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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ZHELLE BAKER, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

LA PROVENCE, INC. a California corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: 37-2020-00031040-CU-OE-CTL

CLASS ACTION

[Hon. Joel R. Wohlfeil, Dept. C-73]

**JOINT AMENDED STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT**

Complaint Filed: September 3, 2020

Trial Date: October 28, 2022

1 **JOINT AMENDED STIPULATION OF CLASS ACTION SETTLEMENT**

2 This Joint Amended Stipulation of Class Action and PAGA Settlement (“Joint Amended Stipulation of
3 Settlement” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiff ZHELLE BAKER,
4 individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class Representative”), and Defendant La
5 Provence, Inc. (“Defendant”). Plaintiff and Defendant are sometimes referred to individually as a “Party” or
6 collectively referred to herein as “the Parties.” THE PARTIES STIPULATE AND AGREE as follows:

7 **DEFINITIONS**

8 1. For purposes of this Settlement, “Complaint” refers to the First Amended Complaint filed in the
9 Action.

10 2. For purposes of this Settlement, the “Action” refers to the above-captioned action entitled *Baker v.*
11 *La Provence, Inc., et al.*, Case No. 37-2020-00031040-CU-OE-CTL.

12 3. For purposes of this Settlement, the “Class Period” is September 3, 2016, through initial
13 preliminary approval.

14 4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All non-exempt
15 employees of Defendant who worked for Defendant in California during the Class Period. The “Settlement Class” or
16 “Settlement Class Members” are those Class Members who do not submit timely and compliant exclusion requests
17 to the Settlement Administrator. The Parties’ estimate that the Class included approximately 477 Class Members as
18 of September 1, 2021. Subclass 1 is composed of 408 non-releasees who did not previously release their wage
19 and hour claims in this matter, and Subclass 2 is composed of the 69 releasees who has previously released his or
20 her wage and hour claims in this matter pursuant to *Chindarah v. Pick Up Stix* (2009) 171 *Cal. App.* 4th 796. the
21 Parties estimate that the current number of workweeks for Subclass 1 during the class period is 8,195 while the
22 current number of PAGA pay periods is 744.

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

24 6. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a Subclass 1
25 Member worked at Defendant’s locations in California during the Class Period.

26 7. For purposes of this Settlement, “Response Deadline” means the date forty-five (45) days after the
27 Settlement Administrator initially mails the Notice to Settlement Class Members (“Notice”) and the last date on
28 which Class Members may submit a request for exclusion or written objection to the Settlement. In the case of a re-

1 mailed Notice, the Response Deadline will be the later of 45 calendar days after initial mailing or 14 calendar days
2 from re-mailing. The Response Deadline may be extended only as expressly described herein.

3 8. For purposes of the Settlement, “Defendant’s Counsel” means VARNER & BRANDT LLP.

4 9. For purposes of this Settlement, “PAGA” means the Labor Code Private Attorneys General Act of
5 2004 (Cal. Lab. Code §§ 2698, *et seq.*).

6 10. For purposes of this Settlement, “PAGA Allocation” means the portion of the Gross Settlement
7 Amount that the Parties have agreed to allocate to resolution of the Released PAGA Claims. The Parties have
8 agreed that the PAGA Allocation will be \$10,000 from the Gross Settlement Amount. Pursuant to PAGA, Seventy-
9 Five Percent (75%), or \$7,500, of the PAGA Allocation will be paid to the Labor and Workforce Development
10 Agency (“LWDA”) (“PAGA Penalty Payment”), and Twenty-Five Percent (25%), or \$2,500, of the PAGA
11 Allocation will be paid to the PAGA Employees (“PAGA Settlement Payment”).

12 11. For purposes of this Settlement, “PAGA Period” means the period from September 3, 2019,
13 through the date of preliminary approval.

14 12. For purposes of this Settlement, “PAGA Employee” means all Subclass 1 Members that worked
15 during the PAGA Period. It is stipulated by the Parties that, for purposes of this Settlement, all PAGA Employees
16 are “aggrieved employees” as defined pursuant to PAGA.

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

19 14. For purposes of this Settlement, “PAGA Representative” means Plaintiff.

20 15. For purposes of this Settlement, “Released PAGA Claims” means all claims for penalties and any
21 other available relief pursuant to PAGA, to the extent asserted in Plaintiff’s administrative exhaustion letter
22 submitted to the LWDA in this Action on October 5, 2021, arising during the PAGA Period.

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

26 17. For purposes of this Settlement, Subclass 1” and/or “Subclass 1 Member” means all a Class
27 Member who has not previously released his or her wage and hour claims in this matter.

28 18. For purposes of this Settlement, “Subclass 2” and/or “Subclass 2 Member” means all a Class

1 Member who has previously released his or her wage and hour claims in this matter

2 19. For purposes of this Settlement, Subclass 1 Settlement Payment” means a share of the settlement
3 fund that will be made to a Subclass 1 Member on a pro rata basis, based upon his or her workweeks during the
4 Class Period.

5 20. For purposes of this Settlement, “Subclass 2 Settlement Payment” means a flat sum payment of
6 \$100 which shall be made to members of Subclass 2 who have previously released their claims in this matter.

7 **STIPULATED BACKGROUND**

8 21. On September 3, 2020, Plaintiff filed a putative Class Action alleging the following labelled causes
9 of action: (1) Failure to Pay Minimum Wage and Straight Time Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, 1197,
10 and the Industrial Welfare Commission Wage Orders]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code
11 §§ 1194 and 1198, and the Industrial Welfare Commission Wage Orders]; (3) Failure to Provide Meal Periods [Cal.
12 Lab. Code §§ 226.7, 512, and the Industrial Welfare Commission Wage Orders]; (4) Failure to Authorize and Permit
13 Rest Breaks [Cal. Lab. Code §§ 226.7, and the Industrial Welfare Commission Wage Orders]; (5) Failure to Timely
14 Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (6) Failure to Provide Accurate Itemized Wage
15 Statements [Cal. Lab. Code § 226, and the Industrial Welfare Commission Wage Orders]; and (7) Unfair Business
16 Practices [Cal. Bus. & Prof. Code §§ 17200, *et seq.*]. (The “Action.”) In the Complaint, Plaintiff sought to represent
17 all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the
18 period beginning four years before the filing of the initial complaint and ending when Notice to the Class is sent.

19 22. On October 5, 2021, Plaintiff satisfied the administrative exhaustion requirement that is a
20 prerequisite to filing a claim for Civil Penalties under PAGA. Plaintiff will file an amended complaint to add a
21 single cause of action for Civil Penalties under PAGA prior to final approval of this settlement.

22 23. On October 25, 2021, the Parties entered into the Initial Joint Stipulation of Class Action and
23 PAGA Settlement. On November 9, 2021, Plaintiff filed a Motion for Preliminary Approval of Class Action
24 Settlement, and thereafter, on January 5, 2022, Plaintiff filed a First Amended Complaint (“FAC”), adding a
25 claim for “Civil Penalties Under PAGA.”

26 24. On January 10, 2022, the Court issued an Order Granting Plaintiffs’ Motion for Preliminary
27 Approval of Class Action Settlement (the “Court’s initial preliminary approval order”).

28 25. Following the Court’s preliminary approval order, the Parties began gathering data for use in

1 distribution of the class notice to class and PAGA members. During this process, determined the number of
2 workweeks for putative class members listed in the MOU and Settlement Agreement was incorrect. On further
3 research, it was discovered that this number improperly conflated workweeks with pay periods, as the
4 settlement documents incorrectly reflected the number of pay periods (8,376) rather than the number of
5 workweeks (16,008). The number of workweeks had increased from the amount calculated prior to mediation,
6 primarily because the total number of class members had increased from 408 to 477 individuals. This
7 expansion resulted from the inclusion of 69 individuals who had previously released their wage and hour claims
8 (the “releasees”), pursuant to *Chindarah v. Pick Up Stix* (2009) 171 Cal. App. 4th 796. These 69 releasees were
9 included in mediation discussions and the Parties’ Settlement Agreement, although, but for the settlement,
10 Defendant would have asserted that these 69 releasees could not be class members as they had released their
11 claims and were therefore owed no damages. The addition of these 69 releasees also doubled the number of
12 workweeks at issue, as the 408 non-releasees had 8,056 workweeks at time of mediation, while the addition of
13 the 69 releasees added approximately 7,952 workweeks.

