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12 Attorneys for Plaintiff,
13 LUIS LARRABURU, and all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES**
16

17 LUIS LARRABURU, on behalf of himself, all
18 others similarly situated, the general public, and as
an “aggrieved employee” on behalf of other
19 “aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

20 *Plaintiff(s),*

21 vs.

22 AMERICAN MERCHANDISING SPECIALISTS,
23 INC., a North Carolina corporation; and DOES 1–
24 50, inclusive,

25 *Defendant(s).*
26
27
28

Case No. 21STCV17704

**SUPPLEMENTAL DECLARATION
OF DAVID SPIVAK IN SUPPORT OF
PLAINTIFF LUIS LARRABURU’S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date: March 1, 2023
Hearing Time: 10:00 a.m.
Hearing Dept.: SSC-9, The Honorable
Yvette M. Palazuelos

Action filed: May 11, 2021



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1 **SUPPLEMENTAL DECLARATION OF DAVID SPIVAK IN SUPPORT OF MOTION**
2 **FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 I, WALTER L. HAINES, declare as follows:

4 1. I am an attorney duly licensed to practice law in the State of California and am
5 an attorney of record for Plaintiff Luis Larraburu (“Plaintiff”) in his lawsuit against Defendant
6 American Merchandising Specialists, Inc. (“Defendant”). I am a member in good standing of
7 the State Bar of California. I make this Declaration in support of Plaintiff’s Supplemental
8 Motion for Preliminary Approval of Class Action Settlement. I make this Declaration based on
9 my personal knowledge and if called to testify I could and would competently testify to the
10 matters contained in this Declaration.

11 2. A true and correct copy of the fully executed First Amended Joint Stipulation of
12 Class Action Settlement and Release of Claims (“Amended Settlement”) is attached hereto as
13 **Exhibit 12.**

14 3. A true and correct copy of the Amended Notice of Class Action Settlement
15 (“Amended Notice”) is attached hereto as **Exhibit A** of the Amended Settlement.

16 4. A true and correct copy of the redline comparison of the First Amended Joint
17 Stipulation of Class Action Settlement and Release of Claims is attached hereto as **Exhibit 13.**

18 5. A true and correct copy of the redline comparison of the changes made to Notice
19 of Class Action Settlement Claims is attached hereto as **Exhibit 14.**

20 6. Plaintiff prepared “damages” estimates in advance of mediation and determined
21 Defendant’s maximum exposure in unreimbursed expenses to be approximately \$564,075.41.
22 Furthermore, the Motion for Preliminary Approval mistakenly states Plaintiff’s maximum
23 exposure for restitution and penalties to be approximately “\$2,817,990.53.” However, Plaintiff’s
24 maximum exposure for restitution and penalties was determined to be approximately
25 \$3,263,405.89. A true and correct copy of Plaintiff’s damage estimates prepared in advance of
26 mediation are attached hereto as **Exhibit 15.**

27 7. Plaintiff’s counsel share the following fee splitting agreement: If the total legal
28 fees received in this case are greater than \$250,000 it is agreed that the United Employees Law



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1 Group, PC will receive 33 and 1/3% of the total legal fees received and the Spivak Law Firm
2 shall receive the remaining 66 and 2/3% of the total legal fees received. If the total legal fees
3 received in this case are equal or less than \$250,000, it is agreed that the United Employees Law
4 Group, PC will receive 25% of the total legal fees received and the Spivak Law Firm shall
5 receive the remaining 75% of the total legal fees received. Counsel has provided this information
6 in the Amended Settlement Agreement. Settlement Agreement, ¶ III.C.2. Plaintiff has given
7 written approval of this agreement in his signed Retainer Agreement, dated May 10, 2021. A
8 true and correct copy of Plaintiff's fully executed Retainer Agreement is attached hereto as
9 **Exhibit 16.**

10 8. Pursuant to Lab. Code § 2699(1)(2), Plaintiff Luis Larraburu submitted a copy of
11 the Amended Settlement with the Labor and Workforce Development Agency ("LWDA") at the
12 same time Plaintiffs' supplemental briefing is being filed with the Court. A true and correct copy
13 of Plaintiff's submission to the LWDA and a confirmation email is attached as **Exhibit 17.**

14 I declare under the penalty of perjury of the laws of the State of California that the
15 foregoing is true and correct to the best of my knowledge.

16 Executed on Wednesday, February 08, 2023 at Los Angeles, California.

17 

18 DAVID SPIVAK,
19 Declarant



23 **SPIVAK LAW**
24 Employee Rights Attorneys

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EXHIBIT 12

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10 Attorneys for Plaintiff,

11 LUIS LARRABURU, and all others similarly situated

12 (Additional attorneys for parties on following page)

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF LOS ANGELES**

15 **(UNLIMITED JURISDICTION)**

16 LUIS LARRABURU, on behalf of himself and
17 all others similarly situated, and as an “aggrieved
18 employee” on behalf of other “aggrieved
19 employees” under the Labor Code Private
20 Attorneys General Act of 2004,

21 *Plaintiff,*

22 vs.

23 AMERICAN MERCHANDISING
24 SPECIALISTS, INC., a North Carolina
25 corporation; and DOES 1–50, inclusive,

26 *Defendant(s).*

Case No. 21STCV17704

**FIRST AMENDED JOINT
STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE OF
CLAIMS**

Action filed: May 11, 2021

Department: 9, The Honorable Yvette M.
Palazuelos

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ADDITIONAL ATTORNEYS FOR PLAINTIFF

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Attorneys for Defendant,
AMERICAN MERCHANDISING SPECIALISTS, INC.

1 This Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement
2 Agreement” or “Agreement”) is made and entered into by and between Plaintiff Luis Larraburu
3 (“Plaintiff” or “Class Representative”), individually and on behalf of all putative class members,
4 on the one hand, and Defendant American Merchandising Specialists, Inc. (“Defendant”).
5 Plaintiff and Defendant are collectively referred to herein as the “Parties.”

6 **I. DEFINITIONS.**

7 The following definitions are applicable to this Settlement Agreement, in addition to other
8 terms defined elsewhere in the Agreement:

9 **A. “Action”** shall mean: (1) the civil action commenced on May 11, 2021, by
10 Plaintiff against Defendant in the Superior Court of California, County of LOS ANGELES, Case
11 No. 21STCV17704, entitled: “Luis Larraburu, on behalf of himself, and all others similarly
12 situated, and as an ‘aggrieved employee’ on behalf of other ‘aggrieved employees’ under the
13 Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. American Merchandising
14 Specialists, Inc., a North Carolina corporation; and DOES 1 through 50, inclusive,
15 *Defendant(s)*.”

16 **B. “Class,” “Class Members,” or “Settlement Class”** shall mean all current and
17 former non-exempt employees who are or were employed by Defendant in the State of California
18 at any time during the Class Period. Defendant estimates that there were approximately 115
19 members.

20 **C. “Work Weeks”** for each Settlement Class Members means each workweek in
21 which a Participating Class Member worked at least one day for Defendant in California during
22 the Class Period, according to Defendant’s records.

23 **D. “Class Counsel”** shall mean the attorneys representing Plaintiff in the Action:
24 David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law
25 Group.

26 **E. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses**
27 **Payment”** shall mean the amounts awarded to Class Counsel by the Court to compensate them
28 for, respectively, their fees and expenses in connection with the Action, including their pre-filing

1 investigation, their filing of the Action and all related litigation activities, this Settlement, and all
2 post-Settlement compliance procedures.

3 **F. “Class Notice”** shall mean the Notice of Proposed Settlement attached as **Exhibit**
4 **A** and incorporated by reference into this Agreement.

5 **G. “Class Period”** shall mean the period of time from August 25, 2016 through
6 March 15, 2022.

7 **H. “Class Representative Payment”** shall mean the special payment made to
8 Plaintiff in his capacity as Class Representative to compensate him for initiating the Action,
9 performing work in support of the Action, and undertaking the risk of liability for attorneys’ fees
10 and expenses in the event he was unsuccessful in the prosecution of the Action.

11 **I. “PAGA”** shall mean the California Labor Code Private Attorneys General Act of
12 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”).

13 **J. “PAGA Member”** shall mean any and all Settlement Class Members who worked
14 for Defendant from August 20, 2019 through March 15, 2022.

15 **K. “PAGA Period”** shall mean the time between August 20, 2019 through March
16 15, 2022.

17 **L. “PAGA Penalties”** shall mean the amount that the Parties have agreed to allocate
18 for settlement of claims for civil penalties arising under PAGA. The Parties have agreed to
19 allocate Four Thousand Dollars and Zero Cents (\$4,000.00) of the Gross Settlement Amount as
20 PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties in the amount of Three
21 Thousand Dollars and Zero Cents (\$3,000.00) shall be paid directly to the LWDA in accordance
22 with PAGA. The remaining Twenty-Five percent (25%) of the PAGA Penalties in the amount of
23 One Thousand Dollars and Zero Cents (\$1,000.00), shall be distributed to PAGA Members.
24 PAGA Members will receive payment from the employee portion of the PAGA Penalties
25 regardless of their decision to participate in the class portion of the Settlement if the allocation
26 for PAGA Penalties is approved by the Court.

27 **M. “PAGA Work Weeks”** shall mean the number of weeks of employment for each
28 PAGA Member as a non-exempt employee during the PAGA Period. The Settlement

1 Administrator will calculate the number of PAGA Work Weeks by calculating the number of
2 days each PAGA Member was employed using their original hire date and final termination date,
3 excluding any time they were unemployed in between during that time period, during the PAGA
4 Period, dividing by seven (7), and rounding up to the nearest whole number.

5 **N. “Court”** shall mean the Superior Court for the County of Los Angeles, 312 North
6 Spring Street, Los Angeles, CA 90012.

7 **O. “Defense Counsel”** shall mean the attorneys representing Defendant in the
8 Action: Thalia S. Rofos of Lewis Brisbois Bisgaard & Smith, LLP.

9 **P. “Effective Date”** is defined as follows: If no objection to this Settlement or to any
10 of the terms and or conditions of the Settlement are filed by Plaintiff, another member of the
11 Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that
12 the Court enters an order of final approval of this Settlement; however, if any objection to this
13 Settlement or to any of the terms and or conditions of the Stipulation is filed by a member of the
14 Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur upon the
15 expiration of the time for the filing any appeal of the order of final approval of this Settlement.
16 If an appeal is filed or any writ granted, then the Effective Date shall occur after the appeal has
17 been dismissed or the writ dissolved and when there is no further time to appeal the dismissal of
18 the appeal or the dissolution of the writ.

19 **Q. “Final Approval Hearing”** shall mean the hearing to be conducted by the Court
20 to determine whether to approve finally and implement the terms of this Agreement.

