

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement is entered into by and between Plaintiff Kim Grant, individually and on behalf of all others similarly situated, and Defendant Rodd & Gunn USA Retail, Inc., and is approved by their respective counsel of record, subject to the terms and conditions hereof and the Court's approval.

A. Definitions

1. "Action" or "Lawsuit" means and refers to the case entitled *Kim Grant v. Rodd & Gunn USA Retail, Inc.*, Case No. C21-02113, filed in Contra Costa Superior Court.

2. "Aggrieved Employees" include all current or former non-exempt employees who worked for Defendant in California from October 7, 2017, until October 17, 2022.

3. "Agreement," "Settlement Agreement," or "Settlement," shall mean this Class Action and PAGA Settlement Agreement and Release of Claims, including any attached Exhibits.

4. "Class Claims" or "Released Class Claims" will include all claims that were pled in the Action, or which could have been pled in the Action based on the factual allegations therein along with related claims and associated penalties, including, but not limited to failure to pay for all hours worked, failure to correctly pay overtime, unpaid off-the-clock work, improper rounding of hours, failure to properly calculate the applicable regular rate, non-compliant or missed meal and rest breaks including failure to communicate compliant break policies, failure to pay premium compensation for meal and rest period violations, failure to reimburse necessary business expenditures, waiting time penalties, wage statement penalties, failure to provide accurate itemized wage statements, and any related claims for unfair business practices (including unlawful, deceptive, or unfair business practices prohibited by the California Business and Professions Code § 17200, *et seq.*) and claims for civil penalties under the Private Attorneys General Act, that arose during the Class Period ("Released Claims"). Released Class Claims do not include claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and claims outside of the Class and PAGA Periods.

5. "Class Counsel" refers to Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C.

6. "Class Data" means a complete list that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator on one spreadsheet and shall include the Settlement Class Members' full names; last known addresses; Social Security Numbers; and dates of employment and/or number of Workweeks Worked as non-exempt or hourly employees of Defendant during the Class Period and the PAGA Period for each Settlement Class Member.

7. "Class Period" and "Class Release Period" shall mean October 7, 2017 through October 17, 2022.

8. "Class Representative" or "Plaintiff" means and refers to Kim Grant.

9. "Complaint" refers to the First Amended Complaint filed in the Contra Costa Superior Court action entitled *Kim Grant v. Rodd & Gunn USA Retail, Inc.*, Case No. C21-02113.

10. "Court" means the California Superior Court, County of Contra Costa or any Court of competent jurisdiction.

11. "Defendant" means and refers to Rodd & Gunn USA Retail, Inc.

12. "Defendant's Counsel" or "Defense Counsel" mean and refer to Heather M. Sager and Matthew Goldberg of Perkins Coie LLP.

13. "Effective Date" means the latter of (a) The Court's Final Approval of the settlement if no objections by or on behalf of Class Members have been filed and not withdrawn; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed. "Final" means that the Settlement has been granted "Final Approval" by the Court and the "Effective Date" has occurred.

14. "Final Approval" refers to the order of the Court granting final approval of this Settlement Agreement and entering a judgment approving this Settlement on substantially the same terms provided herein or as may be modified by subsequent agreement of the Parties or order of the Court. For the avoidance of doubt both an order granting final approval of the Settlement and a judgment approving the settlement must be entered.

15. "Final Settlement Class" or "Final Settlement Class Members" means, collectively, all Participating Class Members and all Aggrieved Employees.

1 16. “Individual Settlement Amount” shall have the meaning ascribed to it in Paragraph
2 47(d) below.

3 17. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 47(c)
4 below.

5 18. “Notice” means the notice of settlement of class action and PAGA Settlement that
6 will be sent to the Settlement Class Members. A copy of the Notice is attached as **Exhibit A**.

7 19. “Notice Response Deadline” is forty-five (45) calendar days from the date the
8 Notice is mailed to the Settlement Class Members.

9 20. “Objecting Settlement Class Member” means a Settlement Class Member, other
10 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
11 respect to the Class Claims pursuant to Paragraph 72(a) below.

12 21. “PAGA” shall refer to the California Labor Code Private Attorneys General Act
13 of 2004, California Labor Code sections 2698–2699.5.

14 22. “PAGA Claims” or “Released PAGA Claims” shall include any and all claims for
15 civil penalties pursuant to PAGA based on the allegations stated in the PAGA Notice and that
16 were or could have been pled in the Complaint based on the facts alleged therein including claims
17 for failure to pay for all hours worked, failure to correctly pay overtime, unpaid off-the-clock
18 work, improper rounding of hours, failure to properly calculate the applicable regular rate, non-
19 compliant or missed meal and rest breaks including failure to communicate compliant break
20 policies, failure to pay premium compensation for meal and rest period violations, failure to
21 reimburse necessary business expenditures, waiting time penalties, failure to provide accurate
22 itemized wage statements, and wage statement penalties.

23 23. “PAGA Notice” shall refer to the notices sent by Plaintiff, by and through counsel,
24 on or about October 5, 2021, to the LWDA and to Defendant, alleging that Defendant engaged in
25 violations of the California Labor Code and California Wage Order(s).

26 24. “PAGA Period” and “PAGA Release Period” shall mean October 5, 2020, until
27 October 17, 2022.
28

1 25. “Participating Class Member” means any and all Settlement Class Members who
2 are deemed to participate and receive an Individual Settlement Amount for the Class Claims and
3 who do not opt-out of the settlement of the Class Claims by submitting timely valid Requests for
4 Exclusion.

5 26. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class Members, the
6 Aggrieved Employees, and Defendant, collectively.

7 27. “Preliminary Approval Date” means the date the Court preliminarily approves the
8 Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

9 28. “Preliminary Approval Order” means the judicial Order to be entered by the Court,
10 upon the application or motion of the Plaintiff, preliminarily approving this Settlement and
11 providing for the issuance of the Notice to the Settlement Class Members, an opportunity to opt
12 out of settlement of the Class Claims, an opportunity to submit timely objections to the terms of
13 this Settlement related to the Class Claims, and setting a hearing on the fairness of the terms of
14 Settlement, including approval of attorneys’ fees and costs.

