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and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

STEVEN GONZALEZ and GIANA
PADILLA on behalf of themselves and all
others similarly situated and aggrieved,

Plaintiffs,

v.

H&M HENNES & MAURITZ L.P., a
Domestic limited partnership; ALYSE
DIGILDO, an individual; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 30-2021-01217029-CU-OE-
CXC

[Assigned to the Hon. William Claster in
Dept. CX101]

**DECLARATION OF VEDANG J. PATEL
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND
REPRESENTATIVE ACTION
SETTLEMENT**

DECLARATION OF VEDANG J. PATEL

1
2 1. I am an attorney at law, duly licensed to practice before all the Courts of the State
3 of California, a senior attorney at Bibiyan Law Group, P.C., counsel for Plaintiffs Steven Gonzalez
4 (“Plaintiff Gonzalez”) and Giana Padilla (“Plaintiff Padilla”, and with Plaintiff Gonzalez, the
5 “Plaintiffs”), and all others similarly situated and aggrieved. As such, I am familiar with the file
6 in this matter and, if called as a witness, I could and would competently testify to the following
7 facts of my own personal knowledge.

8 2. On or around August 18, 2021, Plaintiff Gonzalez filed his class action complaint
9 for damages in the Superior Court of the State of California for the County of Orange, Case No.
10 30-2021-01217029-CU-OE-CXC. Plaintiff Gonzalez alleged violations, including but not limited
11 to, failure to give compliant meal and rest breaks, to pay meal and rest break premiums, to pay
12 overtime, to provide accurate wage statements, to pay minimum wage, to pay all due wages upon
13 termination, failure to indemnify, and unfair competition. On August 18, 2021, Plaintiff Gonzalez
14 also filed a notice with the Labor and Workforce Development Agency (“LWDA”) to seek civil
15 penalties for various Labor Code violations.

16 3. On or around April 19, 2022, Plaintiff Gonzalez filed a First Amended Complaint
17 in the instant action seeking civil penalties under the Private Attorney’s General Act Labor Code
18 section 2699. On or around January 2, 2024, Plaintiffs filed an amended notice with the LWDA
19 (“Amended PAGA Notice”). A true and correct copy of the Amended PAGA Noticed is attached
20 to the Patel Decl. as Exhibit 2. On February 5, 2024, Plaintiff Gonzalez filed a Second Amended
21 Complaint adding another allegedly aggrieved employee and purported class representative,
22 Giana Padilla, as a named plaintiff.

23 4. Thereafter, the Parties conducted formal discovery and also agreed to exchange
24 informal discovery and attend mediation. Prior to the mediations, Plaintiffs obtained, through
25 informal discovery: (a) a 10% sampling of time and payroll records for Class Members and
26 Aggrieved Employees; (b) all policy documents related to the claims in this case; and (c)
27 Plaintiffs’ personnel file.
28

5. On or around July 18, 2023, the Parties participated in an all-day mediation presided over by Mark S. Rudy, Esquire. The mediation was unsuccessful, but the Parties continued settlement negotiations for the next several months with the aid of the mediator.

6. On or around April 19, 2022, Plaintiff Gonzalez filed a First Amended Complaint in the instant action seeking civil penalties under the Private Attorney's General Act Labor Code section 2699.

7. On or around November 6, 2024, the Parties attended a second all-day mediation, also presided over by Mark S. Rudy, Esquire, which led to the Parties reaching an agreement to settle the Action. As part of the Settlement, the Parties agreed Plaintiffs shall dismiss, without prejudice, any and all claims against defendant Alyse Digildo (“Ms. Digildo”). Defendant represents that Ms. Digildo is a Class Member and as such Plaintiffs agree that dismissal of any claims against her is appropriate for approval purposes.

The Proposed Settlement

8. Subject to Court approval pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.679, *et seq.*, the Parties have agreed to settle the Action by agreement upon the terms and conditions and for the consideration set forth in the Settlement Agreement, a copy of which is attached hereto as Exhibit “1” thereto. A summary of the terms of the settlement are as follows:

Defendant will stipulate, for purpose of this settlement only, as follows:

- Certification of a class (“Settlement Class,” “Settlement Class Members” or “Class Members”) defined as: all retail workers currently or formerly employed by Defendant H&M Fashion USA, Inc. (“Defendant”), either directly or through any subsidiary, staffing agency, or professional employer organization, as non-exempt employees during the period from August 18, 2017 through November 6, 2024 (“Class Period”) in the State of California.
- Defendant will pay \$7,500,000.00 (“Gross Settlement Amount”) to resolve the matter.

- 1 • The Settlement was negotiated based on Defendant’s representation that there are
2 approximately 1,020,974 Workweeks worked during the Class Period. In the event the
3 number of Workweeks worked increases during the Class Period by more than 10%, or
4 an additional 102,097 Workweeks, then, at Defendant’s election: (1) the Gross
5 Settlement Amount shall be increased proportionally by the Workweeks worked in
6 excess of 1,123,071 (1,020,974 Workweeks + 102,097 Workweeks) multiplied by the
7 Workweek Value; or (2) the Class Period shall be reduced in order to ensure that the
8 Workweeks do not exceed 1,123,071. The Workweek Value shall be calculated by
9 dividing the Gross Settlement Amounts by 1,020,974. The Parties agree that the
10 Workweek Value amounts to \$7.35 per Workweek (\$7,500,000 / 1,020,974
11 Workweeks). Thus, for example, should there be 1,200,000 Workweeks in the Class
12 Period, then, if Defendant elects option 1 above, the Gross Settlement Amount shall be
13 increased by \$565,428.15. (1,200,000 Workweeks – 1,123,071 Workweeks) x
14 \$7.35/Workweek.) Defendant shall have ten (10) business days from receiving notice
15 that there are greater than 1,123,071 Workweeks to exercise its election; otherwise, it
16 will be assumed that Defendant has exercised Option (1).
- 17 • Defendant will pay the employer’s share of taxes separate and apart from the Gross
18 Settlement Amount.
- 19 • This is a non-reversionary settlement.
- 20 • Class Members will be paid their *pro rata* share of the class action settlement based
21 on the total number of Workweeks¹ worked during the Class Period.
- 22 • The Settlement Administration costs, estimated not to exceed \$71,950.00 will be paid
23 out of the Gross Settlement Amount.
- 24 • Class Counsel will apply for, and Defendant will not oppose, attorneys’ fees of not
25 more than thirty-five (35%) of the Gross Settlement Amount, which, unless escalated

26 _____
27 ¹ “Workweek” means any week (i.e. 7-day period) during which a Class Member was employed by Defendant for at
28 least one day in a non-exempt position during the Class Period in California, based on hire dates, re-hire dates (as
applicable), and termination dates (as applicable).

pursuant to the Settlement Agreement, amounts to \$2,625,000.00, and actual costs, not to exceed \$85,000.00 all of which will be paid out of the Gross Settlement Amount. Class Counsel may seek less than 35% in fees at the time of final approval.

- Class Counsel will apply for, and Defendant will not oppose, a service award in the amount of \$7,500.00 each, to a total amount of \$15,000, for the Class Representatives, which will be paid out of the Gross Settlement Amount.
- “Aggrieved Employees” means all retail workers currently or formerly employed by Defendant, either directly or through any subsidiary, staffing agency, or professional employer organization, as non-exempt employees during the period from August 18, 2020 through November 6, 2024 (“PAGA Period”) in the State of California.
- Defendant has agreed to pay \$200,000.00 as PAGA penalties, seventy-five percent (75%) or \$ 150,000.00 of which will be paid to the LWDA out of the Gross Settlement Amount, and twenty-five percent (25%) or \$ 50,000.00 of which will be distributed to the PAGA Members.
- For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date (180 days), the Administrator shall transmit the funds represented by such checks to Legal Aid at Work.

Settlement Agreement and Accompanying Documents

9. Attached hereto as Exhibit “1” is the Settlement Agreement. Attached to the Settlement Agreement as Exhibit A is the proposed “Class Notice” to be distributed to Class Members in English.

10. Class Counsel has selected to use ILYM Group, Inc. an experienced Settlement Administrator, to administer the settlement.

11. On or about April 15, 2025 my office submitted a copy of the Settlement Agreement to the California Labor and Workforce Development Agency (“LWDA”) in compliance with Labor

1 Code section 2699, subdivision (l)(2). A true and correct copy of each confirmation from the LWDA
2 in connection with Plaintiffs is attached hereto as Exhibit 3.

3 **The Settlement Is Fair and Reasonable Based Upon Objective Evidence**

4 **The Settlement was Negotiated at Arm's-Length and is not Collusive**

5 12. The Settlement that has been reached, subject to this Court's approval, is a product
6 of substantial efforts by Class Counsel. The Settlement was reached after extensive factual and legal
7 investigation and research; substantial negotiation regarding the scope of informal discovery; an
8 exchange of documents and information that included review of time and pay records and analysis
9 thereof with the aid of Plaintiffs and expert consultants; an analysis of shifts and Workweeks worked
10 by Class Members in the Class Period, analysis of the number of pay periods and number of PAGA
11 Members in the PAGA Period for calculating PAGA penalties, number of Class Members eligible
12 for wage statement penalties and waiting time penalties; an analysis of Plaintiffs' employment
13 records; extensive correspondence and communication between counsel; a review of pleadings,
14 evidence and rulings in similar actions litigated elsewhere in the state; a review of similar cases in
15 the same industry elsewhere in the country; and preparation for and attendance at two full-day
16 session of mediations, followed by months of further discussions and coordination to finalize the
17 terms and conditions of the general settlement parameters agreed to by the Parties.

18 13. While Class Counsel believe in the chance of success of certifying the claims, Class
19 Counsel recognized the potential risk, expense and complexity posed by further litigation.
20 Moreover, litigating Plaintiffs' claims in this Litigation—claims that involve approximately 19,694
21 Class Members during the Class Period—would require enormous preparation and discovery, and
22 ultimately would involve the deposition and presentation of numerous more witnesses (including
23 Class Members and expert witnesses), as well as the consideration, preparation and analysis of
24 expert reports. Therefore, should litigation have progressed any further, there would have been
25 significant expense incurred by each side (above and beyond the expense already incurred).

26 **The Settlement Amount is Well Within Range of Reasonableness**

1 14. Class settlement amount reached in this case provides significant recovery to Class
2 Members and PAGA Members, and easily falls within the range of reasonableness. Based on
3 documents and information provided by Defendant, Class Counsel understand there are
4 approximately 1,020,974 Workweeks during the Class Period.

5 **Unpaid Wages for Failure to pay Off-the-Clock Work**

6 15. Class Counsel theorized at the mediation, based on Plaintiffs' and Class Members'
7 narrative evidence, that Defendant's practices during the Claas Period resulted in off-the-clock work.
8 Class Counsel theorized that Class Members spent time off-the-clock because, among other things,
9 they were required to walk to the time clock to clock in and out, wait in line to clock in, stow their
10 personal belongings, and submit to security checks, all off-the-clock. Class Counsel further
11 theorized that Class Members were required to wait for the on-duty keyholder to arrive and unlock
12 the doors before being admitted into the store. Furthermore, based upon Plaintiffs' and Class
13 Members' narrative evidence, Class Counsel theorized that every putative Class Member was
14 required to notify the manager of their departure before they are permitted to leave for the day which
15 involved clocking out, searching for the manager, notifying the manager of the employee's
16 departure, and then departing the store which would occur off-the-clock. Additionally, all Class
17 Members with bags were obligated to submit to mandatory security checks after clocking out
18 resulting in additional off-the-clock work.

19 16. Class Counsel advanced a theory that all Class Members worked off-the-clock for an
20 estimate of 6 minutes each shift throughout the Class period, without pay. Class Counsel understand
21 from the data provided and analyzed by expert data consultants that there were 4,380,195 shifts
22 during the Class Period, 22.7% of shifts worked were over 8 hours, and that Class Members were
23 paid an average of \$18.65 per hour. Thus, one theory advanced by Class Counsel resulted in
24 Defendant's exposure for unpaid overtime wages due to failure to track and pay for all time worked
25 of \$2,781,566 (0.1 hr. x \$18.65/hr x 1.5 OT rate x 4,380,195 shifts x 0.227 shifts over 8 hrs.).
26 Additionally, Class Counsel theorized Defendant's exposure for unpaid minimum wages is
27 \$12,629,372 (0.1 hr. x \$18.65/hr x 2 liquidated damages x 4,380,195 shifts x 0.773 shifts under 8
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1 hrs.). Thus, Class Counsel theorized Defendant's total exposure for failure to pay for all time worked
2 at the time of mediation was \$15,410,938.

3 17. Class Counsel understand from the mediator and the mediation process that
4 Defendant made the following defenses, among others, in connection with this claim: Defendant
5 contends that its policies specifically prohibit off-the-clock work. Defendant contends that it did not
6 require Class Members to work off-the-clock and, rather, they were paid for all time suffered or
7 permitted to work. Defendant also state that its provided numerous computers for Class Members
8 to clock in and out, and therefore it would not have to wait in line. Furthermore, Defendant argued
9 that any allegations that Class Members were required to be under Defendant's control off-the-clock
10 would necessitate an individualized inquiry into when and why, making this claim not subject to
11 class treatment and any trial in this litigation unmanageable. Thus, Defendant contends that no
12 damages can be recovered here, and, even if, arguendo, they could, an estimate of six (6) minutes
13 of unpaid work off-the-clock of Class Members for every single shift during the Class Period is a
14 wild exaggeration of time spent working off-the-clock if any such time was spent.