21 **R. “Gross Settlement Amount”** shall mean the Gross Settlement Amount of Two
22 Hundred and Fifteen Thousand Dollars and No Cents (\$215,000.00) payable by Defendant as
23 provided by this Agreement, plus Defendant’s employer-side payroll taxes. Defendant estimated
24 for purposes of mediation that there are 6,042.00 Work Weeks by 115 Class Members for the
25 period of August 25, 2016 through November 15, 2021. These numbers would be expected to
26 increase proportionately for the passage of time between that date and the time of court
27 approval. Before the Parties seek or a Party seeks court approval of the Settlement, the Settlement
28 Administrator will advise Plaintiff’s counsel of Defendant’s report of the total number of Work

1 Weeks and Class Members. If the Work Weeks and/or Class Members as of the date the Court
2 approves the settlement exceeds the referenced 6,042.00 Work Weeks and/or 115 Class Members
3 by more than 10.00%, the Gross Settlement Amount, including the Class Counsel Fees Payment,
4 the Class Representative Payment, and the LWDA payment, will increase proportionally
5 according to the number of additional Work Weeks or Class Members, whichever results in a
6 higher increase in the Gross Settlement Amount.

7 **S. “Judgment”** shall mean the Order of Final Judgment entered by the Court that
8 the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in
9 this Action.

10 **T. “Net Settlement Amount”** shall mean \$215,000.00 payable by Defendant
11 pursuant to this Settlement, less:

- 12 **1.** the Class Representative Payment approved by the Court;
- 13 **2.** the Class Counsel Fees Payment (one-third or 33 and 1/3% of Gross
14 Settlement Amount) and the Class Counsel Litigation Expenses Payment (of not more than
15 \$17,500.00) approved by the Court;
- 16 **3.** the Settlement Administrator’s reasonable fees and expenses approved by
17 the Court (not to exceed \$10,000.00);
- 18 **4.** the amount of \$4,000.00 paid to the Labor Workforce Development
19 Agency of California and PAGA members for the PAGA claim;
- 20 **5.** any other fees or expenses (other than attorneys’ fees and expenses)
21 incurred by Plaintiff in implementing the terms and conditions of this Agreement as approved by
22 the Court.

23 ///

24 **U. “Participating Class” or “Participating Class Members”** shall mean all
25 Settlement Class members who do not submit a valid letter requesting to be excluded from the
26 Settlement, consistent with the terms set forth in this Settlement Agreement.

27 **V. “Preliminary Approval of the Settlement”** shall mean the Court’s preliminary
28 approval of the Settlement without material change.

1 **W.** “**Settlement**” shall mean the disposition of the Action and all related claims
2 effectuated by this Agreement.

3 **X.** “**Settlement Administrator**” shall mean Phoenix. or another administrator
4 proposed by the Parties and appointed by the Court to administer the Settlement.

5 **Y.** “**Settlement Share**” shall mean each Class Member’s allocated share of the Net
6 Settlement Amount as provided by this Agreement.

7 **II. RECITALS**

8 **A.** On or about December 3, 2021, Plaintiff, through his attorneys, sent a letter to the
9 Labor Workforce Development Agency (“LWDA”) alleging the following against Defendant:
10 failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods,
11 failure to indemnify for business expenses, failure to issue proper wage statements, failure to
12 timely pay wages and related allegations (the “PAGA letter”). Plaintiff asserted these
13 representative claims on behalf of all Class Members who are or were employed during the
14 applicable statutory period.

15 **B.** On May 11, 2021, Plaintiff filed a class action complaint in the Los Angeles
16 Superior Court, alleging the same wage and hour claims as set forth in the earlier PAGA letter
17 and adding a cause of action for unfair competition. On December 23, 2021, Plaintiff filed a first
18 amended class action complaint in the Los Angeles County Superior Court, adding causes of
19 action under Labor Code section 226 for incomplete and inaccurate wage statements and the
20 Labor Code Private Attorneys General Act of 2004 (“PAGA”). The first amended complaint is
21 the “Operative Complaint.”

22 **C.** On January 23, 2022, Defendant answered Plaintiff’s First Amended Complaint
23 and denied, and continues to deny, all of Plaintiff’s material allegations. Specifically, Defendant
24 denies that Plaintiff and putative class members are entitled to additional wages and overtime
25 pay. Defendant contends it paid the putative class members for all hours worked as required by
26 law, including all vacation and sick days. Defendant denies the Class Members were deprived of
27 meal and rest periods, allege that it had meal and rest break policies and procedures in place to
28 ensure compliance with California law, and alleges that employees were allowed to take their

1 rest and meal periods. Defendant further alleges that the unpaid wage, improper wage statement,
2 and rest and meal period claims are not amenable to class treatment because common issues do
3 not predominate. Defendant asserts that the waiting time penalties claim will fail as to former
4 Class Members who cannot prevail on the claims described above. Defendant denies that it failed
5 to issue accurate itemized wage statements, or otherwise failed to keep accurate and complete
6 employment records. Defendant denied that it failed to reimburse Class Members for mileage
7 and telecom expenses.

8 **D.** The Parties thereafter engaged in an informal, voluntary exchange of information
9 in the context of privileged settlement discussions to facilitate an early mediation. Defendant
10 produced Plaintiff's and Class Member Shane Rollman's entire personnel file (including policies
11 and agreements he signed and acknowledged), copies of its relevant company written policies,
12 time-keeping records, and paycheck data and records for the putative class, and more detailed
13 time and payroll data for a random sample of putative class members specifically selected by
14 Plaintiff's counsel.

15 **E.** On November 15, 2021, following much of the foregoing informal discovery and
16 exchange of information, the Parties participated in a mediation session presided over by
17 Mediator David Phillips, an experienced class action mediator. During the mediation, the Parties
18 had a full day of productive negotiations and reached agreement on a class-wide settlement
19 during the second mediation session. During the mediation sessions, each side, represented by
20 its respective counsel, recognized the risk of an adverse result in the Action and agreed to settle
21 the Action and all other matters covered by this Agreement pursuant to the terms and conditions
22 of this Agreement.

23 **F.** Based on their own thorough, independent investigation and evaluation of this
24 case, Class Counsel are of the opinion that the settlement with Defendant for the consideration
25 and on the terms set forth in this Agreement is fair, reasonable, adequate, and in the best interest
26 of the Settlement Class in light of all known facts and circumstances, including the risk of
27 significant costs and delay, the risk of non-certification of the Class, the defenses asserted by
28 Defendant, the risks of adverse determinations on the merits, and numerous potential appellate

1 issues. Although Defendant contends it has no liability in this case, Defendant's counsel shares
2 Class Counsel's belief that the Agreement represents a fair and adequate settlement given the
3 respective risks associated with the case.

4 **G.** This Agreement represents a compromise and settlement of highly disputed
5 claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant
6 that Plaintiff's claims in the Action have merit or that it has any liability to Plaintiff or the Class
7 on those claims or to the State, or as an admission by Plaintiff that Defendant's defenses raised
8 in the Action have merit. This Agreement is intended to fully, finally, and forever compromise,
9 release, resolve, discharge, and settle the released claims subject to the terms and conditions set
10 forth in this Agreement.

11 Based on the foregoing Recitals, the Parties agree as follows:

12 **III. SETTLEMENT TERMS AND CONDITIONS**

13 **A. Certification for Settlement Purposes.** Solely for the purposes of effectuating
14 this Settlement, and subject to Court approval, the Parties hereby stipulate to the conditional
15 certification of the Settlement Class. The Parties agree that if for any reason the Settlement is not
16 preliminarily and finally approved, the conditional certification of the Settlement Class will be
17 of no force or effect, does not constitute an admission by Defendant that class certification is
18 proper, and will not be deemed admissible in this or any other proceeding, and that the Parties
19 will litigate the issue of class certification.

20 **B. Gross Settlement Amount.** Subject to the terms and conditions of this
21 Agreement, the Gross Settlement Amount of Two Hundred and Fifteen Thousand Dollars and
22 Zero Cents (\$215,000.00), plus Defendant's employer share of employer-side payroll taxes, is
23 the maximum amount payable by Defendant. In no event will Defendant be required to pay more
24 than the Gross Settlement Amount for distribution to the Plaintiff, Class Counsel, Class
25 Members, LWDA, and Settlement Administrator. However, if the number of Class Members
26 increases by more than 10.00%, the Defendant will pay a pro rata increase in the Gross Settlement
27 Amount, including pro rata increases in the Class Counsel Fees Payment, and allocation to the
28 Private Attorneys General Act claim. Likewise, if the number of Work Weeks increases by more

1 than 10.00%, the Defendant will pay a pro rata increase in the Gross Settlement Amount,
2 including pro rata increases in the Class Counsel Fees Payment, Class Representative Payment,
3 and allocation to the Private Attorneys General Act claim. The release provisions of this
4 Settlement will not take effect until Defendant has paid the Gross Settlement Amount in full per
5 this Settlement Agreement.

6 **C. Payments to Plaintiff and Class Counsel and Others.** Subject to the terms and
7 conditions of this Agreement, the Settlement Administrator will make the following payments
8 out of the Gross Settlement Amount as follows:

9 **1. To Plaintiff.**

10 **(a) Class Representative Payment.** In addition to his Settlement
11 Share, Plaintiff will apply to the Court for an award of not more than Fifteen Thousand Dollars
12 and No Cents (\$15,000.00) as his Class Representative Payment. Defendant will not oppose a
13 Class Representative Payment of not more than \$15,000.00. Plaintiff will receive no other
14 payment other than his Settlement Share and Class Representative Payment, and acknowledges
15 that he is aware of no other facts or circumstances related to his employment with Defendant that
16 could give rise to any additional entitlement to any further payments. The Settlement
17 Administrator will pay the Class Representative Payment approved by the Court out of the Gross
18 Settlement Amount. Payroll taxes, withholdings, and deductions will not be taken from the Class
19 Representative Payment, and instead a Form 1099 will be issued to Plaintiff with respect to that
20 payment. Plaintiff agrees to assume all responsibility and liability for the payment of taxes due
21 on the Class Representative Payment. Any portion of the Class Representative Payment not
22 awarded to Plaintiff will not revert to Defendant, but instead shall be returned to the Net
23 Settlement Amount.

24 **2. To Class Counsel.** Class Counsel will apply to the Court for an award of
25 not more than Seventy One Thousand Six Hundred Sixty Six Dollars and Sixty Six Cents
26 (\$71,666.66) (which is 33 and 1/3% of the Gross Settlement Amount) as their Class Counsel
27 Fees Payment and an amount not more than Seventeen Thousand Five Hundred Dollars and No
28 Cents (\$17,500.00) as their Class Counsel Litigation Expenses Payment, and Defendant will not

1 oppose this request. The Settlement Administrator will pay the amount approved by the Court
2 (but not more than Seventy One Thousand Six Hundred Sixty Six Dollars and Sixty Six Cents
3 (\$71,666.66) in fees and not more than Seventeen Thousand Five Hundred Dollars and No Cents
4 (\$17,500.00) in expenses) out of the Gross Settlement Amount. Withholding and deductions will
5 not be taken from the Class Counsel Fees and Litigation Expenses Payment and one or more
6 Forms 1099 will be issued to Class Counsel with respect to those payments. United Employees
7 Law Group, PC will receive 25% of the Class Counsel Fees Payment and The Spivak Law Firm
8 shall receive the remaining 75% of the Class Counsel Fees Payment.