15 29. “QSF” means the Qualified Settlement Fund set up by the Settlement
16 Administrator for the benefit of the Final Settlement Class, and from which the settlement
17 payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue
18 Code Section 468B-1.

19 30. “Release” shall mean the release and discharge of the Class Claims by Plaintiff
20 and all of the Participating Class Members and the release and discharge of the PAGA Claims by
21 Plaintiff and all of the Aggrieved Employees.

22 31. “Released Parties” shall refer to Defendant, together with its future, current and
23 former officers, directors, members, managers, shareholders, agents, insurers, charitable
24 organizations, parents, subsidiaries, affiliates, predecessors, successors, operators, partners,
25 attorneys, successors, alleged alter egos, real or alleged joint employers, investors, managing
26 agents, and assignees.

27 32. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 70(a)
28 below.

33. "Service Payment" or "Service Award" means the amount approved by the Court to be paid to Class Representative in addition to his Individual Settlement Amount as a Participating Class Member.

34. "Settlement Administration Costs" means the costs payable from the Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, due diligence, reporting and remittance obligations, distributing the Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Settlement Amount.

35. "Settlement Administrator" means and refers to ILYM Group, Inc., which the Parties have mutually agreed will provide the Notice to the Class Members and distribute the settlement amounts as described in this Agreement.

36. "Settlement Amount" or "Gross Settlement Amount" shall have the meaning ascribed to it in Paragraph 47(a) below.

37. "Settlement Class Member" or "Class Member" refers to individual members of the Settlement Class.

38. "Settlement Class" and "Settlement Class Members" refers to all persons who are or were previously employed by Defendant in California classified as a non-exempt employee during the Class Period.

39. "Workweeks Worked" for each Settlement Class Member and Aggrieved Employee means any workweek during the Class Period and/or the PAGA Period, as applicable, in which the Settlement Class Member and/or Aggrieved Employee was employed by Defendant as a non-exempt employee in California and worked at least one shift during the workweek for or on behalf of Defendant. Workweeks Worked shall not include weeks where a Settlement Class Member and/or Aggrieved Employee only had sick time, vacation time, was on leave, or otherwise did not record any actual work time in Defendant's timekeeping system. Workweeks Worked will be calculated based on Defendant's business records.

1 **B. General Terms**

2 40. On or about October 7, 2021, Plaintiff filed a class action complaint in the Court
3 against Defendant, including allegations of: (1) failure to pay all minimum wages, (2) failure to
4 pay overtime wages, (3) meal period violations, (4) rest period violations, (5) waiting time
5 penalties, and (6) wage statement violations, and (7) unfair competition. On or about December
6 9, 2021, Plaintiff filed a First Amended Complaint to add a cause of action for PAGA penalties
7 based on the foregoing Labor Code violations.

8 41. Defendant denies Plaintiff's claims and allegations and contends that the Action
9 is not suitable for class certification and/or representative treatment.

10 42. Class Representative believes he can proceed with his class and representative
11 claims, that the Action is meritorious, and that class certification is appropriate.

12 43. The Parties have conducted a thorough investigation into the facts of the Action.
13 This includes conducting extensive exchange of informal discovery, including Defendant's
14 written policies and practices and the production of payroll and timekeeping records for
15 Settlement Class Members and Aggrieved Employees. Class Counsel is both knowledgeable
16 about and has done extensive research with respect to the applicable law and potential defenses
17 to the claims of the Settlement Class Members and Aggrieved Employees. Class Counsel has
18 diligently pursued an investigation of the Class Members' claims against Defendant. Based on
19 the foregoing data and on their own independent investigation and evaluation, Class Counsel is
20 of the opinion that the settlement with Defendant for the consideration and on the terms set forth
21 in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the
22 Settlement Class Members and Aggrieved Employees in light of all known facts and
23 circumstances, including the risk of significant delay and uncertainty associated with litigation,
24 various defenses asserted by Defendant, and numerous potential appellate issues.

25 44. On October 17, 2022, the Parties participated in mediation before Hon. Carl J.
26 West, a highly experienced class action mediator. The Parties reached settlement on that date,
27 through extensive and, at times, contentious arms-length negotiations.

1 45. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
2 to be performed or judgments to be entered pursuant to the terms of the Settlement and
3 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
4 any statute or law or liability on the claims or allegations in the Action.

5 46. Stipulation for Class Certification and Representative Treatment. For settlement
6 purposes only, Defendant will stipulate that the Settlement Class Members described herein who
7 do not Request Exclusion from the Settlement Class may be conditionally certified as a settlement
8 class and that the Aggrieved Employees are appropriate for representative treatment for purposes
9 of settlement. This stipulation to certification and representative treatment is in no way an
10 admission that class action certification and/or representative treatment is proper and shall not be
11 admissible in this or in any other action except for the sole purposes of enforcing this Agreement.
12 Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to
13 class certification and representative treatment as part of the Settlement shall become null and
14 void *ab initio* and shall have no bearing on and shall not be admissible in connection with the
15 issue of whether or not class certification and/or representative treatment would be appropriate in
16 a non-settlement context. Defendant expressly reserves its rights and declares that it will continue
17 to oppose class certification, representative treatment, and the substantive merits of the case
18 should the Court fail to issue Final Approval. Plaintiff expressly reserves his rights and declares
19 that he will continue to pursue class certification and representative treatment and a trial should
20 the Court fail to issue Final Approval.

21 **C. Terms of Settlement**

22 47. The financial terms of the Settlement are as follows:

23 (a) Gross Settlement Amount: The Parties agree to settle this Action for Four
24 Hundred Fifty Thousand Dollars (\$450,000) ("the Settlement Amount"). The Settlement Amount
25 is the maximum amount that will be paid by Defendant, and includes Individual Settlement
26 Amounts, attorneys' fees of Class Counsel, costs and expenses, the Service Payment to Class
27 Representative, all Settlement Administration Costs, and payment to the Labor Workforce
28 Development Agency (LWDA) for PAGA penalties. Defendant shall separately pay to the

Settlement Administrator the employers' share of applicable payroll taxes.