14 26. On February 11, 2022, the Parties submitted a Joint Stipulation to amend the Class Action
15 Settlement such that there shall be two subclasses: Subclass 1 is composed of the 408 non-releasees, and
16 Subclass 2 is composed of the 69 releasees, with each receiving a different measurement of recompense. The
17 Parties therein agreed that a fair and equitable distribution is to allocate the 408 non-releasees based upon a
18 *pro-rata* distribution based upon workweeks, in the same manner set forth in Paragraph 35(j), and subject to the
19 escalation clause at Paragraph 35(d). The Parties estimated that for the 408 non-releasees, the current number of
20 workweeks during the class period is 8,195, while the current number of PAGA pay periods is 744.

21 27. On February 14, 2022, the Court denied the parties’ Joint Stipulation and advised that an
22 amended motion for preliminary approval needed to be filed. As a result, the parties’ entered into an amended
23 settlement agreement setting forth the above two subclasses and prepared the amended motion for preliminary
24 approval. Now therefore, solely for purposes of settling the Action and addressing the above identified
25 discrepancies, the Parties and their respective counsel stipulate and agree that the requisites for establishing class
26 certification with respect to the Class Members have been met and are met. More specifically for settlement
27 purposes only, the Parties stipulate and agree that:

28 ///

- (a) The Class is ascertainable and so numerous as to make it impracticable to join all Class Members.
- (b) There are common questions of law and fact including, but not limited to, the following:
- 1) Whether or not Defendant paid proper wages to the Class;
 - 2) Whether or not Defendant provided meal periods to the Class;
 - 3) Whether or not Defendant provided rest periods to the Class;
 - 4) Whether or not Defendant paid proper compensation timely upon separation of employment to former Class Members;
 - 5) Whether or not Defendant paid proper compensation timely throughout Class Members' employment;
 - 6) Whether or not Defendant provided accurate and complete itemized wage statements to the Class;
 - 7) Whether or not waiting-time penalties are available to Class Members who are no longer employed by Defendant for violation of California Labor Code § 203;
 - 8) Whether or not Defendant maintained adequate and requisite records;
 - 9) Whether or not Defendant paid proper meal period pay or rest period pay to the Class;
 - 10) Whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208; and,
 - 11) Whether Subclass 2 Members properly released their claims pursuant to *Chindarah v. Pick Up Stix* (2009) 171 Cal. App. 4th 796.
- (c) Plaintiff's claims are typical of the claims of the Class Members.
- (d) Plaintiff and Class Counsel will fairly and adequately protect the interests of the Class.
- (e) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.
- (f) With respect to the Class, questions of law and fact common to the members of the Class

predominate over any questions affecting any individual member in such Class, and that a class action is superior to other available means for the fair and efficient adjudication of the controversy.

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

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

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

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

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

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

PRIMARY TERMS OF SETTLEMENT

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

- (a) It is agreed by and among Plaintiff (on behalf of herself and the Class) and Defendant that this Action and any claims, damages, or causes of action arising out of the disputes which are the subject of this Action, be settled and compromised as between the Class and Defendant, subject to the terms and conditions set forth in this Settlement and the approval of the Court.
- (b) Effective Date: The terms of settlement embodied in this Settlement shall become effective when all of the following events have occurred: (i) this Joint Amended Stipulation of Settlement has been executed by all Parties and their respective counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) the Notice has been given to the Class, providing them with an opportunity to dispute information contained in the Notice, to opt out of the Settlement, or to object to the Settlement; (iv) the Court has held a final approval hearing and entered a final order and judgment certifying the Class and approving this Settlement; and (v) the later of the following events: (a) five (5) calendar days have passed since final approval is granted if there are no objections to the settlement; (b) sixty-five (65) days following notice of entry of the Court's final order approving the Settlement if there are any objections by any Class Member; (c) or if any appeal, writ or other appellate proceeding opposing this Settlement has been filed within sixty-five (65) days following notice of entry of the Court's final order approving the Settlement, then twenty (20) days after when any appeal, writ or other appellate proceeding opposing the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall

not become effective until the Court's order approving the Settlement is completely final, and there is no further recourse by an appellant or objector who seeks to contest the Settlement.

- (c) Gross Settlement Amount: Defendant's maximum total payment under the Settlement, including all attorney's fees and costs, the Service Payment to the named Plaintiff, the costs of settlement administration, the PAGA Allocation, and any other payments provided by this Settlement, is \$206,900.00 ("Gross Settlement Amount"), subject to the Escalator Clause and except that, to the extent that any portions of the Settlement Class Payments constitute wages, Defendant will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions.
- (d) Escalator Clause: Subclass 1 shall be subject to an "Escalatory Clause." Defendant represents that Subclass 1 Members worked 8,195 workweeks during the Class Period, and the Parties agree that in the event this representation turns out to be understated by more than ten (10) percent, Defendant shall increase the Gross Settlement Amount by the percentage that that actual number of workweeks exceeds the original estimated amount (the "Escalator Clause"). Subclass 2 shall not be subject to the Escalator Clause and shall each receive a \$100 flat sum payment. The Gross Settlement Amount will not be reduced for any reason.
- (e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will revert to Defendant.
- (f) No Claims Required: Class Members will not be required to submit a claim to receive their Settlement payment.
- (g) Net Settlement Amount: The Net Settlement Amount shall be calculated by deducting from the Gross Settlement Amount (\$206,900.00) the following sums, subject to approval by the Court: (1) attorney's fees (not to exceed 33 1/3% of the Gross Settlement Amount, or \$69,866.66); (2) reasonable litigation costs (not to exceed \$20,000.00); (3) the Service Payment (not to exceed \$5,000.00 to the named Plaintiff); (4) the PAGA Allocation; and (5) costs of settlement administration (estimated not to exceed \$15,000). Settlement Class

1 Payments for Subclass 1 will be calculated by the Settlement Administrator and paid out of
2 the Net Settlement Amount as set forth below. For members of Subclass 2, each of these
3 individuals will receive a \$100 flat sum as settlement and will not receive a pro rata
4 distribution based on workweeks.

5 (h) Payroll Taxes and Required Withholdings: To the extent that any portions of the
6 Settlement Class Payments constitute wages, Defendant will be separately responsible for
7 any **employer** payroll taxes required by law, including the employer FICA, FUTA, and
8 SDI contributions. The Settlement Administrator will calculate and submit the
9 Defendant's employer share of payroll taxes after advising Defendant of the total amount
10 owed, in aggregate, as employer-side payroll taxes and receiving a lump sum payment
11 from Defendant in that amount when the Gross Settlement Amount is delivered to the
12 Settlement Administrator.

13 (i) Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
14 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND
15 EACH PARTY TO THIS AGREEMENT OTHER THAN THE
16 ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES
17 AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND
18 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
19 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER
20 ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
21 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
22 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
23 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR
24 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING
25 PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN,
26 INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE
27 (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
28 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT

1 BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR
2 ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS
3 NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
4 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER
5 PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON
6 THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER
7 TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
8 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
9 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH
10 LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
11 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
12 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY
13 TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

- 14 (j) Settlement Class Payments (Excludes PAGA Payments): Settlement Class Payments will
15 be paid out of the Net Settlement Amount. Each Subclass 1 Member will be paid a pro-
16 rata share of the Net Settlement Amount (excluding the \$6,900 to be separately paid as
17 \$100 flat sum settlement payments to the 69 releasees or Subclass 2 Members) as
18 calculated by the Settlement Administrator. The pro-rata share will be determined by
19 comparing the Subclass 1 Member's Covered Workweeks employed during the Class
20 Period in California to the total Covered Workweeks of all the Settlement Class Members
21 during the Class Period as follows: [Workweeks worked by a Subclass 1 Member] ÷ [Sum
22 of all Covered Workweeks worked by all Subclass 1 Members] × [Net Settlement
23 Amount] = individual Settlement Payment for a Subclass 1 Member. Subclass 2 members
24 will not participate in this pro rata distribution but shall receive a \$100 flat sum as
25 Settlement Class Payment. Subclass 2 Members shall not receive a pro-rata distribution.
- 26 (k) Settlement Class Payments in the appropriate amounts will be distributed by the Settlement
27 Administrator by mail to the Settlement Class Members. Uncashed, unclaimed, or
28 abandoned checks, shall be transmitted by the Settlement Administrator to the California

Controller's Office, as set forth below.