9 **3. To the Settlement Administrator.** The Settlement Administrator will be
10 paid from the Gross Settlement Amount its reasonable fees and expenses as approved by the
11 Court in an amount currently estimated to not exceed Ten Thousand Dollars and No Cents
12 (\$10,000.00).

13 **4. To the LWDA.** The Parties will jointly apply to the Court for approval of
14 a settlement of claims under the Private Attorneys General Act (“PAGA”), California Labor Code
15 section 2698, *et seq.*, for Four Thousand Dollars and No Cents (\$4,000.00), of which, payment
16 from the Gross Settlement Amount to the LWDA will be made in the amount of Three Thousand
17 Dollars and No Cents (\$3,000.00), which is 75% of the PAGA settlement. One Thousand Dollars
18 and No Cents (\$1,000.00), 25% of the PAGA settlement, will remain in the Net Settlement
19 Amount for distribution.

20 **D. Allocation of Net Settlement Amount and Calculation of Settlement Shares.**
21 Subject to the terms and conditions of this Agreement, the Settlement Administrator will
22 distribute a payment from the Net Settlement Amount to each Participating Class Member. The
23 Settlement Share for each Participating Class Member will be calculated as follows,
24 understanding that the formulas below do not constitute an admission by either party, and are
25 intended only to provide a practical means to simplify and administer the claims process:

26 **(a) Participating Class Members’ Settlement Shares.** The
27 settlement shares are allocated 15.00% to wages (for which employment taxes will be deducted
28 and W-2s issued) and 85.00% to penalties (for which 1099s will be issued).

1 **(b) Settlement Ratio Calculation.** The Settlement Administrator
2 shall assign to each Class Member a “Settlement Ratio,” which shall be a fractional number
3 comprised of (a) that Class Member’s Individual Work Weeks as the numerator, and (b) the
4 aggregate total of all Class Members’ Individual Work Weeks as the denominator. The
5 Settlement Administrator shall assign to each Class Member the “Settlement Share” which shall
6 be calculated by multiplying that Class Member’s Settlement Ratio by amount allocated to Class
7 Members from the Net Settlement Amount.

8 **2. Settlement Share Worksheet.** Upon calculation of the Class Members’
9 Settlement Share, the Settlement Administrator shall furnish to Class Counsel and Defense
10 counsel a worksheet containing a list unique identifying numbers for each of the Class Members
11 with their corresponding Individual Work Weeks and Settlement Shares.

12 **3. Individual Settlement Amounts for the PAGA Payments.** The
13 Individual Settlement Amount for each PAGA Member will be calculated by the Settlement
14 Administrator using the Class Data provided by Defendant. The Settlement Administrator will
15 calculate the number of PAGA Work Weeks by calculating the number of days each PAGA
16 Member was employed using their original hire date and final termination date, excluding any
17 time they were unemployed in between during that time period, during the PAGA Period,
18 dividing by seven (7), and rounding up to the nearest whole number. PAGA Members shall
19 receive their portion of the PAGA Penalties regardless of their decision to opt-out of the class
20 settlement.

21 **4. Taxes and Withholdings.** Each Settlement Share is intended, in part, to
22 settle the Class Members’ claims for unpaid wages. Each Class Member shall be individually
23 responsible for the employee’s share of applicable payroll tax withholdings and deductions.
24 Accordingly, each Settlement Share allocated to wages will be reduced by applicable employee-
25 side payroll tax withholdings and deductions, and the Settlement Administrator will issue a Form
26 W-2 to each Participating Class Member. Defendant will be responsible for the normal
27 employer’s share of any payroll tax attributable to the wage portion of the Settlement Share
28 payments. Defendant’s payment of the normal employer’s share of payroll taxes attributable to

1 the wage portion of the Settlement Share payments will be in addition to the Gross Settlement
2 Amount or Net Settlement Amount.

3 **E. Appointment of Settlement Administrator.** The Parties will ask the Court to
4 appoint Phoenix Settlement Administrators, a qualified administrator, to serve as the Settlement
5 Administrator, which, as a condition of appointment, will agree to be bound by this Agreement
6 with respect to the performance of its duties and its compensation. The Settlement
7 Administrator's duties will include preparing, printing, and mailing the Class Notice to all Class
8 Members; and using reasonable measures to contact all Class Members, including conducting a
9 National Change of Address search on all Class Members before mailing the Class Notice to
10 each Class Member's address. The Settlement Administrator's duties will also include re-mailing
11 the Class Notice to the Class Member's new address for those Class Members whose address has
12 changed; providing the Parties with weekly status reports about the delivery of Class Notice;
13 calculating Settlement Shares; issuing and distributing checks to effectuate the payments due
14 under the Settlement; reporting to the Court as required; and otherwise administering the
15 Settlement pursuant to this Agreement. The Settlement Administrator's reasonable fees and
16 expenses, including the cost of printing and mailing the Class Notice, will be paid out of the
17 Gross Settlement Amount, as set forth herein, subject to Court approval. Any portion of the of
18 the Settlement Administrator's fees and expenses that are not used or which are not awarded by
19 the Court will not revert to Defendant, but instead will be part of the Net Settlement Amount for
20 distribution to Participating Class Members. If the Settlement Administrator's fees and expenses
21 exceed Ten Thousand Dollars and No Cents (\$10,000.00), such cost will be deducted from the
22 Net Settlement Amount.

23 **IV. PROCEDURES FOR APPROVING SETTLEMENT**

24 **A. Motion for Preliminary Approval of Settlement by the Court.** Class Counsel
25 will move the Court for an order granting Preliminary Approval of the Settlement (the "Motion
26 for Preliminary Approval"), setting a date for the Final Approval Hearing, and approving the
27 Class Notice (attached as **Exhibit A** to this Agreement), the Exclusion Request form (attached
28 as **Exhibit B** to this Agreement), and the Work Weeks Dispute form (attached as **Exhibit C** to

1 this Agreement). Any disagreement among the Parties concerning the Class Notice or other
2 documents necessary to implement the Settlement will be referred to the Court.

3 **1.** At the hearing on the Motion for Preliminary Approval, the Parties
4 anticipate that they will appear and support the granting of the motion, and that Class Counsel
5 will submit an Order Granting Preliminary Approval of Settlement, Approval of Notice to Class
6 and Setting Hearing for Final Approval of Settlement.

7 **2.** Should the Court decline to approve the Settlement, the Settlement will be
8 null and void and the Parties will have no further obligations under it.

9 **B. Notice to Class Members.** After the Court enters its order granting Preliminary
10 Approval of the Settlement, every Class Member will be provided with a “Class Notice.”

11 **1. List of Class Members.** Within fourteen (14) days after the Court grants
12 Preliminary Approval of the Settlement, Defendant shall provide to the Settlement Administrator
13 only:

14 **(a)** An electronic database of all Class Members, last known mailing
15 address, Social Security number, Defendant’s employee identification number, and dates of
16 employment as non-exempt employees (“Class Members’ Data”).

17 **(b)** Corresponding to each Class Member’s name, Defendant shall
18 provide a figure indicating the dates of employment as a non-exempt employee in the State of
19 California at any time during the Class Period so that the Settlement Administrator can calculate
20 the total number of Work Weeks during the Class Period in which that Class Member was
21 employed by Defendant as a Class Member. That number of Work Weeks shall be referred to as
22 that Class Member’s “Individual Work Weeks.”

23 **(c)** If any of the Class Members’ Data are unavailable to Defendant,
24 Defendant will so inform Class Counsel and the Parties will make its best efforts to reconstruct
25 or otherwise agree upon the Class Members’ Data prior to when it must be submitted to the
26 Settlement Administrator. Class Members’ Data will otherwise remain confidential and will not
27 be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to
28 Defendant’s express written authorization or by order of the Court.

1 **2. Mailing of Class Notice.** Within fourteen (14) days after receiving the
2 Class Members' Data, or as soon thereafter as it can do so, the Settlement Administrator will
3 mail the Class Notice to all identified Class Members via first-class U.S. mail using the mailing
4 address information provided by Defendant, unless modified by any updated address information
5 that the Settlement Administrator obtains in the course of administration of the Settlement.

6 **3. Returned Class Notice.** If a Class Notice is returned because of an
7 incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days
8 from receipt of the returned Class Notice, search for a more current address for the Class Member
9 and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the
10 Class Members' Data and otherwise work with Defendant's Counsel and Class Counsel to find
11 a more current address. The Settlement Administrator will be responsible for taking reasonable
12 steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing
13 address of any Class Member for whom a Class Notice is returned as undeliverable by the U.S.
14 Postal Service. These reasonable steps shall include the tracking of all undelivered mail;
15 performing address searches for all mail returned without a forwarding address, including but not
16 limited to a skip trace; and promptly re-mailing to Class Members for whom new addresses are
17 found. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records
18 and notify Class Counsel and Defendant's Counsel of the date and address of each such re-
19 mailing as part of a weekly status report provided to the Parties.

20 **4. Declaration of Settlement Administrator.** Not later than twenty-one
21 (21) court days prior to the Final Approval Hearing, the Settlement Administrator will provide
22 the Parties for filing with the Court a declaration of due diligence setting forth its compliance
23 with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement
24 Administrator will supplement its declaration of due diligence if any material changes occur from
25 the date of the filing of its prior declaration.

26 **C. Disputed Class Member Settlement Shares.** If a Class Member disputes his/her
27 estimated Settlement Share, the Class Member may produce evidence to the Settlement
28 Administrator for the Class Period. In order for the dispute to be considered, he/she must follow

1 the directions on the Class Notice. To be valid and timely, all disputes and supporting documents
2 must be postmarked by the date specified in the Class Notice (no less than 60 days from the initial
3 mailing of the Class Notice by the Settlement Administrator). A Class Member may use the Work
4 Weeks Dispute form (**Exhibit C** to this Settlement), though a Class Member is not obligated to
5 do so to request exclusion from the Settlement.