(b) The Settlement is based on Defendant's representation for the purposes of mediation that there are approximately 5,500 workweeks. In the event that the actual number of workweeks worked by all Class Members during the Class Period increases by 10% or more, then Defendant shall increase the Maximum Settlement Amount on a proportional basis (i.e., if there was a 13.5% increase in the number of workweeks, Defendant will increase the maximum settlement amount by 3.5%).

(c) Net Settlement Amount: The "Net Settlement Amount" is defined as the Settlement Amount less attorneys' fees and litigation costs as approved and awarded by the Court, the Service Payment to Class Representative as approved and awarded by the Court, the Settlement Administration Costs, as approved and awarded by the Court, and the Ten Thousand Dollars (\$10,000.00) allocated to payment for PAGA penalties as described in paragraph 47(d) below. In the event that the Court reduces the attorneys' fees and litigation costs or Service Awards, Settlement Administration Costs, or either increases or decreases the amount allocated to PAGA penalties, the Net Settlement Sum shall be increased or decreased accordingly.

(d) Individual Settlement Amounts for the Settlement Class: The Settlement Administrator will use the Class Data provided by Defendant to calculate each Participating Class Member's and Aggrieved Employee's Individual Settlement Amounts based on the following formula:

i. PAGA Amount: \$10,000 of the Gross Settlement Amount has been designated to the PAGA claims. Twenty-five percent (25%) or \$2,500, shall be paid out to Aggrieved Employees, while seventy-five percent (75%), or \$7,500, will be paid to the LWDA. Each Aggrieved Employee shall receive a portion of the \$2,500 proportionate to the number of Workweeks Worked by the Aggrieved Employees during the PAGA Period compared to the total number of Workweeks Worked by all Aggrieved Employees during the PAGA Period. Aggrieved Employees shall have their settlement amount for the Released PAGA claims paid one hundred percent (100%) as civil penalties for which no taxes will be withheld and for which a Form 1099 will be issued by the Settlement Administrator.

1 ii. Class Amount: The Net Settlement Amount shall be allocated to each
2 Participating Class Member based on his/her/their proportionate Workweeks Worked during the
3 Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the
4 numerator of which is the Participating Class Member's total Workweeks Worked during the
5 Class Period, and the denominator of which is the total Workweeks Worked by all Participating
6 Class Members during the Class Period. Class Members will be provided with an estimated
7 Individual Settlement Amount in the Notice. If there are any valid and timely submitted Requests
8 for Exclusion, the Settlement Administrator shall proportionately increase the Individual
9 Settlement Amounts for each Participating Class Member so that the amount actually distributed
10 to Participating Class Members equals 100% of the Net Settlement Amount allocated toward
11 Released Class Claims.

12 (e) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts
13 will be allocated for tax purposes based on the allegations in the Action as follows: twenty percent
14 (20%) will be paid as wages subject to withholding of all applicable local, state, and federal taxes;
15 and eighty percent (80%) will be paid as interest and as civil penalties (pursuant to, *e.g.*, California
16 Labor Code sections 203, 226) from which no taxes will be withheld. The Settlement
17 Administrator will issue to each Participating Class Member an Internal Revenue Service Form
18 W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect
19 to the civil penalties and interest allocations.

20 (f) Service Payment to Class Representative: The amount awarded to Class
21 Representative as a Service Payment will be set by the Court in its discretion, not to exceed
22 \$10,000. Defendant agrees not to oppose this request. The Service Payment to Class
23 Representative will be paid out of the Gross Settlement Amount. Class Representative will be
24 issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally
25 responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount
26 awarded by the Court as the Service Payment to Plaintiff less than the requested amount shall not
27 be a basis for Plaintiff or Class Counsel to rescind the Settlement Agreement or otherwise void
28 the Settlement. Should the Court approve a lesser amount for the Service Payment, the difference

1 shall be added to the Net Settlement Amount to be distributed to the Participating Class Members.

2 (g) Attorneys' Fees and Costs: Defendant agrees not to oppose a request by Class
3 Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of the Settlement
4 Amount (approximately \$150,000), plus reasonable litigation costs not to exceed \$15,000
5 ("Attorneys' Fees and Cost Award"). For purposes of this Settlement, Defendant agrees not to
6 oppose any contention by Class Counsel that attorneys' fees should be based on the common fund
7 theory. The Attorneys' Fee and Cost Award shall be paid from the Gross Settlement Amount, and
8 except for this award, Defendant shall have no further obligation to pay any attorneys' fees, costs,
9 or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by
10 Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to
11 the Participating Class Members. Any Court order awarding less than the amount sought by Class
12 Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the
13 Settlement. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099
14 reflecting the amount of attorneys' fees and costs awarded by the Court. Class Counsel agrees
15 that any allocation of fees between or among Class Counsel and any other attorney representing
16 or claiming to represent the Class Members shall be the sole responsibility of Class Counsel.

17 (h) Settlement Administration Costs: The fees and other charges of the Settlement
18 Administrator will be paid from the Gross Settlement Amount, not to exceed \$6,000 subject to
19 Court approval, unless approved by all Parties and the Court.

20 (j) Tax Liability: Class Counsel, Defendant, and Defendant's Counsel make no
21 representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder,
22 and Plaintiff and the Settlement Class Members are not relying on any statement or representation
23 by Class Counsel, Defendant, or Defendant's Counsel in this regard. Plaintiff and Final Settlement
24 Class Members understand and agree that they will be solely responsible for the payment of any
25 taxes and penalties assessed on their respective Settlement Amounts described herein. The
26 Settlement Administrator will be responsible for income tax withholding which will be made
27 pursuant to applicable federal, state, and/or local withholding codes or regulations. Forms W-2
28 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue

1 Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations
2 promulgated thereunder, or other applicable tax law, are changed after the date of this Agreement,
3 the processes set forth in this Section may be modified in a manner to comply with any such
4 changes.