(l) PAGA Payments: PAGA Settlement Payments will be paid to PAGA Employees out of the PAGA Allocation deducted from the Gross Settlement Amount after the PAGA Penalty Amount (75 percent of the PAGA Allocation) is paid to the LWDA. Each PAGA Employee will be paid a pro-rata share of the PAGA Settlement Payment, as calculated by the Settlement Administrator. PAGA Employees will not be permitted to exclude themselves from this portion of the Settlement. Each PAGA Employee's pro-rata share will be determined by comparing the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows:
$$\frac{[\text{PAGA Pay Periods worked by a PAGA Employee}]}{[\text{Sum of all PAGA Pay Periods worked by all PAGA Employees}]} \times [\text{PAGA Settlement Payment}] = \text{individual PAGA Employee's portion of the PAGA Settlement Payment.}$$
 PAGA Settlement Payments to PAGA Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees at the same time Settlement Class Payments issue to the Settlement Class. Uncashed, unclaimed or abandoned checks, shall be transmitted by the Settlement Administrator to the California Controller's Office, as set forth below. The Settlement Administrator will send the PAGA Penalty Payment to the LWDA at the same time the Settlement Administrator send Settlement Payments to the Settlement Class and PAGA Settlement Payments to the PAGA Employees.

(m) Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments will be allocated as follows: 20% to wages and 80% to penalties and interest. The PAGA Settlement Payments will be entirely allocated to penalties. Appropriate federal, state and local withholding taxes will be taken out of the wage allocations, and each Settlement Class Member will receive an IRS Form W-2 with respect to this portion of the Settlement Class Payment. The Settlement Class Member's share of payroll taxes and other required withholdings will be remitted by the Settlement Administrator to the appropriate taxing authorities as set forth above, along with Defendant's employer portion

of FICA and FUTA contributions, based on the payment of claims to the Settlement Class Members. IRS Forms 1099 will be issued by the Settlement Administrator to each Settlement Class Member and/or PAGA Employee reflecting the payments for penalties and interest. Settlement Class Members and PAGA Employees are responsible to pay appropriate taxes due on the Settlement Class Payments and PAGA Settlement Payments they receive. To the extent required by law, IRS Forms 1099 and W-2 will be issued to each Settlement Class Member and PAGA Employee with respect to such payments.

(n) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement Payments to Settlement Class Members and PAGA Employees shall be deemed to be paid to such Settlement Class Member or PAGA Employee solely in the year in which such payments actually are received by the Settlement Class Member or PAGA Employee. It is expressly understood and agreed that the receipt of such Settlement Payments will not entitle any Settlement Class Member or PAGA Employee to additional wages, compensation or benefits under any company bonus, contest or other compensation or benefit plan or agreement in place during the period covered by the Settlement up to and including the date the Settlement becomes effective, nor will it entitle any Settlement Class Member or PAGA Employee to any increased retirement, 401(k) benefits or matching benefits or deferred compensation benefits. It is the intent of all Parties that the Settlement Payments provided for in this Settlement are the sole payments to be made by Defendant to the Settlement Class Members and PAGA Employees, and that the Settlement Class Members and PAGA Employees are not entitled to any new or additional compensation or benefits as a result of having received the Settlement Payments (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Settlement).

(o) Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not object to Class Counsel's application for attorney's fees not to exceed 33 1/3% of the Gross Settlement Amount (\$69,866.66) and reimbursement of litigation costs and expenses not to exceed \$20,000.00.

- (p) Service Payment: Subject to Court approval, and in exchange for a general release, Defendant will not object to Class Counsel's application for an additional payment of up to \$5,000.00 to Plaintiff for service as a Class Representative ("Service Payment"). It is understood that the Service Payment is in addition to the individual Settlement Payment to which the Plaintiff and Class Representative is entitled along with the other Settlement Class Members.
- (q) The Settlement Administrator will issue an IRS Form 1099 for the Service Payment to the Plaintiff. The Plaintiff will be individually responsible for correctly characterizing this compensation on personal income tax returns for tax purposes and for paying any taxes on the amounts received. Should the Court approve a Service Payment in an amount less than that set forth above, the difference between the lesser amount(s) approved by the Court and the Service Payment amount(s) set forth above shall be added to the Net Settlement Amount. Plaintiff agrees not to opt out or object to the Service Payment as the Class Representative.
- (r) Settlement Administrator: The Settlement Administrator will be Phoenix Settlement Administrators, or such Settlement Administrator as may be mutually agreeable to the Parties and approved by the Court. Settlement Administration Costs are estimated not to exceed \$15,000. The costs of the Settlement Administrator for work done shall be paid regardless of the outcome of this Settlement. If the Settlement does not become final and effective, the cost of the Settlement Administrator will be shared equally by Plaintiff and Defendant.
- (s) Funding of Settlement Account: Defendant will fund the settlement account 14 days after the Effective Date.
- (t) Mailing of Settlement Payments: The Settlement Administrator shall cause the Settlement Payments to be mailed to the Class Members within 14 calendar days of the receipt of funding.
- (u) Notice of Settlement: Each Class Member will be mailed a notice setting forth the material terms of the proposed Settlement, along with instructions about how to object or request

1 exclusion from the propose class action Settlement (“Notice”). For each Class Member,
2 there will be pre-printed information on the mailed Notice, based on Defendant’s records,
3 stating the Class Member’s Covered Workweeks during the Class Period, PAGA
4 Workweeks during the PAGA Period, and the estimated total Settlement Payment under
5 the Settlement, including the Settlement Class Payment and the PAGA Settlement
6 Payment. As discussed below, the PAGA Settlement Payment will be distributed
7 irrespective of any exclusion request. The pre-printed information based on Defendant’s
8 records shall be presumed to be correct. A Class Member may dispute the pre-printed
9 information on the Notice as to his or her Covered Workweeks during the Class Period or
10 PAGA Workweeks during the PAGA Period. Class Members must submit any dispute
11 regarding the information on the Notice as to his or her Covered Workweeks or PAGA
12 Workweeks within the Response Deadline. Unless a disputing Class Member submits
13 documentary evidence in support of his or her dispute, the records of the Defendant will be
14 determinative.

15 (v) Settlement Notice Language: The Notice will issue in English and Spanish. If there is any
16 ambiguity between the English and Spanish translation, the English version will be
17 controlling.

18 (w) Class Members Cannot Exclude Themselves from the Released PAGA Claims: Class
19 Members submitting a Request for Exclusion will nevertheless receive their pro-rata share
20 of the PAGA Settlement Payment. If the Court approves the compromise of the PAGA
21 Claim, all Class Members are bound by the Court’s resolution of that Claim. Plaintiff shall
22 serve a notice of settlement on the California Labor and Workforce Development Agency
23 at or before the time Plaintiff files the motion for preliminary approval.

24 (x) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of
25 Defendant’s records used to calculate Covered Workweeks or PAGA Workweeks, and the
26 Parties’ counsel cannot resolve the dispute informally, the matter will be referred to the
27 Settlement Administrator. The Settlement Administrator will review Defendant’s records
28 and any information or documents submitted by the Class Member and issue a non-

1 appealable decision regarding the dispute. The Class Member must submit information or
2 documents supporting his or her position to the Settlement Administrator prior to the
3 expiration of the Response Deadline. Information or documents submitted after the
4 expiration of the Response Deadline will not be considered by the Settlement
5 Administrator, unless otherwise agreed to by the Parties.

6 (y) Right of Class Member to Request Exclusion from the Settlement: Any Class Member
7 may request to be excluded from the Settlement Class by mailing a “Request for
8 Exclusion” from the Settlement within the Response Deadline, stating, as follows or in
9 substantially similar terms:

10 “I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE
11 BAKER V. LA PROVENCE, INC., CLASS ACTION LAWSUIT, SAN
12 DIEGO COUNTY SUPERIOR COURT CASE NO. 37-2020-00031040-CU-
13 OE-CTL. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM
14 THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY
15 FROM THE SETTLEMENT OTHER THAN MY SHARE OF THE PAGA
16 PAYMENT.”

17 Any Request for Exclusion must include the name, address, telephone number, last four
18 digits of the Class Member’s Social Security Number, and the signature of the Class
19 Member requesting exclusion. Any such request must be made in accordance with the
20 terms of the Notice, and the Notice will advise Class Members of these requirements. Any
21 Class Member who timely requests exclusion in compliance with these requirements (i)
22 shall not have any rights under this Settlement other than a right to receive a pro-rata share
23 of the PAGA Settlement Payment if the Class Member is also PAGA Employee; (ii) shall
24 not be entitled to receive any Settlement Payments under this Settlement other than as
25 stated herein; and (iii) shall not be bound by this Settlement or the Court’s Order and Final
26 Judgment other than as it applies to the PAGA Claim.