6 **D. Requests for Exclusion from Settlement; and Objections to Settlement.** Class
7 Members may submit requests to be excluded from the effect of the Settlement, or objections to
8 the Settlement, pursuant to the following procedures:

9 **1. Request for Exclusion from Settlement.** A Class Member may request
10 to be excluded from the effect of this Agreement, and any payment of amounts under this
11 Agreement, by timely mailing a letter to the Settlement Administrator stating that the Class
12 Member wants to be excluded from this Action. This letter must include the Class Member's
13 name, address, telephone number, and signature. To be valid and timely, the request to be
14 excluded must be postmarked by the date specified in the Class Notice (no more than 60 days
15 from the initial mailing of the Class Notice by the Settlement Administrator). A Class Member
16 may use the Exclusion Request form (**Exhibit B** to this Settlement), though a Class Member is
17 not obligated to do so to request exclusion from the Settlement. A Class Member who properly
18 submits a valid and timely request to be excluded from the Action shall not receive any payment
19 of any kind in connection with this Agreement or this Action, shall not be bound by or receive
20 any benefit of this Agreement, and shall have no standing to object to the Settlement. A request
21 for exclusion must be mailed to the Settlement Administrator at the address provided on the Class
22 Notice. The Settlement Administrator shall transmit the request for exclusion to counsel for the
23 Parties as follows:

24 *To Class Counsel:*

25 David G. Spivak, Esq.
26 The Spivak Law Firm
27 8605 Santa Monica Blvd., PMB 42554
28 West Hollywood, CA 90069

To Defense Counsel:

Thalia S. Rofos, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
Thalia S. Rofos Esq.
650 Town Center Drive
Suite 1400

///

2. Objections to Settlement. The Class Notice will provide that any Class Member who does not request exclusion from the Action and who wishes to object to the Settlement should submit an objection in writing to the Settlement Administrator not later than 60 days after the Settlement Administrator mails the Class Notice. The written objection to the Settlement should set forth the grounds for the objection and the other information required by this paragraph. The objection should be mailed to the Settlement Administrator at the address provided on the Class Notice. The Settlement Administrator shall transmit the objections to counsel for the Parties as follows:

To Class Counsel:

David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Blvd., PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Thalia S. Rofos, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
Thalia S. Rofos Esq.
650 Town Center Drive
Suite 1400
Costa Mesa, CA 92626

Counsel will promptly file such objection with the Court.

The written objection should state the objecting Class Member's full name, address, and the approximate dates of his or her employment with Defendant. The written objection should state the basis for each specific objection and any legal support in clear and concise terms. The written objection also should state whether the Class Member intends to formally intervene and become a party of record in the action, and upon formally intervening, appear and argue at the Final Approval Hearing.

Regardless of whether an objecting Class Member complies with the objection procedure encouraged above, the Court will provide a Class Member with the opportunity to speak at the final approval hearing regardless of whether he or she has filed an appearance or submitted a written opposition beforehand. If the objecting Class Member does not formally intervene in the action and/or the Court rejects the Class Member's objection, the Class Member will still be bound by the terms of this Agreement.

1 **E. Report.** Not later than fourteen (14) days after the deadline for submission of
2 requests for exclusion, the Settlement Administrator will provide the Parties with a complete and
3 accurate list of all Class Members who sent timely requests to be excluded from the Action and
4 all Class Members who objected to the settlement.

5 **F. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
6 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member
7 to seek exclusion from the Settlement, object to the Settlement, or to appeal from the Judgment.
8 If Class Members accounting for more than 5.00% of the Class submit valid requests to be
9 excluded from the Settlement, then Defendant shall have the unilateral right to void this
10 Settlement. Defendant may do so by giving notice to Class Counsel and the Court of its election
11 to void the Settlement not later than seven (7) days before the Final Approval Hearing. No sums
12 shall be payable by Defendant if this Agreement is voided as provided for herein with one
13 exception: Defendant agrees to pay any fees owing to the Settlement Administrator for services
14 rendered in the event Defendant exercises its right to void the Settlement.

15 **G. Additional Briefing and Final Approval.** Plaintiff will file with the Court a
16 motion for final approval of the Settlement and payment of the Settlement Administrator's
17 reasonable fees and expenses and a memorandum in support of their motion; and Plaintiff and
18 Class Counsel will serve on Defendant and file with the Court a motion for awards of the Class
19 Representative Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation
20 Expenses Payment pursuant to this Settlement, and memoranda in support of their motions.

21 Before the Final Approval Hearing, the Parties shall be entitled to file and serve a
22 response to any Class Member's objection to the Settlement and/or reply in support of their
23 motion for final approval of the Settlement, and payment of the Settlement Administrator's
24 reasonable fees and expenses to the extent that any opposition to the motion is filed; and Plaintiff
25 and Class Counsel may file replies in support of their motions for the Class Representative
26 Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.

27 If the Court ultimately does not grant final approval of the Settlement or grants final
28 approval conditioned on any material change to the Settlement, then either Party will have the

1 unilateral right to void the Settlement in its entirety; if that occurs, the Parties will have no further
2 obligations under the Settlement, including any obligation by Defendant to pay the Gross
3 Settlement Amount or any amounts that otherwise would have been payable under this
4 Agreement, except that Defendant and Plaintiff will jointly and equally pay the Settlement
5 Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the
6 right to void the Settlement under this Paragraph. However, an award by the Court of a lesser
7 amount than that sought by Plaintiff and Class Counsel for the Class Representative Payment,
8 the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not
9 constitute a material modification to the Settlement within the meaning of this Paragraph and
10 shall not render the Settlement voidable. Plaintiff and Class Counsel shall retain the right to
11 appeal awards of attorneys' fees and costs less than requested.

12 Upon final approval of the Settlement by the Court at or after the Final Approval Hearing,
13 the Parties will present for the Court's approval and entry a Proposed Final Order and Judgment.
14 The Final Order and Judgment shall permanently bar all Participating Class Members from
15 prosecuting against Defendant any claims within the scope of the Releases contained in this
16 Agreement.

17 After entry of the Judgment, the Court will have continuing jurisdiction over the Action
18 and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement
19 administration matters, and (iii) addressing such post-Judgment matters as may be appropriate
20 under court rules or applicable law.

21 **H. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the
22 terms and conditions of this Agreement, and that no Class Member timely objects to the
23 Settlement and formally intervenes into the action as required under the California Supreme
24 Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260, 228 Cal. Rptr. 3d 106
25 (2018) or files a motion pursuant to Civil Procedure Code section 663, Defendant, and its
26 respective counsel hereby waive, except as provided for in this Agreement or prohibited by law,
27 any and all rights to appeal from the Judgment, including all rights to any post-judgment
28 proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new

1 trial, any extraordinary writ, and any appeal, and the Judgment therefore will become non-
2 appealable at the time it is entered. The waiver of appeal does not include any waiver of the right
3 to oppose any appeal, appellate proceedings, or post-judgment proceedings. If an appeal is taken
4 from the Judgment, the time for consummation of the Settlement (including making any
5 payments under the Settlement) will be suspended until the appeal is fully and finally resolved
6 and the Judgment, consistent with the terms of this Agreement, becomes Final.

7 **I. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
8 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
9 motion, petition, writ, application, or appeal, the reviewing court vacates, reverses, or modifies
10 the Judgment such that there is a material modification to the Settlement, and that court's decision
11 is not completely reversed and the Judgment is not fully affirmed on review by a higher court,
12 then either Plaintiff or Defendant will have the unilateral right to void the Settlement, which the
13 Party must do by giving written notice to the other Parties, the reviewing court, and the Court,
14 not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or
15 materially modifying the Judgment becomes final. The Party exercising its right to unilaterally
16 void the Settlement pursuant to this provision agrees to pay any fees owing to the Settlement
17 Administrator for services rendered. An order vacating, reversing or modifying the Court's award
18 of the Class Representative Payment, or the Class Counsel Fees Payment and/or Class Counsel
19 Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of
20 the Judgment within the meaning of this paragraph, and shall not render the Settlement voidable.

21 **J. Establishment of Settlement Account.** The Settlement Administrator shall
22 establish a Settlement Account for distributing Settlement Shares and Payments identified in this
23 Agreement. Within fourteen (14) calendar days of the Effective Date, Defendant shall pay the
24 Gross Settlement Amount into the Settlement Account.

25 **K. Payment of Settlement Shares.** Within ten (14) calendar days of receipt of the
26 Gross Settlement Amount, the Settlement Administrator shall pay Settlement Shares, from the
27 Settlement Account, to all Class Members (who do not submit valid requests to be excluded from
28 the Action). The Settlement Administrator shall pay each Settlement Share by sending a check

1 in the appropriate amount to the Class Member at the address indicated in the list of Class
2 Member names and addresses provided by Defendant, or as subsequently determined by the
3 Settlement Administrator to be the correct address.

4 **L. Uncashed Settlement Share Checks.** Any check issued by the Settlement
5 Administrator to Class Members who do not timely and validly opt out shall be negotiable for
6 one hundred and eighty (180) calendar days. Those funds represented by checks returned as
7 undeliverable and those checks remaining un-cashed for more than 180 days after issuance
8 (collectively, “Voided Settlement Checks”), plus any interest that has accrued on those funds,
9 will be paid to the California Unclaimed Property Fund.

10 **M.** The Settlement Administrator will mail or wire all required payments no later than
11 fourteen (14) calendar days after receipt of the funds representing the Gross Settlement Amount
12 from Defendant. Proof of payment will be filed with the Court.

13 **N. Final Report by Settlement Administrator to Court.** Within ten (10) calendar
14 days after final disbursement of all funds from the Settlement Account, the Settlement
15 Administrator will serve on the Parties for filing with the Court a declaration providing a final
16 summary report on the disbursements of all funds from the Settlement Account.

17 **V. RELEASE OF CLAIMS**

18 **A. Plaintiff and Class Members.** The Parties agree that it is their intent that the
19 resolution set forth in this Settlement will release any further attempt, by lawsuit, administrative
20 claim or action, arbitration, demand, or other action of any kind by each and all of the Settlement
21 Class Members (including participation to any extent in any representative or collective action),
22 against Defendant and all of those entities’ and individual’s past, present and future agents,
23 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
24 stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations, divisions,
25 joint venturers, assigns, predecessors, successors, service providers, insurers, consultants,
26 subcontractors, joint employers, employee benefit plans and fiduciaries thereof, affiliated
27 organizations, and all persons acting under, by, through or in concert with any of them, and each
28 of them, arising during the period August 25, 2016 through March 15, 2022, and arising from,

1 could have been asserted, or related in any way to the claims asserted in the Action against
2 Defendant based on the facts pleaded in the Operative Complaint. The Settlement Class Members
3 will release and discharge Defendant, and any of its former and present parents, subsidiaries,
4 owners, shareholders, officers, directors, employees, affiliates, successors, assigns, agents,
5 attorneys, legal representatives (“Released Parties”). This release will not take effect until
6 Defendant has paid the Gross Settlement Amount in full per this Settlement Agreement.

7 **B. Class Counsel.** As of the date the Judgment becomes Final, and except as
8 otherwise provided by this Agreement, Class Counsel and any counsel associated with Class
9 Counsel (The Spivak Law Firm and United Employees Law Group), including without limitation
10 David G. Spivak, Esq. and Walter L. Haines, Esq., waive any claim to costs and attorneys’ fees
11 and expenses against Defendant or the Releasees arising from or related to the Action, except
12 those incurred to enforce this Agreement and collect the Judgment, including but not limited to
13 claims based on the California Labor Code, the California Civil Code, the California Code of
14 Civil Procedure, the Fair Labor and Standards Act, or any other statute or law (the “Class Counsel
15 Released Claims”).