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

9 48. No Credit Towards Benefit Plans. The Individual Settlement Payments and
10 Individual PAGA Payments made to Participating Class Members and/or Aggrieved Employees
11 under this Settlement, as well as any other payment made pursuant to this Settlement, will not be
12 utilized to calculate any additional benefits under any benefit plans to which any Class Members
13 and/or Aggrieved Employees may be eligible, including but not limited to: profit-sharing plans,
14 bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and
15 any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not
16 affect the rights, contributions, or amounts to which any Class Member and/or Aggrieved
17 Employees may be entitled under benefit plans.

18 49. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
19 no circumstances will any portion of the Settlement Amount revert to Defendant. Final Settlement
20 Class Members will not have to make a claim to receive an Individual Settlement Amount.
21 Distributions, in the form of Individual Settlement Amounts, will be made directly to each Final
22 Settlement Class Member. The Settlement Administrator shall be responsible for accurately and
23 timely reporting any remittance obligations with respect to unclaimed funds as a result of a Final
24 Settlement Class Member not cashing an Individual Settlement Amount by the check cashing
25 deadline, as set forth herein.

26 50. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
27 adequate, and will so represent same to the Court.
28

D. Release by Plaintiff and the Final Settlement Class

51. Upon the Effective Date and the date Defendant fully funds the Settlement, Plaintiff and each Participating Class Member, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Release Period.

52. Each Participating Class Member will be deemed to have made the foregoing Release as if by manually signing it.

53. Upon the Effective Date of this Settlement, Plaintiff, the LWDA, and each Aggrieved Employee, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, will forever completely release and discharge the Released Parties from the Released PAGA Claims for the PAGA Release Period.

54. Each Aggrieved Employee and the LWDA will be deemed to have made the foregoing Release as if by manually signing it.

55. Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery based on, arising out of, and/or related to any and all of the Released Class Claims. The Settlement Class Members shall be so notified in the Notice. This paragraph does not apply to any Settlement Class Member who timely and validly opt out of the Settlement for purposes of Class Claims. For the avoidance of doubt, if a Settlement Class Member timely and validly opts out of the Settlement, the Settlement Class Member, if an Aggrieved Employee, will release and discharge the Released Parties from the Released PAGA Claims for the PAGA Release Period.

1 56. Plaintiff and Defendant intend that the Settlement described in this Agreement will
2 release and preclude any further claim, whether by lawsuit, administrative claim or action,
3 arbitration, demand, or other action of any kind, by the LWDA to obtain a recovery based on,
4 arising out of, and/or related to any and all of the Released PAGA Claims for the PAGA Release
5 Period.

6 57. Class Representative, on behalf of himself and the Participating Settlement Class
7 Members, acknowledges and agrees that the claims for (1) unpaid minimum wages, (2) unpaid
8 overtime wages; (3) meal break violations; (4) rest break violations; (5) failure to reimburse for
9 necessary business expenses; (6) waiting time penalties; (7) failure to provide accurate and
10 itemized wage statements, (8) unfair competition; and (9) associated civil and PAGA penalties
11 are disputed, and that the payments set forth herein constitute payment of all sums allegedly due
12 to him. Class Representative, on behalf of himself and the Participating Settlement Class
13 Members, acknowledges and agrees that California Labor Code Section 206.5 is not applicable
14 to the Parties hereto. Section 206.5 provides in pertinent part as follows:

15 An employer shall not require the execution of any release of any claim or right on
16 account of wages due, or to become due, or made as an advance on wages to be
17 earned, unless payment of those wages has been made.

18 **E. Release by Class Representative**

19 58. As a material inducement to Defendant to enter into this Settlement Agreement, in
20 addition to Class Representative's release of the Released Class Claims and Released PAGA
21 Claims, as discussed in Paragraphs 53 and 55 above, Class Representative does hereby, for
22 himself and for his respective spouses, domestic partners, marital community, children, estates,
23 trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators,
24 trustees, conservators, guardians, assigns, and representatives, forever completely release and
25 discharge the Released Parties from any and all charges, complaints, claims, liabilities,
26 obligations, promises, agreements, contracts, controversies, damages, actions, causes of action,
27 suits, rights, demands, costs, losses, debts, and expenses (including for back wages, statutory
28 penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and

costs) of any nature whatsoever, from the beginning of time through the execution of this Settlement Agreement, whether known or unknown, suspected or unsuspected, concealed or hidden, including but not limited to all claims arising out of, based upon, or relating to Class Representative's employment with Defendant or the remuneration for or termination of such employment (collectively, the "Class Representative's Claims").

59. Without limiting the generality of the foregoing, Class Representative also expressly releases all claims or rights against Released Parties arising out of or relating to alleged violations of any contracts, express or implied (including but not limited to any contract of employment); any contract or covenant of good faith and fair dealing (express or implied); any tort, including but not limited to, negligence, fraud, misrepresentation and violation of California Labor Code section 970, negligent infliction of emotional distress, intentional infliction of emotional distress, defamation, "retaliation" claims and claims for violation of public policy, any claim for improper or unauthorized wage deductions, failure to pay the applicable wage, unpaid wages, unpaid vacation benefits, penalties, liquidated damages, other damages, overtime, and alleged "off the clock" work under federal and state law, including, but not limited to, California Labor Code Sections 204 and 558, waiting time penalties pursuant to California Labor Section 203, damages, or penalties pursuant to California Labor Code Section 226, meal period and rest break payments and penalties pursuant to California Labor Code Sections 226.7 and 512, failure to provide itemized wage statements pursuant to California Labor Code Section 226, statutory or civil penalties pursuant to California Labor Code Sections 210, failure to indemnify for business expenses pursuant to Labor Code section 2802, failure to provide one day of rest in seven pursuant to California Labor Code Sections 551 and 552, unfair competition and unfair business practices pursuant to Business and Professions Code Section 17200 *et seq.*, interest and costs pursuant to California Civil Code Section 3287 and California Labor Code Section 218.6, statutory or common law rights to attorneys' fees and costs, including those pursuant to California Labor Code Section 1194 *et seq.*; claims under the Private Attorneys General Act of 2004, Labor Code section 2699 *et seq.*, and the alleged violation or breach of any other state or federal statute, rule, and or regulation; including all applicable Industrial Welfare Commission Wage Orders, and all

