

**JOINT STIPULATION OF PAGA REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE**

This Joint Stipulation of PAGA Representative Action Settlement and Release (hereinafter “Settlement Agreement”) is made and entered into by and between Plaintiff Cassondra Jackson (“Plaintiff”) individually and as a proxy of the State of California and the California Labor and Workforce Development Agency (“LWDA”) on behalf of all other allegedly aggrieved employees, and Five Below, Inc. (“Five Below”) (collectively, the “Parties”), and their respective counsel of record. This Settlement Agreement is subject to the terms and conditions set forth below and to the approval of the Court. This Settlement Agreement accurately sets forth the Parties’ PAGA representative action settlement in the total amount of One Million Six Hundred Forty Thousand Dollars (\$1,640,000) to resolve all claims, as detailed below.

I. DEFINITIONS

1. “Action” means the action entitled “*Cassondra Jackson v. Five Below, Inc.*,” Case No. 37-2021-00044698-CU-OE-CTL, filed in the Superior Court of California in and for the County of San Diego.
2. “Approval Date” means the date the Court approves this Settlement Agreement and enters the Order Granting Settlement Approval and Judgment to that effect.
3. “Approval Hearing” means the hearing on the Motion for Settlement Approval and Judgment.
4. “Court” means the Superior Court of California in and for the County of San Diego, which presides over the Action.
5. “Covered PAGA Pay Periods” means, as reflected on Five Below’s internal records, pay periods from August 16, 2020 to the earlier of June 30, 2023 or the Approval Date in which a PAGA Member worked for Five Below as a non-exempt employee in California.
6. “Defendant” means Five Below, Inc.
7. “Defendant’s Counsel” means Morgan, Lewis & Bockius LLP.
8. “Estimated Covered PAGA Pay Periods” means the estimated total of 78,488 Covered PAGA Pay Periods at issue between August 16, 2020 and January 31, 2023 provided by Five Below in connection with the execution of the Parties’ Memorandum of Understanding .
9. “Five Below Releasees” means Defendant Five Below, Inc., its affiliates, divisions,

subsidiaries, parents, predecessors, any merged entity or merged entities and/or its or their present and former officers, partners, directors, employees, agents, shareholders and/or successors, assigns, trustees, heirs, administrators, executors, representatives and/or principals thereof.

10. “Individual PAGA Settlement Amount” means the final gross amount sent and paid to any PAGA Member under this Settlement Agreement.

11. “Individual PAGA Settlement Fund” means the twenty-five percent (25%) of the Net Settlement Amount allocated for the Individual PAGA Settlement Amount payments to the PAGA Members.

12. “LWDA” means the California Labor and Workforce Development Agency.

13. “Maximum Settlement Amount” is the sum of One Million Six Hundred Forty Thousand Dollars (\$1,640,000), which represents the maximum amount payable in this Settlement by Five Below, and includes all attorneys’ fees, litigation costs, the Settlement Administration Expenses, and all settlement payments to the LWDA and the PAGA Members.

14. “Net Settlement Amount” equals the Maximum Settlement Amount less Plaintiff’s Counsel’s attorneys’ fees and reasonable substantiated litigation costs, and Settlement Administration Expenses.

15. “Order Granting Settlement Approval and Judgment” means the Order entered by the Court in the Action, *inter alia*: (1) approving the terms and conditions of this Settlement Agreement, including the payments and the release of claims as set forth herein; (2) approving the amount of attorneys’ fees and litigation costs to be awarded to Plaintiff’s Counsel, and the Settlement Administration Expenses, to be deducted from the Maximum Settlement Amount; and (3) entering judgment in the Action pursuant to and consistent with the terms and conditions of this Settlement Agreement. Plaintiff will seek dismissal of the Action with prejudice. However, in the event the Court requires Plaintiff to file a satisfaction of judgment instead of a request for dismissal, Plaintiff shall file a satisfaction of judgment within 30 calendar days after the distribution of the settlement payments have been completed.

16. “PAGA” means the California Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698 et seq.

17. “PAGA Member(s)” means all individuals employed by Five Below as non-exempt employees in California from August 16, 2020 to the earlier of June 30, 2023 or the Approval Date.

18. “Plaintiff’s Counsel” collectively means Mashiri Law Firm, APC and The Jami Law Firm P.C.

19. “Released Claims” means all claims, obligations, demands, rights, causes of action, and liabilities against Five Below Releasees, for civil penalties under the PAGA that have been asserted or that could have been asserted in the Complaint, the First Amended Complaint, the PAGA letter to the LWDA, and any amendments thereto, based on the facts, claims and/or allegations pled therein. Released Claims include claims for failure to pay sick pay wages, failure to pay overtime wages, failure to provide accurate or otherwise compliant wage statements, failure to maintain accurate wage statements, failure to provide meal periods, failure to timely wages during employment, failure to timely pay wages upon separation of employment, failure to provide personnel records, failure to provide payroll records, and failure to provide reimbursement for necessary business-related expenses, and includes all such claims from August 16, 2020 through and including the earlier of June 30, 2023 or the Approval Date. The Released Claims only pertain to civil penalties under the PAGA and excludes any claims for wages or other legal remedies.

20. “Settlement Administration Expenses” means all settlement administration fees and costs, including those for the Settlement Administrator, in effectuating the Settlement and approved by the Court in an amount not to exceed \$20,000.00.

21. “Settlement Administrator” means Phoenix Settlement Administrators, or any other third-party settlement administrator that the Parties jointly select, subject to Court approval.