27 (z) Right of Settlement Class Member to Object to The Settlement: Any Settlement Class
28 Member may object to the Settlement. To object, the Settlement Class Member may (1)
29 appear at the Final Approval Hearing, remotely or in person, to explain any objection, (2)
30 have an attorney object for the Settlement Class Member, or (3) submit a simple written
31 brief or statement of objection to the Settlement Administrator. If any Settlement Class

1 Member chooses to submit a written objection, the written objection should contain
2 sufficient information to confirm the identity of the objector and the basis of the objection,
3 including (1) the full name of the Settlement Class Member; (2) the signature of the
4 Settlement Class Member; (3) the grounds for the objection; and (4) be postmarked within
5 the Response Deadline to permit adequate time for processing and review by the Parties of
6 the written statement or objection. Class Counsel shall ensure that any written objections
7 are transmitted to the Court for the Court's review (either by Class Counsel or as an
8 attachment to a declaration from the Settlement Administrator). Regardless of the form, an
9 objection alone will not satisfy the requirement that a Settlement Class Member must either
10 make a timely complaint in intervention before final judgment or by filing a motion to set
11 aside and vacate the class judgment under Code of Civil Procedure §663, to have standing
12 to appeal entry of judgment approving this Settlement, as is required under the California
13 Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018). A
14 Settlement Class Member who does not object prior to or at the Final Approval Hearing,
15 will be deemed to have waived any objections and will be foreclosed from making any
16 objections (whether at the Final Approval Hearing, by appeal, or otherwise) to the
17 Settlement. If the objecting Settlement Class Member does not formally intervene in the
18 action or move to set aside any judgment and/or the Court rejects the Settlement Class
19 Member's objection, the Settlement Class Member will still be bound by the terms of this
20 Agreement and the Settlement. Class Counsel and Defendant's Counsel may, at least five
21 (5) calendar days (or some other number of days as the Court shall specify) before the final
22 approval hearing, file responses to any written objections submitted to the Court. Class
23 counsel will not represent any Class Members with respect to any objections to the
24 Settlement.

25 **THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES**

26 35. Subject to the Court's approval, and subject to reconsideration by the Parties after a competitive
27 bidding process, the Parties have agreed to the appointment of Phoenix Settlement Administrators to perform the
28 customary duties of Settlement Administrator. The Settlement Administrator will mail the Notice, both in English

1 and Spanish, to the Class Members. The Settlement Administrator will independently review the Covered
2 Workweeks and PAGA Workweeks attributed to each Subclass 1 Member and PAGA Employee and will calculate
3 the estimated amounts due to each Subclass 1 Member and the amounts due to each Subclass 1 Member and PAGA
4 Employee in accordance with this Settlement. The Settlement Administrator shall report, in summary or narrative
5 form, the substance of its findings. The Settlement Administrator shall be granted reasonable access to Defendant's
6 records in order to perform its duties. The Settlement Administrator will provide Defendant's counsel and Class
7 Counsel a weekly report which certifies: (i) the number of Class Members who have submitted valid Requests for
8 Exclusion; (ii) the number of any deficient Requests for Exclusion and (iii) whether a Class Member has submitted a
9 challenge to information contained in their Notice Packet. Additionally, the Settlement Administrator will provide to
10 counsel for both Parties any updated reports regarding the administration of the Settlement Agreement as needed or
11 requested.

12 36. In accordance with the terms of this Settlement, and upon receipt of Gross Settlement Amount from
13 Defendant, the Settlement Administrator will issue and send out the Settlement Payment checks to the Settlement
14 Class Members and the PAGA Settlement Payments to the PAGA Employees. Tax treatment of the Class
15 Settlement Payments and PAGA Settlement Payments will be as set forth herein, and in accordance with state and
16 federal tax laws. The Settlement Administrator will also issue a payment to Class Counsel and itself for Court-
17 approved services performed in connection with the settlement.

18 37. All disputes relating to the Settlement Administrator's performance of its duties shall be referred
19 to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement
20 until all payments and obligations contemplated by this Settlement have been fully carried out.

21 **ATTORNEY'S FEES AND COSTS**

22 38. In consideration for resolving this matter and in exchange for the release of all claims by the
23 Settlement Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not object to
24 Class Counsel's application for attorney's fees not to exceed 33 1/3% of the Gross Settlement Amount (\$69,866.66
25 of \$206,900.00) and litigation costs not to exceed \$20,000.00. The amounts set forth above will cover all work
26 performed and all fees and costs incurred to date, and all work to be performed and all fees and costs to be incurred
27 in connection with the approval by the Court of this Settlement and administration of the Settlement. Should Class
28 Counsel request a lesser amount and/or the Court approve a lesser amount(s) of attorney's fees and/or attorneys'

costs, the difference between the lesser amount(s) and the maximum amount set forth above shall be added to the Net Settlement Amount. The Parties agree that there is no prevailing party, and the Class and Class Counsel shall not be entitled to any fees or costs other than those awarded out of and deducted from the Gross Settlement Amount. As with the Class Settlement Payments to the Settlement Class, the attorney's fees and costs approved by the Court shall be distributed by the Settlement Administrator to Class Counsel within 14 calendar days of the receipt of settlement funds by the Settlement Administrator. In the event that the Court awards less than 25% of the Gross Settlement Amount for attorney's fees, Class Counsel shall retain the right to appeal that portion of any Final Approval Order and Judgment.

THE NOTICE PROCESS

39. A Notice in approximately the form attached hereto as Exhibit "A," and as approved by the Court, shall be sent by the Settlement Administrator to the Class Members by first class mail. The Notice shall be translated into Spanish so that Spanish and English language versions of the Notice are included in the mailing.

- (a) Within 14 calendar days from the date of preliminary approval of this Settlement by the Court, Defendant shall provide to the Settlement Administrator a class database containing the following information for each Class Member: (1) name; (2) last known address; (3) social security number; and (4) dates of employment at Defendant's locations in California. This database shall be based on Defendant's payroll and other business records and shall be provided in a reasonable format to the Settlement Administrator. Defendant agrees to consult with the Settlement Administrator prior to the production date to ensure that the format will be acceptable to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List; this check will be performed only once per Class Member by the Settlement Administrator. Absent mutual written agreement of counsel for the Parties or Court order, the Settlement Administrator will keep this database confidential and secure and use it only for the purposes described herein, and will return this database to Defendant upon final approval of the settlement or destroy electronic records containing the database after the Settlement is final and all payments are distributed as required under this Agreement.

- (b) Within 14 calendar days after the Class database is provided to the Settlement Administrator, the Settlement Administrator will mail the Notices to the Class Members by First Class United States mail.
- (c) Notices returned to the Settlement Administrator as non-deliverable on or before the initial Response Deadline shall be resent to the forwarding address, if any, on the returned envelope. A returned Notice will be forwarded by the Settlement Administrator any time that a forwarding address is provided with the returned mail. If there is no forwarding address, the Settlement Administrator will do a computer search for a new address using the Class Member's social security number or other information. In any instance where a Notice is re-mailed, that Class Member will have until the extended Response Deadline as described above to submit objections or request exclusion. A letter prepared by the Settlement Administrator will be included in the re-mailed Notice in that instance, stating the extended Response Deadline. Upon completion of these steps by the Settlement Administrator, Defendant and the Settlement Administrator shall be deemed to have satisfied their obligations to provide the Notice to the affected Class Member. The affected Class Member shall remain a member of the Settlement Class and shall be bound by all the terms of the Settlement and the Court's Order and Final Judgment.
- (d) Class Counsel shall provide to the Court, at least five calendar days prior to the final approval hearing, or such other date as set by the Court, a declaration by the Settlement Administrator of due diligence and confirming mailing of the Notices.

DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS

40. As set forth above, each Settlement Class Member will have until the expiration of the applicable Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Settlement Class Member's Covered Workweek information on the Notice. No disputes will be honored if they are submitted after the Response Deadline, unless the Parties mutually agree to accept the untimely dispute. Each Settlement Class Member is responsible to maintain a copy of any documents sent to the Settlement Administrator and a record of proof of mailing.

41. The Settlement Administrator shall cause the Settlement Payments to be mailed to the Settlement

Class Members and PAGA Employees as provided herein. Settlement Class Payments and PAGA Settlement Payments may be combined into one check. Settlement Payment checks shall remain valid and negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will automatically be cancelled by the Settlement Administrator if they are not cashed by the Settlement Class Member within that time, and the Settlement Class Member's relevant claims will remain released by the Settlement. Settlement Payment checks which have expired will not be reissued.

42. Funds from uncashed or abandoned Settlement Class Payment checks or PAGA Settlement Checks, based on a 180-day void date, shall be transmitted by the Settlement Administrator to the California State Controller's Office for Unclaimed Property in the name of each Settlement Class Member and/or PAGA Employee who failed to cash their Settlement Payment check prior to the void date.

43. Upon completion of its calculation of Settlement Class Payments and PAGA Settlement Payments, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a report listing the amounts of all payments to be made to Class Members (to be identified anonymously by employee number or other identifier). A Declaration attesting to completion of all payment obligations will be provided to Class Counsel and Defendant's Counsel and filed with the Court by Class Counsel.