16 **C. Released Claims.** Released Claims by the Participating Class Members include
17 all claims alleged in the operative First Amended Complaint along with related claims that could
18 have been alleged based on the facts alleged in the operative First Amended Complaint including:
19 (1) claims for unpaid wages (including but not limited to overtime pay, minimum wage, regular
20 wages, missed meal period premium pay, missed rest period premium pay, failure to pay wages
21 of terminated or resigned employees, or other benefits), and claims for interest, penalties, or
22 premiums in connection therewith, as well as any claims under the California Labor Code, any
23 applicable California Wage Order(s); (2) claims for failure to comply with the employee itemized
24 wage statement provision under California Labor Code section 226; (3) claims for failure to
25 provide or make available meal and rest periods as required under California Labor Code §512
26 and IWC Wage Orders; (4) claims for failure to indemnify as required under California Labor
27 Code §§1198 and 2802); (5) penalties for violations of the California Labor Code; (6) violation
28 of California Business and Professions Code Section 17200, et seq.; and (7) all other claims under

1 California common law, the California Labor Code, California Wage Orders, the California
2 Business and Professions Code, set forth in the Complaint including alleged violation of
3 California Labor Code sections 201-204, 210, 215-216, 218.5, 225.5, 226, 226.3, 226.6, 226.7,
4 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699, 2699.3,
5 2699.5, 2802, California Civil Code sections 1021.5, 3287, 3288, California Business and
6 Professions Code sections 17000 and 17200 et. seq., the relevant Wage Orders issued by the
7 Industrial Welfare Commission, or any other claim for any statutory or civil penalty that have
8 been, or could have been, asserted based on the facts alleged in the First Amended Complaint
9 under California law that arise from the allegations as pled including claims for damages,
10 reimbursement, restitution, losses, penalties, fines, liens, attorney's fees, costs, expenses, debts,
11 interest, injunctive or declaratory relief, liquidated damages or similar relief. The Final Judgment
12 shall cover and bar each and every Participating Class Member from asserting any Released
13 Claims in the future. PAGA claims – include the underlying claims alleged in the PAGA notice
14 letter and Plaintiff's Operative Complaint - will be released, and PAGA Members will be entitled
15 to their portion of the PAGA Payment, regardless of whether or not the Participating Class
16 Member opts-out or excludes him or herself from the Class.

17 **D. Dismissal of the Rollman Action.** Ten calendar days following the preliminary
18 approval of the settlement, the Parties will stipulate to dismiss with prejudice *Shane Rollman v.*
19 *American Merchandising Specialists, Inc.* action, USDC Case No.: 2:20-CV-02371-KJM-JDP.

20 **VI. NON-PUBLICITY PROVISION**

21 The Parties and their counsel agree that they will not issue any press releases, initiate any
22 contact with the press, respond to any press inquiry, or have any communication with the press
23 about the fact, amount, or terms of the Settlement. In addition, the Parties and their counsel agree
24 that they will not engage in any advertising or distribute any marketing materials relating to the
25 Settlement of this case in any manner that identifies the Defendant, including but not limited to
26 any postings on any websites maintained by Class Counsel. Neither Plaintiff nor Class Counsel
27 will discuss the terms or the fact of the Settlement with third parties other than (1) their immediate
28 family members, (2) their respective accountants or lawyers as necessary for tax purposes; or (3)

1 other Class Members. Plaintiff and Class Counsel agree not to publish any of the terms or
2 conditions of this Settlement in any manner that identifies the Defendant. However, Class
3 Counsel may identify this Settlement in other matters to demonstrate their adequacy as counsel
4 in such other matters.

5 **VII. MISCELLANEOUS TERMS**

6 **A. No Effect on Other Benefits.** The Settlement Shares will not result in any
7 additional employee benefit payments (such as pension, ERISA, 401(k), vacation, or bonus) and
8 shall not have any effect on the eligibility for, or calculation of, any employee benefit. Plaintiff
9 and Class Members will be deemed to have waived all such claims, whether known or unknown
10 by them, as part of their release of claims under this Agreement.

11 **B. No Admission of Liability.** Defendant denies that it has engaged in any unlawful
12 activity, has failed to comply with the law in any respect, or has any liability to anyone under the
13 claims asserted in the Action. This Agreement is entered into solely for the purpose of
14 compromising highly disputed claims. Nothing in this Agreement is intended or will be construed
15 as an admission of liability or wrongdoing by Defendant, or an admission by Plaintiff that any of
16 his claims was non-meritorious or any defense asserted by Defendant was meritorious. This
17 Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have
18 no bearing on, and will not be admissible in connection with, any litigation (other than solely in
19 connection with the Settlement).

20 **C.** Whether or not the Judgment becomes Final, neither the Settlement, this
21 Agreement, any document, statement, proceeding or conduct related to the Settlement or the
22 Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or
23 admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to
24 Defendant or any other Releasees, including, but not limited to, evidence of a presumption,
25 concession, indication or admission by any of the Releasees of any liability, fault, wrongdoing,
26 omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any
27 of the Releasees, in any further proceeding in the Action, or any other civil, criminal or
28 administrative action or proceeding except for purposes of effectuating the Settlement pursuant

1 to this Agreement.

2 **D. Integrated Agreement.** After this Agreement is signed and delivered by all
3 Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement
4 between the Parties relating to the Settlement, and it will then be deemed that no oral
5 representations, warranties, covenants, or inducements have been made to any Party concerning
6 this Agreement or its exhibits other than the representations, warranties, covenants, and
7 inducements expressly stated in this Agreement and its exhibits.

8 **E. Attorney Authorization.** Class Counsel and Defense Counsel warrant and
9 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
10 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
11 its terms, and to execute any other documents required to effectuate the terms of this Agreement.
12 The Parties and their counsel will cooperate with each other and use their best efforts to effect
13 the implementation of the Settlement. In the event the Parties are unable to reach agreement on
14 the form or content of any document needed to implement the Agreement, or on any supplemental
15 provisions that may become necessary to effectuate the terms of this Agreement, the Parties will
16 seek the assistance of the Court, and in all cases, all such documents, supplemental provisions
17 and assistance of the court will be consistent with this Agreement.

18 **F. Modification of Agreement.** This Agreement, and all parts of it, may be
19 amended, modified, changed, or waived only by an express written instrument signed by all
20 Parties or their successors-in-interest.

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

23 **H. Applicable Law.** All terms and conditions of this Agreement and its exhibits will
24 be governed by and interpreted according to the laws of the State of California, without giving
25 effect to any conflict of law principles or choice of law principles.

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

1 **J. Fair Settlement.** The Parties and their respective counsel believe and warrant that
2 this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived
3 at this Agreement through arms-length negotiations, considering all relevant factors, current and
4 potential.

5 **K. Headings.** The descriptive heading of any section or paragraph of this Agreement
6 is inserted for convenience of reference only and does not constitute a part of this Agreement.

7 **L. Notice.** All notices, demands or other communications given under this
8 Agreement will be in writing and deemed to have been duly given as of the third calendar day
9 after mailing by United States mail, addressed as follows:

10
11 *To Class Counsel:*
12 David G. Spivak, Esq.
13 The Spivak Law Firm
14 8605 Santa Monica Blvd., PMB 42554
15 West Hollywood, CA 90069

To Defense Counsel:
 Thalia S. Rofos, Esq.
 Lewis Brisbois Bisgaard & Smith, LLP
 Thalia S. Rofos Esq.
 650 Town Center Drive
 Suite 1400
 Costa Mesa, CA 92626

16 **M. Execution in Counterpart.** This Agreement may be executed in one or more
17 counterparts. All executed counterparts and each of them will be deemed to be one and the same
18 instrument provided that counsel for the Parties will exchange between themselves original
19 signed counterparts. Facsimile signatures will be presumptive evidence of execution of the
20 original, which shall be produced on reasonable request. Any executed counterpart will be
21 admissible to prove the existence and contents of this Agreement.

22
23 Dated: 02 / 08 / 2023

By: 

LUIS LARRABURU

24
25 Dated:

By: _____

ANGELA FOX
Vice President of Human Resources
AMERICAN MERCHANDISING
SPECIALISTS, INC.

J. Fair Settlement. The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, considering all relevant factors, current and potential.

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

L. Notice. All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third calendar day after mailing by United States mail, addressed as follows:

To Class Counsel:
David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Blvd., PMB 42554
West Hollywood, CA 90069

To Defense Counsel:
Thalia S. Rofos, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
Thalia S. Rofos Esq.
650 Town Center Drive
Suite 1400
Costa Mesa, CA 92626

M. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Agreement.

Dated:

By:

LUIS LARRABURU

Dated: 2/8/2023

By:

DocuSigned by:

David Balke

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DAVID BALKE

Chief Financial Officer
AMERICAN MERCHANDISING
SPECIALISTS, INC.

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THE SPIVAK LAW FIRM

Dated:

By: _____
DAVID G. SPIVAK,
MAYA CHEAITANI, Attorneys for
Plaintiff, LUIS LARRABURU, and all
others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: February 8, 2023

By:  _____
WALTER L. HAINES, Attorney for
Plaintiff, LUIS LARRABURU, and all
others similarly situated

LEWIS BRISBOIS BISGAARD & SMITH,
LLP

Dated:

By: _____
EFTHALIA S. ROFOS, Attorneys for
Defendant, AMERICAN
MERCHANDISING SPECIALISTS,
INC.

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THE SPIVAK LAW FIRM

Dated:

By:

DAVID G. SPIVAK,
MAYA CHEAITANI, Attorneys for
Plaintiff, LUIS LARRABURU, and all
others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated:

By:

WALTER L. HAINES, Attorney for
Plaintiff, LUIS LARRABURU, and all
others similarly situated

LEWIS BRISBOIS BISGAARD & SMITH,
LLP

Dated: February 8, 2023

By:

Armine Antonyan

EFTHALIA S. ROFOS,
ARMINE ANTONYAN, Attorneys for
Defendant, AMERICAN
MERCHANDISING SPECIALISTS,
INC.

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EXHIBIT A

1 **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND**
2 **HEARING DATE FOR COURT APPROVAL**

3 *Luis Larraburu v. American Merchandising Specialists, Inc., Case No. 21STCV17704*

4 **As a current or former non-exempt employees of American Merchandising Specialists,**
5 **Inc. in California, you may be entitled to receive money from a class action settlement.**

6 Phoenix ID: <<Phoenix ID>>
7 <<Name>>
8 <<Address1>>
9 <<Address2>>
10 <<City>>, <<State>> <<Zip
11 Code>>

Please provide current address (if different) here:

12 *The Los Angeles County Superior Court has authorized this Class Notice.*
13 *This is not a solicitation from a lawyer.*

14 YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION
15 SETTLEMENT IF YOU ARE A CURRENT OR FORMER NON-EXEMPTEMPLOYEE OF
16 AMERICAN MERCHANDISING SPECIALISTS, INC. WHO WORKED IN THE STATE OF
17 CALIFORNIA BETWEEN AUGUST 25, 2016 AND MARCH 15, 2022.