22. “Settlement Agreement” or “Settlement” will mean this Joint Stipulation of PAGA Representative Action Settlement and Release.

23. “Settlement Effective Date” means, after the Order Granting Settlement Approval and Judgment has been entered by the Court in the Action, the latter of the following dates: (a) if an appeal, review, or writ is not sought from the Order Granting Settlement Approval and Judgment, the 63rd day after entry of the Order Granting Settlement Approval and Judgment; or (b) if an appeal, writ, or review is sought from the Order Granting Settlement Approval and Judgment, the day after the Order Granting

Settlement Approval and Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Order Granting Settlement Approval and Judgment is no longer subject to any further judicial review.

II. LITIGATION BACKGROUND

24. On or about August 16, 2021, Plaintiff submitted a PAGA notice letter to the LWDA which stated that Plaintiff intended to seek civil penalties against Five Below for alleged violations of the California Labor Code.

25. On October 20, 2021, Plaintiff filed a representative action under PAGA against Defendant in the Superior Court of California for the County of San Diego.

26. On October 29, 2021, Plaintiff submitted an Amended PAGA notice letter to the LWDA.

27. On January 7, 2022, Plaintiff filed a First Amended Complaint in the Action.

28. On March 4, 2022, Plaintiff dismissed her eleventh cause of action for failure to pay all accrued vacation wages upon separation of employment.

29. Five Below filed a demurrer and a motion to strike in response to the First Amended Complaint. On June 10, 2022, the Court granted the demurrer in part, resulting in the dismissal of Plaintiff's seventh cause of action, with prejudice, for failure to pay meal period premiums at the correct rate, and denied the motion to strike.

30. Five Below denies Plaintiff's claims, and asserts that it has complied fully with California's labor laws and wage orders. Consequently, Five Below does not believe that any liability to Plaintiff, the State of California or the LWDA, or to any other PAGA Member exists, or that Plaintiff, the State of California or the LWDA, or any other PAGA Member are entitled to any recovery in the Action.

31. On March 3, 2023, counsel for Plaintiff's Counsel and Defendant's Counsel participated in a mediation with experienced mediator Michael Dickstein, Esq. With Mr. Dickstein's assistance, the Parties negotiated the key terms of a complete settlement of Plaintiff's claims. The terms of the settlement are now set forth in complete and final form in this Settlement and a separate settlement agreement covering Plaintiff's individual non-PAGA claims.

32. Neither this Settlement, nor any final judgment pursuant to this Settlement, will constitute an admission of any form of wrongdoing or liability on the part of Defendant or the accuracy of any

allegation raised in the Action. This Settlement is entered into in compromise of disputed claims. Plaintiff and Five Below intend, by their actions pursuant to this Settlement, merely to avoid the expense, delay, uncertainty, and burden of litigation. This Settlement and any related court documents or orders may not be cited or otherwise admitted as evidence of liability. There has been no final determination by any Court as to the merits of the Action.

33. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims against the Five Below Releasees arising from or related to the Action.

34. It is the intention of the Parties that this Settlement Agreement will constitute a full and complete settlement and release of the claims averred in the Action by Plaintiff, both individually and as a proxy of the State of California and the LWDA on behalf of all PAGA Members pursuant to PAGA. This release includes in its effect a release of all the Five Below Releasees of the Released Claims.

III. JURISDICTION AND VENUE

35. This Court has jurisdiction over the Parties and the subject matter of this Settlement. This Court will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all payments and obligations provided for herein have been fully executed.

IV. TERMS OF SETTLEMENT

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

A. Non-Admission of Liability

37. Nothing in this Settlement Agreement, or any communications, papers, or orders related to this Settlement Agreement, will be construed as or be deemed an admission by the Five Below Releasees of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the PAGA Members, or any other person, and the Five Below Releasees specifically disclaim any liability, culpability, negligence, or wrongdoing toward Plaintiff, the PAGA Members, or any other person. Five Below also maintains that, for any purpose other than settlement, the claims alleged in the Action are not suitable or appropriate for representative action treatment and are not manageable pursuant to California Labor Code § 2698 *et seq.* Each of the Parties has entered into this Settlement Agreement with the intention to avoid further disputes

and litigation with the attendant inconvenience, expenses, and contingencies, including in the Action. This Settlement Agreement and any communications, papers, or orders related to the Settlement Agreement may not be cited or otherwise admitted as evidence of liability, whether in the Action or elsewhere. There has been no final determination by any Court as to the merits of the claims asserted by Plaintiff against Defendant.

38. Furthermore, nothing in this Settlement Agreement will be considered a form of waiver of any of the alternative dispute resolution provisions contained in Five Below's Arbitration Agreement or any other applicable alternative dispute resolution agreement with Five Below, and Five Below expressly does not waive any right to enforce arbitration agreements and class, collective, and representative action waivers in any other circumstance.

B. Non-Approval By The Court

39. If this Settlement Agreement is not approved by the Court, fails to become effective, is reversed, withdrawn or modified by the Court:

- (a) The Parties will meet and confer in good faith and diligently attempt to address the Court's concerns;
- (b) The Settlement Agreement will have no force or effect, other than the confidentiality and non-disclosure provisions in Section XI and the non-admission provisions in Section IV.A;
- (c) The Settlement Agreement will not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;
- (d) None of the parties to this Settlement Agreement will be deemed to have waived any claims, objections, defenses or arguments with respect to the merits of Plaintiff's claims; and
- (e) Five Below does not waive, and instead expressly reserves its right to challenge the propriety of the Action proceeding as a representative action.