1 similar causes of action, including but not limited to, any claim for restitution, equitable relief,
2 interest, penalties, costs, or attorneys' fees in connection with any of the foregoing, negligent
3 infliction of emotional distress, intentional infliction of emotional distress, and defamation; any
4 "wrongful discharge," "constructive discharge," and "retaliation" claims; any claims relating to
5 any breach of public policy; any legal restrictions on Defendant's right to discharge employees;
6 and any federal, state, or other governmental statute, regulation, or ordinance, including, without
7 limitation: (1) Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national
8 origin discrimination or harassment, including retaliation for reporting discrimination or
9 harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d)(1) and
10 California Labor Code 1197.5 (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. § 12100
11 et seq. (disability discrimination); (5) Family and Medical Leave Act, 29 U.S.C. § 2601 et
12 seq.(family/medical leave); (6) California Fair Employment and Housing Act, Cal. Government
13 Code § 12900 et seq. (discrimination or harassment in employment and/or housing, including
14 discrimination or harassment based on race, religious creed, color, national origin, ancestry,
15 disability, marital status, sex (including pregnancy), or age, including retaliation for reporting
16 discrimination or harassment); (7) California Family Rights Act, Cal. Government Code §
17 12945.1 et seq. (family/medical leave); (8) California Labor Code, including Section 1720 et seq.,
18 or any Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race, color,
19 religion, sex, and national origin discrimination or harassment); (10) Executive Order 11141 (age
20 discrimination); (11) Sections 503 and 504 of the Rehabilitation Act of 1973 (handicap
21 discrimination); (12) the Fair Labor Standards Act; (13) Employee Retirement Income Security
22 Act, 29 U.S.C. § 1000 et seq. (employee benefits); (14) the California Civil Code; (15) the
23 California Labor Code; (16) the California Constitution; (17) the National Labor Relations Act;
24 and (18) any other federal, state, or local statute or legislation.

25 60. Class Representative expressly waives and relinquishes all rights and benefits
26 afforded by Section 1542 of the Civil Code of the State of California and does so understanding
27 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
28 of the State of California states:

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

7 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
8 full and complete release and discharge of all parties, Class Representative, and Class Counsel
9 expressly acknowledge that this Settlement Agreement is intended to include in its effect, without
10 limitation, all claims that Class Representatives knew of, as well as all claims that the Class
11 Representative does not know or suspect to exist in the Class Representative's favor against the
12 Released Parties, or any of them, for the time period from the beginning of time to the execution
13 of this Settlement Agreement, and that this Settlement Agreement contemplates the
14 extinguishment of any such Class Representative's claims.

15 **F. Interim Stay of Proceedings**

16 61. Pending completion of all of the prerequisites necessary to effectuate this
17 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
18 except such as are necessary to effectuate the Settlement.

19 **G. Notice Process**

20 62. Appointment of Settlement Administrator. The Parties have agreed to the
21 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
22 including mailing the Notice, using standard devices to obtain forwarding addresses,
23 independently reviewing and verifying documentation associated with any claims or opt-out
24 requests, resolving any disputes regarding the calculation or application of the formula for
25 determining the Individual Settlement Amounts, drafting and mailing the settlement checks to
26 Final Settlement Class Members, issuing Forms W-2 and 1099, reporting to taxing authorities,
27 due diligence, reporting and remittance obligations, and performing such other tasks as set forth
28 herein or as the Parties mutually agree or that the Court orders.

63. Disputes Regarding Settlement Administration. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify the Court that all payments and obligations contemplated by this Settlement Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Final Settlement Class Members, and Class Counsel any Forms W-2, Forms 1099, or other Tax Forms as may be required by law for all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate government authorities.

64. Class Data. Within fifteen (15) days after entry of the Preliminary Approval Order, Defendant shall provide the Class Data 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. The Class Data provided to the Settlement Administrator will not be provided to Class Counsel and it will remain confidential, it shall be used solely to administer the Settlement, and it will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court.

65. Notice. The Notice, as approved by the Court, shall be sent by the Settlement Administrator to the Settlement Class Members, by first class mail, in English, within seven (7) calendar days following the Settlement Administrator's receipt of the Class Data. The Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses of Settlement Class Members if any envelopes are returned.

66. Returned Notices. The Settlement Administrator will take steps to ensure that the Notice is received by all Settlement Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of

and, if possible, update a mailing address. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address, and/or Social Security number of the Class Member involved and will then perform a single re-mailing. In the event the procedures in this Paragraph are followed and the intended recipient of a Notice Packet still does not receive the Notice Packet, the Class Member shall be bound by all terms of the Settlement and any Judgment entered by the Court if the Settlement is approved by the Court. Notices will be re-mailed to any Settlement Class Member for whom an updated address is located within ten (10) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. The Notice shall be identical to the original Notice, except that it shall notify the Settlement Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Notice Response Deadline or fifteen (15) days after the remailing of the Notice.

67. Presumption Regarding Receipt of Notice. It will be conclusively presumed that if an envelope has not been returned within thirty (30) days of the mailing that the Settlement Class Member received the Notice.