- 18 • A proposed settlement of \$215,000.00 (the “Gross Settlement Amount”) will be used to pay
19 claims to: All persons Defendant American Merchandising Specialists, Inc. employed as non-
20 exempt employee in the State of California during the “Class Period” of August 25, 2016 to
21 March 15, 2022 (the “Class Members”). The Gross Settlement Amount includes (a) expenses
22 and fees of the Settlement Administrator up to \$10,000.00; (b) a Class Representative
23 Payment of \$15,000.00 to the Plaintiff Luis Larraburu as the class representative; (c)
24 attorneys’ fees of up to \$71,666.66 and litigation expenses of up to \$17,500.00 to Class
25 Counsel; and (d) \$4,000.00 allocated to settle claims brought pursuant to the Private
26 Attorneys General Act, California Labor Code Section 2698, *et seq.* (“PAGA”)(75% of which
27 will go to the California Labor & Workforce Development Agency (“LWDA”) and 25% of
28 which will go to Class Members). The Court must approve these payments at the Final
Approval Hearing.
- Defendant estimated for purposes of settlement negotiations leading up to the Settlement that
there are 6042.00 Work Weeks by 115 Class Members for the period of August 25, 2016
through November 15, 2021. These numbers would be expected to increase proportionately
for the passage of time between that date and the time of court approval. Before the Parties
seek or a Party seeks final court approval of the Settlement, the Settlement Administrator will
advise Plaintiff’s counsel of Defendant’s report of the total number of Work Weeks and Class
Members. If the Work Weeks and/or Class Members as of the date the Court approves the
settlement exceeds the referenced 6042.00 Work Weeks and/or 115 Class Members by more
than 10.00%, the Gross Settlement Amount, including the Class Counsel Fees Payment, the
Class Representative Payment, and the LWDA payment, will increase proportionally

1 according to the number of additional Work Weeks or Class Members, whichever results in
2 a higher increase in the Gross Settlement Amount.

3 The Settlement Administrator shall assign to each Class Member a “Settlement Ratio,” which
4 shall be a fractional number comprised of (a) that Class Member’s Individual Work Weeks
5 as the numerator, and (b) the aggregate total of all Class Members’ Individual Work Weeks
6 as the denominator. The Settlement Administrator shall assign to each Class Member the
7 “Settlement Share” which shall be calculated by multiplying that Class Member’s Settlement
8 Ratio by amount allocated to Class Members from the Net Settlement Amount. Class
9 Members will receive a payment based on the number of Work Weeks, rounded up to the
10 nearest full Work Week, during the Class Period.

- 11 • The Individual Settlement Amount for each PAGA Member will be calculated by the
12 Settlement Administrator using the Class Data provided by Defendant. The Settlement
13 Administrator will calculate the number of PAGA Work Weeks by calculating the number
14 of days each PAGA Member was employed using their original hire date and final
15 termination date, excluding any time they were unemployed in between during that time
16 period, during the PAGA Period, dividing by seven (7), and rounding up to the nearest whole
17 number. PAGA Members shall receive their portion of the PAGA Penalties regardless of
18 their decision to opt-out of the class settlement.
- 19 • The settlement resolves a lawsuit entitled *Luis Larraburu v. American Merchandising*
20 *Specialists, Inc.*, Case No. 21STCV17704 (the “Action”) for Defendant’s alleged failure to
21 pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure
22 to indemnify for business expenses, failure to issue proper wage statements, failure to timely
23 pay wages, and other legal consequences that would follow from these failures, including
24 claims under California’s Business & Professions Code and PAGA. This settlement avoids
25 the costs and risks from continuing the Action, pays money to persons like you, and releases
26 Defendant from alleged liability.
- 27 • The Court has not made a determination of the validity of the claims in the Action. Defendant
28 denies any and all liability arising from any of the claims and contends that at all relevant
times it properly compensated the Class Members, provided lawful meal periods, authorized
and permitted lawful rest breaks, reimbursed for all work expenses, provided accurate
itemized wage statements, timely paid wages, and fully complied with all applicable laws.

**PLEASE READ THIS ENTIRE CLASS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED BY IT.**

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

All current and former non-exempt employees who work or worked for Defendant at any time during the period of August 25, 2016 to March 15, 2022 (“Class Period”). The “Participating Class Members” does not include any person who submits a timely and valid request for exclusion as provided in this Notice.

WHO IS INCLUDED IN THE PAGA SETTLEMENT CLASS?

1 All Participating Class Members who worked for Defendant at any time during the period of
2 August 20, 2019 to March 15, 2022 (“PAGA Period”). The PAGA Members includes any person
3 worked during the PAGA Period even if that person submits a request for exclusions as provided
in this Notice.

4 HOW MUCH WILL I GET?

5 You have a total number of <<number of Work Weeks>> Work Weeks during the Class Period
6 You have a total number of <<number of Work Weeks>> Work Weeks during the PAGA Period.

7 It is expected that you will receive approximately <<\$____>> from this Settlement as your
8 Settlement Share and <<\$____>> as your Individual Settlement Payment form the PAGA
9 Payment.

10 YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

11 DO NOTHING	Receive a payment and give up your legal rights to pursue claims released by the settlement of the Action.
12 OPT OUT	Receive no payment and retain your legal rights to pursue class claims that would otherwise be released by the settlement of the Action.
13 OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, Phoenix, about why you do not like the settlement and they will forward your concerns to counsel which will then be provided to the Court.
14 DISPUTE THE WORK WEEK CALCULATION	If you feel that you worked a different amount of Work Weeks as a non-exempt employee by Defendant than identified above, you may dispute that calculation by writing to the Settlement Administrator.
15 ATTEND A HEARING	You have the right to attend a fairness hearing that will be conducted by the Court, but you are not required to attend. If you timely file and serve a written objection, and if you also want to speak about your objection at the hearing, you should send a letter to the Settlement Administrator, Phoenix, providing notice of your intention to appear and speak at the hearing.

18 IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT

19 1. Why did I get this Class Notice?

20 You were sent this Class Notice because you have a right to know about the proposed settlement
21 in the Action and about all of your options before the Court rules on whether to finally approve
22 the settlement. If the Court approves the settlement, and after any objections and appeals are
23 resolved, a “Settlement Administrator” appointed by the Court will make the payments that the
24 settlement allows. This Class Notice explains the Action, the proposed settlement, your legal
25 rights, and what benefits are available and how to receive them.

1 The Court in charge of this case is the Los Angeles County Superior Court. The person who sued
2 is called “Plaintiff” and the organization he sued is called “Defendant.”

3 2. What is the Action about?

4 In the Action, Luis Larraburu (“Plaintiff”) alleged multiple violations of the California Labor
5 Code, the California Business & Professions Code, and PAGA, including causes of action for:
6 failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods,
7 failure to indemnify for business expenses, failure to issue proper wage statements, failure to
timely pay wages, unfair competition under California’s Business & Professions Code, and
claims for civil penalties for violations of the PAGA.

8 ///

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3. Why is there a settlement?

10 The parties disagree on the probable outcome of the case with respect to liability, damages, and
11 how much money could be recovered if the Plaintiff won at trial. Defendant believes the Plaintiff
12 would not prevail if this case went to trial. The Court has not decided in favor of the Plaintiff or
13 Defendant. There has been no trial in this case. Instead, both sides recognize the risks, expenses,
14 and disruption associated with continued litigation and they have therefore chosen to resolve
15 their differences by entering into a settlement. By doing so, the parties can avoid the cost of a
16 trial, yet Class Members are still entitled to receive payments if they comply with the instructions
in this Class Notice. The parties entered into this settlement after arms-length negotiations while
using the services of an experienced and neutral mediator. The Plaintiff and Class Counsel
believe that the proposed settlement is fair and reasonable and is in the best interest of the Class
Members.

4. What is a class action settlement?

18 The Court must approve the terms of the proposed settlement as fair and reasonable. Once
19 approved, the settlement will affect all Class Members, except those who have properly opted
20 out. This Class Notice explains your legal rights, the terms of the settlement, what you must do
21 to participate, and the amount of money you may receive. Please read this entire Class Notice
carefully.

5. What should I do?

23 You can do nothing, and if you are entitled to a payment, you will be paid. Be mindful, however,
24 that if this Class Notice reaches you and the address where you now live is different, you need
25 to contact the Settlement Administrator and provide updated information so that any future
correspondence or the settlement check itself reaches you and is not returned as an address
unknown.

26 Class Members will be notified of the final judgment through a website maintained by the
27 Settlement Administrator. The Settlement Administrator will set up the website and post all
relevant documents including the notice of the final judgment

1 6. How much will my payment be?

2 After all fees, costs, and offsets are taken as set forth under the Settlement Agreement (which is
3 available for review), the remainder will be used to pay Class Members a pro-rata payment based
4 on the number of Work Weeks each Class Member worked during the Class Period (“Pro-Rata
Share”).

5 The Settlement Administrator shall determine by how many Work Weeks each such Class
6 Member has.

7 Your estimated payment is listed above, on page 2 of this document. If you do not dispute your
8 Work Weeks calculation, and do not opt out of the settlement, you will be bound by the
9 settlement and receive a settlement payment. **In other words, you do not need to take any
action to receive a settlement payment.**

10 If you wish to dispute the number of Work Weeks credited to you or anything else about your
11 employment status, you must write to the Settlement Administrator indicating what you believe
12 is incorrect and return it on or before <<date>> [60 days after initial mailing] via U.S. Mail with
13 proof of the submission date (such as a postmark or delivery service date stamp). You may use
14 the enclosed Work Weeks Dispute Form for this purpose. If the Settlement Administrator re-
15 mailed your Class Notice to a new address, you will have additional 30 days from the date of the
16 re-mailed Class Notice to write to the Settlement Administrator to dispute your Work Weeks
information. You must also send any documents or other information that you contend supports
your belief that the information set forth above is incorrect. The Settlement Administrator will
resolve any dispute based upon Defendant’s records and any information you provide. Please be
advised that the information on this Notice is presumed to be correct unless the documents you
submit are company records from Defendant.

17 7. When would I get my payment?

18 The Court will hold a hearing on <<final approval hearing date>> at <<final approval hearing
19 time>> .m to decide whether to approve the proposed settlement. If the Court approves the
20 settlement and anyone objects, there may be appeals. It is always uncertain when these objections
21 and appeals can be resolved, and resolving them can take time. To check on the progress of the
settlement, call the Settlement Administrator at <<settlement administrator phone number>>, or
contact Class Counsel (see below for Class Counsel’s contact information.). Please be patient.

22 You will have 180 days to cash your settlement check. If a mailed individual settlement payment
23 is not cashed by <<check cashing deadline>> (within 180 days of the date printed on the check),
24 all uncashed funds will be paid to the California State Controller’s Office Unclaimed Property
25 Fund with the identity of the Class Member to whom the funds belong, to be held for the Class
Member.

26 8. What am I releasing?

27 If you do not exclude yourself from the settlement (according to the procedures explained below),
28 you will release certain claims as follows:

1 The Parties agree that it is their intent that the resolution set forth in this Settlement will
2 release any further attempt, by lawsuit, administrative claim or action, arbitration,
3 demand, or other action of any kind by each and all of the Settlement Class Members
4 (including participation to any extent in any representative or collective action), against
5 Defendant and all of those entities' and individual's past, present and future agents,
6 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
7 stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations,
8 divisions, joint venturers, assigns, predecessors, successors, service providers, insurers,
9 consultants, subcontractors, joint employers, employee benefit plans and fiduciaries
10 thereof, affiliated organizations, and all persons acting under, by, through or in concert
11 with any of them, and each of them, arising during the period August 25, 2016 through
12 March 15, 2022, and arising from, could have been asserted, or related in any way to the
13 claims asserted in the Action against Defendant based on the facts pleaded in the
14 Operative Complaint. The Settlement Class Members will release and discharge
15 Defendant, and any of its former and present parents, subsidiaries, owners, shareholders,
16 officers, directors, employees, affiliates, successors, assigns, agents, attorneys, legal
17 representatives.