C. Settlement Payments

40. Five Below agrees to pay a Maximum Settlement Amount of One Million Six Hundred Forty Thousand Dollars (\$1,640,000), inclusive of (a) all PAGA penalty settlement payments to the LWDA and PAGA Members; (b) any award of attorneys' fees and out-of-pocket litigation costs and expenses to Plaintiff's Counsel; and (c) all Settlement Administration Expenses. The Parties specifically agree, subject to Court approval, to the following allocations to be paid from the Maximum Settlement Amount:

- (a) From the Maximum Settlement Amount, Plaintiff's Counsel may seek from the Court attorneys' fees up to \$546,666.67 (one-third of the total) and reasonable substantiated litigation costs up to \$20,000.00 for serving as Plaintiff's Counsel. Five Below takes no position on Plaintiff's request for attorneys' fees and costs provided it does not exceed these amounts and Plaintiff and Plaintiff's Counsel are not in breach of the Settlement Agreement.
- (b) From the Maximum Settlement Amount, Settlement Administration Expenses in a reasonable amount currently estimated to be no more than \$20,000.00.
- (c) From the Net Settlement Amount, settlement payments attributable to PAGA penalties will be allocated and paid to the LWDA and the PAGA Members.
 - (i) Seventy-five percent (75%) of the Net Settlement Amount will be paid to the LWDA as its share of the Settlement attributable to PAGA penalties.
 - (ii) The remaining twenty-five percent (25%) of the Net Settlement Amount will be the Individual PAGA Settlement Fund and will be distributed as Individual PAGA Settlement Amounts to the PAGA Members based on their eligible employee service time for Covered PAGA Pay Periods, as reflected on Five Below's internal records. Individual PAGA Settlement Amounts will be calculated as follows: the numerator shall be the number of the PAGA Member's individual Covered PAGA Pay Periods; the denominator shall be the total Covered PAGA Pay Periods for all PAGA Members; this fraction shall be multiplied by the Individual PAGA

Settlement Fund.

- (d) If the Court approves a lesser amount of attorneys' fees and litigation costs than those sought by Plaintiff and Plaintiff's Counsel, any amount disallowed by the Court will be added to the Net Settlement Amount. The Parties agree that the Settlement Agreement will remain binding with such modification(s) as ordered by the Court, and its terms will be otherwise unchanged. This Settlement is not conditioned upon the Court's approval of Plaintiff's Counsel's petition for fees and costs. Plaintiff and Plaintiff's Counsel retain their right to appeal any reduction in the amount of attorneys' fees and litigation costs provided that any reduction post-appeal shall be paid *cy pres* to Legal Aid Society of San Diego.
- (e) The Settlement Administrator will disburse monies from the Net Settlement Amount as and when authorized in this Settlement Agreement and by order of the Court, will file and issue any necessary tax reporting documents, and will inform the Parties and the Court of its fulfillment of the duties imposed by this Settlement Agreement.
- (f) The Settlement Administrator will issue settlement checks to the LWDA and PAGA Members under this Settlement Agreement, as well as the attorneys' fees and costs awarded to Plaintiff's Counsel, by sending such payments by mail, wire, or other reliable means to the respective recipients as specified below.

D. Estimated Covered PAGA Pay Periods

41. In connection with the Parties' execution of the Memorandum of Understanding, Five Below has provided to Plaintiff the number of Estimated Covered PAGA Pay Periods. If the data reported to the Settlement Administrator for the relevant period ending January 31, 2023 reflects an increase of more than 10% of the 78,488 approximation, Five Below shall have the option to: (a) increase the Maximum Settlement Amount in proportion to the increase in Covered PAGA Pay Periods worked by PAGA Members above 5% (82,413) (*i.e.*, if there is a 12% increase in Covered PAGA Pay Periods, Five Below would need to increase the Maximum Settlement Amount by 7%) or (b) limit the end date of the release

period appropriately so that the cumulative Covered PAGA Pay Periods do not exceed 86,337.

E. Estimated Number of PAGA Members

42. Five Below estimates the number of PAGA Members is approximately 5,953 as of January 31, 2023. The Parties will secure a quote from Phoenix Settlement Administrators that will cover the fees/costs to administer this Settlement to no less than 6,251 PAGA Members (5% above the 5,953 approximation). Should the number of PAGA Members exceed 6,251 at the time of the administration/disbursement of the settlement funds, Five Below shall pay for the additional Settlement Administration Expenses associated with the administration of the settlement for those PAGA Members in excess of 6,251.

F. Released Claims

43. Upon the date Five Below funds the payment of the Maximum Settlement Amount in accordance with Paragraph 57, Plaintiff individually, and the State of California, the LWDA, and all PAGA Members, through Plaintiff acting as a proxy for the State of California and the LWDA and as a Private Attorney General acting on behalf of all other PAGA Members, will be deemed to have fully, finally, and forever released the Five Below Releasees from all Released Claims as set forth in Section VII.

G. Waiver of Appeal

44. The Parties expressly acknowledge and agree that the funding of the settlement payment by Five Below following approval of this Settlement Agreement, through the Order Granting Settlement Approval and Judgment, effectuates the Releases set forth in Section VII, extinguishes all Released Claims. Upon the Approval Date, Plaintiff, Five Below, and their counsel expressly agree to hereby waive and extinguish their right to appeal any order or judgment in the Action, and the judgment entered in the Action will be final. As the lone exception to this waiver of the right to appeal, Plaintiff and Plaintiff's Counsel shall retain their right to appeal any reduction in the amount of attorneys' fees and litigation costs allowed by the Court provided that any reduction post-appeal goes to the *cy pres* selected by the Parties.