15 **Recovery of Damages for Non-Compliant Meal Periods**

16 18. Class Counsel theorized, based on the narrative evidence of Plaintiffs, as well as
17 documents produced by Defendant, that Defendant's meal period policies and practices throughout
18 the Class Period were non-compliant as Plaintiffs and Class Members did not receive full, timely
19 and uninterrupted meal periods. Class Counsel theorized that, among other things, Plaintiffs and
20 Class Members were required to walk back and forth from a suitable break area, and therefore would
21 regularly end their breaks early so that their meal break would not exceed 30 minutes. Furthermore,
22 Class Counsel understand that Defendant's time punch machine was located in the back room and
23 away from the break room. The food court was also located in a different part of the store requiring
24 Class Members to walk to clock in and out. Class Counsel also theorized that Plaintiffs and Class
25 Members were required to retrieve and stow their belongings in the company lockers as a part of
26 Defendant's safety policy after clocking out for meal periods. Furthermore, Class Counsel also
27 theorized, based on Plaintiffs' and Class Members' narrative evidence, that managers would often
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1 come and ask work-related questions during the meal break, and customers would interrupt Class
2 Members' break by asking them questions.

3 19. Class Counsel understands from the documents produced by Defendant and analyzed
4 by expert data consultants that there were 965,184 unique meal period violations (i.e. meal periods
5 that were late, short, or missed) during the Class Period through the mediation. Thus, one theory
6 advanced by Class Counsel, based solely on facial and unique violations, resulted in Defendant's
7 liability for unpaid meal premiums of \$17,071,110 [$\$18.65/\text{hr} \times (965,184 \text{ unique meal period}$
8 $\text{violations} - 49,842 \text{ meal period premiums paid}]$.

9 20. Class Counsel understand from the mediator and the mediation process that
10 Defendant makes the following defenses, among others, in connection with this claim: Defendant
11 argued that it had compliant meal period policies and practices. Defendant argued that Class
12 Members took timely and full meal periods. Defendant contends that its policy requires their
13 employees to take timely and full meal periods. Defendant further contends that any instance of a
14 Class Member failing to take a compliant meal period was voluntary, in violation of its meal period
15 policy, would necessitate an individualized inquiry and would not lend itself to a manageable trial.
16 Thus, Defendant contends that no monies are owed for this account but, even if any amounts were
17 due, the amount calculated by Class Counsel is excessive.

18 **Recovery of Damages for Non-Compliant Rest Periods**

19 21. Class Counsel theorized at mediation, based on Plaintiffs' and Class Members'
20 narrative evidence, that Class Members did not receive compliant rest periods throughout the Class
21 Period based on many of the reasons stated above for meal period violations, including that they
22 were cut short, interrupted, or just not provided in some instances. Class Counsel theorized from
23 Plaintiffs' and Class Members' narrative evidence that Class Members would be required to walk
24 to and from the break room or another suitable break area to retrieve and stow their personal items.
25 Class Counsel also theorized that Plaintiffs and Class Members missed rest breaks entirely due to
26 workload and understaffing. Class Counsel understand from Defendant's records and Class
27 Members' narrative evidence that Class Members did not know that they were entitled to more than
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1 one rest break per shift, even for shifts longer than eight hours. As a result, Class Members were
2 deprived of a second or third rest break, even for qualifying shifts. Moreover, Class Counsel also
3 theorized from Plaintiffs' narrative evidence that rest periods were frequently cut short or interrupted
4 by managers or customers with time-sensitive questions and tasks. Notably, no rest period premiums
5 were paid during the Class Periods through the mediation. One calculation performed by Class
6 Counsel resulted in, assuming a conservative 20% violation rate for rest-eligible shifts, of
7 \$16,052,320 (\$18.65/hr. x 4,303,571 shifts x 0.20 violation rate).

8 22. Class Counsel understand from the mediator and the mediation process that
9 Defendant make the following defenses, among others, in connection with this claim: Defendant
10 argued that it had compliant rest period policies and practices and that its policy requires their
11 employees to take timely and full rest breaks. Defendant argued that Class Members took timely
12 and full rest breaks or received the required rest period premium for each instance of rest period
13 violations. Defendant further contends that any instance of a Class Member failing to take a
14 compliant rest period was voluntary and therefore would necessitate an individualized inquiry and
15 would not lend itself to a manageable trial. Thus, Defendant contends that *no* monies are owed for
16 this account but, even if any amounts were due, the amount calculated by Class Counsel is excessive.

17 **Wage Statement Violations**

18 23. Class Counsel theorized that Class Members are entitled to recover penalties for
19 Defendant's alleged failure to issue compliant wage statements under Labor Code section 226,
20 subdivision (e), because shift involved off-the-clock work that was not included on wage statements.
21 Further, many shifts included meal period and rest period violations for which premiums were not
22 paid. Thus, Defendant is liable for wage statement violations for each pay period. Class Counsel
23 understand from the data provided by Defendant that there were 351,909 pay periods in the wage
24 statement liability period. Thus, Class Counsel theorized Defendant's exposure for this claim,
25 assuming a 20% violation rate, to be \$7,038,180. (351,909 pay periods in the wage statement
26 period x \$100 penalty x .20 violation rate).

1 24. Class Counsel understand from the mediator and the mediation process that
2 Defendant makes the following defenses, among others, in connection with this claim: Defendant
3 contends that the wage statements issued to the employees fully complied with Labor Code section
4 226. Defendant contends that because they believe no wages are unpaid that, thus, there can be no
5 derivative penalties. However, Class Counsel also understand the risks inherent in this claim if the
6 above claims were not certified. Class Counsel also had to factor in, and did factor in, the risk that
7 a Court would find there was no injury to Class Members even if the wage statements were
8 inaccurate or that Defendant's conduct was not intentional, both of which are requirements of Labor
9 Code section 226 before penalties can issue. Class Counsel also note that the calculation used does
10 not consider the first pay period violation only being \$50 and the fact that all Class Members did
11 not work all pay periods.

12 **Waiting Time Penalties**

13 25. Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant
14 statutory period (i.e., three years before the filing of the initial Complaint) is entitled to 30 days'
15 worth of wages as waiting time penalty for not being paid all wages due upon separation of
16 employment. Class Counsel theorized at mediation, based on relevant documents provided by
17 Defendant, that, under Labor Code section 203, Defendant is liable to pay each Class Member, who
18 was terminated during the relevant statutory period, a full 30-day worth of wages as waiting time
19 penalty for failure to pay compensation in lieu of compliant meal and rest periods, and failure to
20 timely pay all wages due. Class Counsel further theorized that there are putative Class Members
21 who were provided their final paycheck late and in addition to this, numerous putative Class
22 Members were given their final paycheck as a pay card. That pay card had fees associated with it
23 and therefore all final wages were not paid properly to any of those Class Members. Class Counsel
24 understands from documents provided by Defendant that there were 12,000 separated employees
25 during the relevant statutory period. Thus, Class Counsel theorized Defendant's exposure for this
26 claim, assuming a 20% violation rate, to be \$10,742,400 (12,000 separated Class Members x
27 \$18.65/hr. x 8 hrs x 30 days x .20 violation rate
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1 26. Class Counsel understand from the mediator and the mediation process that
2 Defendant contends that there is no credence to Plaintiffs' off-the-clock theory and that, thus, no
3 waiting time penalties are owed based on that theory. Finally, Defendant contends that their actions
4 were not "willful" and that, thus, waiting time penalties cannot be awarded. Thus, Defendant argued
5 that no waiting time penalties are owed.

6 **Failure to Reimburse Work Expenses**

7 27. Class Counsel theorized that Defendant failed to indemnify Class Members for
8 business expenses because, among other things, Defendant required Class Members to use their
9 personal cellphones for work-related purposes. Class Counsel theorized from Plaintiffs' and Class
10 Members' narrative evidence that Class Members were required to use their phones to document
11 merchandising in stores, and interact with their managers, district managers, and supervisors. Class
12 Counsel, based on Class Members' narrative evidence, also theorized that Defendant contacted
13 Class Members at least twice a week on their personal cell phones. Moreover, Class Counsel
14 understand that Defendant had no system for reporting or recording cell-phone usage, so there was
15 no mechanism by which non-exempt Class Members could recuperate the costs of employer-
16 mandated cellphone usage. Class Counsel theorized that Class Members are owed \$3 of cell phone
17 usage per week in reimbursement which results in approximately \$3,062,922 (\$3 per Workweek x
18 1,020,974 Workweeks).

19 28. Class Counsel understand from the mediator and the mediation process that
20 Defendant argued the following: Defendant argued that they did not require Class Members to use
21 their cell phones for work-related purposes and that Class Members used cell phones solely for
22 personal use. Defendant also argued that they reimbursed all employees for all expenses incurred in
23 furtherance of work. Thus, Defendant contends that no monies under this theory, either.

24 **PAGA Penalties**

25 29. Class Counsel understand from the time and payroll data provided by Defendant that
26 there were 351,909 pay periods in the PAGA Period. Plaintiffs' claims in the Action under PAGA
27 are substantially similar to those described herein. PAGA penalties include penalties for initial
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1 violations and subsequent violations. Defendant contends that only initial violation rates may be
2 used instead of the subsequent violation rates initially used by Class Counsel. With this in mind and
3 because Class Counsel through investigation and discovery did not come to the conclusion that
4 Defendant at any time was notified by any governmental entity that they violated any Labor Code
5 sections presented in the PAGA Notice and PAGA claims, Class Counsel adjusted the exposure
6 model for Defendant to include only initial violation rates.

7 30. While Class Counsel are informed and believe that reasonable minds differ with
8 regard to calculation of PAGA penalties, Class Counsel believe it is reasonable to calculate
9 Defendant's maximum exposure in PAGA penalties as follows:

10 a. Overtime Violations: Labor Code section 558 prescribes penalties of \$50 for an
11 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all
12 violations, and a violation every single pay period for every single non-exempt employee in the
13 PAGA Period, this amounts to a maximum exposure of \$17,595,450 (351,909 pay periods x \$50).

14 b. Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of
15 \$100 for an initial violation and \$250 for each subsequent violation. Using the initial pay period
16 rate for all violations and a violation every single pay period for every single non-exempt
17 employee in the PAGA Period, this amounts to a maximum exposure of \$35,190,900 (351,909
18 pay periods x \$100).

19 c. Meal Period Violations: Labor Code section 558 prescribes penalties of \$50 for an
20 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all
21 violations and a violation every single pay period for every single non-exempt employee in the
22 Settlement Period, this amounts to a maximum exposure of \$17,595,450 (351,909 pay periods x
23 \$50).

24 d. Rest Period Violations: Labor Code section 558 prescribes penalties of \$50 for an
25 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all
26 violations and a violation every single pay period for every single non-exempt employee in the
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1 Settlement Period, this amounts to a maximum exposure of \$17,595,450 (351,909 pay periods x
2 \$50).

3 e. Waiting Time Penalties: Labor Code section 2699 prescribes penalties of \$100 for
4 an initial violation and \$200 for each subsequent violation. Because this violation is merited only
5 at separation of employment, a 100% violation rate would likely include just one violation per
6 employee. The data produced by Defendant indicates that there were 8,139 Aggrieved Employees
7 whose employment was separated during the PAGA Period. This amounts to a maximum exposure
8 of \$813,900 (8,139 Aggrieved Employees x \$100).

9 f. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021)
10 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty
11 for wage statement violations that are inaccurate, which prescribes penalties of \$100 for an initial
12 violation and \$200 for each subsequent violation (*Id.* at 247-248). Using the initial pay period rate
13 for all violations and a violation every single pay period for every single non-exempt employee in
14 the PAGA Period, this amounts to a maximum exposure of \$35,190,900 (351,909 pay periods x
15 \$100).

16 g. Failure to Reimburse Work Expenses: Labor Code section 2699 would be the
17 appropriate penalty for failure to reimburse work expenses, which prescribes penalties of \$100 for
18 an initial violation and \$200 for each subsequent violation. Using *only* the initial pay penalty of
19 \$100 for all violations, and a violation every pay period for each non-exempt employee in the
20 PAGA Period, this amounts to exposure of \$35,190,900 (351,909 pay periods x \$100).

21 h. Conclusion: In sum, Class Counsel calculated Defendant's total maximum
22 exposure for PAGA violations if the Court were to find a 100% violation rate for every PAGA
23 Member every pay period and not exercise its discretion to reduce any of those penalties to be
24 \$159,172,950. Class Counsel understand from the mediator and the mediation process that
25 Defendant argued the following in connection with this claim: Defendant contends that no PAGA
26 penalties are likely to be awarded and, even if they were, the maximum exposure calculated by
27 Class Counsel is vastly overstated. First, Defendant defends that PAGA penalties cannot and
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1 should not be stacked. Second, Defendant asserts that individualized issues predominate the
2 PAGA claims, making the claims unmanageable for trial. Third, Defendant denies that a violation
3 for each pay period can be established. Fourth, Defendant contends that a Court is unlikely to
4 exercise its discretion to award civil penalties under PAGA where, as here, there is no conduct
5 shown by Plaintiffs that would show any Labor Code violation by Defendant is knowing and
6 intentional. Defendant insists that this is especially true in this Action where class action damages
7 are available to Class Members, rendering an award of PAGA penalties in addition to class action
8 damages to be double recovery.