RELEASE BY THE PLAINTIFF AND BY THE CLASS AND PAGA EMPLOYEES

44. Release by Class and PAGA Employees. Upon the final approval by the Court of this Settlement and Defendant's payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representatives, the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, and each PAGA Employee, regardless of whether they have requested exclusion from the Settlement of Class claims, will release claims as follows:

- (a) **Identity of Released Parties.** The released parties are Defendant, and each of its former and present direct and/or indirect owners, dba's, affiliates, parents, subsidiaries, co-employers, brother and sister corporations, divisions, related companies, successors and predecessors, and current and former employees, officers, directors, shareholders, members, owners, trustees, attorneys, fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents, employees, servants, insurers, representatives, administrators,

employee benefit plans, and assigns of said entities (collectively “Releasees”).

(b) **Date Release Becomes Active.** The Released Claims and Released PAGA Claims will be released upon the later of (1) the Settlement’s Effective Date, or (2) the satisfaction of Defendant’s obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, and Defendant has paid all amounts owing under the Settlement.

(c) **Claims Released by Settlement Class Members.** Each and every Class Member, on behalf of himself or herself and his or her heirs and assigns, unless he or she has submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period:

1) any and all claims stated in the First Amended Complaint, or that could have been stated based on the facts alleged therein, including but not limited to all wage and hour claims (including all claims under the California Labor Code) for unpaid wages, minimum wage, overtime, off-the-clock work, meal periods, rest periods, wage statement violations, interest, civil or statutory penalties, and attorneys’ fees and costs, waiting time penalties, expense reimbursements, withholding from wages and the related provisions of the Labor Code including but limited to Labor Code §§ 201-204, 210, 216, 218.6, 226, 226.2, 226.3 , 226.7, 510, 512, 512.5, 558, 1174, 1194, 1194.2, 1197, 1198, 2699, derivative claims under California Business & Professions Code §§ 17200 et seq., and all claims under the governing Industrial Welfare Commission Wage Order (“Released Claims”);

(d) **Claims Released by the Class, Including PAGA Employees.** All Class Members, including all PAGA Employees, release the Released PAGA Claims, regardless of whether they have requested exclusion from the Settlement as to Class claims.

45. Release by Plaintiff and Class Representative. Upon the final approval by the Court of this Settlement

1 and Defendant's payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may
2 be created by this Settlement, the Plaintiff and Class Representative, will release claims as follows:

- 3 (a) The Plaintiff and Class Representative hereby fully and finally releases and discharges the
4 Releasees (defined above) from any and all of the released claims (defined above) and
5 from any and all other claims, charges, complaints, liens, demands, agreements, contracts,
6 covenants, actions, suits, causes of action, penalties, wages, obligations, debts, expenses,
7 damages, attorneys' fees, costs, judgments, orders, and liabilities of whatever kind or
8 nature in law, equity, or otherwise, known or unknown, suspected or unsuspected, that the
9 Plaintiff and Class Representative had, now has, or may hereafter claim to have against the
10 Released Parties arising out of, or relating in any way to, the Plaintiff and Class
11 Representative's hiring by, employment with, separation of employment with, or any other
12 transactions, occurrences, acts or omissions or any loss, damage or injury whatsoever,
13 known or unknown, suspected or unsuspected, resulting from any act or omission by or on
14 the part of any Released Party (the "Class Representative's Released Claims"), arising or
15 accruing from the beginning of time up through the Final Approval Date Order Date
16 ("Class Representative's Released Period"). The Class Representative's Released Claims
17 include, but are not limited to, claims arising from or dependent on the California Labor
18 Code; the Wage Orders of the California Industrial Welfare Commission; California
19 Business and Professions Code section 17200 et seq.; the California Fair Employment and
20 Housing Act, Cal. Gov't Code § 12900 et seq.; the California Healthy Workplaces,
21 Healthy Families Act, Cal. Labor Code § 245 et seq., the California common law of
22 contract and tort; Title VII of the Civil Rights Act of 1964; the Americans with Disabilities
23 Act, 42 U.S.C. § 12101 et seq.; the Employee Retirement Income Security Act of 1974, 29
24 U.S.C. § 1001 et seq.; the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., the Portal to
25 Portal Act, 29 U.S.C. § 251 et seq., and the Families First Coronavirus Response Act.
- 26 (b) The Plaintiff and Class Representative also acknowledges that she has read Section 1542 of
27 the Civil Code of the State of California, which provides as follows:

28 ///

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
2 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
3 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF
4 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR
5 HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

6 46. The Plaintiff and Class Representative further warrants that she understands that Section 1542 gives
7 her the right not to release existing claims of which she is not now aware, unless she voluntarily chooses to waive
8 this right. Having been so apprised, Plaintiff and Class Representative shall nevertheless voluntarily waive the rights
9 described in Section 1542, and elects to assume all risks and to release the claims set forth herein, that now exist in
10 her favor, whether known or unknown.

11 **EMPLOYMENT BY DEFENDANT**

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

13 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

14 48. The Parties shall submit this Joint Amended Stipulation of Class Action Settlement to the Court in
15 support of Plaintiff's unopposed amended motion for preliminary approval for determination by the Court as to its
16 fairness, adequacy, and reasonableness. Upon execution of this Joint Amended Stipulation of Class Action and
17 PAGA Settlement, the Parties shall apply to the Court for the entry of an order:

- 18 (a) Scheduling a hearing on Plaintiff's unopposed amended motion for preliminary approval,
19 as necessary and later final approval and fairness hearing on the question of whether the
20 proposed Settlement, including payment of attorney's fees and costs, and the Class
21 Representatives' service payment, should be finally approved as fair, reasonable, and
22 adequate as to the members of the Class;
- 23 (b) Conditionally certifying a Class for settlement purposes only;
- 24 (c) Approving as to form and content the proposed amended Notice;
- 25 (d) Directing the mailing of the amended Notice by the Settlement Administrator;
- 26 (e) Preliminarily approving the amended Settlement subject only to the objections of Class
27 Members and final review by the Court;
- 28 (f) Conditionally appointing Plaintiff and Class Counsel as representatives of the proposed
Class Members; and,

(g) Appointing Phoenix Settlement Administrators as the Settlement Administrator.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

49. In conjunction with the hearing of a motion for final approval by the Court of the Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the following:

- (a) Approving the amended Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) Approving Class Counsel's application for an award of attorney's fees and costs;
- (c) Approving the Service Payment to the Class Representatives;
- (d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement;
- (e) Adjudging Plaintiff and Class Counsel may adequately represent the Final Settlement Class for the purpose of entering into and implementing the amended Agreement;
- (f) Entering a final judgment in the action; and,
- (g) Adjudging that notwithstanding the submission of a timely request for exclusion, Class Members are still bound by the settlement and release of the Released PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do not apply to the Released PAGA Claims, and further affirming that the State's claims for civil penalties pursuant to PAGA are also extinguished.

NULLIFICATION AND TERMINATION

50. This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a Class for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to the attorney's fees and costs or granting of Service Payments; (c) the Court should for any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final for any other reason.

51. If 10% or more of the Class Members opt out of this Settlement, then Defendant in its sole

discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no less frequently than on a weekly basis. To terminate this Settlement under this paragraph, Defendant's Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later than 30 calendar days after the Response Deadline. If this option is exercised by Defendant, Defendant shall be solely responsible for the costs incurred by the Settlement Administrator for the settlement administration.

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

PARTIES' AUTHORITY

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

MUTUAL FULL COOPERATION

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

NO PRIOR ASSIGNMENTS

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

1 **NO ADMISSION OF LIABILITY**

2 56. Nothing contained herein, nor the consummation of this Settlement, is to be construed or deemed
3 an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Defendant denies all the
4 claims and contentions alleged by the Plaintiff in this case. Defendant does not admit, and specifically denies, that it
5 has violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any
6 statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached
7 any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to
8 its current or former employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of
9 the negotiations connected with it, will be construed as an admission or concession by Defendant of any such
10 violations or failures to comply with any applicable law. Defendant has entered into this Settlement solely with the
11 intention to avoid further disputes and litigation with the attendant inconvenience and expenses. Except as necessary
12 in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms and
13 provisions will not be offered or received as evidence in any action or proceeding to establish any liability or
14 admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-
15 compliance with, federal, state, local or other applicable law.