H. No Right to Exclusion or Objections by PAGA Members

45. Because this Settlement resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a Private Attorney General of and for the State of California and the LWDA, the

Parties agree that no PAGA Member has the right to exclude himself or herself from the Settlement. PAGA Members will be bound by the terms of the Settlement Agreement, upon its approval by the Court, regardless of whether he or she cashes any Individual PAGA Settlement Amount payment received as a result of this Settlement. The Parties also agree that no PAGA Member, including Plaintiff, has the right to object to the terms of the Settlement Agreement and Plaintiff agrees not to object to the Settlement.

I. Motion for Settlement Approval and Entry of Judgment

46. Plaintiff will file motion for settlement approval and entry of judgment with the Court, in which Plaintiff will request that the Court, among other things, enter an Order Granting Settlement Approval and Judgment in accordance with the terms of this Settlement Agreement. Concurrent with filing the request for settlement approval and entry of judgment, Plaintiff will submit that motion and any supporting papers, including a copy of this Settlement Agreement, to the LWDA pursuant to Labor Code § 2699(l)(2).

V. SETTLEMENT ADMINISTRATION

A. Settlement Administrator Duties

47. Pursuant to the terms of this Settlement Agreement, the Settlement Administrator will be responsible for and the Settlement Administration Expenses will cover: (a) calculating and determining the LWDA's 75% share of the Net Settlement Amount, and preparing and mailing that payment to the LWDA; (b) preparing a list of all PAGA Members, calculating the Individual PAGA Settlement Amounts due to each PAGA Member from the Individual PAGA Settlement Fund, and issuing and mailing checks payable to said PAGA Members, including taking appropriate steps to trace, update and locate any PAGA Members whose address or contact information as provided to the Settlement Administrator is inaccurate or outdated; (c) issuing to Plaintiff, Plaintiff's Counsel, and PAGA Members any tax forms as may be required by applicable law for all amounts paid pursuant to this Settlement Agreement; (d) forwarding all taxes and penalties to the appropriate government authorities; (e) maintaining the Maximum Settlement Amount account in an interest-bearing account at a federally insured banking institution, as discussed below; (f) preparing and mailing the amount of attorneys' fees and litigation costs awarded to Plaintiff's Counsel from the Maximum Settlement Amount; (g) reporting to Defendant's Counsel, Plaintiff's Counsel, and, if

necessary, the Court regarding the completion of the tasks identified in this paragraph; and (h) carrying out other related tasks including the proper maintenance of undisbursed Individual PAGA Settlement Amounts or uncashed checks in an interest bearing account and any reporting required for that account, in accordance with the terms of this Settlement Agreement.

48. All disputes relating to the Settlement Administrator's ability and need to perform its duties will be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all payments and obligations contemplated by the Settlement Agreement have been fully executed.

B. Qualified Settlement Fund

49. The Settlement Administrator will create a Qualified Settlement Fund ("QSF"), to be funded by the Maximum Settlement Amount paid by Five Below and administered by the Settlement Administrator. The Settlement Administrator shall have control over the distribution of funds from the QSF, once funded. With respect to the QSF, the Settlement Administrator shall: (1) satisfy all federal, state and local income and other tax reporting, return, and filing requirements with respect to the QSF and any interest or other income earned by the QSF; and (2) satisfy out of the QSF all fees, expenses and costs incurred in connection with the opening and administration of the QSF and the performance of its duties and functions as described in this Settlement Agreement. The aforementioned fees, costs and expenses shall be treated as and included in the costs of administering the QSF and as Settlement Administration Expenses. The Parties agree to cooperate with the Settlement Administrator and one another to the extent reasonably necessary to carry out the provisions of this Section. If the Court does not enter the Order Granting Settlement Approval and Judgment, Five Below shall not be obligated to fund the QSF.

C. Calculating and Issuing Payments To PAGA Members

50. The Settlement Administrator shall calculate the Individual PAGA Settlement Amount payments to PAGA Members as described in Paragraph 40(c)(ii).

51. In addition to the payments to PAGA Members, Five Below, through the Settlement Administrator, shall also make a payment to the California LWDA as consideration for the release of all PAGA claims that are the subject of the Action on behalf of the State of California. Of the Net Settlement

Amount, seventy-five percent (75%) shall be paid to the LWDA.

52. Prior to mailing the Individual PAGA Settlement Amount payments to PAGA Members, the Settlement Administrator will update the addresses for the PAGA Members using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. Any returned envelopes from the initial mailing with forwarding addresses will be used by the Settlement Administrator to locate PAGA Members and re-mail the Individual PAGA Settlement Amount payments to the correct or updated address. The Settlement Administrator will use appropriate tracing methods, including skip tracing, to ensure that the Individual PAGA Settlement Amount payments are received by PAGA Members. The Settlement Administrator will also take reasonable steps, including skip tracing, to locate any PAGA Member whose Individual PAGA Settlement Amount payments are returned as undeliverable.

53. The Individual PAGA Settlement Amount payments mailed to each PAGA Member will include the notice letter attached to this Settlement Agreement as **Exhibit A** and will provide a payment of each PAGA Member's pro rata share from the Individual PAGA Settlement Fund.