18 Released Claims by the Participating Class Members include all claims alleged in the
19 operative First Amended Complaint along with related claims that could have been
20 alleged based on the facts alleged in the operative First Amended Complaint including:
21 (1) claims for unpaid wages (including but not limited to overtime pay, minimum wage,
22 regular wages, missed meal period premium pay, missed rest period premium pay, failure
23 to pay wages of terminated or resigned employees, or other benefits), and claims for
24 interest, penalties, or premiums in connection therewith, as well as any claims under the
25 California Labor Code, any applicable California Wage Order(s); (2) claims for failure to
26 comply with the employee itemized wage statement provision under California Labor
27 Code section 226; (3) claims for failure to provide or make available meal and rest periods
28 as required under California Labor Code §512 and IWC Wage Orders; (4) claims for
failure to indemnify as required under California Labor Code §§1198 and 2802; (5)
penalties for violations of the California Labor Code; (6) violation of California Business
and Professions Code Section 17200, et seq.; and (7) all other claims under California
common law, the California Labor Code, California Wage Orders, the California
Business and Professions Code, set forth in the Complaint including alleged violation of
California Labor Code sections 201-204, 210, 215-216, 218.5, 225.5, 226, 226.3, 226.6,
226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699,
2699.3, 2699.5, 2802, California Civil Code sections 1021.5, 3287, 3288, California
Business and Professions Code sections 17000 and 17200 et. seq., the relevant Wage
Orders issued by the Industrial Welfare Commission, or any other claim for any statutory
or civil penalty that have been, or could have been, asserted based on the facts alleged in
the First Amended Complaint under California law that arise from the allegations as pled
including claims for damages, reimbursement, restitution, losses, penalties, fines, liens,
attorney's fees, costs, expenses, debts, interest, injunctive or declaratory relief, liquidated
damages or similar relief. The Final Judgment shall cover and bar each and every
Participating Class Member from asserting any Released Claims in the future. PAGA

1 claims – include the underlying claims alleged in the PAGA notice letter and Plaintiff's
2 Operative Complaint - will be released, and PAGA Members will be entitled to their
3 portion of the PAGA Payment, regardless of whether or not the Participating Class
Member opts-out or excludes him or herself from the Class.

4 The release provisions of this Settlement will not take effect until Defendant has paid the Gross
5 Settlement Amount in full per this Settlement Agreement.

6 9. How can I opt out of this settlement?

7 You can opt out of this settlement and retain your rights. To do so, you must send a letter by mail
8 to the Settlement Administrator with the following sentence, or something similar, stating: "I
9 request to be excluded from the class action proceedings in the matter of *Luis Larraburu v.*
10 *American Merchandising Specialists, Inc.*, Case No. 21STCV17704." You may use the enclosed
11 "Election not to Participate in Settlement Form" for this purpose. You will have **60 days** from
12 the date of mailing of this Class Notice to do so. Your Opt-Out request must be in writing and
13 mailed to the Settlement Administrator, Phoenix, <<settlement administrator mailing address>>
and be postmarked no later than <<response deadline>>, or it will not be considered and you
will be bound by the settlement. If the Settlement Administrator re-mailed your Class Notice to
a new address, you will have additional 30 days from the date of the re-mailed Class Notice to
opt out. You must include your full name (and former names, if any) and address in your request
and you must sign the written request.

14 However, even if you opt-out of the class action settlement, you will still be entitled to your
15 portion of the PAGA penalties.

16 10. Do I have a lawyer in this case?

17 The Court has appointed David G. Spivak and The Spivak Law Firm, 8605 Santa Monica Blvd.,
18 PMB 42554, West Hollywood, CA 90069, telephone (213) 725-9094, david@spivaklaw.com,
19 to represent you and other Class Members in the Action. These lawyers are called Class Counsel.
They will be compensated from the Gross Settlement Amount as discussed in this Class Notice.
If you want to be represented by your own lawyer, you may hire one at your own expense.

20 11. How will the lawyers be paid?

21 Class Counsel will ask the Court to award them fees of approximately 33 and 1/3% (one-third)
22 of the Gross Settlement Amount. Class Counsel will also ask the Court to award them costs
23 incurred in connection with the Action. The Court may choose to award less than the amount
24 requested by Class Counsel.

25 12. How do I tell the Court that I do not like the settlement?

26 You can ask the Court to deny approval by objecting. You cannot ask the Court to order a larger
27 settlement; the Court can only approve or deny the settlement. If the Court denies the settlement,
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1 no settlement payments will be sent out and the Action will continue. If that is what you want to
2 happen, you must object.

3 You may object to the proposed settlement in writing or in person. You may also appear at the
4 Final Approval Hearing, either in person or through your own attorney. If you appear through
5 your own attorney, you are responsible for paying that attorney. All written objections and
6 supporting papers should (a) clearly identify the case name and number (*Luis Larraburu v.*
7 *American Merchandising Specialists, Inc.*, Case No. 21STCV17704), (b) be submitted to the
8 Settlement Administrator by mailing them to the Settlement Administrator, Phoenix,
9 <<settlement administrator mailing address>>, and (c) be filed or postmarked on or before
10 <<response deadline>>. If the Settlement Administrator re-mailed your Class Notice to a new
11 address, you will have additional 30 days from the date of the re-mailed Class Notice to object.
12 Class Members may appear at the final approval hearing to be heard on their objections, even if
13 they have not previously served a written objection.

14 **13. When and where will the Court decide whether to approve the settlement?**

15 The Court will hold a fairness hearing on <<final approval hearing date>> at <<final approval
16 hearing time>> .m at the Los Angeles County Superior Court, 312 North Spring Street, Los
17 Angeles, CA 90012 (The Honorable Yvette M. Palazuelos). At this hearing, the Court will
18 consider whether the settlement is fair, reasonable, and adequate. If there are objections that were
19 properly made, the Court will consider them. The Court will listen to people who have asked to
20 speak at the hearing. The Court may also decide how much to pay to Class Counsel. At or after
21 the hearing, the Court will decide whether to approve the settlement. We do not know how long
22 this decision will take.

23 **14. Do I have to come to the hearing?**

24 No. Class Counsel will answer any questions that the Court may have. But, you are welcome to
25 come at your own expense. If you sent an objection, you do not have to come to Court to talk
26 about it. As long as you timely mailed your written objection, the Court will consider it. You
27 may also pay your own lawyer to attend, but it is not required.

28 **15. May I speak at the hearing?**

Regardless of whether you properly objected to the settlement, you may speak at the fairness
hearing.

16. What happens if I do nothing at all?

You will participate in the settlement and receive payment. You will be bound by the release as
set forth herein.

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GETTING MORE INFORMATION

This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel or the Settlement Administrator if you would like more information about the case. You may call <<settlement administrator phone number>> or write the Settlement Administrator, Phoenix, located at <<settlement administrator mailing address>>.

You can also access the Los Angeles County Superior Court’s Online Services at <https://www.>, or by visiting the Clerk’s Office at the Los Angeles County Superior Court, 312 North Spring Street, Los Angeles, CA 90012, between _:_0 a.m. and _:_0 p.m., Monday through Friday, excluding Court holidays.

On April 4, 2022, the Superior Court of Los Angeles lifted its mandatory face mask order while strongly recommending the use of well-fitting medical masks or respirators inside all courthouses to align with the most recent Los Angeles County Department of Public Health (LADPH) Health Order. For more information, please visit the Court’s website at <https://www.lacourt.org/>.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE
TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

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EXHIBIT B

ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM

**IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE ELIGIBLE FOR
A SHARE OF THE SETTLEMENT PROCEEDS,
DO NOT FILL OUT THIS FORM.**

**IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, YOU MUST COMPLETE AND
SIGN THIS DOCUMENT AND MAIL IT TO THE ADDRESS BELOW, POSTMARKED NOT LATER
THAN <<RESPONSE DEADLINE>>:**

PLEASE NOTE THAT EVEN IF YOU EXCLUDE YOURSELF FROM THE SETTLEMENT, YOU WILL
STILL BE ENTITLED TO A PORTION OF THE PAGA PENALTIES.

Larraburu v. American Merchandising Specialists, Inc. Class Action Settlement Administrator
c/o _____

I declare as follows: I have received notice of the proposed settlement in this action and I wish to be
excluded from the class and **not** to participate in the proposed settlement. I understand this means that I will not be
bound by the Settlement and also will not share in the settlement proceeds.

(Typed or Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number, Including Area Code)

(Identification Number)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
correct and was executed on _____.

Dated: _____

(Signature)

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EXHIBIT C

1 **WORK WEEKS DISPUTE FORM**

2 Superior Court of The State of California
3 For The County of Los Angeles

4 *Luis Larraburu v. American Merchandising Specialists, Inc.*, Case No. 21STCV17704

5 Indicate Name/Address Changes, if any:

6 <<Name>> _____

7 <<Address>> _____

8 <<City>>, <<State>> <<Zip Code>> _____

9 XX - XX - _____

10 TO ALL NON-EXEMPT EMPLOYEES EMPLOYED BY DEFENDANT IN THE STATE OF CALIFORNIA
11 FROM AUGUST 25, 2016 THROUGH March 15, 2022.

12 The amount of your estimated Settlement Award is based upon the number of Eligible Work Weeks you worked
13 between August 25, 2016 and March 15, 2022. "Individual Work Weeks" are defined as any Work Week in which
14 you worked at least one (1) day as an non-exempt employee by Defendant of American Merchandising Specialists,
15 Inc. ("Defendant") in California during the calendar week. The number of August 25, 2016 applicable to your claim
16 is set forth below.

17 **YOUR ELIGIBLE WORK WEEK**

18 Defendant's records indicate that you worked <<number of Work Weeks>> Work Weeks between August 25, 2016
19 and March 15, 2022.

20 **YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE**

21 Under the terms of the Class Action Settlement, you are entitled to receive a settlement payment in the approximate
22 estimated amount of <<\$Settlement Share Amount>>, minus all applicable payroll and tax deductions, after the
23 Court approves the Settlement and it goes into effect. This process may take six months or more. You will receive
24 a Form W-2 reflecting the payment to you. Your Settlement Share reflected on this Notice is only an estimate. The
25 exact amount of the payment could vary, up or down.