9 31. Class Counsel maintain that it is possible to recover the subsequent violation rate for
10 penalties, that stacking is permissible, and that there is no manageability requirement under PAGA
11 (citing Estrada v. Royalty Carpet Mills, Inc.). As such, Class Counsel believe a 95% discount of this
12 claim to be reasonable, resulting in a valuation of \$7,958,613 as a reasonable estimate of the
13 likelihood of what Plaintiffs may recover at trial for PAGA penalties (\$159,172,950 x .05).

14 **Conclusion**

15 32. When including derivative penalties, such as waiting time penalties, wage statement
16 violations, and discretionary PAGA penalties, Class Counsel theorized Defendant's maximum
17 exposure to be approximately \$77,336,483. In all, Class Counsel obtained a Gross Settlement
18 Amount of \$7,500,000. Particularly in light of the risks involving obstacles to class certification, all
19 issues and risks related to liability, the issues with manageability at trial, the discretionary nature of
20 PAGA penalties, and considering the case law regarding fair, reasonable and adequate settlements,
21 Class Counsel strongly believe that the settlement reached is fair, reasonable and adequate, and in
22 the best interest of Class Members.

23 33. Moreover, \$200,000 of the Gross Settlement Amount was attributed to PAGA
24 penalties. This allocation was decided mutually by the Parties and the mutual decision was based
25 on: (1) the fact that damages are available for the failure to pay wage claims while only penalties
26 are available for the PAGA claims; (2) the risk that the Court may exercise its discretion to decline
27 to stack PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the full
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1 amount of PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA
2 penalties at all in light of the fact that damages are available for Class Members and it may find any
3 further liability against Defendant unnecessarily punitive.

4 **Proposed Attorneys' Fees and Costs Are Reasonable**

5 34. Class Counsel seek an attorneys' fees award of *not more than* thirty-five percent
6 (35%) of the Gross Settlement Amount, which, unless escalated pursuant to this Agreement, would
7 amount to \$2,625,000.00. Class Counsel also seek reimbursement of costs not to exceed \$85,000.00.
8 Class Counsel may seek less than 35% in fees at the time of final approval.

9 **The Requested Enhancement Award to The Named Plaintiffs and Class Representatives Is**
10 **Reasonable**

11 35. Class Counsel believe Plaintiffs are entitled to an enhanced award for their service
12 as class representatives, for answering extensive questions by Class Counsel, for being available
13 and answering questions during mediation, for the risks in being the named Plaintiffs and for
14 providing Defendant with a more expansive release of claims, including a waiver based upon
15 California Civil Code section 1542, in exchange for the enhancement award.

16 36. I am informed and believe Defendant does not oppose the requested enhancement to
17 Plaintiffs. Plaintiffs risked intrusive discovery and the payment of employer costs. Class Counsel
18 seeks a limited enhancement of \$7,500.00 each for Plaintiffs or a total of \$15,000.00 for their
19 services.

20 **Conditional Certification for Settlement Purposes**

21 **Ascertainability**

22 37. The Class Member definition (i.e., all retail workers currently or formerly employed
23 by Defendant, either directly or through any subsidiary, staffing agency, or professional employer
24 organization, as non-exempt employees during the Class Period in the State of California) is derived
25 from the operative complaint, which complains of alleged violations of Labor Code sections that
26 are chiefly and, in some instances, solely applicable to non-exempt and hourly-paid employees.
27 Pursuant to Defendant's payroll records, approximately 19,694 persons.

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Numerosity

38. Class Counsel understand from documents provided that Defendant identified at least 19,694 Class Members.

Commonality

39. This litigation is brought to resolve common issues that include whether Defendant failed to pay for all hours worked; whether Defendant provided full, timely and un-interrupted meal and rest periods, whether Class Members are entitled to premium pay for incomplete, untimely or interrupted meal or rest periods, among other claims as set forth above.

Typicality

40. I believe Plaintiffs: (1) were non-exempt employees like other Class Members; (2) complaints of not being paid for all time under Defendant’s control or suffered and/or permitted to work for Defendant; (3) did not receive full premium pay for meal periods that were not compliant with the Labor Code; (4) did not receive premium pay for rest periods that were not provided, among others as set forth above.

Adequacy of Vedang J. Patel

41. I graduated with Bachelor of Arts degree in Economics from the University of California, Davis in 2016.

42. I received my Juris Doctorate from the UCLA School of Law in 2019.

43. After graduating from law school, I practiced law as a member of Murchison & Cumming, LLP on a variety of matters on behalf of defendants.

44. Thereafter, I joined Bibiyan Law Group, P.C., practicing law on behalf plaintiffs in matters of employment law, and specifically on issues of unpaid wages and class action settlements.

45. I am currently a Senior Attorney at Bibiyan Law Group, P.C. Among other tasks, I oversee and manage all class action and PAGA action settlements at Bibiyan Law Group, P.C. I have led settlement negotiations and the approval process for class action and PAGA settlements in countless matters, including many of those listed in the declaration of David D. Bibiyan filed concurrently.

46. I have also been appointed as Class Counsel in the past in the following actions:

- *Ramirez v. Sea-win*, Case No. 21STCV22026, California Superior Court, County of Los Angeles, Honorable Lawrence P. Riff presiding;

- *Ortega Chavez v. Winpak Lane, Inc.* Case No. CIVSB2202274, California Superior Court, County of San Bernardino, Honorable Jessica Morgan presiding;

- *Taat v. Acell. Inc.* Case No. 37-2022-00005437-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Matthew Brainer presiding;

- *Jordan v. The Martin-Brower Company.* Case No. 21STCV41435, California Superior Court, County of Los Angeles, Honorable Stuart Rice presiding;

- *Williams v. Marrs.* Case No. 21STCV23775, California Superior Court, County of Los Angeles, Honorable Stuart Rice presiding;

- *Russell v. Staffmark.* Case No. CVRI2103921, California Superior Court, County of Riverside, Honorable Harold Hopp presiding;

- *Ortega Chavez v. Winpak Lane, Inc., et al.* Case No. CIVSB2202274, California Superior Court, County of San Bernardino, Honorable Jessica Morgan presiding;

- *Carrasco v O.H. Barkhordar D.D.S., Inc., et al.* Case No. 22STCV21188, California Superior Court, County of Los Angeles, Honorable Lawrence Riff presiding;

- *Correia v. Gallo Glass Company, et al.* Case No. CV-21-006459, California Superior Court, County of Stanislaus, Honorable Sonny S. Sandhu presiding;

- *Hernandez v Bromley Foods, Inc., et al.* Case No. 56-2021-00561326-CU-OE-VTA, California Superior Court, County of Ventura, Honorable Henr Walsh presiding;

- *Moreno v. Infiniti Group LLC., et al.* Case No. CIVSB2223551, California Superior Court, County of San Bernardino, Honorable Joseph T. Ortiz presiding;

- *Kelley v. Applus Technologies, Inc., et al.* Case No. CIVSB2204889, California Superior Court, County of San Bernardino, honorable Jessica Morgan presiding;

- *Helaire, et al. v. Smithfield Packaged Meats Corp., et al.* Case No. JCCP5244, California Superior Court, County of San Bernardino, Honorable Jesica Morgan, presiding;

1 • *Davood v. NKSFB, LLC*. Case No. 22STCV17305, California Superior Court, County of
2 Los Angeles, Honorable Christopher Lui presiding.

3 • *Flores v. United Maintenance Company, Inc., et al.* Case No. 21STCV07008, California
4 Superior Court, County of Los Angeles, Honorable Carolyn B. Kuhl presiding;

5 • *Cabral v. Laser Care Specialists, A Professional Medical Corporation, et al.* Case No.
6 21STCV25443, California Superior Court, County of Los Angeles, Honorable Carolyn B. Kuhl
7 presiding;

8 • *Lopez Cabrera v. South Valley Almond Company, LLC, et al.* Case No. BCV-2-100722,
9 California Superior Court, County of Kern, Honorable Bernard C. Barmann, Jr. presiding;

10 • *Portillo Sanchez v. Paragon Services Janitorial Orange County, LLC, et al.* Case No.
11 20STCV38562, California Superior Court, County of Los Angeles, Honorable William F.
12 Highberger presiding;

13 • *Trigueros Garcia v. Highland Plastics, Inc., et al.*, Case No. CVRI2202836, California
14 Superior Court, County of Riverside, Honorable Harold Hopp presiding;

15 • *Magana Ramirez v. 360 Support Services, et al.* Case No. 22STCV20456, California
16 Superior Court, County of Los Angeles, Honorable Lawrence P. Riff presiding;

17 • *Helaire v. Smithfield Packaged Meats Corp, et al.* Case No. JCCP5244, California
18 Superior Court, County of San Bernardino, Honorable Jessica Morgan presiding;

19 • *Hernandez v. Bromley Foods, Inc., et al.* Case No. 56-2021-00561326-CU-OE-VTA,
20 California Superior Court, County of Ventura, Honorable Henry Walsh presiding;

21 • *Hernandez v. Central Valley Recovery Services, et al.* Case No. VCU290220, California
22 Superior Court, County of Tulare, Honorable Brett Hillman presiding;

23 • *Kelley v Applus Technologies, Inc., et al.* Case No. CIVSB2204889, California Superior
24 Court, County of San Bernardino, Honorable Jessica Morgan presiding;

25 • *Mcintosh v. WWL Vehicle Services Americas Inc., et al.* Case No. 56-2022-00562544-
26 CU-OE-VTA, California Superior Court, County of Ventura, Honorable Benjamin Coats
27 presiding;

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- 1 • *Moore v. Dnata US Inflight Catering LLC, et al.* Case No. CGC-20-586512, California
2 Superior Court, County of San Francisco, Honorable Curtis Karnow presiding;
- 3 • *Peterson v. Sorenson Engineering, Inc., et al.* Case No. CIVDS2023994, California
4 Superior Court, County of San Bernardino, Honorable David Cohn presiding;
- 5 • *Torres v. Laurel Avenue, LLC, et al.* Case No. CIVSB2202708, California Superior
6 Court, County of San Bernardino, Honorable David Cohn presiding;
- 7 • *Ruiz v. Kleen Harvest, Inc., et al.* Case No. 21CV002319, California Superior Court,
8 County of Monterey, Honorable Thomas W. Wills presiding;
- 9 • *Russell v. Staffmark Investment LLC, et al.* Case No. CVRI12103921, California
10 Superior Court, County of Riverside, Honorable Harold Hopp presiding;
- 11 • *Vargas-Flores v. Barbor Bay Club, Inc., et al.* Case No. 21CV002396, California
12 Superior Court, County of Alameda, Honorable Michael Markman presiding;
- 13 • *Low v. Triple Canopy, Inc., et al.* Case No. 37-2023-0007078-CU-OE-CTL, California
14 Superior Court, County of San Diego, Honorable Carolyn Caietti presiding;
- 15 • *Lopez v. Bachem Americas, Inc., et al.* Case No. 23STCV04258, California Superior
16 Court, County of Los Angeles, Honorable Laura Seigle presiding;
- 17 • *Romero v. Armstrong Installation Service, et al.* Case No. 22CV022519, California
18 Superior Court, County of Alameda, Honorable Noel Wise presiding;
- 19 • *Sarmiento, et al. v. Neil Jones Food Company* Case No. 21CECG03825, California
20 Superior Court, County of Fresno, Hon. Kristi Culver Kapetan presiding
- 21 • *Mendoza Cendejas v. E. & J. Gallo Winery, et al.* Case No. CV-22-005396, California
22 Superior Court, County of Stanislaus, Honorable Sonny S. Sandhu presiding;
- 23 • *Garcia v. Nature Fresh Farms, LLC, et al.* Case No. ECU001961, California Superior
24 Court, County of Imperial, Honorable Jeffery B. Jones presiding;

25 47. I have also settled matters on a “PAGA Only” basis for aggrieved employees in the
26 past, including in:

- 27 • *Bailey v. Cannon Constructors*, Case No. 21STCV38274, California Superior Court,
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1 County of Los Angeles, Honorable Carolyn Kuhl presiding.

2 • *Johns v. Whelan Security of California, Inc., et al.* Case No. 22STCV68687, California
3 Superior Court, County of Los Angeles, Honorable Laura Seigle presiding;

4 • *Carrion v. Clutter, Inc., et al.* Case No. 23STCV06709, California Superior Court,
5 County of Los Angeles, Honorable Kerry Bensinger presiding;

6 • *Juarez v. Calmet Services, Inc., et al.* Case No. 21STCV33668, California Superior
7 Court, County of Los Angeles, Honorable Kenneth R. Freeman presiding;

8 • *Pattingale v. Laird Family Estate, LLC et al.* Case No. 22CV000048, California Superior
9 Court, County of Napa, Honorable Cynthia P. Smith presiding;

10 • *London Young v. Amazon.com LLC, et al.* Case No. 21STCV38280, California Superior
11 Court, County of Los Angeles, Honorable Elaine Lu presiding;

12 • *Latrice Ackles v. Brinker Restaurant Corporation, et al.* Case No. 22STCV19068,
13 California Superior Court, County of Los Angeles, Honorable Gail Killefer presiding.