54. All settlement payments from the Maximum Settlement Amount, including any payment to the LWDA and any Individual PAGA Settlement Amount payments will be treated as civil penalties under PAGA, and will be reported on an IRS Form 1099 without withholdings. The payments to Plaintiff's Counsel for attorneys' fees and litigation costs will be treated as miscellaneous income and will be reported on an IRS Form 1099 without withholdings. Plaintiff and PAGA Members will be exclusively liable for any and all tax liability, if any. All Parties represent that they have not received, and will not rely on, advice or representations from other Parties or their agents or attorneys regarding the tax treatment of payments under federal, state, or local law.

D. Settlement Administration Expenses

55. All Settlement Administration Expenses will come out of the Maximum Settlement Amount. If the actual Settlement Administration Expenses are less than the amount approved by the Court, the portion not approved by the Court will be added to the Net Settlement Amount.

VI. DISTRIBUTION OF NET SETTLEMENT AMOUNT

A. Process and Deadlines

56. Within thirty (30) calendar days after the Approval Date, Five Below will provide information in an electronic format regarding all PAGA Members, including name(s), last known residence addresses, Social Security numbers, and all Covered PAGA Pay Periods worked, to the Settlement Administrator only, contingent upon the Settlement Administrator's execution of a confidentiality agreement. PAGA Member data will be used by the Settlement Administrator only for the purpose of calculating settlement shares and finding and paying PAGA Members their portion of the Individual PAGA Settlement Fund. Data for PAGA Members will be kept confidential by the Settlement Administrator, and will not be disclosed to Plaintiff, Plaintiff's Counsel, the LWDA, or any other PAGA Member without the written consent of Five Below. The Settlement Administrator shall provide a report to both Parties confirming whether the provisions in Paragraphs 41 and 42 concerning increases to the amount of Maximum Settlement Amount and the Settlement Administration Expenses, respectively, are triggered by the data reported to the Settlement Administrator by Five Below.

57. Within seven (7) calendar days after the Settlement Effective Date, Five Below will provide payment of the Maximum Settlement Amount to the Settlement Administrator to fund the QSF to be created by the Settlement Administrator.

58. Within forty-five (45) calendar days after the Approval Date, the Settlement Administrator will calculate the Net Settlement Amount and will make the calculation of payments from the Net Settlement Amount to be distributed to the LWDA (representing its 75% share under PAGA of the Net Settlement Amount) and to each of the PAGA Members (representing, in the aggregate, their 25% share under PAGA of the Net Settlement Amount). Upon completion of its calculation of payments, and at least seven (7) days prior to the distribution of payments to the LWDA and PAGA Members, the Settlement Administrator will provide Defendant's Counsel with a report listing the amount of all payments to be made to the LWDA and to each PAGA Member from the Net Settlement Amount.

59. Within thirty (30) calendar days of the Settlement Effective Date, the Settlement Administrator will distribute and pay Individual PAGA Settlement Amount checks to all PAGA Members,

issue a settlement check to the LWDA for its payment of PAGA penalties, and distribute and pay the attorneys' fees and litigation costs awarded to Plaintiff's Counsel. The Settlement Administrator will then also issue a payment to itself in the amount approved by the Court for services performed in administering this Settlement.

B. Uncashed Settlement Checks

60. PAGA Members who are sent Individual PAGA Settlement Amount payments will have 120 calendar days after mailing by the Settlement Administrator to cash their settlement checks and will be so advised of such deadline. If PAGA Members do not cash their checks within that 120-day period, the Settlement Administrator shall remit any unclaimed funds to the Controller of the State of California pursuant to the Unclaimed Property Law, California Code of Civil Procedure § 1500, *et seq.*, to be held in trust for those PAGA Members who did not timely cash their checks for their Individual PAGA Settlement Amount payments.

VII. RELEASE OF CLAIMS BY PLAINTIFF, THE LWDA, AND ALL PAGA MEMBERS

61. Upon the date Five Below funds the payment of the Maximum Settlement Amount in accordance with Paragraph 57, Plaintiff, on behalf of herself, the State of California and the LWDA, and all PAGA Members, fully and forever releases and discharges the Five Below Releasees (as defined in Paragraph 9) from the Released Claims as defined in Paragraph 19. The Parties agree that this Settlement Agreement is conditioned upon this release of all Released Claims, both by Plaintiff individually, and by the State of California, the LWDA, and all PAGA Members through Plaintiff acting on behalf of, and as a Private Attorney General for, the State of California, the LWDA, and all allegedly aggrieved current and former employees of Five Below. Upon the date Five Below funds the Maximum Settlement Amount, Plaintiff, the LWDA, and each and every PAGA Member will be bound by the terms of this Settlement Agreement and will have recourse exclusively to the benefits, rights, and remedies provided hereunder.

62. The Parties further understand and agree that this Settlement Agreement, in conjunction with the Order Granting Settlement Approval and Judgment, prohibits and enjoins any PAGA Member (including Plaintiff), from bringing against the Five Below Releasees any of the Released Claims for civil

penalties through and including the earlier of June 30, 2023 and the Approval Date. Upon the date Five Below funds the Maximum Settlement Amount, Plaintiff, on behalf of herself and on behalf of the LWDA and each and every PAGA Member, will be deemed to have, and by operation of the Order Approving Settlement Agreement and Judgment entered by the Court will have fully, finally, and forever released, relinquished, and discharged each and all of the Five Below Releasees from any and all Released Claims through the earlier of June 30, 2023 and the Approval Date.