16 **ENFORCEMENT ACTIONS**

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

22 **NOTICES**

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

26 ///

27 ///

28 ///

Class Counsel:

Kane Moon
Allen Feghali
Enzo Nabiev
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
kane.moon@moonyanglaw.com
allen.feghali@moonyanglaw.com
enzo.nabiev@moonyanglaw.com

Counsel for Defendant:

Richard D. Marca
Richard.Marca@varnerbrandt.com
Christopher S. Milligan
Chris.Milligan@varnerbrandt.com
VARNER & BRANDT LLP
3750 University Ave., Ste. 610
Riverside, California 92501
Telephone: (951) 274-7777
Facsimile: (951) 274-7770

CONSTRUCTION

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

CAPTIONS AND INTERPRETATIONS

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

MODIFICATION

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

CONFIDENTIALITY

62. Confidentiality Agreement. The Parties and their counsel agree that none of them will issue any marketing materials, press release, social media post, internet or website announcement, or otherwise initiate any contact with the press, respond to any press inquiry or have any communication with the press regarding the Settlement or the terms of this settlement. Class Counsel will not communicate with other wage-hour plaintiffs' counsel about this settlement, nor utilize it in any way in their marketing or advertising materials or website, prior to Preliminary Approval. Plaintiff will not discuss the Settlement with anyone other than her counsel, tax advisors or spouses, except as required or authorized by law. Additionally, Class Counsel agree that the fact that the Actions

1 were filed and/or settled will not be included in any filing or court submission in any other case or controversy unless
2 required to do so by applicable law or done in submissions to courts or arbitrators in connection with establishing
3 adequacy as class counsel or relevant experience in wage and hour lawsuits.

4 **INTEGRATION CLAUSE**

5 63. This Settlement contains the entire agreement between the Parties relating to the Settlement and
6 transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and
7 statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No
8 rights hereunder may be waived except in writing. The Parties expressly recognize California Civil Code Section
9 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is to be
10 construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree
11 that no such extrinsic oral or written representations or terms will modify, vary or contradict the terms of this
12 Agreement.

13 **AMENDMENT**

14 64. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a
15 written instrument mutually signed by counsel for all Parties or their successors-in-interest.

16 **WAIVER OF APPEALS**

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

21 **BINDING ON ASSIGNS**

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

24 **CLASS COUNSEL SIGNATORIES**

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

COUNTERPARTS

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

FINAL JUDGMENT

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

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

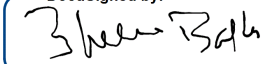
IT IS SO STIPULATED.

Plaintiff & Class Representative:

Dated: 2/23/2022

By: _____

ZHELLE BAKER

DocuSigned by:

8C3CCA4078DC408

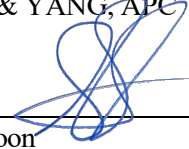
Plaintiff's Counsel:

Dated: 3/2/2022

MOON & YANG, APC

By: _____

Kane Moon
Allen Feghali
Enzo Nabiev
Attorneys for Plaintiff



1 **Defendant:**

2 Dated: 2-25-2022

LA PROVENCE, INC.

3 By: Philip Dardaine
4 Print Name

5 Philip Dardaine
6 Signature

7 President
8 Title

9
10 **Defendant's Counsel:**

11 Dated: 2/25/22

VARNER & BRANDT, LLP

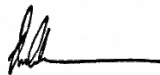
12 By: 
13 Richard D. Marca
14 Christopher S. Milligan
15 Attorneys for Defendant La Provence, Inc.

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION AND PAGA SETTLEMENT

Baker v. La Provence, Inc., et al.

San Diego Superior Court Case No. 37-2020-00031040-CU-OE-CTL

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE EMPLOYED BY LA PROVENCE, INC. IN CALIFORNIA AS A NON-EXEMPT OR HOURLY-PAID EMPLOYEE AT ANY TIME FROM SEPTEMBER 3, 2016, THROUGH JANUARY 10, 2022 THIS PUTATIVE CLASS, COLLECTIVE, AND PRIVATE ATTORNEYS GENERAL ACT ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS. PLEASE READ THIS NOTICE CAREFULLY.

Why you are receiving this Notice?

A proposed settlement (the “Settlement”) has been reached in a class action lawsuit entitled *Baker v. La Provence, Inc., et al.*, San Diego Superior Court Case No. 37-2020-00031040-CU-OE-CTL (the “Action”). As discussed below, the settlement will result in payments to current and former non-exempt employees who worked for LA PROVENCE, INC. (“Defendant”) in California at any time from September 3, 2016, through January 10, 2022. The proposed Settlement will resolve all claims in the Action.

When used in this Notice, the following terms have the following meanings:

“Action”	<i>Baker v. La Provence, Inc., et al.</i> , San Diego Superior Court Case No. 37-2020-00031040-CU-OE-CTL
“Plaintiff” and “Class Representative”	Zhelle Baker
“Defendant”	La Provence, Inc.
“Class Period”	September 3, 2016, through January 10, 2022
“Class”	All non-exempt employees of Defendant who worked for Defendant in California during the Class Period.
“Class Member”	A non-exempt employee who worked for Defendant in California at any time during the Class Period.
“Settlement Class Member”	A Class Member who does not timely request to be excluded from the proposed Class of non-exempt employees who worked for Defendant in California at any time during the Class Period.
“Subclass 1 Member”	A Class Member who has <u>not</u> previously released his or her wage and hour claims in this matter.
“Subclass 2 Member”	A Class Member who <u>has</u> previously released his or her wage and hour claims in this matter.
“Subclass 1 Settlement Payment”	A share of the settlement fund that will be made to a Subclass 1 Member on a pro rata basis, based upon his or her workweeks during the Class Period.
“Subclass 2 Settlement Payment”	A flat sum payment of \$100 which shall be made to members of Subclass 2 who have previously released their claims in this matter.
“Individual Class Settlement Payment” or “Class Settlement Payment”	Refers to and includes both Subclass 1 Settlement Payments and Subclass 2 Settlement Payments.
“PAGA”	The Labor Code Private Attorneys General Act, California Labor Code sections 2688 <i>et seq.</i>
“PAGA Period”	September 3, 2019, through January 10, 2022.

“PAGA Employee”	A member of Subclass 1 who worked for Defendant in California at any time during the PAGA Period.
“Individual PAGA Settlement Payment”	A share of the PAGA Allocation from settlement fund that will be made to PAGA Employees on a pro rata basis, based upon his or her workweeks during the PAGA Period
“Settlement Administrator”	Phoenix Settlement Administrators, <<mailing address>>

Defendant’s records indicate that you are a Class Member and/or a PAGA Employee as defined above. As a Class Member, you may be eligible to receive a Class Settlement Payment. If you are a member of Subclass 1, you will receive a payment based on the number of workweeks that you worked for Defendant in California during the Class Period and you will be bound by the release of claims described in this Notice and in the Settlement Agreement as amended and filed with the Court, unless you timely request to be excluded from the Settlement. If you are a member of Subclass 2, and have previously released your claims in this matter, you will receive a flat sum payment of \$100. A Class Member who excludes himself or herself from the Settlement will still be bound by the PAGA portion of the settlement, to the extent he or she is also a PAGA Employee. and members of Subclass 1 will receive an Individual PAGA Settlement Payment based on the number of workweeks that he or she worked for Defendant in California during the PAGA Period.

A hearing concerning final approval of the proposed Settlement will be held before the Hon. Joel R. Wohlfeil on <<FA Date and Time>> in Department 73 of the San Diego Superior Court, Hall of Justice, 330 West Broadway, San Diego, CA 92101, to determine whether the Settlement is fair, adequate and reasonable.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING – GET MONEY	If you do nothing, you will be considered part of the Settlement Class and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS DEADLINE TO EXCLUDE YOURSELF: << RESPONSE DATE >>	You have the option to exclude yourself from the Settlement Class and pursue a separate legal action against Defendant about the claims in the Action (other than the PAGA claim). If you choose to do so, you must exclude yourself, in writing, from the Settlement Class by submitting a written Request to be Excluded. If you timely submit a Request to be Excluded, you will not receive any benefits under the Settlement except for a pro rata allocation of the PAGA portion of the settlement, and you will not be bound by the release of claims against Defendant, except for the PAGA portion of the release.
OBJECT TO THE SETTLEMENT DEADLINE TO SUBMIT WRITTEN OBJECTIONS: << RESPONSE DATE >>	You may also object to the terms of the Settlement. To object to the Settlement, you can mail a written explanation of why you don’t like the Settlement to the Settlement Administrator, appear at the final approval hearing, or hire an attorney at your expense to object for you. This option is available, however, only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit a Request to be Excluded if you wish to object. Written objections must be submitted to the Settlement Administrator by <<RESPONSE DATE>>.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following Class:

“All non-exempt employees of Defendant who worked for Defendant in California during the Class Period of September 3, 2016 through January 10, 2022

The Court has also certified two subclasses: Subclass 1 shall be composed of Class Members who have *not* previously released their wage and hour claims in this matter, and Subclass 2 is composed of those Class

Members who *have* released their wage and hour claims in this matter, pursuant to *Chindarah v. Pick Up Stix* (2009) 171 Cal. App. 4th 796.