68. Disputes Regarding Class Data. Settlement Class Members are deemed to participate in the Settlement unless they opt-out. The Notice will inform Settlement Class Members of his/her/their estimated Individual Settlement Amount and the number of Workweeks Worked during the Class Period and during the PAGA Period. Settlement Class Members may dispute their Workweeks Worked if they believe they were employed more workweeks in the Class Period in California than Defendant's records show by timely submitting evidence to the Settlement Administrator. Defendant's records will be presumed determinative absent reliable evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by the Settlement Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Workweeks Worked and estimated Individual Settlement Amount. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a final decision. All disputes will be

1 decided within ten (10) business days of the Notice Response Deadline. Settlement Class
2 Members will have until the Notice Response Deadline to dispute Workweeks Worked, object,
3 or opt out, unless extended by the Court. In the event that the Settlement Administrator increases
4 the number of Workweeks Worked for any Settlement Class Member, then the Settlement
5 Administrator will recalculate the Participating Class Members' Individual Settlement Amounts;
6 accordingly, in no event will Defendant be required to increase the Gross Settlement Amount.

7 69. Declaration of Due Diligence. The Settlement Administrator shall provide counsel
8 for the Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of
9 due diligence and proof of mailing with regard to the mailing of the Notice.

10 70. Settlement Class Members' Rights. Each Settlement Class Member will be fully
11 advised of the Settlement, the ability to object to the provisions in the Settlement related to the
12 Class Claims, and the ability to opt out or request exclusion from the Class Claims provisions of
13 the Settlement. The Notice will inform the Settlement Class Members of the Court-established
14 deadlines for filing objections or requesting exclusion from the Class Claims provisions of the
15 Settlement in accordance with the following guidelines:

16 (a) Requests for Exclusion from Participating Settlement Class. Any
17 Settlement Class Member, other than Plaintiff, may request to be excluded from the Participating
18 Settlement Class by submitting a "Request for Exclusion" to the Settlement Administrator,
19 postmarked on or before the Notice Response Deadline. The Request for Exclusion should state
20 in words to this effect:

21 I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN
22 THE GRANT V. RODD & GUNN LAWSUIT. I UNDERSTAND THAT
23 IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I
24 WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF
25 THE CLASS CLAIMS IN THIS LAWSUIT.

26 Any Request for Exclusion must include the full name, address, telephone number, last
27 four digits of the social security number or date of birth, and signature of the Settlement Class
28 Member requesting exclusion. The Request for Exclusion must be returned by mail to the

Settlement Administrator at the specified address. Any such Request must be made in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing. Any Settlement Class Member who timely requests exclusion in compliance with these requirements: (i) will not have any rights under this Agreement with respect to the Class Claims, including the right to object, appeal, or comment on the Settlement; (ii) will not be entitled to receive any payments under this Agreement with respect to Class Claims; and (iii) will not be bound by this Agreement, or the Judgment, with respect to the Class Claims.

(b) Binding Effect on Final Settlement Class Members. Except for those Settlement Class Members who exclude themselves in compliance with the procedures set forth above, all Settlement Class Members will: (i) be deemed to be Final Settlement Class Members for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

(c) Objections to Settlement of Class Claims. Any Settlement Class Member, other than Plaintiff, may object to the terms of this Agreement with respect to the Class Claims and may appear at the Final Approval Hearing and object whether or not they have filed a written objection as outlined herein. To object, a Settlement Class Member shall inform the Settlement Administrator, in writing, of his/her/their objection, which must be postmarked by the Notice Response Deadline at the address set forth in the Notice. Such objection shall include the full name, address, telephone number, dates of employment with Defendant, the name and contact information of the Objecting Settlement Class Member, the case name and number, the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is represented by counsel, the name and address of his/her/their counsel. If any Objecting Settlement Class Member wishes to speak at the Final Approval Hearing with respect to the Class Claims, that Objecting Settlement Class Member's written submission should include a request

1 to be heard, and the Court will determine whether Objecting Settlement Class Members will be
2 permitted to speak. The Settlement Administrator shall provide objections, if any, to Class
3 Counsel and Defense Counsel within three (3) days of receipt, and the Settlement Administrator
4 shall attach the same to its declaration of due diligence it files with the Court prior to the Final
5 Approval Hearing. Any Participating Class Member who files an objection remains eligible to
6 receive monetary compensation from the Settlement. Plaintiff and Defendant shall not be
7 responsible for any fees, costs, or expenses incurred by any Class Member and/or his/her/their
8 counsel related to any objections to the Settlement. Submitting an objection does not preserve the
9 right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of
10 record by timely and properly intervening or filing a motion to vacate the judgment under Code
11 of Civil Procedure section 663. Settlement Class Members and Aggrieved Employees may not
12 object to or opt out of the Settlement with respect to the PAGA Claims. At no time will any of
13 the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written
14 objections to the Settlement or appeal from the Judgment. To the extent a timely Notice of
15 Objection is withdrawn before final approval, such an objection shall be treated as though no
16 objection has been made.

17 (d) Failure to Object. Any Settlement Class Member who desires to object
18 with respect to the Class Claims but fails to timely submit a written objection or fails to appear at
19 the Final Approval Hearing waives any right to object will be foreclosed from making any
20 objection to this Settlement. Any Settlement Class Member who does not timely and properly
21 become a party of record by intervening or filing a motion to vacate the judgment waives any and
22 all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and
23 appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion under
24 California Code of Civil Procedure section 473, and extraordinary writs.

25 (e) Responses to Objections. Counsel for the Parties may file a response to any
26 objections submitted by Objecting Settlement Class Members at least five (5) court days before
27 the date of the Final Approval Hearing.
28

1 71. Settlement Class Members will have until the Notice Response Deadline to object
2 or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
3 Administrator shall disclose jointly to Class Counsel and Defendant's counsel what objections or
4 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
5 Counsel or Defense Counsel.

6 72. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
7 the QSF of the Settlement Amount, as described in Paragraph 47(a) that is necessary to make all
8 payments required under this Settlement, within fourteen (14) days after the Effective Date, plus
9 Defendant shall separately pay to the QSF its share of employer payroll taxes as calculated and
10 directed by the Settlement Administrator.

11 73. Distribution of Funds. No later than seven (7) calendar days after deposit of the
12 payment into the QSF, the Settlement Administrator will mail the payments to the Participating
13 Class Members, the payment for the attorneys' fees and costs to Class Counsel, any Service
14 Payment to the Class Representatives, the payment to the LWDA for PAGA penalties, and will
15 pay itself the Settlement Administration Costs.