VIII. DUTIES OF THE PARTIES

63. Plaintiff's Counsel, subject to Five Below's approval, will submit to the Court a motion seeking approval of this Settlement and attaching this Settlement Agreement as well as a proposed Order Granting Settlement Approval and Judgment.

64. Following entry of the Court's Order Granting Settlement Approval and Judgment, the Parties will each act to assure her or its timely execution and the fulfillment of all provisions in that Order and in this Settlement Agreement, including but not limited to the following:

- (a) Within ten (10) days after the Approval Date and receipt of the Order Granting Settlement Approval and Judgment, Plaintiff's Counsel will submit a copy of the Order Granting Settlement Approval and Judgment to the LWDA pursuant to Labor Code § 2699(l)(3).
- (b) Within thirty (30) calendar days after the Approval Date, Five Below will provide to the Settlement Administrator the PAGA Member list and identification and contact information specified in Paragraph 56 above. Five Below will submit this information in electronic format as specified by the Settlement Administrator and will thereafter assist the Settlement Administrator as necessary or as requested to use, correct, or update this information in order to enable the Settlement Administrator to locate and contact PAGA Members, and to provide information needed or requested by the Settlement Administrator in order to make determinations on PAGA Members' challenges.
- (c) Upon entry of the Order Granting Settlement Approval and Judgment, all Parties

will waive their right to appeal the judgment and all other court orders in the Action, with the lone exception that Plaintiff and Plaintiff's Counsel shall retain their right to appeal any reduction in the amount of attorneys' fees and litigation costs allowed by the Court provided that any reduction post-appeal goes to the *cy pres* selected by the Parties.

- (d) Plaintiff's Counsel and Defendant's Counsel will assist the Settlement Administrator as needed or requested in the process of identifying and locating PAGA Members entitled to payments from the Individual PAGA Settlement Fund and assuring delivery of such payments.
- (e) Plaintiff's Counsel and Defendant's Counsel will cooperate with each other and assist the Settlement Administrator as needed or requested in completing the distribution of any amount of attorneys' fees and litigation costs not awarded to Plaintiff's Counsel after an appeal from the Court's Order Granting Settlement Approval and Judgment to be sent to Legal Aid Society of San Diego.

IX. SETTLEMENT APPROVAL PROCEDURES AND TIMELINE FOR COMPLETION OF SETTLEMENT

65. This Settlement Agreement will become final and effective only upon the occurrence of all of the following events:

- (a) Execution of this Settlement Agreement by the Parties and their respective counsel of record.
- (b) Submission of the Settlement Agreement to the Court for approval.
- (c) Plaintiff's submission of the Settlement Agreement to the LWDA.
- (d) Entry by the Court of an Order Approving Settlement Approval and Judgment, which, among other things, must:
 - (i) approve the Settlement and the release of claims set forth herein, adjudging the terms thereof to be fair, adequate, reasonable, and binding on Plaintiff, the LWDA, and all PAGA Members through Plaintiff acting

on behalf of, and as a Private Attorney General for, the State of California, the LWDA, and all PAGA Members, and directing that its terms and provisions be carried out;

- (ii) approve settlement administration services to be provided by the Settlement Administrator;
- (iii) permanently enjoin and prohibit Plaintiff, the LWDA, and all other PAGA Members from pursuing and/or seeking to reopen claims that have been released by this Agreement;
- (iv) provide that the Court will retain jurisdiction to oversee administration and enforcement of the terms of the Settlement and the Court's orders;
- (v) otherwise incorporate the terms of this Settlement Agreement; and
- (vi) occurrence of the Settlement Effective Date.

66. The schedule for approval and payment procedures carrying out this Settlement is as follows. The schedule may be modified depending on whether and when the Court grants necessary approvals. In the event of such modification, the Parties will cooperate in order to complete the settlement procedures as expeditiously as reasonably practicable.

Within 10 days after the Approval Date and receipt of the Order Granting Settlement Approval and Judgment Order from the court	Plaintiff's Counsel to submit a copy of the Order Granting Settlement Approval and Judgment to the LWDA.
Within 30 calendar days after the Approval Date	Five Below to provide the Settlement Administrator the PAGA Member information, including names, last known residence addresses, social security numbers, and the number of Covered PAGA Pay Periods.

Within 45 calendar days after the Approval Date	Settlement Administrator to make the calculation of payments from the Net Settlement Amount to be distributed to the LWDA and to the PAGA Members and provide Defendant's Counsel with a report listing the amount of all payments to be made to the LWDA and to each PAGA Member. Settlement Administrator to complete any skip trace or other address searches for PAGA Members, including updating any contact information.
Settlement Effective Date	Following entry of the Order Granting Settlement Approval and Judgment, the latter of the following dates: (a) if an appeal, review, or writ is not sought from the Order Granting Settlement Approval and Judgment, the 63rd day after the Order Granting Settlement Approval and Judgment; or (b) if an appeal, writ, or review is sought from the Order Granting Settlement Approval and Judgment, the day after the Order Granting Settlement Approval and Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Order Granting Settlement Approval and Judgment is no longer subject to further judicial review.
Within 7 calendar days of the Settlement Effective Date	Five Below to send payment of the Maximum Settlement Amount to the Settlement Administrator to be deposited into the QSF.
Within 30 calendar days of the Settlement Effective Date	Settlement Administrator to distribute Individual PAGA Settlement Amount checks to all PAGA Members, a settlement check to the LWDA for its payment of PAGA penalties, the attorneys' fees and litigation costs awarded to Plaintiff's Counsel, and a payment to itself in the amount approved by the Court for services performed in administering this Settlement.
120 calendar days after distribution of settlement checks	Expiration of PAGA Members' settlement checks.