14 **Adequacy of Plaintiffs**

15 48. Class Counsel believe no conflicts, disabling or otherwise, exists between Plaintiffs
16 and Class Members because Plaintiffs allege to have been damaged by the same alleged conduct of
17 Defendant (i.e., Plaintiffs were classified as non-exempt employees, were not paid premium pay,
18 etc.) and thus have the incentive to fairly represent all Class Members' claims to achieve the
19 maximum possible recovery.

20 I declare under penalty of perjury under the laws of the state of California that the
21 foregoing is true and correct this April 15, 2025, at Los Angeles, California.

22
23 /s/ Vedang J. Patel

Vedang J. Patel

EXHIBIT 1

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Attorneys for Defendant H&M HENNES & MAURITZ, L.P.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

STEVEN GONZALEZ and GIANA
PADILLA on behalf of themselves and all
others similarly situated and aggrieved,

Plaintiffs,

v.

H&M HENNES & MAURITZ L.P., a
Domestic limited partnership; ALYSE
DIGILDO, an individual; and DOES 1
through 100, inclusive

Defendants.

CASE NO.: 30-2021-01217029-CU-OE-
CXC

[Assigned to the Hon. William Claster in
Dept. CX101]

**CLASS AND PAGA SETTLEMENT
AGREEMENT**

Action Filed: August 18, 2021
Trial Date: None Set

This Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement” or “Settlement Agreement”) is made by and between Plaintiffs STEVEN GONZALEZ AND GIANA PADILLA (“Plaintiffs”) and Defendant H&M FASHION USA, INC., previously known as H&M HENNES & MAURITZ L.P, (“Defendant”). The Agreement refers to Plaintiffs and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS

1.1. “Action” means the Plaintiffs’ lawsuit alleging wage and hour violations and civil penalties under California Private Attorneys’ General Act of 2004, California Labor Code § 2698 *et seq.* (“PAGA”), against Defendants, captioned *Steven Gonzalez and Giana Padilla v. H&M Hennes & Mauritz L.P. and Alyse Digildo*, Case No. 30-2021-01217029-CU-OE-CXC, initiated on August 18, 2021, and pending in Superior Court of the State of California, County of Orange.

1.2. “Administrator” means ILYM Group, Inc. the neutral entity Plaintiffs have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. “Aggrieved Employees” means all retail workers currently or formerly employed by Defendant, either directly or through any subsidiary, staffing agency, or professional employer organization, as non-exempt employees during the PAGA Period in the State of California.

1.5. “Class” or “Settlement Class” means all retail workers currently or formerly employed by Defendants, either directly or through any subsidiary, staffing agency, or professional employer organization, as non-exempt employees during the Class Period in the State of California.

1.6. “Class Counsel” means David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group, P.C.

1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean

the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.8. "Class Data" means Class Member identifying information in Defendants' custody, possession, or control, including the Class Member's (1) name; (2) last known address(es); (3) last four digits of the last known Social Security Number(s); and (4) the dates of employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)).

1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).

1.10. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English and Spanish in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. "Class Period" means the period from August 18, 2017 through November 6, 2024.

1.13. "Class Representative" means the named Plaintiffs in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. "Class Representative Incentive Award" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. "Court" means the Superior Court of California, County of Orange.

1.16. "Defendant" means named Defendant H&M Fashion USA, Inc. (previously known as H&M HENNES & MAURITZ L.P.).

1.17. "Defense Counsel" means Andrew L. Satenberg of Manatt, Phelps & Phillips, LLP.

1.18. "Effective Date" means the later of: (a) the Court enters a Judgment on its Order Granting

Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final the day after the deadline for filing a notice of appeal (i.e. 61st day after entry of the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.21. “Final Judgment” means the Judgment entered by the Court based upon the Final Approval.

1.22. “Gross Settlement Amount” means \$7,500,000.00 (Seven Million Five Hundred Thousand Dollars and Zero Cents) which is the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 8.1 below and any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, Class Representative Incentive Award, and Administrator’s Expenses.

1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.

1.25. “Judgment” means the judgment entered by the Court based upon Final Approval.

1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following
2 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
3 Payment, Class Representative Incentive Award, Class Counsel Fees Payment, Class Counsel
4 Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be
5 paid to Participating Class Members as Individual Class Payments.

6 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
7 Settlement by sending the Administrator a valid and timely Request for Exclusion.

8 1.30. “Operative Complaint” means the Second Amended Complaint filed in the Action on
9 February 5, 2024.

10 1.31. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee was
11 employed by Defendant for at least one day during the PAGA Period, based on hire dates, re-
12 hire dates (as applicable), and termination dates (as applicable).

13 1.32. “PAGA Period” means the period from August 18, 2020 through November 6, 2024.

14 1.33. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

15 1.34. “PAGA Notice” means Plaintiffs’ August 18, 2021, letter to Defendant and the LWDA,
16 providing notice pursuant to Labor Code section 2699.3 subd. (a).

17 1.35. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the
18 Gross Settlement Amount (\$200,000.00), allocated 25% to the Aggrieved Employees
19 (\$50,000.00) and 75% to the LWDA (\$150,000.00) in settlement of PAGA claims.

20 1.36. “Participating Class Member” means a Class Member who does not submit a valid and
21 timely Request for Exclusion from the Settlement.

22 1.37. “Plaintiffs,” “Named Plaintiffs,” or “Class Representative” means Steven Gonzalez and
23 Giana Padilla, the named Plaintiffs in the Action.

24 1.38. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the
25 Settlement.

26 1.39. “Preliminary Approval Order” means the proposed Order granting Preliminary Approval
27 and Approval of PAGA Settlement.

1 1.40. “Released Class Claims” means the claims being released as described in Paragraph 5.2
2 below.

3 1.41. “Released PAGA Claims” means the claims being released as described in Paragraph 5.4
4 below.

5 1.42. “Released Parties” means: Defendant, and each of their former, present and future owners,
6 parents, and subsidiaries, and all of their current, former, and future officers, directors, members,
7 managers, employees, consultants, partners, shareholders, joint venturers, agents, predecessors,
8 successors, assigns, accountants, insurers, reinsurers, and/or legal representatives, including but
9 not limited to H&M HENNES & MAURITZ L.P.

10 1.43. “Request for Exclusion” means a Class Member’s submission of a written request to be
11 excluded from the Class Settlement signed by the Class Member.

12 1.44. “Response Deadline” means forty-five (45) days after the Administrator mails Notice to
13 Class Members and Aggrieved Employees and shall be the last date on which Class Members
14 may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the
15 Settlement. Class Members to whom Notice Packets are resent after having been returned
16 undeliverable to the Administrator shall have an additional 15 days beyond the Response
17 Deadline has expired.

18 1.45. “Settlement” means the disposition of the Action effected by this Agreement and the
19 Judgment.

20 1.46. “Workweek” means any week (i.e. 7-day period) during which a Class Member was
21 employed by Defendant for at least one day in a non-exempt position during the Class Period in
22 California, based on hire dates, re-hire dates (as applicable), and termination dates (as
23 applicable).

24 **2. RECITALS**

25 2.1. On August 18, 2021, Mr. Gonzalez filed his Class Action Complaint for damages in the
26 Superior Court of the State of California for the County of Orange, Case No. 30-2021-01217029-
27 CU-OE-CXC. Mr. Gonzalez alleged violations, including but not limited to, failure to give
28

1 compliant meal and rest breaks, to pay meal and rest break premiums, to pay overtime, to provide
2 accurate wage statements, to pay minimum wage, to pay all due wages upon termination, failure
3 to indemnify and unfair competition.

4 2.2. On August 18, 2021, Mr. Gonzalez also filed a notice with the Labor and Workforce
5 Development Agency (“LWDA”) to seek civil penalties for various Labor Code violations.

6 2.3. On October 27, 2023, Mr. Gonzalez filed a representative action complaint under the
7 Private Attorney’s General Act Labor Code section 2699 in the State of California for the County
8 of Alameda, Case No. 21CV001252, alleging, among other things: failure to pay overtime and
9 minimum wages; failure to provide meal breaks, rest breaks, or compensation in lieu thereof;
10 waiting time penalties; wage statement violations; failure to indemnify work expenses; failure to
11 comply with paid sick leave laws; and unfair competition.

12 2.4. On April 19, 2022, Plaintiff filed a First Amended Complaint in the instant action seeking
13 civil penalties under the Private Attorney’s General Act Labor Code section 2699.

14 2.5. On February 5, 2024, Plaintiff filed a Second Amended Complaint adding another
15 allegedly aggrieved employee and purported class representative, Giana Padilla, as a named
16 plaintiff.

17 2.6. Thereafter, the Parties conducted formal discovery and also agreed to exchange informal
18 discovery and attend mediation.

19 2.7. Prior to the mediations, Plaintiffs obtained, through informal discovery: (a) a 10%
20 sampling of time and payroll records for Class Members and Aggrieved Employees; (b) all policy
21 documents related to the claims in this case; and (c) Plaintiffs’ personnel file.

22 2.8. Plaintiffs’ investigation was sufficient to satisfy the criteria for court approval set forth in
23 *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker*
24 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

25 2.9. On July 18, 2023, the Parties participated in an all-day mediation presided over by Mark
26 S. Rudy, Esquire. The mediation was unsuccessful, but the Parties continued settlement
27 negotiations for the next several months with the aid of the mediator.
28

2.10. On November 6, 2024, the Parties attended a second all-day mediation, also presided over by Mark S. Rudy, Esquire, which led to the Parties reaching an agreement to settle the Action.

2.11. The Court has not granted class certification.

2.12. As part of the Settlement, the Parties agree Plaintiff shall dismiss, without prejudice, any and all claims against defendant Alyse Digildo (“Ms. Digildo”). Defendant represents that Ms. Digildo is a Class Member and as such Plaintiffs agree dismissal of any claims against her is appropriate for approval purposes

3. MONETARY TERMS

3.1. Gross Settlement Amount. Defendant promises to pay \$7,500,000.00 as the Gross Settlement Amount, unless increased pursuant to Paragraph 8.1 of this Agreement, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiffs: Class Representative Incentive Award to Plaintiffs in the amount of \$7,500.00 to each Plaintiff, for a total of \$15,000.00, in addition to any Individual Class Payment and any Individual PAGA Payment Plaintiffs are entitled to receive as a Participating Class Member. Defendant will not oppose Plaintiffs’ request for a Class Representative Incentive Award that does not exceed this amount. Plaintiffs will seek Court approval for any Class Representative Incentive Award prior to the Final Approval Hearing. If the Court approves a Class Representative Incentive Award less than the amount requested, the Administrator will retain the remainder in the Net

Settlement Amount and shall be distributed to Participating Class Members as part of their Individual Settlement Payment. The Administrator will pay the Class Representative Incentive Award using IRS Form 1099. Plaintiffs assume full responsibility and liability for any applicable employee taxes owed on the Class Representative Incentive Award.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than thirty five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph 8.1 of this Agreement, is currently estimated to be \$2,625,000.00 and a Class Counsel Litigation Expenses Payment of not more than \$85,000.00. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiffs and/or Class Counsel will endeavor to file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assume full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments. There will be no additional charge of any kind to either the Settlement Class Members or request for additional consideration from Defendant for such work unless, Defendant materially breaches this Agreement, including any term regarding funding, and further efforts are necessary from Class Counsel to remedy said breach, including, without limitation, moving the Court to

enforce the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$71,950.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$71,950.00 the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 10% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 90% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$200,000.00 to be paid from the Gross Settlement Amount, with 75% (\$150,000.00)

1 allocated to the LWDA PAGA Payment and 25% (\$50,000.00) allocated to the
2 Individual PAGA Payments.

3 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a)
4 dividing the amount of the Aggrieved Employees' 25% share of PAGA
5 Penalties \$50,000.00 by the total number of PAGA Period Pay Periods worked
6 by all Aggrieved Employees during the PAGA Period and (b) multiplying the
7 result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved
8 Employees assume full responsibility and liability for any taxes owed on their
9 Individual PAGA Payment.

10 3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested,
11 the Administrator will allocate the remainder to the Net Settlement Amount.
12 The Administrator will report the Individual PAGA Payments on IRS 1099
13 Forms.

14 **4. SETTLEMENT FUNDING AND PAYMENTS**

15 4.1. Class Workweeks and PAGA Pay Periods. Based on a review of its records to date,
16 Defendant estimates there are approximately 19,694 Class Members who collectively worked a
17 total of 1,020,974 Workweeks, and 13,873 Aggrieved Employees who worked a total of 351,909
18 PAGA Pay Periods.