16 74. Deadline for Cashing Settlement Checks. Final Settlement Class Members shall
17 have 180 calendar days after mailing by the Settlement Administrator to cash their settlement
18 checks. If any Final Settlement Class Member's check is not cashed within that period, the check
19 will be void and a stop-payment will be issued. All unclaimed funds shall be sent to the California
20 Unclaimed Property Fund in the name of the class member. The release will be binding upon all
21 Final Settlement Class Members who do not cash their checks within the 180-day period. In the
22 event that any settlement check is returned to the Settlement Administrator within 180 days of
23 mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned
24 settlement check, perform a skip trace to locate the individual. If a new address is located by these
25 means, the Administrator will have ten (10) business days to re-issue the check and will notify
26 Defense Counsel and Class Counsel that a re-issued check has been sent. Neither Defendant,
27 Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any
28 liability for lost or stolen settlement checks, forged signatures on settlement checks, or

1 unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Final
2 Settlement Class Member notifies the Settlement Administrator that he/she/they believe that a
3 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
4 payment on such check. If the check in question has not been negotiated prior to the stop payment
5 order, the Settlement Administrator will issue a replacement check.

6 75. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff,
7 Class Counsel, or the Settlement Administrator based on mailings, distributions, payments, or
8 reports made in accordance with or pursuant to this Agreement. This provision does not, however,
9 prevent a Party from seeking enforcement of this Agreement.

10 76. Without prejudice to any other remedies, the Settlement Administrator shall agree
11 to be responsible for any breach of its obligations (whether committed by the Settlement
12 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from
13 and against all liabilities, claims, causes of action, costs and expenses (including legal fees and
14 expenses) arising out of any breach committed by the Settlement Administrator or its agents.

15 **H. Duties of the Parties Prior to the Court's Approval**

16 77. Within 30 days of execution of this Agreement, Plaintiff will move the Court for
17 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
18 accomplishing the following:

19 (a) Scheduling the Final Approval Hearing on the issue of whether this
20 Settlement should be finally approved as fair, reasonable, and adequate as to the Class Members
21 and a hearing on fees, costs, and the Service Payment;

22 (b) Approving as to form and content the proposed Notice;

23 (c) Directing the mailing of the Notice by first class mail to the Settlement
24 Class Members;

25 (d) Preliminarily approving this Settlement; and

26 (e) Preliminarily certifying the class for purposes of this Settlement.

27 78. In conjunction with the Preliminary Approval Hearing, Plaintiff will submit this
28 Settlement Agreement, and will include the proposed Notice Packet, which will include the

1 Notice of Class Action Settlement document and proposed Mailing Envelope.

2 79. In accordance with section 2699(1)(2) of the California Labor Code, Plaintiff shall
3 provide a copy of this Settlement Agreement to the LWDA on the same day that Plaintiff files his
4 motion for Preliminary Approval of this Settlement with the Court.

5 80. Reallocation of Settlement Proceeds. In the event the Court fails, on its first
6 hearing, to approve this Agreement because the amount of the PAGA penalties is not adequate,
7 then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within
8 this Agreement, to try to achieve Final Approval of the Agreement upon any subsequent Court
9 hearings.

10 **I. Duties of the Parties Following Court's Final Approval**

11 81. In connection with the Final Approval Hearing provided for in this Settlement
12 Agreement, Class Counsel shall submit motion for Final Approval and a proposed Final Approval
13 Order:

14 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and
15 adequate, and directing consummation of its terms and provisions;

16 (b) Approving Class Counsel's application for an award of attorneys' fees and
17 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
18 and the payment to the Settlement Administrator for costs of administering the settlement; and

19 (c) Entering judgment approving settlement, thereby permanently barring all
20 Participating Class Members from prosecuting any Released Class Claims against any of the
21 Released Parties and permanently barring all Aggrieved Employees and the LWDA from
22 prosecuting any Released PAGA Claims against any of the Released Parties.

23 **J. Voiding the Agreement**

24 82. If the Court fails or refuses to issue the Final Approval Order or fails to approve
25 any material condition of this Settlement Agreement which effects a fundamental change of the
26 Settlement, the entire Settlement Agreement shall be rendered voidable and unenforceable as to
27 all Parties herein at the option of either Party.
28

83. If more than fifteen percent (15%) of the Settlement Class Members timely submit a Request for Exclusion, Defendant shall have the option of terminating or modifying this Agreement without prejudice to its pre-settlement positions and defenses in the Action. If Defendant exercise such option under this paragraph, it shall be relieved of any obligation to pay the Settlement Amount or any other obligations from the Settlement by giving notice to Plaintiff's Counsel and the Settlement Administrator within ten (10) business days of being notified by the Settlement Administrator of the opt-out rate which will take place after the Notice Response Deadline. If Defendant exercise its option under this paragraph, the Parties shall be jointly responsible for the Settlement Administration Costs incurred.

84. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

85. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

K. Other Terms

86. Full and Complete Defense. This Agreement may be pleaded by any Released Party as a full and complete defense to and may be used as the basis for an injunction against, any action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted, asserting any Released Claim.

87. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

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

89. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of

1 such documents and to take such other action as may reasonably be necessary to implement the
2 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best
3 efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that
4 may become necessary by order of the Court, or otherwise, to effectuate this Settlement
5 Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement
6 Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and
7 Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval
8 of the settlement and the final entry of judgment.

9 90. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
10 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
11 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
12 cause of action, or rights released and discharged by this Settlement Agreement.

13 91. No Admission. Defendant denies any and all liability to Plaintiff and/or any
14 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
15 that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and
16 compromise to avoid further substantial expense and the inconvenience and distraction of
17 protracted litigation. Defendant has considered the uncertainty and risks inherent in litigation, and
18 without conceding any infirmity in the defenses that they have asserted or could assert against
19 Plaintiff, have determined that it is desirable and beneficial that Plaintiff's claims be settled in the
20 manner and upon the terms and conditions set forth in this Agreement.