X. VOIDING OR MODIFYING THE SETTLEMENT AGREEMENT

67. The Parties each have the right to withdraw from the Settlement at any time prior to the Settlement Effective Date if: (a) the Settlement is construed by the Court in such a fashion that Five Below is required to pay more than the Maximum Settlement Amount; (b) the Court denies approval of the Settlement or any material terms thereof (excluding any reduction of Plaintiff and Plaintiff's Counsel's requests for attorneys' fees and substantiated litigation costs) despite the Parties' diligent and good faith attempt to obtain Court approval; (c) the Court does not order the release of claims of the PAGA Members

set forth in this Settlement Agreement, or otherwise makes an order inconsistent with any of the material terms of this Settlement Agreement; or (d) either party or her or its counsel breaches this Settlement Agreement.

68. In the event the Court denies approval of the Settlement, the Parties will work diligently and in good faith to obtain approval of the Settlement.

69. If for any reason the Settlement Agreement is not approved or the Court fails to enter the Order Granting Settlement Approval and Judgment despite the Parties' diligent and good faith attempt to obtain Court approval, or Five Below or Plaintiff withdraw from the Settlement, this Settlement Agreement and any related settlement documents (including the Parties' memorandum of understanding) will be null and void, other than the confidentiality and non-disclosure provisions in Section XI and the non-admission provisions in Section IV.A. In such an event, neither this Settlement Agreement, nor the parties' memorandum of understanding, nor the settlement documents, nor the negotiations leading to the Settlement, may be used as evidence for any purpose, and Five Below will retain the right to challenge all claims and allegations in the Action and to assert all applicable defenses on all applicable grounds. In the event Five Below withdraws from the Settlement for reasons other than a breach by Plaintiff or Plaintiff's Counsel, it will pay any and all administration costs incurred.

70. Other than as specified above, this Settlement Agreement may not be changed, altered, or modified, except in writing and signed by counsel for the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto, and approved by the Court.

XI. CONFIDENTIALITY AND PUBLICITY

71. Names of PAGA Members and their allocation amounts will be kept strictly confidential by the Settlement Administrator, who will not release such information to Plaintiff or Plaintiff's Counsel and will only file such information under seal if necessary. Plaintiff's Counsel agrees that any information they receive or have received in connection with this Settlement, may be used for the purposes of settling the Action only, and may not be used for any other purpose or in any other action or proceeding.

72. Plaintiff and Plaintiff's Counsel agree to keep this Settlement and Settlement Agreement

confidential before the Settlement Agreement is submitted to the LWDA and/or filed with the Court, and after filing not to disclose the terms of this Settlement and Settlement Agreement except in court papers, the LWDA, any other governmental agency, by subpoena, or if required by law or court order. In the event that Plaintiff and/or Plaintiff's Counsel believe they are legally obligated by statutory or regulatory requirements (including compulsory legal process, such as a subpoena) to make disclosures regarding the terms of this Settlement or Settlement Agreement, they must notify Defendant's Counsel, Carrie A. Gonell, by email at carrie.gonell@morganlewis.com, within a reasonable amount of time, but no greater than five (5) business days, of receiving such notice that gives Plaintiff and/or Plaintiff's Counsel reason to believe they are so obligated, and they shall take reasonable steps to maintain the confidentiality of this settlement and Settlement Agreement, including by filing any required disclosures under seal. Neither Plaintiff nor Plaintiff's Counsel, directly or indirectly, will issue a press release, hold a press conference, publish information about the settlement on any website, or otherwise publicize the settlement, with the exception that Plaintiff's Counsel may put information available in the public record about the Settlement in a description of their experience or the like in order to describe their experience to a court. Plaintiff and Plaintiff's Counsel agree not to respond to any press inquiries concerning the Settlement except to refer reporters generally to papers filed with the Court.

XII. PARTIES' AUTHORITY

73. The signatories hereby represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

XIII. MUTUAL FULL COOPERATION

74. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, executing such documents and taking such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement will use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court or otherwise to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Plaintiff's Counsel will, with the assistance and cooperation of Five Below and

Defendant's Counsel, take all necessary steps to secure the Court's approval of this Settlement Agreement.

XIV. NOTICES

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

To Plaintiff's Counsel:

Alex Asil Mashiri
MASHIRI LAW FIRM, APC
11251 Rancho Carmel Drive #500694
San Diego, CA 92150
Tel: (858) 348.4938
Fax: (858) 348.4939
alex@mashirilawfirm.com

To Defendant's Counsel:

Carrie A. Gonell
MORGAN, LEWIS & BOCKIUS LLP
600 Anton Boulevard, Suite 1800
Costa Mesa, CA 92626
Tel: (714) 830.0600
Fax: (714) 830.0700
carrie.gonell@morganlewis.com

If the identity of the persons to be notified for any Party changes, or their address changes, that Party will notify all other Parties of the change in writing.

XV. MISCELLANEOUS PROVISIONS

A. Captions and Titles

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

B. Drafting

77. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the

result of lengthy, intensive arms-length negotiations between the Parties. Neither Party will be considered the “drafter” of the Settlement Agreement for purposes of having terms construed against that Party, and this Settlement Agreement will not be construed in favor of or against any Party by reason of the extent to which any Party or their counsel participated in the drafting of this Settlement Agreement.