19 4.2. Class Data. Not later than 14 days after the Court grants Preliminary Approval of the
20 Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft
21 Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain
22 the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no
23 other purpose, and restrict access to the Class Data to Administrator employees who need access
24 to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty
25 to immediately notify Class Counsel if they discover that the Class Data omitted class member
26 identifying information and to provide corrected or updated Class Data as soon as reasonably
27 feasible. Without any extension of the deadline by which Defendant must send the Class Data
28

to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than six (6) months after the Effective Date.

4.4. Within 7 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments, and the Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment in each installment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search for all Class

Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to Legal Aid at Work, 180 Montgomery St., Suite 600, San Francisco, California 94104 for use in Orange County, thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure section 384, subd. (b).

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASE OF CLAIMS

Effective upon entry of Judgment, the Order granting Final Approval of this Settlement, and on the date after Defendant fully funds the Gross Settlement Amount and all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1. Plaintiffs’ Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts

1 contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could
2 have been, alleged based on facts contained in the Operative Complaint and Plaintiffs' PAGA
3 Notice ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims or actions to
4 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
5 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
6 on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover
7 facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe
8 to be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all
9 respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

10 5.1.1. Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For
11 purposes of Plaintiffs' Release only, Plaintiffs expressly waive and relinquish the
12 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,
13 which reads:

14 A general release does not extend to claims that the creditor or
15 releasing party does not know or suspect to exist in his or her favor
16 at the time of executing the release, and that if known by him or
her would have materially affected his or her settlement with the
debtor or Released Party.

17 5.2. Release of Class Claims: For the duration of the Class Period, all Participating Class
18 Members, on behalf of themselves and their respective former and present representatives,
19 agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all
20 claims that were alleged, or reasonably could have been alleged, based on the facts stated in the
21 Operative Complaint including, but not limited to: (1) failure to pay overtime wages under
22 California Labor Code sections 200-204, 206, 206.5, 207, 210, 216, 218, 218.5, 218.6, 221, 223,
23 510, 558, 1194, 1197, 1197.1, 1198, and 1199, as well as applicable Wage Orders, including IWC
24 Wage Order No. 7-2001, section 3; (2) failure to pay minimum wages under California Labor
25 Code sections 204, 210, 216, 558, 218.6, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 1199,
26 as well as applicable Wage Orders, including IWC Wage Order No. 7-2001, section 4, IWC Wage
27 Order No. 5-2001, and California Code of Regulations, Title 8, section 1100 *et seq.*; (3) failure to
28 provide meal periods under California Labor Code sections 218.6, 226, 226.7, 510, and 512, as

well as applicable Wage Orders, including IWC Order No. 7-2001, section 11; (4) failure to provide rest periods under California Labor Code sections 218.6, 226, 226.7, and 512, as well as applicable Wage Orders, including IWC Wage Order No. 7-2001, section 12; (5) waiting time penalties under California Labor Code sections 201, 202, 203, and 218.6, as well as applicable Wage Orders, including IWC Wage Order No. 7-2001, § 12; (6) wage statement violations, including intentional failure to comply with itemized employee wage statement provisions, under California Labor Code sections 226, 1174, 1175, and 1174.5, as well as applicable Wage Orders, including IWC Wage Order No. 7-2001, section 7; (7) failure to timely pay wages under California Labor Code sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, 210, 218.5, 218.6, 226.7, 510, 1194, and 1197.5 as well as applicable IWC Wage Orders; (8) failure to indemnify under California Labor Code section 2802 and applicable IWC Wage Orders; (9) all claims asserted through California Business & Professions Code sections 17203 17200, *et seq.* arising out of the Labor Code violations referenced in the Operative Complaint; (10) failure to maintain required records under California Labor Code sections 226 and 1174, and IWC Wage Order No. 7-2001, section 7; (11) failure to comply with California Labor Code section 246.

5.3. Except as set forth in Section 5.2 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.4. Release of PAGA Claims: For the duration of the PAGA Period and to the extent permitted by law, the LWDA and the State of California, by and through Plaintiffs as an agent and proxy of the LWDA, release the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice. This includes, but is not limited to, claims for the following causes of action:

5.4.1. Failure to Timely Pay Wages under California Labor Code sections 201.3, 204, 204b, 204.1, 205, 205.5, 210, and 1197.5;

- 1 5.4.2. Intentional Failure to Provide Itemized Wage Statements under California Labor
2 Code sections 226, 1174, 1174.5, 2699 *et seq.*;
- 3 5.4.3. Failure To Pay Wages Due Upon Termination under California Labor Code
4 sections 201, 202, 203, 256, 227.3, 246, 247.5, 248.5 and 2698 *et seq.*;
- 5 5.4.4. Failure To Pay Minimum Wage under California Labor Code sections 203,
6 1197.1, 1197.2;
- 7 5.4.5. Failure To Pay Overtime At Regular Rate Of Pay under California Labor Code
8 sections 200-204, 206, 206.5, 207, 210, 216, 218, 218.5, 218.6, 221, 223, 510, 558,
9 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 7;
- 10 5.4.6. Failure to Provide Accurate Itemized Wage Statements and Violation of Record
11 Keeping Requirements under California Labor Code sections 226, 432, 1174, 1174.5,
12 2699 *et seq.*;
- 13 5.4.7. Failure to Comply with California Sick Pay Requirements under California Labor
14 Code sections 246, 247.5, 248.5 and 2698 *et. seq.*;
- 15 5.4.8. Civil Penalties under California Labor Code section 2698 and 2699 *et seq.*,
16 including, without limitation, for all causes of action named in this Paragraph 5.4,
17 including, but not limited to, failure to pay the rates of pay and overtime rates of pay
18 applicable to their employment, allowances claimed as part of the minimum wage, the
19 regular payday designated by Defendant, the name of the employer, including any
20 “doing business as” names used, the name, address and telephone number of the
21 workers’ compensation insurance carrier, information regarding paid sick leave, and
22 other pertinent information required to be disclosed by employer under Labor Code
23 section 2810.5, failing to provide employee and other aggrieved employees with the
24 amount of paid sick leave required to be provided pursuant to California and local laws.

25 **6. MOTION FOR PRELIMINARY APPROVAL**
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27
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1 The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion
2 for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary
3 Approvals.

4 6.1. Within 7 days of full execution of this Agreement, Defendant will prepare and deliver to
5 Class Counsel a signed declaration from Defendant and Defense Counsel disclosing all facts
6 relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres
7 Recipient

8 6.2. Plaintiffs’ Responsibilities. Plaintiffs will prepare and endeavor to deliver to Defense
9 Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the
10 notice, and memorandum in support, of the Motion for Preliminary Approval that includes an
11 analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement
12 under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary
13 Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed
14 declaration from the Administrator attaching its “not to exceed” bid for administering the
15 Settlement and attesting to its willingness to serve; competency; operative procedures for
16 protecting the security of Class Data; amounts of insurance coverage for any data breach,
17 defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of
18 interest with Class Members; and the nature and extent of any financial relationship with
19 Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiffs confirming
20 willingness and competency to serve and disclosing all facts relevant to any actual or potential
21 conflicts of interest with Class Members; (v) a signed declaration from each Class Counsel firm
22 attesting to its competency to represent the Class Members; its timely transmission to the LWDA
23 of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd.
24 (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code
25 section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest
26 with Class Members and the Administrator.

27 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible
28

1 for expeditiously finalizing and filing the Motion for Preliminary Approval after the full
2 execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary
3 Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary
4 Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the
5 Administrator.

6 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
7 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
8 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and
9 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary
10 Approval or conditions Preliminary Approval on any material change to this Agreement, Class
11 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by
12 meeting and conferring, and negotiating in good faith, to modify the Agreement and otherwise
13 satisfy the Court's concerns.

14 7. SETTLEMENT ADMINISTRATION

15 7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve
16 as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees
17 to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
18 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
19 represent that they have no interest or relationship, financial or otherwise, with the Administrator
20 other than a professional relationship arising out of prior experiences administering settlements.

21 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
22 Identification Number for purposes of calculating payroll tax withholdings and providing reports
23 state and federal tax authorities.

24 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
25 the requirements of a Qualified Settlement Fund ("QSF") under U.S. Treasury Regulation section
26 468B-1.

27 7.4. Notice to Class Members
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1 7.4.1. No later than three (3) business days after receipt of the Class Data, the
2 Administrator shall notify Class Counsel that the list has been received and state the
3 number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the
4 Class Data.

5 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14
6 days after receiving the Class Data, the Administrator will send to all Class Members
7 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail,
8 the Class Notice with Spanish translation, substantially in the form attached to this
9 Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the
10 dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable
11 to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable)
12 used to calculate these amounts. Before mailing Class Notices, the Administrator shall
13 update Class Member addresses using the National Change of Address database.

14 7.4.3. Not later than 3 business days after the Administrator’s receipt of any Class Notice
15 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
16 using any forwarding address provided by the USPS. If the USPS does not provide a
17 forwarding address, the Administrator shall conduct a Class Member Address Search,
18 and re-mail the Class Notice to the most current address obtained. The Administrator
19 has no obligation to make further attempts to locate or send Class Notice to Class
20 Members whose Class Notice is returned by the USPS a second time.

21 7.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks
22 and/or Pay Periods, and Requests for Exclusion will be extended an additional 15 days
23 beyond the 45 days otherwise provided in the Class Notice for all Class Members whose
24 notice is re-mailed. The Administrator will inform the Class Member of the extended
25 deadline with the re-mailed Class Notice.

26 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
27 discovers any persons who believe they should have been included in the Class Data
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1 and should have received Class Notice, the Parties will expeditiously meet and confer,
2 in good faith, in an effort to agree on whether to include them as Class Members. If the
3 Parties agree, such persons will be Class Members entitled to the same rights as other
4 Class Members, and the Administrator will send, via email or overnight delivery, a Class
5 Notice requiring them to exercise options under this Agreement not later than 15 days
6 after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are
7 later.

8 7.5. Requests for Exclusion (Opt-Outs).

9 7.5.1. Class Members who wish to exclude themselves from (opt-out of) the Class
10 Settlement must send the Administrator, by mail, a signed written Request for Exclusion
11 not later than 45 days after the Administrator mails the Class Notice (plus an additional
12 15 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion
13 is a letter from a Class Member or his/her representative, signed by the Class Member,
14 that reasonably communicates the Class Member's election to be excluded from the
15 Settlement and includes the Class Member's name, signature, the last four digits of their
16 Social Security Number, address, and email address or telephone number. To be valid,
17 a Request for Exclusion must be timely postmarked by the Response Deadline.

18 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
19 fails to contain all the information specified in the Class Notice. The Administrator
20 shall accept any Request for Exclusion as valid if the Administrator can reasonably
21 ascertain the identity of the person as a Class Member and the Class Member's desire
22 to be excluded. The Administrator's determination shall be final and not appealable or
23 otherwise susceptible to challenge. If the Administrator has reason to question the
24 authenticity of a Request for Exclusion, the Administrator may demand additional proof
25 of the Class Member's identity. The Administrator's determination of authenticity shall
26 be final and not appealable or otherwise susceptible to challenge.

27 7.5.3. In the event that more than one hundred and seventy-five (175) Class Members
28

1 opt out of the settlement of the class-action claims, Defendant will have the right to
2 rescind and terminate the Settlement without prejudice to its pre-settlement positions
3 and defenses in the Action, including as to its assertion that class certification is not
4 appropriate. Defendant shall have ten (10) business days from notice of the 175 (or
5 more) opt-outs to exercise its discretion under this Paragraph. If Defendant elect to
6 rescind the Settlement, they shall be responsible for all administration costs incurred
7 through the date of rescission.

8 1.1.1. Every Class Member who does not submit a timely and valid Request for
9 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled
10 to all benefits and bound by all terms and conditions of the Settlement, including the
11 Participating Class Members' Releases under Paragraphs 5.2 and 5.4 of this Agreement,
12 regardless whether the Participating Class Member actually receives the Class Notice or
13 objects to the Settlement.

14 1.1.2. Every Class Member who submits a valid and timely Request for Exclusion is a
15 Non-Participating Class Member and shall not receive an Individual Class Payment or
16 have the right to object to the class action components of the Settlement. Because future
17 PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
18 Participating Class Members who are Aggrieved Employees are deemed to release the
19 claims identified in Paragraph 5.4 of this Agreement and are eligible for an Individual
20 PAGA Payment.

21 1.2. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after
22 the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose
23 Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods
24 (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge
25 the allocation by communicating with the Administrator via mail. The Administrator must
26 encourage the challenging Class Member to submit supporting documentation. In the absence
27 of any contrary documentation, the Administrator is entitled to presume that the Workweeks
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1 contained in the Class Notice are correct so long as they are consistent with the Class Data. The
2 Administrator's determination of each Class Member's allocation of Workweeks and/or Pay
3 Periods shall be final and not appealable or otherwise susceptible to challenge. The
4 Administrator shall promptly provide copies of all challenges to calculation of Workweeks
5 and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination
6 the challenges.

7 **1.3. Objections to Settlement**

8 1.3.1. Only Participating Class Members may object to the class action components of
9 the Settlement and/or this Agreement, including contesting the fairness of the
10 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
11 Counsel Litigation Expenses Payment and/or Class Representative Incentive Award.