21 92. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
22 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
23 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
24 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
25 Settlement Agreement with the intention of avoiding further disputes and litigation with the
26 attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and
27 it, along with all related documents such as the notices, and motions for preliminary and final
28 approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of

Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part of this Settlement Agreement is for settlement purposes only and if, for any reason the settlement is not approved, the stipulation will be of no force or effect.

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

To the Settlement Class Members and Aggrieved Employees:

Mehrdad Bokhour <i>mehrdad@bokhourlaw.com</i> 1901 Avenue of the Stars, Suite 450 Los Angeles, California 90067 Tel: (310) 975-1493; Fax: (310) 675-0861	Joshua Falakassa <i>josh@falakassalaw.com</i> 1901 Avenue of the Stars, Suite 450 Los Angeles, California 90067 Tel: (818) 456-6168; Fax: (818) 505-0868
--	--

To Defendant:

Heather M. Sager Matthew Goldberg <i>HSager@perkinscoie.com</i> 505 Howard Street, Suite 1000 San Francisco, California 94104 Tel: (415) 344-7000; Fax: (415) 344-7050

94. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or their counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

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

5 96. Modification. This Settlement Agreement may not be changed, altered, or
6 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
7 Settlement Agreement may not be discharged except by performance in accordance with its terms
8 or by a writing signed by all of the Parties hereto.

9 97. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
10 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide
11 written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and
12 Plaintiff and Defendant agree to seek the help of the mediator identified in this Agreement to
13 resolve any dispute they are unable to resolve informally. During this period, the Parties shall
14 bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other
15 proceeding instituted by any person or entity other than Plaintiff or Defendant. For the avoidance
16 of doubt, this provision shall not apply if a Participating Class Member asserts a new or separate
17 claim that Defendant asserts that such claim has been released by this Agreement.

18 98. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
19 dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure
20 section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action
21 over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations
22 of this Agreement.

23 99. Enforceability. Pursuant to California Evidence Code section 1123(a) and (b), this
24 Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible in
25 a court of law.

26 100. Choice of Law. This Settlement Agreement shall be governed by and construed,
27 enforced, and administered in accordance with the laws of the State of California, without regard
28 to its conflicts-of-law rules.

any communications with the press or media about the Action or the Settlement. Plaintiff, in response to inquiries, will state that "the Action was resolved." This provision will not impede Class Counsel's ability to discharge fiduciary duties, including effectuating the terms of this settlement. The Parties acknowledge and agree that non-public information about the business practices and business records of Defendant disclosed solely during the scope of privileged mediation proceedings and settlement negotiations ("Confidential Information") will not be disclosed to any third parties and will be returned to Defendant or destroyed, with no copies retained after the Court issues Final Approval of the Settlement. The Parties further acknowledge and agree that such Confidential Information has not and will not be used for any purpose other than for evaluating claims for purposes of entering into this Settlement Agreement. The Parties, Class Counsel and Defendant's Counsel further agree that none of them will post commentary about this Settlement or the terms of it on any social media website, or through any online or print media outlet, or in any article or blog.

107. Counterparts. This Settlement Agreement may be executed in counterparts, 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 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

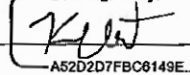
APPROVAL AND EXECUTION BY PARTIES:

Dated: February __, 2023
2/9/2023

CLASS REPRESENTATIVE:

KIM GRANT

DocuSigned by:


A52D2D7FBC6149E...

Dated: February 28, 2023

DEFENDANT:

RODD & GUNN USA RETAIL, INC.

By
Its


CEO / PRESIDENT

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

6 102. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
7 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
8 successors, and assigns.

9 103. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
10 because the members of the Settlement Class are numerous, it is impossible or impractical to have
11 each Final Class Member execute this Settlement Agreement. The Notice will advise all
12 Settlement Class Members of the binding nature of the releases provided herein and such shall
13 have the same force and effect as if this Settlement Agreement were executed by each Final
14 Settlement Class Member.

15 104. Amended Judgment. If any amended judgment is required under Code of Civil
16 Procedure section 284, the Parties will work together in good faith to jointly submit a proposed
17 amended judgment.

18 105. Deadlines Falling on Weekends or Holidays. To the extent that any deadline set
19 forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be
20 continued until the following business day.

21 106. Publicity. Class Counsel and Plaintiff agree to discuss the terms of this Settlement
22 only in declarations submitted to a court to establish Class Counsel's adequacy to serve as Class
23 Counsel, in declarations submitted to a court in support of motions for preliminary approval, Final
24 Approval, for attorneys' fees/costs, and any other pleading filed with the Court in conjunction
25 with the Settlement, and in discussions with Class Members in the context of administering this
26 Settlement until the Preliminary Approval Order is issued. Class Counsel and Plaintiff agree that
27 they shall not publish any press releases or press statements regarding the Settlement, identify
28 Defendant or Defense Counsel by name in any media including Class Counsel's website, or have

1 **APPROVED AS TO FORM:**

2 **CLASS COUNSEL**

3
4 Dated: February ___, 2023
5 2/8/2023

BOKHOUR LAW GROUP, P.C.

6 DocuSigned by:
7 *Mehrdad Bokhour*
8 98D3643F271040F
9 Mehrdad Bokhour
10 Attorneys for Plaintiff

11 Dated: February ___, 2023
12 2/8/2023

FALAKASSA LAW, PC

13 DocuSigned by:
14 *Joshua Falakassa*
15 15A628B2C5A149C
16 Joshua Falakassa
17 Attorneys for Plaintiff

18 Dated: February ___, 2023
19 March 3, 2023

DEFENDANT'S COUNSEL:

PERKINS COIE LLP

20 *Heather M. Sager*
21 Heather M. Sager
22 Matthew Goldberg
23 Attorneys for Defendant,
24 Rodd & Gunn USA Retail, Inc.
25
26
27
28