C. Extensions of Time

78. If a Party cannot reasonably comply with an obligation under this Settlement Agreement by the deadline set forth herein applicable to that obligation, that Party may apply to the Court for a reasonable extension of time to fulfill that obligation. Consent to such a request for an extension will not be unreasonably withheld by the other Party.

D. Governing Law

79. The rights and obligations of the Parties hereunder will be construed and enforced in accordance with, and will be governed by, the laws of the State of California, without regard to principles of conflict of laws.

E. No Impact on Benefit Plans

80. Neither the Settlement Agreement nor any amounts paid under the Settlement Agreement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Five Below. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Five Below’s sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement will not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of Five Below’s benefit plan, policy, or bonus program. Five Below retains the right to modify the language of its benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for “hours worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by applicable plans, policies and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

F. Integration

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

G. No Prior Assignments

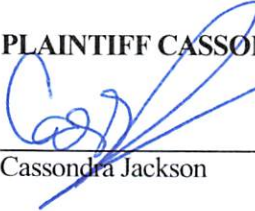
82. This Settlement Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

H. Counterparts

83. This Settlement Agreement may be executed in counterparts with signatures transmitted by facsimile or as an electronic image of the original signature. When each Party has signed and delivered at least one such counterpart, each counterpart will be deemed an original, and, when taken together with other signed counterparts, will constitute one Settlement Agreement, which will be binding upon and effective as to all Parties. A facsimile signature or electronic image will have the same force and effect as the original signature.

READ CAREFULLY BEFORE SIGNING

Dated: May 12, 2023

PLAINTIFF CASSONDRA JACKSON


Cassandra Jackson

FIVE BELOW, INC.

Dated: May __, 2023

Ronald J. Masciantonio

F. Integration

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

G. No Prior Assignments

82. This Settlement Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

H. Counterparts

83. This Settlement Agreement may be executed in counterparts with signatures transmitted by facsimile or as an electronic image of the original signature. When each Party has signed and delivered at least one such counterpart, each counterpart will be deemed an original, and, when taken together with other signed counterparts, will constitute one Settlement Agreement, which will be binding upon and effective as to all Parties. A facsimile signature or electronic image will have the same force and effect as the original signature.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF CASSONDRA JACKSON

Dated: May ___, 2023

Cassandra Jackson

FIVE BELOW, INC.

5/12/2023

Dated: May ___, 2023

Ron Masciantonio _____
Ronald J. Masciantonio

SVP, General Counsel & New Business Development

APPROVED AS TO FORM

Dated: May 12, 2023

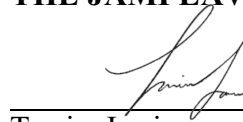
MASHIRI LAW FIRM, APC



Alex Asil Mashiri
Attorneys for Plaintiff Cassondra Jackson

Dated: May 12, 2023

THE JAMI LAW FIRM P.C.



Tamim Jami
Attorneys for Plaintiff Cassondra Jackson

Dated: May 12, 2023

MORGAN, LEWIS & BOCKIUS LLP



Carrie A. Gonell
David J. Rashé
Attorneys for Defendant Five Below, Inc.

EXHIBIT A

<<FIRST_NAME>><<LAST_NAME>>

<<ADDRESS1>>

<<ADDRESS2>>

Re: Settlement Payment from *Jackson v. Five Below, Inc.* Lawsuit

Enclosed is your settlement payment from the settlement of the lawsuit entitled *Jackson v. Five Below, Inc.*, San Diego County Superior Court Case No. 37-2021-00044698-CU-OE-CTL.

In the lawsuit, the plaintiff brings claims against Five Below, Inc. (“Five Below”) pursuant to the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.* (called “PAGA”). The lawsuit was brought on behalf of the State of California and seeks penalties with respect to all similarly situated “aggrieved employees” of Five Below who worked as non-exempt employees in California.

The plaintiff in the case claimed that Five Below owed penalties under PAGA for certain California Labor Code violations because Five Below allegedly failed to pay sick pay wages, including at the correct rate, failed to pay overtime wages, including at the correct rate, failed to provide accurate or otherwise compliant wage statements and failed to maintain accurate wage statements, failed to provide meal periods, failed to timely pay wages during employment and upon separation of employment, failed to provide personnel and payroll records, and failed to reimburse necessary business expenses. Five Below denies that it did anything wrong and denies that it owes any penalties. The parties agreed to resolve the case, and as part of that settlement, Five Below agreed to pay a certain amount of money categorized as PAGA penalties. Under the PAGA statute, penalties are divided between the State and aggrieved employees.

You have been identified as one of the employees on whose behalf the case was brought because you were employed by Five Below as a non-exempt employee in California during the period from August 16, 2020 through [fill in with June 30, 2023 or settlement approval date].

Enclosed is a check made out to you and may be cashed or deposited by you for up to 120 calendar days from the issuance date. The check represents your share of the settlement for PAGA civil penalties (\$____), for which you may receive a Form 1099. Whether you cash or deposit that check, you are waiving and releasing any PAGA claim that, from August 16, 2020, through [fill in with June 30, 2023 or settlement approval date], Five Below did not pay you sick pay wages, including at the correct rate, pay you overtime wages, including at the correct rate, provide you accurate or otherwise compliant wage statements or maintain accurate wage statements, provide you meal periods, timely pay you wages during employment and upon separation of employment, provide you personnel and payroll records, and reimburse you necessary business expenses.

If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter), or visit the Court’s website at the address below, where you can type in the case number “37-2021-44698”: <https://roa.sdcourt.ca.gov/roa/>

Sincerely,
[Administrator]