12 1.3.2. Participating Class Members may send written objections to the Administrator, by
13 mail. In the alternative, Participating Class Members may appear in Court (or hire an
14 attorney to appear in Court) to present verbal objections at the Final Approval Hearing.
15 A Participating Class Member who elects to send a written objection to the
16 Administrator must do so not later than 45 days after the Administrator's mailing of the
17 Class Notice (plus an additional 15 days for Class Members whose Class Notice was re-
18 mailed).

19 1.3.3. Non-Participating Class Members have no right to object to any of the class action
20 components of the Settlement.

21 **1.4. Administrator Duties.** The Administrator has a duty to perform or observe all tasks to be
22 performed or observed by the Administrator contained in this Agreement or otherwise.

23 1.4.1. **Website, Email Address and Toll-Free Number.** The Administrator will maintain
24 and use an internet website to post information of interest to Class Members including
25 the date, time and location for the Final Approval Hearing and copies of the Settlement
26 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
27 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,
28

Class Counsel Litigation Expenses Payment and Class Representative Incentive Award, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls and emails.

1.4.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

1.4.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

1.4.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

1.4.5. Administrator’s Declaration. Before the date by which Plaintiffs are required to

1 file the Motion for Final Approval of the Settlement, the Administrator will provide to
2 Class Counsel and Defense Counsel, a declaration suitable for filing in Court attesting
3 to its due diligence and compliance with all of its obligations under this Agreement,
4 including, but not limited to, its mailing of Class Notice, the Class Notices returned as
5 undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total
6 number of Requests for Exclusion from Settlement it received (both valid or invalid),
7 the number of written objections and attach the Exclusion List. The Administrator will
8 supplement its declaration as needed or requested by the Parties and/or the Court. Class
9 Counsel is responsible for filing the Administrator's declaration(s) in Court.

10 1.4.6. Final Report by Settlement Administrator. Within 10 days after the Administrator
11 disburses all funds in the Gross Settlement Amount, the Administrator will provide
12 Class Counsel and Defense Counsel with a final report detailing its disbursements by
13 employee identification number only of all payments made under this Agreement. At
14 least 7 days before any deadline set by the Court, the Administrator will prepare, and
15 submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in
16 Court attesting to its disbursement of all payments required under this Agreement. Class
17 Counsel is responsible for filing the Administrator's declaration in Court.

18 **2. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE**

19 Based on its records, Defendant estimates that, as of the date of this Settlement
20 Agreement, (1) there are 19,694 Class Members and 1,020,974 Total Workweeks during the
21 Class Period and (2) there are 13,873 Aggrieved Employees who worked 351,909 Pay Periods
22 during the PAGA Period.

23 8.1 Increase in Workweeks. Defendant represents that there are approximately 1,020,974
24 Workweeks worked during the Class Period. In the event the number of Workweeks worked
25 increases during the Class Period by more than 10%, or an additional 102,097 Workweeks, then,
26 at Defendant's election: (1) the Gross Settlement Amount shall be increased proportionally by
27 the Workweeks worked in excess of 1,123,071 (1,020,974 Workweeks + 102,097 Workweeks)
28

multiplied by the Workweek Value; or (2) the Class Period shall be reduced in order to ensure that the Workweeks do not exceed 1,123,071. The Workweek Value shall be calculated by dividing the Gross Settlement Amounts by 1,020,974. The Parties agree that the Workweek Value amounts to \$7.35 per Workweek (\$7,500,000 / 1,020,974 Workweeks). Thus, for example, should there be 1,200,000 Workweeks in the Class Period, then, if Defendant elects option 1 above, the GFV shall be increased by \$565,428.15. (1,200,000 Workweeks – 1,123,071 Workweeks) x \$7.35/Workweek.) Defendant shall have ten (10) business days from receiving notice that there are greater than 1,123,071 Workweeks to exercise its election; otherwise, it will be assumed that Defendant has exercised Option (1).

3. MOTION FOR FINAL APPROVAL

Prior to the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiffs shall endeavor to provide drafts of these documents to Defense Counsel prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

3.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

3.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Incentive Award, Class Counsel Fees Payment, Class Counsel Litigation

Expenses Payment, and Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

3.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

3.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

3.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Incentive Award or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

1 **4. AMENDED JUDGMENT**

2 10.1 If any amended judgment is required under the Code of Civil Procedure section 384, the
3 Parties will work together in good faith to jointly submit a proposed amended judgment.

4 **5. ADDITIONAL PROVISIONS**

5 5.1. No Admission of Liability, Class Certification or Representative Manageability for Other
6 Purposes. This Agreement represents a compromise and settlement of highly disputed claims.
7 Nothing in this Agreement is intended or should be construed as an admission by Defendant that
8 any of the allegations in the Operative Complaint have merit or that Defendant has any liability
9 for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that
10 Defendant's defenses in the Action have merit. The Parties agree that class certification and
11 representative treatment is for purposes of this Settlement only. If, for any reason the Court does
12 grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to
13 contest certification of any class for any reasons, and Defendant reserves all available defenses
14 to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any
15 grounds available and to contest Defendant's defenses. The Settlement, this Agreement and
16 Parties' willingness to settle the Action will have no bearing on, and will not be admissible in
17 connection with, any litigation (except for proceedings to enforce or effectuate the Settlement
18 and this Agreement).

19 5.2. Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendant and
20 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement
21 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit
22 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly
23 or indirectly, specifically or generally, to any person, corporation, association, government
24 agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom
25 will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the
26 extent necessary to report income to appropriate taxing authorities; (4) in response to a court
27 order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
28

1 government agency. Each Party agrees to immediately notify each other Party of any judicial or
2 agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel,
3 Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any
4 conversation or other communication, before the filing of the Motion for Preliminary Approval,
5 any with third party regarding this Agreement or the matters giving rise to this Agreement except
6 to respond only that “the matter was resolved,” or words to that effect. This paragraph does not
7 restrict Class Counsel’s communications with Class Members in accordance with Class
8 Counsel’s ethical obligations owed to Class Members.

9 5.3. No Solicitation. The Parties separately agree that they and their respective counsel and
10 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
11 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s
12 ability to communicate with Class Members in accordance with Class Counsel’s ethical
13 obligations owed to Class Members.

14 5.4. No Publicity. Class Counsel shall not include information about this case on its website
15 and shall not actively seek publicity in connection with the settlement of this case.

16 5.5. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
17 together with its attached exhibits shall constitute the entire agreement between the Parties
18 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
19 inducements made to or by any Party.

20 5.6. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
21 represent that they are authorized by Plaintiffs and Defendant, respectively, to take all
22 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
23 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
24 terms of this Agreement including any amendments to this Agreement.

25 5.7. Cooperation. The Parties and their counsel will cooperate with each other and use their
26 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
27 Settlement Agreement, submitting supplemental evidence and supplementing points and
28

1 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
2 or content of any document necessary to implement the Settlement, or on any modification of the
3 Agreement that may become necessary to implement the Settlement, the Parties will seek the
4 assistance of a mediator and/or the Court for resolution.

5 5.8. No Prior Assignments. The Parties separately represent and warrant that they have not
6 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
7 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
8 action, or right released and discharged by the Party in this Settlement.

9 5.9. No Tax Advice. Neither Plaintiffs, Class Counsel, Defendant nor Defense Counsel are
10 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
11 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
12 Part 10, as amended) or otherwise.

13 5.10. Modification of Agreement. This Agreement, and all parts of it, may be amended,
14 modified, changed, or waived only by an express written instrument signed or agreed to by all
15 Parties or their representatives, and approved by the Court. Plaintiff and Defendant expressly
16 agree that should the Parties agree to amend, modify, change, or waive this Agreement, or any
17 part of it, Class Counsel and Defense Counsel are authorized to submit to the Court any
18 amendments of this Agreement, amended Agreements, or amendments to the Agreement, on
19 behalf of the Parties once fully executed, which includes, but is not limited to, authorization of
20 the use of signatures previously provided by the Parties.

21 5.11. Agreement Binding on Successors. This Agreement will be binding upon, and inure to
22 the benefit of, the successors of each of the Parties.

23 5.12. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
24 governed by and interpreted according to the internal laws of the State of California, without
25 regard to conflict of law principles.

26 5.13. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
27 this Agreement. This Agreement will not be construed against any Party on the basis that the
28

1 Party was the drafter or participated in the drafting

2 5.14. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
3 during Action and in this Agreement relating to the confidentiality of information shall survive
4 the execution of this Agreement

5 5.15. Use of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code
6 §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant
7 in connection with the mediation, other settlement negotiations, or in connection with the
8 Settlement, may be used only with respect to this Settlement, and no other purpose, and may not
9 be used in any way that violates any existing contractual agreement, statute, or rule of court.

10 5.16. Headings. The descriptive heading of any section or paragraph of this Agreement is
11 inserted for convenience of reference only and does not constitute a part of this Agreement.

12 5.17. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
13 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
14 weekend or federal legal holiday, such date or deadline shall be on the first business day
15 thereafter.

16 5.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts
17 by facsimile, electronically (i.e., DocuSign, AdobeSign, or similar), or email which for purposes
18 of this Agreement shall be accepted as an original. All executed counterparts and each of them
19 will be deemed to be one and the same instrument if counsel for the Parties will exchange between
20 themselves signed counterparts. Any executed counterpart will be admissible in evidence to
21 prove the existence and contents of this Agreement.

22 5.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
23 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
24 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend
25 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
26 process.

27 5.20. Severability. In the event that one or more of the provisions contained in this Agreement
28

1 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
2 illegality, or unenforceability shall in no way effect any other provision if Defendant's Counsel
3 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing
4 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this
5 Agreement.

6
7 **IT IS SO AGREED:**

8
9
10 _____
Plaintiffs, STEVEN GONZALEZ

For Defendant, H&M HENNES

11
12 _____
Plaintiffs, GIANA PADILLA

13
14 **AGREED AS TO FORM ONLY:**

15
16
17 _____
David D. Bibiyan
Vedang J. Patel
18 Counsel for Plaintiffs

Andrew Satenberg
Counsel for Defendant

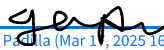
shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant's Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

IT IS SO AGREED:


Steven Gonzalez (Mar 12, 2025 16:40 PDT)

Plaintiffs, STEVEN GONZALEZ

For Defendant, H&M HENNES


Giana Padilla (Mar 11, 2025 16:38 PDT)

Plaintiffs, GIANA PADILLA

AGREED AS TO FORM ONLY:



David D. Bibiyan
Vedang J. Patel
Counsel for Plaintiffs

Andrew Satenberg
Counsel for Defendant

1 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
2 illegality, or unenforceability shall in no way effect any other provision if Defendant's Counsel
3 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing
4 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this
5 Agreement.

6
7 **IT IS SO AGREED:**

Adam Valko

Anne Hanssen

8
9 
Steven Gonzalez (Mar 12, 2025 16:40 PDT)



10 Plaintiffs, STEVEN GONZALEZ

For Defendant, H&M HENNES

11
12 
Giana Padilla (Mar 11, 2025 16:38 PDT)

13 Plaintiffs, GIANA PADILLA

14
15 **AGREED AS TO FORM ONLY:**



16
17 David D. Bibiyan
18 Vedang J. Patel
Counsel for Plaintiffs

Andrew Satenberg
Counsel for Defendant

EXHIBIT A

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND DATE
FOR FINAL APPROVAL HEARING**

Steven Gonzalez and Giana Padilla v. H&M Hennes & Mauritz L.P. et al.
(County of Orange, California Superior Court Case No. 30-2021-01217029-CU-OE-CXC)

As an hourly, non-exempt employee who works or worked for H&M Hennes & Mauritz L.P., in California, you are entitled to receive money from a class action settlement.

Please read this Notice carefully. This Notice relates to a proposed settlement of class action litigation. If you are a Class Member, it contains important information about your right to receive a payment from the Settlement fund.

You have received this Notice of Class Action Settlement because the records of H&M Hennes & Mauritz L.P., (“Defendant”) show that you are a “Class Member” and, therefore, entitled to a payment from this class action settlement. Class Members are all current and former non-exempt employees who worked in California for Defendant at any time from August 18, 2017 through November 6, 2024.

The settlement is to resolve a class action lawsuit, *Steven Gonzalez and Giana Padilla v. H&M Hennes & Mauritz L.P. et al.*, pending in the Superior Court of California for the County of Orange, Case Number 30-2021-01217029-CU-OE-CXC (the “Lawsuit”), alleging, among other things, claims for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) wage statement violations; (7) failure to timely pay wages; (8) failure to indemnify; (9) unfair competition. Based on the alleged Labor Code violations above-mentioned and other alleged Labor Code violations, Plaintiff also seeks penalties under California Labor Code Private Attorneys’ General Act (“PAGA”).