You were sent this Notice because you have a right to know about the proposed Settlement of the Action and about your options before the Court rules on whether to finally approve the Settlement. If the Court approves the settlement, and after any objections and appeals are resolved, the Settlement Administrator appointed by the Court will make payments to Settlement Class Members and PAGA Employees as the settlement allows. This Notice explains the Action, the proposed Settlement, your legal rights, what benefits are available to you, and how to receive them.

What this case is about?

In the Action, Plaintiff alleges on behalf of herself and the Class that Defendant: (1) failed to pay minimum and straight time wages; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to timely pay all wages to terminated employees; (6) failed to furnish accurate itemized wage statements; (7) violated California's Unfair Competition Law, California Business and Professions Code section 17200 *et seq.*; and (8) violated provisions of the Labor Code giving rise to civil penalty liability under PAGA. Plaintiff seeks unpaid wages, actual damages, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys' fees, and costs.

Defendant denies all liability arising from any of the Action and is confident it has strong legal and factual defenses to Plaintiff's claims. Defendant contends that, at all relevant times, Defendant properly compensated all employees and fully complied with all applicable laws. Defendant also denies that the Action is appropriate to maintain as a class or representative action. Defendant also asserts that Subclass 2 Members previously released their claims in this matter and but for this settlement would not otherwise be appropriate class members.

The Court has not ruled on the merits of Plaintiff's claims or Defendant's defenses.

Why is there a settlement?

The Parties disagree on the probable outcome of the case with respect to viability of the Class, liability, damages, and how much money could be recovered if Plaintiff won at trial. This Settlement is a compromise reached after good faith, arm's length negotiations between Plaintiff and Defendant (the "Parties"), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that this Settlement is fair, adequate, and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members and PAGA Employees.

What is a class action and PAGA settlement?

On **January 10, 2022** the Court granted preliminary approval of the proposed Settlement, and on _____, the Court granted its preliminary approval of the Settlement as amended. However, the Court must still approve the terms of the proposed Settlement as amended as fair and reasonable before the amended Settlement becomes final. Once approved, the settlement will affect all Class Members, except those who have submitted a timely Request to be Excluded. The settlement will affect all PAGA Employees regardless of whether they opt out of the Class. This Class Notice explains your legal rights, the terms of the settlement, what you must do to participate, and the estimated amount of money you may receive.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

Kane Moon
Allen Feghali
Enzo Nabiev
MOON & YANG, APC
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Defendant's Counsel

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What are the Settlement terms?

Subject to final Court approval, Defendant will pay a total of \$206,900 (the Gross Settlement Amount”) to fully and finally resolve all claims in the Action. The amount to be distributed to Settlement Class Members, i.e., Class Members who do not exclude themselves from the settlement (the “Net Settlement Amount”) will be the Gross Settlement Amount, minus the following amounts: (a) payment to the Settlement Administrator for administration fees and cost (up to an estimated maximum of \$15,000); (b) payment to the Plaintiff of a Class Representative Service Payment (\$5,000 to be requested); (c) payment to Class Counsel of Plaintiff’s attorneys’ fees (up to \$69,866.66 to be requested) (d) payment to Class Counsel of Plaintiff’s actual litigation costs (up to \$20,000 to be requested); and (d) payment of \$10,000 for resolution of all claims under PAGA (the “PAGA Allocation”). The actual amounts allocated to attorneys’ fees, litigation costs, the service fee payment, the Settlement Administrator’s fees and costs, and the PAGA Allocation are all subject to Court approval. The Net Settlement Amount will be used to pay each Subclass 1 Members a pro-rata Individual Class Settlement Payment based on the number of workweeks each Settlement Class Member worked for Defendant in California during the Class Period, and will also be used to pay Subclass 2 Members a flat \$100 payment. Subclass 2 Members will not receive a pro-rata Individual Class Settlement Payment

Calculation of Subclass 1 Settlement Payments. The Subclass 1 Settlement Amount will be divided among all members of Subclass 1 on a pro rata basis, based upon the total number of workweeks worked for Defendant by each respective member of Subclass 1 in California as a non-exempt hourly employee during the Class Period. Your estimated individual workweeks during the Class Period and estimated Subclass 1 Class Settlement Payment are listed below:

You worked a total of << **Class Workweeks**>> workweeks in California during the Class Period. Based on your workweeks during the Class Period, your estimated Subclass 1 Settlement Payment is approximately \$<<**Subclass 1 Settlement Payment**>>.

For tax reporting purposes, each Subclass 1 Settlement Payment will be allocated 20% as wages and 80% as penalties and interest. The wage portion of each Subclass 1 Settlement Payments will be subject to withholding of applicable local, state, and federal taxes, and the Settlement Administrator will deduct applicable employee-side payroll taxes from the wage portion of each Individual Class Settlement Payment. The portion of each Subclass 1 Settlement Payment allocated to penalties and interest will be classified as other miscellaneous income and reported to state and federal taxing authorities by the Settlement Administrator using Form 1099-MISC without any tax withholding. All taxes owed on the other miscellaneous income portion of each Individual Class Settlement Payment will be the responsibility of the Subclass 1 Class Member receiving the payment. The employer’s share of any payroll taxes will be separately paid by Defendant.

Calculation of Individual PAGA Settlement Payments. The PAGA Allocation will be distributed to the California Labor and Workforce Development Agency (“LWDA”) and to the PAGA Employees. In accordance with California law, 75 percent of the PAGA Allocation (or \$7,500) will be paid to the LWDA and the remaining 25 percent of the PAGA Allocation (or \$2,500) will paid to the PAGA Employees on a pro-rata basis (the “Individual PAGA Settlement Payments”) based on the number of workweeks each PAGA Employee worked for Defendant in California during the PAGA Period. Your estimated individual workweeks during the PAGA Period and estimated Individual PAGA Settlement Payment are listed below:

You worked a total of <<**PAGA Workweeks**>> workweeks in California during the PAGA Period. Based on your workweeks during the PAGA Period, your estimated Individual PAGA Settlement Payment is approximately \$<<**Est Individual PAGA Settlement Payment**>>.

Each Individual PAGA Settlement Payment will be allocated as 100 percent miscellaneous income and reported to state and federal taxing authorities by the Settlement Administrator using Form 1099-MISC. Any taxes owed on the PAGA Settlement Payment will be the responsibility of the PAGA Employee receiving these payments.

Calculation of Subclass 2 Settlement Payments.

Subclass 2 shall be composed of those Class Members who had previously released their wage and hour claims, pursuant to *Chindarah v. Pick Up Stix* (2009) 171 Cal. App. 4th 796, and who shall receive a flat \$100 additional sum.

For tax reporting purposes, each Subclass 2 Settlement Payment will be allocated 20% as wages and 80% as penalties and interest. The wage portion of each Subclass 2 Settlement Payments will be subject to withholding of applicable local, state, and federal taxes, and the Settlement Administrator will deduct applicable employee-side payroll taxes from the wage portion of each Individual Class Settlement Payment. The portion of each Subclass 2 Settlement Payment allocated to penalties and interest will be classified as other miscellaneous income and reported to state and federal taxing authorities by the Settlement Administrator using Form 1099-MISC without any tax withholding. All taxes owed on the other miscellaneous income portion of each Individual Class Settlement Payment will be the responsibility of the Subclass 2 Class Member receiving the payment. The employer's share of any payroll taxes will be separately paid by Defendant.

Handling of Unclaimed and Uncashed Checks. All checks for Individual Class Settlement Payments and Individual PAGA Settlement Payments will remain valid and negotiable for one hundred and eighty (180) days from the date of the checks' issuance and shall thereafter automatically be void if not cashed by a participating Settlement Class Member or PAGA Employee within that time. Any Individual Settlement Class Payment or Individual PAGA Settlement Payment that is not cashed by a Settlement Class Member or PAGA Employee within 180 days of issuance will be transmitted by the Settlement Administrator to the California State Controller's Office for Unclaimed Property in the name of each check recipient who failed to cash his or her check prior to the void date. The Settlement Administrator will also void any tax documents issued to the Settlement Class Members or PAGA Employees who did not cash their checks within 180 days of issuance. In such event, the Settlement Class Member and/or PAGA Employee will nevertheless remain bound by the terms of the Settlement.