- On [REDACTED], Orange County Superior Court granted preliminary approval of this class action settlement and ordered that all Class Members be notified of the Settlement. The Court has not made any determination of the validity of the claims in the Lawsuit. Defendant vigorously denies the claims in the Lawsuit and contend that they fully complied with all applicable laws.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE PAYMENT	Get a payment and give up your legal rights to pursue claims released by the settlement of the Lawsuit.
OPT OUT OF THE SETTLEMENT	Exclude yourself from the Settlement, get no payment for settlement of the class claims, and retain your legal rights to individually pursue the class claims that would otherwise be released by the settlement of the Lawsuit. If you worked at any time from August 18, 2020 through November 6, 2024 ("PAGA Period") as a non-exempt employee for Defendant in California as well, then you will be deemed an “Aggrieved Employee” and you will still receive your share of the proceeds available from the settlement of the PAGA Released Claims, defined below, (your “Individual PAGA Payment”) even if you opt out of the class settlement.

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, Phoenix Settlement Administrators about why you object to the settlement, and they will forward your concerns to counsel which will then be provided to the Court. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement. You or your attorney may also address the Court during the Final Approval Hearing scheduled for [REDACTED], 2024 at [REDACTED] : [REDACTED] .m.] in Department CX101 of the Orange County Superior Court, located at 700 W Civic Center Dr, Santa Ana, CA 92701.
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The Final Approval Hearing on the adequacy, reasonableness and fairness of the Settlement will be held at [REDACTED] : [REDACTED] .m. on [REDACTED], 2024, in the Orange Superior Court, located at 700 W Civic Center Dr, Santa Ana, CA 92701, in Department CX101 You are not required to attend the Hearing, but you are welcome to do so.

Why Am I Receiving This Notice?

Defendant's records show that you currently work, or previously worked, for Defendants as a non-exempt employee in California during the Class Period. You were sent this Class Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all your options before the Court decides whether to finally approve the settlement. If the Court approves the settlement and then any objections and appeals are resolved, a "Settlement Administrator" appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them and how to get them.

What is This Case About?

Steven Gonzalez and Giana Padilla were non-exempt employees of Defendant. They are the "Plaintiffs" in this case and are suing on behalf of themselves and Class Members for, among other things, Defendant's alleged violation of the (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) wage statement violations; (7) failure to timely pay wages; (8) failure to indemnify; and (9) unfair competition.

Based on the alleged Labor Code violations above-mentioned and other alleged Labor Code violations, Plaintiff also seeks penalties under California Labor Code Private Attorneys' General Act ("PAGA").

Defendant denies all the allegations made by Plaintiff and denies that it violated any law. The Court has made no ruling on the merits of Plaintiff's claims. The Court has only preliminarily approved this class action settlement. The Court will decide whether to give final approval to this settlement at the Final Approval Hearing.

Summary of the Settlement Terms

Questions? Contact the Settlement Administrator toll free at [REDACTED]

Plaintiff and Defendants have agreed to settle this case on behalf of themselves and Class Members and Aggrieved Employees for the Gross Settlement Amount of \$7,500,000.00, unless increased pursuant to the Settlement Agreement. The Gross Settlement includes: (1) Administration Costs up to \$71,950.00 (2) a service award of up to \$7,500.00 to Steven Gonzalez and Giana Padilla for their time and effort in pursuing this case; (3) up to 35% of the Gross Settlement Amount in attorneys' fees which, unless escalated pursuant to the Settlement Agreement, amounts to \$2,625,000.00; (4) up to \$85,000.00 in litigation costs to Class Counsel, according to proof; (5) payment allocated to PAGA penalties in the amount of \$200,000.00 of the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent (75%) of the amount allocated toward PAGA, or \$150,000.00, will be paid to the LWDA and twenty-five percent (25%), or \$50,000.00, will be distributed to Aggrieved Employees. After deducting these sums, a total of approximately not less than \$4,503,050 will be available for distribution to Class Members ("Net Settlement Amount").

Defendants represents that there are approximately 1,020,974 Workweeks worked during the Class Period. In the event the number of Workweeks worked increases during the Class Period by more than 10%, or an additional 102,097 Workweeks, then, at Defendant's election: (1) the Gross Settlement Amount shall be increased proportionally by the Workweeks worked in excess of 1,123,071 (1,020,974 Workweeks + 102,097 Workweeks) multiplied by the Workweek Value; or (2) the Class Period shall be reduced in order to ensure that the Workweeks do not exceed 1,123,071. The Workweek Value shall be calculated by dividing the Gross Settlement Amounts by 1,020,974. The Parties agree that the Workweek Value amounts to \$7.35 per Workweek (\$7,500,000 / 1,020,974 Workweeks). Thus, for example, should there be 1,200,000 Workweeks in the Class Period, then, if Defendant elects option 1 above, the GFV shall be increased by \$565,428.15. (1,200,000 Workweeks – 1,123,071 Workweeks) x \$7.35/Workweek.) Defendant shall have ten (10) business days from receiving notice that there are greater than 1,123,071 Workweeks to exercise its election; otherwise, it will be assumed that Defendant has exercised Option (1).

Distribution to Class Members

Class Members who do not opt out will receive a *pro rata* payment of the Net Settlement Amount based on the number of weeks worked by Class Members in non-exempt positions for Defendant in California during the Class Period ("Eligible Workweeks"). Specifically, Class Members' payments will be calculated by dividing the number of Eligible Workweeks attributed to the Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount. Otherwise stated, the formula for a Class Member is: (Individual's Eligible Workweeks ÷ total Settlement Class Eligible Workweeks) x Net Settlement Amount. In addition, individuals who were employed by Defendant between August 18, 2020 through November 6, 2024 (*i.e.*, Aggrieved Employees) will receive a *pro rata* share of the \$50,000.00, allocated as PAGA penalties, whether or not they opt out, based on the number of workweeks worked by each Aggrieved Employee between August 18, 2020 through November 6, 2024 (*i.e.*, the PAGA Period).

Defendant's records indicate that you worked [REDACTED] Workweeks as an hourly, non-exempt employee in California during the Class Period and [REDACTED] Workweeks during the PAGA Period. Based on these records, your estimated payment as a Class Member would be [\$Estimated Award] and your estimated payment as an Aggrieved Employee would be [\$Estimated Award].

Tax Reporting

Payments to Class Members as PAGA Payments shall be designated as penalties. All other payments to Class Members from the Net Settlement Amount shall be designated 10% as wages and 90% as penalties and interest. The Settlement Administrator will be responsible for issuing a form W-2 to each Class Member for the amount

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

each receives for unpaid “wages” and any IRS Form 1099s required by law. This notice is not intended to provide legal or tax advice on your Settlement Share.

Your check will be valid for 180 days after issuance. After 180 calendar days from the date initially mailed by the Settlement Administrator, such funds shall escheat to the State and shall be sent by the Settlement Administrator to the State Controller’s Office, Unclaimed Property Division, thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

Your Options Under the Settlement

Option 1 – Do Nothing and Receive Your Payment

If you do not opt out, you are automatically entitled to your Individual Settlement Payment (*i.e.*, your share of the Net Settlement Amount) because you are a Class Member. If you do not dispute your settlement share calculation and do not opt out of the settlement, you will be bound by the entire release in the settlement and receive your Individual Settlement Payment, as well as your Individual PAGA Payment if you are also an Aggrieved Employee. **In other words, if you are a Class Member, you do not need to take any action to receive the settlement payment(s) set forth above.**

Class Members who do not submit a valid and timely opt out (pursuant to Option 2 below), will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all “Released Claims” he or she may have or had upon final approval of this Settlement and payment by Defendant to the Settlement Administrator.

Effective upon entry of Judgment, the Order granting Final Approval of this Settlement, and on the date when Defendant fully funds the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

For the duration of the Class Period, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint including, but not limited to: (1) failure to pay overtime wages under California Labor Code sections 200-204, 206, 206.5, 207, 210, 216, 218, 218.5, 218.6, 221, 223, 510, 558, 1194, 1197, 1197.1, 1198, and 1199, as well as applicable Wage Orders, including IWC Wage Order No. 7-2001, section 3; (2) failure to pay minimum wages under California Labor Code sections 204, 210, 216, 558, 218.6, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, as well as applicable Wage Orders, including IWC Wage Order No. 7-2001, section 4, IWC Wage Order No. 5-2001, and California Code of Regulations, Title 8, section 1100 *et seq.*; (3) failure to provide meal periods under California Labor Code sections 218.6, 226, 226.7, 510, and 512, as well as applicable Wage Orders, including IWC Order No. 7-2001, section 11; (4) failure to provide rest periods under California Labor Code sections 218.6, 226, 226.7, and 512, as well as applicable Wage Orders, including IWC Wage Order No. 7-2001, section 12; (5) waiting time penalties under California Labor Code sections 201, 202, 203, and 218.6, as well as applicable Wage Orders, including IWC Wage Order No. 7-2001, § 12; (6) wage statement violations, including intentional failure to comply with itemized employee wage statement provisions, under California Labor Code sections 226, 1174, 1175, and 1174.5, as well as applicable Wage Orders, including IWC Wage Order No. 7-2001, section 7; (7) failure to timely pay wages under California Labor Code sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, 210, 218.5, 218.6, 226.7, 510, 1194, and 1197.5 as well as applicable IWC Wage Orders; (8) failure to indemnify under California Labor Code section 2802 and applicable IWC Wage Orders; (9)

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

all claims asserted through California Business & Professions Code sections 17203 17200, *et seq.* arising out of the Labor Code violations referenced in the Operative Complaint; (10) failure to maintain required records under California Labor Code sections 226 and 1174, and IWC Wage Order No. 7-2001, section 7; (11) failure to comply with California Labor Code section 246.

For the duration of the PAGA Period and to the extent permitted by law, the LWDA and the State of California, by and through Plaintiffs as an agent and proxy of the LWDA, release the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice. This includes, but is not limited to, claims for the following causes of action: Failure to Timely Pay Wages under California Labor Code sections 201.3, 204, 204b, 204.1, 205, 205.5, 210, and 1197.5; Intentional Failure to Provide Itemized Wage Statements under California Labor Code sections 226, 1174, 1174.5, 2699 *et seq.*; Failure To Pay Wages Due Upon Termination under California Labor Code sections 201, 202, 203, 256, 227.3, 246, 247.5, 248.5 and 2698 *et seq.*; Failure To Pay Minimum Wage under California Labor Code sections 203, 1197.1, 1197.2; Failure To Pay Overtime At Regular Rate Of Pay under California Labor Code sections 200-204, 206, 206.5, 207, 210, 216, 218, 218.5, 218.6, 221, 223, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 7; Failure to Provide Accurate Itemized Wage Statements and Violation of Record Keeping Requirements under California Labor Code sections 226, 432, 1174, 1174.5, 2699 *et seq.*; Failure to Comply with California Sick Pay Requirements under California Labor Code sections 246, 247.5, 248.5 and 2698 *et. seq.*; Civil Penalties under California Labor Code section 2698 and 2699 *et seq.*, including, without limitation, for all causes of action named in this Paragraph 5.4, including, but not limited to, failure to pay the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Defendant, the name of the employer, including any “doing business as” names used, the name, address and telephone number of the workers’ compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by employer under Labor Code section 2810.5, failing to provide employee and other aggrieved employees with the amount of paid sick leave required to be provided pursuant to California and local laws.

“Released Parties” shall mean Defendant, and each of their former, present and future owners, parents, and subsidiaries, and all of their current, former, and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal representatives, including but not limited to H&M HENNES & MAURITZ L.P.

Option 2 – Opt Out of the Settlement

In order to opt out of the Settlement, the Class Member must timely submit by mail, an opt-request request to the Settlement Administrator by the Response Deadline. The opt-out request should state the your name, address, telephone number, last four digits of your social security number, and signature, and any statement standing for the proposition that you do not wish to participate in the settlement. Sign, date and fax, email or mail your written request for exclusion to the address below.

[Settlement Administrator]
[Mailing Address]

Your written request for exclusion must be mailed to the Administrator not later than [RESPONSE DEADLINE].

The proposed settlement includes the settlement of the PAGA Released Claims. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the court approves the settlement, then even if you request exclusion from the settlement, if you are Aggrieved Employee, you will still receive your Individual

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

PAGA Payment and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right, if any, to individually pursue only the Class Released Claims.

Option 3 – Submit an Objection to the Settlement

If you wish to object to the Settlement, you may submit an objection in writing by mail, stating why you object to the Settlement. Your written objection must provide your name, address, the last four digits of your Social Security Number, your signature, a statement of whether you plan to appear at the Final Approval Hearing, and a statement of the reason(s), along with whatever legal authority, if any, why you believe that the Court should not approve the Settlement. Your written objection must be mailed to the Administrator no later than [RESPONSE DEADLINE]. Please note that you cannot both object to the Settlement and opt out of the Settlement. If you exclude yourself, then your objection will be overruled. If the Court overrules your objection, you will be bound by the Settlement and will receive your Settlement Share.

Even if you don't submit a written objection, you may appear at the Final Approval Hearing and provide a verbal objection before the Court.

Final Approval Hearing

You may, if you wish, appear at the Final Approval Hearing set for _____, 2024 at __:__.m. in the Department CX101 of the Orange County Superior Court, located at 700 W Civic Center Dr, Santa Ana, CA 92701, and orally object to the Settlement, discuss your written objections with the Court and the Parties, or otherwise comment on the Settlement at your own expense. You may attend this hearing virtually by audio or video at <https://www.occourts.org/general-information/media-relations/courtroom-live-streaming>. You may also retain an attorney to represent you at the Hearing at your own expense.