Neither the Parties nor attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel, Defendant's counsel, the Settlement Administrator, and the Court are unable to offer advice concerning the state or federal tax consequences of payments to any Settlement Class Member or PAGA Employee.

Class Counsel Attorneys' Fees and Costs, Class Representative Service Award, Settlement Administration Costs and Payment to the LWDA. Class Counsel will ask the Court to award attorneys' fees up to \$69,866.66 (one-third of the Gross Settlement Amount) and reimbursement of reasonable costs incurred in the Action not to exceed \$20,000.00. In addition, Class Counsel will ask the Court to authorize a Class Representative Service Payment of \$5,000 for Plaintiff for her efforts in bringing the case on behalf of the Class. The Parties estimate the cost of the Settlement Administrator will not exceed \$15,000.00. A proposed payment in the amount of \$7,500.00 will also be made to the LWDA for PAGA penalties, which represents 75 percent of the \$10,000 PAGA Allocation from the Gross Settlement Amount.

How may members of Subclass 1 dispute their workweek calculation?

Workweeks for Subclass 1 Members are calculated based on the number of workweeks each Subclass 1 Member worked for Defendant in California during the Class Period, i.e., September 3, 2016 through January 10, 2022. Workweeks for PAGA Employees are calculated based on the number of workweeks each PAGA Employee worked for Defendant in California during the PAGA Period, i.e., September 3, 2019 through January 10, 2022

If you dispute the number of workweeks for which you were credited during the Class Period or the PAGA Period, you must submit your dispute ("Workweek Dispute") in writing and send it to the Settlement Administrator via fax or mail, postmarked or faxed no later than <<**+45 days from date of mailing**>> (the "Response Deadline"). Your Workweek Dispute must be sent to:

Phoenix Settlement Administrators, <<**mailing address**>>

Your Workweek Dispute must be in writing and must contain: (a) your full name, signature, address, telephone number, and the last four digits of your Social Security number; (b) the number of workweeks you contend to have worked for Defendant in California during the Class Period and PAGA Period; and (c) any evidence supporting your contention. Defendant's records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator will resolve and decide all Workweek Disputes, and the Settlement Administrator's decision will be final and non-appealable. **REMINDER:** If you believe your estimated individual Subclass 1 Settlement Payment amount or PAGA Settlement Payment amount is incorrect because your workweek calculation is inaccurate, the deadline to submit a written Workweek Dispute to the Settlement Administrator, with any supporting evidence, is <<**RESPONSE DATE**>>.

What claims are being released by Settlement Class Members and PAGA Employees?

Upon the final approval by the Court of this Settlement and Defendant's payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representatives, the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, and each PAGA Employee, regardless of whether they have requested exclusion from the Settlement of Class claims, will release claims as follows:

(a) **Identity of Released Parties.** The released parties are Defendant, and each of its former and present direct and/or indirect owners, dba's, affiliates, parents, subsidiaries, brother and sister corporations, divisions, related companies, successors and predecessors, and current and former employees, officers, directors, shareholders, owners, trustees, attorneys, fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents, servants, insurers, representatives, administrators, employee benefit plans, and assigns of said entities (collectively "Releasees").

(b) **Date Release Becomes Active.** The Released Claims and Released PAGA Claims will be released upon the later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, **and** Defendant has paid all amounts owing under the Settlement.

(c) **Claims Released by Settlement Class Members.** Each and every Class Member, on behalf of himself or herself and his or her heirs and assigns, unless he or she has submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period:

(1) any and all claims stated in the First Amended Complaint, or that could have been stated based on the facts alleged therein, including but not limited to all wage and hour claims (including all claims under the California Labor Code) for unpaid wages, minimum wage, overtime, off-the-clock work, meal periods, rest periods, wage statement violations, interest, civil or statutory penalties, attorneys' fees and costs, waiting time penalties, expense reimbursements, withholding from wages and the related provisions of the Labor Code including but limited to Labor Code §§ 201-204, 210, 216, 218.6, 226, 226.2, 226.3, 226.7, 510, 512, 512.5, 558, 1174, 1194, 1194.2, 1197, 1198, 2699, derivative claims under California Business & Professions Code §§ 17200 et seq., and all claims under the governing Industrial Welfare Commission Wage Order ("Released Claims");

(d) **Claims Released by the Class, Including PAGA Employees.** All Class Members, including all PAGA Employees, release the Released PAGA Claims, regardless of whether they have requested exclusion from the Settlement as to Class claims.

The time period covered by this PAGA release is September 3, 2019 through January 10, 2022.

What are your Options at this time?

As a Class Member, you have two options under this Settlement, each of which is further discussed below. You may: (Option A) remain in the Class and receive a Class Settlement Payment and an Individual PAGA Settlement Payment; or (Option B) exclude yourself from the Settlement Class and receive only an Individual PAGA Settlement Payment. If you choose Option A, you may also object to the Settlement, as explained below.

OPTION A. Remain in the Class. If you choose Option A and remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

If you wish to remain in the Class and be eligible to receive an Individual Class Settlement Payment, **you do not need to take any action.** By remaining in the Class and receiving settlement monies, you consent to the release of the Released Claims as described above.

Any and all amounts paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans,

non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

If you chose Option A, but you believe the proposed Settlement is not fair, reasonable, or adequate in any way, you have several options that you may use to object or express any concerns. To object, you may appear in person at the Final Approval Hearing, have an attorney object for you, or submit a written brief or statement of objection (“written objection”) to the Settlement Administrator at Phoenix Settlement Administrators <<address>>. If you submit a written objection to the Settlement Administrator, it should contain sufficient information to confirm your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; and (3) your signature. Your written objection must be postmarked on or before <<Response Deadline>> and set to the Settlement Administrator at the address listed above to ensure that it is received in time to be considered by the Court. You can also hire an attorney at your own expense to represent you with respect to your objection. The Parties may file responses to any written objections before the final approval hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Settlement Hearing. **Regardless of any objection, however, if you choose Option A, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.**

An objection alone will not satisfy the legal requirements for a Settlement Class Member to appeal a Judgment entered in the Action. In order to have standing to appeal a Judgment entered following an Order finally approving this Settlement, a Settlement Class Member must formally intervene and become a party of record in the action to appeal, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Class. If you do not want to be part of the Settlement Class, you must submit a written Request to be Excluded to the Settlement Administrator at Phoenix Settlement Administrators <<address>>. In order to be valid, your written Request to be Excluded must be signed and must include your name, address, and telephone number (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement), along with the following statement:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *BAKER V. LA PROVENCE, INC.*, CLASS ACTION LAWSUIT, SAN DIEGO COUNTY SUPERIOR COURT CASE NO. 37-2020-00031040-CU-OE-CTL. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OTHER THAN MY SHARE OF THE PAGA PAYMENT.”

Your written Request to be Excluded from the Settlement must be signed and postmarked on or before <<Response Deadline>>. If you do not submit a written Request to be Excluded on time (as evidenced by the postmark), your written Request to be Excluded will be rejected, you will be deemed a participating Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a written Request to be Excluded by the deadline to request exclusion, you will have no further role in the Action, and **you will not be entitled to any benefit, including an Individual Class Settlement Payment**, as a result of the Action and Settlement. However, PAGA Employees will still be entitled to receive an Individual PAGA Settlement Payment and will still release the PAGA claims against Defendant described above. Moreover, if you submit a Request to be Excluded, you will not be able to object to the Settlement or complain to the Court about any aspect of the Settlement.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel’s request for attorneys’ fees and costs, the Class Representative Service Payment to Plaintiff, the Settlement Administrator’s costs, and the payment to the LWDA for PAGA penalties on <<FA Date and Time>> in Department 73 of the San Diego Superior Court, Hall of Justice, 330 West Broadway, San Diego, CA 92101. Because of healthcare guidance and Orders of the San Diego Superior Court related to COVID-19, the hearing may be a telephonic hearing only. If you wish to attend the Final Approval Hearing telephonically, visit <https://www.sdcourt.ca.gov/sdcourt/generalinformation/covid-19info> for instructions on how to do so. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an Individual Class Settlement Payment or Individual PAGA Settlement Payment.

How to get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Joint Amended Stipulation of Class Action and PAGA Settlement attached to the Amended Declaration of Kane Moon in Support of Plaintiff's Amended Motion for Preliminary Approval. The Joint Amended Stipulation of Class Action and PAGA Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the San Diego Superior Court. Because of the San Diego Superior Court's COVID-19 pandemic procedures, in order to view documents filed in the lawsuit, Class Members may be required to make an appointment with the Court. You may also request a copy of the Settlement Agreement from Class Counsel, at the address listed above.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.