Additional Information

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may call the Settlement Administrator at [PHONE NUMBER] or Class Counsel, whose information appears below:

BIBIYAN LAW GROUP, P.C.

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You may also visit the Settlement Administrator's website at <https://www.phoenixclassaction.com/> to gain access to key documents in this case, including the Settlement Agreement, the Order Granting Preliminary Approval of this Settlement, the Order Granting Final Approval of this Settlement, and the Final Judgment.

You may also refer to the pleadings, the Settlement Agreement, and other papers filed in this case, which may be inspected at the Department CX101 of the Orange County Superior Court, located at 700 W Civic Center Dr,

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

Santa Ana, CA 92701, during regular business hours of each court day. You may also obtain these documents through the Court's website at <https://www.occourts.org/online-services/case-access>.

All inquiries by Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,
DEFENDANT, OR DEFENDANT'S ATTORNEYS WITH INQUIRIES.**

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

EXHIBIT 2

January 2, 2024

PAGA NOTICE FILED ELECTRONICALLY

Re: Notice Letter of Steven Gonzalez and Giana Padilla on Behalf of
Themselves and Aggrieved Employees Under California Labor section
2699.3

Employer: H&M Hennes & Mauritz L.P.
1328 Broadway 3rd Fl
New York, NY 10001

Alyse Digildo
2800 North Main St.
Santa Ana, California 92705

To Whom It May Concern:

This letter shall constitute notice under Labor Code section 2699.3 (hereinafter “PAGA Notice”). This is an Amended PAGA Notice, because it adds the name of an additional aggrieved employee. The \$75 filing fee for the PAGA Notice was paid online by credit card at the time the PAGA Notice was submitted online to the Department of Industrial Relations.

This Amended PAGA Notice concerns (1) Giana Padilla’s (“Ms. Padilla”); and (2) Steven Gonzalez’s (“Mr. Gonzalez”) collectively, (“Employee”) employment with Employee’s former employers: H&M Hennes & Mauritz L.P. and/or Alyse Digildo (collectively, “Employers”). Ms. Padilla was employed as a non-exempt employee of Employers, with duties that included, but were not limited to: working the cash register, checking people out, and assisting customers on the sales floor. Ms. Padilla was employed as a non-exempt employee of Employers from approximately November of 2020 to approximately January of 2021. Mr. Gonzalez was employed as a non-exempt employee of Employers, with duties that included, but were not limited to: updating departments with current trends, maintaining a clean facility, updating window displays, dressing mannequins, ironing and steaming clothing. Mr. Gonzalez was employed as a non-exempt employee of Employers from approximately July of 2012 to approximately August of 2021. In connection with the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech, Employee seeks to represent all employees of Employers, and each of them, as well as their parents, subsidiaries and affiliates (hereinafter, collectively, “Employer”). On all other claims mentioned herein, Employee seeks to represent only non-exempt employees of Employers.

Employee and other aggrieved employees are covered by Labor Code section 510 and applicable Wage Orders. Employee is informed and believes, and based thereon alleges, that Employers had and have a policy or practice of requiring its employees to work more than eight

(8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to wait to suffer under Employers' control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to don and doff required work clothing and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock, and/or go through security screenings and/or temperature checks off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, and for paying straight pay instead of overtime pay to the detriment of Employee and other aggrieved employees. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code sections 510, 1194, and applicable Wage Orders based on its practice of providing total compensation that is less than the required legal overtime compensation for the overtime worked, entitling Employee and other aggrieved employees to damages. Employer would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is informed and believes, and based thereon alleges, that Employers had and have a practice or policy of failing to compensate Employee and other aggrieved employees with minimum wages for all hours worked or otherwise under Employers' control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to suffer under Employers' control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to don and doff required work clothing and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding of employee time entries; editing and/or manipulation of time entries to show less hours than actually worked; and failing to pay split shift premiums. In addition, Employee and other aggrieved employees were required to report to work, and did report, but were not put to work and/or were furnished less than half their usual or scheduled day's work without being paid for half the usual or scheduled work at their regular rate of pay. As such, Employee is informed and believes, and based thereon alleges, that Employers violated, without limitation, Labor Code sections 221, 223, 1197, 1182.12, Cal. Code Regs, title 8, section 110404(5)(A), and applicable Wage Orders based on its continued failure to pay minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual and liquidated damages under, without limitation, Labor Code sections 1194 and 1194.2. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

Employee is informed and believes, and based thereon alleges, that Employers had and have a policy or practice of compelling its employees to work in excess of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal periods or compensation in lieu thereof including, without limitation: by interrupting meal periods including, but not limited to, due to communications coming in that Employee and aggrieved employees had to work in connection with; not providing timely meal periods; failing to provide first and second meal periods; providing short meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal periods; and auto-deducting meal periods that could not be auto-deducted by law or during which employees worked. Consequently, Employee is informed and believes, and based thereon alleges, that Employers violated Labor Code section 512, entitling Employee and other aggrieved employees to premium payments under Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant meal periods. Employers would thus be liable for civil penalties pursuant to Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant meal periods, as well as for failing to provide premium pay under Labor Code section 226.7.

Employee is informed and believes, and based thereon alleges, that Employers maintains policies or practices of compelling its non-exempt employees, including, without limitation, Employee, to work over four-hour periods (or major fractions thereof) without authorizing and permitting Employee and other aggrieved employees to take uninterrupted, timely, and complete ten-minute rest periods in which the employees are completely relieved of all of their duties, including, without limitation: by failing to provide rest periods all together; requiring that they be bundled together and/or with meal periods; interrupting them due to, among other things, communications coming in that Employee and aggrieved employees had to work in connection with; requiring that employees carry cellular telephones or walkie-talkies during rest periods not providing them in a timely fashion; and not permitting employees to leave the premises; and otherwise requiring on-duty/on-call rest periods. As such, Employee is informed and believes, and based thereon alleges, that Employee and other aggrieved employees are entitled to relief under, without limitation, Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant rest periods. Employers would thus be liable for civil penalties pursuant to Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant rest periods, as well as for failing to provide premium pay under Labor Code section 226.7.

In addition to the above, Employee is informed and believes, and based thereon alleges that Employers failed and continue to fail to keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174, making it difficult for Employee and other aggrieved employees to calculate their unpaid wages and/or premium payments. Employers also failed to provide these documents to Employee and other aggrieved employees upon request. This would entitle Employee and other aggrieved employees to penalties prescribed

by Labor Code sections 226 and 1198.5. Employers would also be liable for civil penalties pursuant to Labor Code sections 558, 1174.5 and 2699.

As a result of, among other things, Employers' herein-described policy or practice of failing to: accurately record time; failing to pay overtime and minimum wages; provide meal periods; provide rest periods; and provide compensation in lieu of meal or rest periods; as described above, Employee is informed and believes, and based thereon alleges, that Employers also intentionally failed and continues to fail to furnish aggrieved employees, including, without limitation, Employee, with itemized wage statements that accurately reflect: gross wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; the legal name and address of the other; and other such information as required by Labor Code section 226, subdivision (a). Specifically, Employers intentionally failed to furnish employees with itemized wage statements that accurately reflect the hours worked by Mr. Gonzalez and other aggrieved employees and the rates of pay at which they were or should have been paid, thus resulting in a failure to reflect gross and net wages earned and paid at each rate, as well. Consequently, since Employers would have failed to comply with Labor Code section 226, subdivision (a), Employee and other aggrieved employees would be entitled to recover penalties under, without limitation, Labor Code section 226, subdivision (e). Employers would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558, and 2699.

Employee is informed and believes, and based thereon alleges, that Employers also failed and refused, and continue to fail and refuse, to timely pay compensation to Employee and other terminated or resigned employees, including but not limited to, all overtime wages owed; all minimum wages owed; and all premium pay owed as set out above. Consequently, Employers would be liable for waiting time penalties for having violated California Labor Code sections 201, 202, and 203. Employers would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is further informed and believes, and based thereon alleges that Employers failed and refused, and continues to fail and refuse, to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing to provide Employee and other aggrieved employees with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employers, the name of the employer, including any "doing business as" names used, the name, address and telephone number of the workers' compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employers under Labor Code section 2810.5. Employee is informed and believes that failure to provide such information, including rates of pay that are in effect, has permitted Employers to pay employees at rates of pay that were not agreed upon and violate minimum wage and overtime wage laws in California. Among other relief, employees may collect from Employers in connection with these violations' civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employers also failed and refused, and continues to fail and refuse, to reimburse employees, including, without limitation, Employee and other aggrieved employees, with their costs incurred for driving personal vehicles (*i.e.*, mileage and gas), purchasing required work clothing, separately laundering mandatory required work clothing, for the purchase of tools and safety equipment, including, without limitation, linen spray, ironing tools, cleaning supplies, driving to other locations to pick up merchandise, and for the purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the discharge of their duties, including, without limitation, taking and sending pictures of finalized window displays, updated departments, mannequin styles, or of their obedience to the directions of Employer, as required by Labor Code section 2802, and other statutory and common law offenses. As a result, Employers are liable to reimburse Employee and other aggrieved employees for these costs incurred in furtherance of work duties. In addition, Employers would be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is further informed and believes, and based thereon alleges, that Employers have or had a policy or practice of failing to provide Employee and other aggrieved employees with the amount of paid sick leave required to be provided pursuant to California and local laws (including, without limitation, Labor Code section 246, *et seq.*). Employee is further informed and believes that Employers also did not permit its use upon request by Employee and other aggrieved employees as contemplated under California and local laws. As such, Employers would be liable for civil penalties for violation of the paid sick leave regulations under Labor Code sections 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employers have or had a policy or practice of failing to pay aggrieved employees their paid time off and vacation time owed upon separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3 and applicable Wage Orders. As such, Employers would be liable for civil penalties for violation of Labor Code section 227.3 under Labor Code section 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employers had and has a policy or practice of failing to pay aggrieved employees their wages in accordance with Labor Code Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Employee is informed and believes and based thereon alleges that Employers did not and do not pay Employee and other aggrieved employees in accordance with Labor Code Section 204. As such, Employee is informed and believes, and based thereon alleges that Employers violated Labor Code section 204. Employers would be liable for civil penalties pursuant to Labor Code sections 210, 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employers have and had a policy of failing to provide all temporary workers with owed wages weekly by not later than

the regular payday of the following week. As a result, pursuant to Labor Code section 201.3, Employers would be liable for civil penalties pursuant to Labor Code sections 201.3.

Employee is informed and believes, and based thereon alleges that Employers have and had a policy or practice of failing to provide all working employees with suitable seats when the nature of the work reasonably permits the use of seats. Employee is further informed and believes, and based thereon alleges that Employers has failed to place an adequate number of seats in reasonable proximity to the work area and/or permitted employees to use such seats when it does not interfere with the performance of their duties when employees are not engaged in the active duties of their employment and the nature of their work requires standing.

Employee is informed and believes, and based thereon alleges that Employers had and have a policy or practice of preventing Employee and/or other aggrieved employees from using or disclosing the skills, knowledge and experience they obtained at Employers for purposes of competing with Employers, including, without limitation, preventing Employees from disclosing their wages in negotiating a new job with a prospective employer, and from disclosing who else works at Employers and under what circumstances that they might be receptive to an offer from a rival employer. As such, Employee is informed and believes that this violates Business and Professions Code sections 17200, 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor Code sections 232, 232.5, and 1197.5, subdivision (k). Employers would be liable for civil penalties pursuant to Labor Code section 2699.

Employee is informed and believes, and based thereon alleges that Employers had and have a policy or practice of preventing Employee and/or other aggrieved employees from disclosing violations of state and federal law, either within Employers to their managers or outside Employers to private attorneys or government officials, among others, in violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5. In addition, Employee is informed and believes that these policies and/or practices prevent Employee and/or other aggrieved employees from disclosing information about unsafe or discriminatory working conditions, or about wage and hour violations in violation of Labor Code section 232 and 232.5. These violations of the Labor Code would expose Employers to liability for civil penalties pursuant to Labor Code section 2699.

Employee is informed and believes, and based thereon alleges that Employers had and have a policy or practice of preventing Employee and/or other aggrieved employees from engaging in lawful conduct during non-work hours, thus violating state statutes entitling employees to disclose wages, working conditions, and illegal conduct, including, without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5, subdivision (k). Employee is informed and believes that this lawful conduct includes the exercise of Employee and/or other aggrieved employee's constitutional rights of freedom of speech and economic liberty and would thus expose Employers to liability for civil penalties pursuant to Labor Code section 2699.

Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), please advise within sixty-five (65) calendar days of the postmarked date of this notice whether the LWDA intends to investigate the violations alleged above. Our office understands that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this PAGA Notice that the LWDA intends to investigate these allegations, Employee may immediately thereafter file a civil complaint against Employers to allege causes of action for civil penalties under the Private Attorney General Act for the herein-described alleged violations of the Labor Code.

Very truly yours,

BIBIYAN LAW GROUP, P.C.



Zachary T. Chrzan

cc: H&M Hennes & Mauritz L.P. (via U.S. Certified Mail, Return Receipt Requested)
Alyse Digildo (via U.S. Certified Mail, Return Receipt Requested)

EXHIBIT 3