26 If you wish to dispute the number of August 25, 2016 credited to you, or anything else about your employment
27 status, you must complete and return this form by indicating what you believe is incorrect on the blank lines below
28 and return it on or before <<RESPONSE DEADLINE>> to the Settlement Administrator via U.S. Mail with proof
of the submission date (such as a postmark or delivery service date stamp). You must also send any documents or
other information that you contend supports your belief that the information set forth above is incorrect. The
Settlement Administrator will resolve any dispute based upon Defendant's records and any information you provide.
Please be advised that the information on this Work Weeks Dispute Form is presumed to be correct unless the
documents you submit are company records from Defendant.

29 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF WORK WEEKS, RECEIPT
30 OF A DIRECT SETTLEMENT PAYMENT, OR YOUR EMPLOYMENT STATUS, YOU DO NOT NEED
31 TO TAKE ANY ACTION**

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**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

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1 class action settlement (the “Final Approval Hearing”) as to whether the Settlement is fair,
2 adequate and reasonable to the Settlement Class.

3 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
4 all current and former non-exempt employees who are or were employed by Defendant in the
5 State of California at any time during the Class Period (collectively “Class Members”). The
6 “Class Period” shall mean the period of time from August 25, 2016, through March 15, 2022.
7 Defendant estimated for purposes of mediation that there are 6042.00 Work Weeks by 115 Class
8 Members for the period of August 25, 2016 through November 15, 2021. These numbers would
9 be expected to increase proportionately for the passage of time between that date and the time
10 of court approval. Before the Parties seek or a Party seeks court approval of the Settlement, the
11 Settlement Administrator will advise Plaintiff’s counsel of Defendant’s report of the total
12 number of Work Weeks and Class Members. If the Work Weeks and/or Class Members as of
13 the date the Court approves the settlement exceeds the referenced 6042.00 Work Weeks and/or
14 115 Class Members by more than 10.00%, the Gross Settlement Amount, including the Class
15 Counsel Fees Payment, the Class Representative Payment, and the LWDA payment will
16 increase proportionally according to the number of additional Work Weeks or Class Members,
17 whichever results in a higher increase in the Gross Settlement Amount. The “Effective Date”
18 means as follows: If no objection to this Settlement or to any of the terms and or conditions of
19 the Settlement are filed by Plaintiff, another member of the Settlement class, or any intervenor
20 to this Lawsuit, the Effective Date shall occur on the day that the Court enters an order of final
21 approval of this Settlement; however, if any objection to this Settlement or to any of the terms
22 and or conditions of the Stipulation is filed by a member of the Settlement class, or any
23 intervenor to this Lawsuit, the Effective Date shall occur upon the expiration of the time for the
24 filing any appeal of the order of final approval of this Settlement. If an appeal is filed or any
25 writ granted, then the Effective Date shall occur after the appeal has been dismissed or the writ
26 dissolved and when there is no further time to appeal the dismissal of the appeal or the
27 dissolution of the writ. The occurrence of the Effective Date is a prerequisite to any obligation
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1 of Defendant to pay any funds into the Settlement Account.

2 3. This action is provisionally certified pursuant to section 382 of the California
3 Code of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action
4 for purposes of settlement only with respect to the proposed Settlement Class.

5 4. The Court hereby preliminarily finds that the Settlement was the product of
6 serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In
7 making this preliminary finding, the Court considered the nature of the claims set forth in the
8 pleadings, the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the
9 allocation of Settlement proceeds to the Settlement Class, and the fact that the Settlement
10 represents a compromise of the Parties' respective positions. The Court further preliminarily
11 finds that the terms of the Settlement have no obvious deficiencies and do not improperly grant
12 preferential treatment to any individual Class Member. Accordingly, the Court preliminarily
13 finds that the Settlement was entered into in good faith.

14 5. The Court finds that the dates set forth in the Settlement for mailing and
15 distribution of the Class Notice meet the requirements of due process and provide the best notice
16 practicable under the circumstances, and constitute due and sufficient notice to all persons
17 entitled thereto, and directs the mailing of the Class Notice by first class mail to the Settlement
18 Class as set forth in the Settlement. Accordingly, the Court orders the following implementation
19 schedule for further proceedings:

20 a. By _____, Defendant shall provide
21 _____, the appointed Settlement Administrator,
22 with: (a) An electronic database of all Class Members, last known mailing
23 address, Social Security number and Defendant's employee identification
24 number ("Class Members' Data"); and (b) Corresponding to each Class
25 Member's name, Defendant shall provide a figure indicating the total number
26 of Work Weeks during the Class Period in which Defendant employed the
27 Class Member. That number of Work Weeks shall be referred to as that Class
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1 Member's "Individual Work Weeks;" (c) If any of the Class Members' Data
2 are unavailable to Defendant, Defendant will so inform Class Counsel and
3 the Parties will make their best efforts to reconstruct or otherwise agree upon
4 the Class Members' Data prior to when it must be submitted to the Settlement
5 Administrator. Class Members' Data will otherwise remain confidential and
6 will not be disclosed to anyone, except as necessary to applicable taxing
7 authorities, or pursuant to Defendant's express written authorization or by
8 order of the Court.

9 b. **Mailing of Class Notice.** By _____, approximately
10 fourteen (14) days after receiving the Class Members' Data, or as soon
11 thereafter as it can do so, the Settlement Administrator will mail the Class
12 Notice to all identified Class Members via first-class U.S. mail using the
13 mailing address information provided by Defendant, unless modified by any
14 updated address information that the Settlement Administrator obtains in the
15 course of administration of the Settlement.

16 c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect
17 address, the Settlement Administrator will promptly, and not later than ten
18 (10) days from receipt of the returned Class Notice, search for a more current
19 address for the Class Member and re-mail the Class Notice to the Class
20 Member. The Settlement Administrator will use the Class Members' Data
21 and otherwise work with Defendant's Counsel and Class Counsel to find a
22 more current address. The Settlement Administrator will be responsible for
23 taking reasonable steps, consistent with its agreed-upon job parameters, court
24 orders, and fee, to trace the mailing address of any Class Member for whom
25 a Class Notice is returned as undeliverable by the U.S. Postal Service. These
26 reasonable steps shall include the tracking of all undelivered mail;
27 performing address searches for all mail returned without a forwarding
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1 address; and promptly re-mailing to Class Members for whom new addresses
2 are found. If the Class Notice is re-mailed, the Settlement Administrator will
3 note for its own records and notify Class Counsel and Defendant's Counsel
4 of the date and address of each such re-mailing as part of a weekly status
5 report provided to the Parties.

6 d. **Declaration of Settlement Administrator.** Not later than twenty-one (21)
7 court days prior to the Final Approval Hearing, the Settlement Administrator
8 will provide the Parties for filing with the Court a declaration of due diligence
9 setting forth its compliance with its obligations under this Agreement. Prior
10 to the Final Approval Hearing, the Settlement Administrator will supplement
11 its declaration of due diligence if any material changes occur from the date
12 of the filing of its prior declaration.

13 e. **Requests for Exclusion from Settlement; and Objections to Settlement.**
14 Class Members may submit requests to be excluded from the effect of the
15 Settlement, or objections to the Settlement, pursuant to the following
16 procedures:

17 i. **Request for Exclusion from Settlement.** A Class Member may
18 request to be excluded from the effect of this Agreement, and any
19 payment of amounts under this Agreement, by timely mailing a letter
20 to the Settlement Administrator stating that the Class Member wants
21 to be excluded from this Action. This letter must include the Class
22 Member's name, address, telephone number, and signature. To be
23 valid and timely, the request to be excluded must be postmarked by
24 the date specified in the Class Notice (_____, or 60 days
25 from the initial mailing of the Class Notice by the Settlement
26 Administrator). A Class Member who properly submits a valid and
27 timely request to be excluded from the Action shall not receive any
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1 payment of any kind in connection with this Agreement or this
2 Action, shall not be bound by or receive any benefit of this
3 Agreement, and shall have no standing to object to the Settlement. A
4 request for exclusion must be mailed to the Settlement Administrator
5 at the address provided on the Class Notice. The Settlement
6 Administrator shall transmit the request for exclusion to counsel for
7 the Parties as follows:

8 *To Class Counsel:*

9 David G. Spivak, Esq.
10 The Spivak Law Firm
11 8605 Santa Monica Blvd., PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Thalia S. Rofos, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
650 Town Center Drive
Suite 1400
Costa Mesa, CA 92626

- 12 ii. **Objections to Settlement.** The Class Notice will provide that any
13 Class Member who does not request exclusion from the Action and
14 who wishes to object to the Settlement should submit an objection in
15 writing to the Settlement Administrator by _____, or 60
16 days after the Settlement Administrator mails the Class Notice, a
17 written objection to the Settlement which sets forth the grounds for
18 the objection and the other information required by this paragraph.
19 The objection should be mailed to the Settlement Administrator at the
20 address provided on the Class Notice. The Settlement Administrator
21 shall transmit the objections to counsel for the Parties as follows:

22
23 *To Class Counsel:*

24 David G. Spivak, Esq.
25 The Spivak Law Firm
26 8605 Santa Monica Blvd., PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Thalia S. Rofos
Lewis Brisbois Bisgaard & Smith, LLP
650 Town Center Drive
Suite 1400
Costa Mesa, CA 92626

1 The written objection should state the objecting Class Member's full
2 name, address, and the approximate dates of his or her employment
3 with Defendant. The written objection should state the basis for each
4 specific objection and any legal support in clear and concise terms.
5 The written objection also should state whether the Class Member
6 intends to formally intervene and become a party of record in the
7 action, and upon formally intervening, appear and argue at the Final
8 Approval Hearing. However, the objectors will be provided with the
9 opportunity to speak at the final approval hearing regardless of
10 whether they have filed an appearance or submitted a written
11 opposition beforehand.

12 If the objecting Class Member does not formally intervene in the action
13 and/or the Court rejects the Class Member's objection, the Class
14 Member may still be bound by the terms of this Agreement.

15 f. **Report.** Not later than fourteen (14) days after the deadline for submission
16 of requests for exclusion, the Settlement Administrator will provide the
17 Parties with a complete and accurate list of all Class Members who sent
18 timely requests to be excluded from the Action and all Class Members who
19 objected to the settlement.

20 6. The Court approves, as to form and content, the Class Notice in substantially the
21 form attached as Exhibit A to the Settlement, the Exclusion Request form in substantially the
22 form attached as Exhibit B to the Settlement, and the Work Weeks Dispute form in substantially
23 the form attached as Exhibit C to the Settlement.

24 7. The Court approves, for settlement purposes only, David Spivak of The Spivak
25 Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

26 8. The Court approves, for settlement purposes only, Luis Larraburu as the Class
27 Representative.
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1 9. The Court approves Phoenix Settlement Administrators as the Settlement
2 Administrator.

3 10. The Court preliminarily approves Class Counsel's request for attorneys' fees and
4 costs subject to final review by the Court.

5 11. The Court preliminarily approves the estimated Settlement Administrator costs
6 payable to the Settlement Administrator subject to final review by the Court.

7 12. The Court preliminarily approves Plaintiff's Class Representative Payment
8 subject to final review by the Court.

9 13. A Final Approval Hearing shall be held on _____ at _____**.m.** in
10 the Superior Court for the State of California, County of Los Angeles, located at the Los Angeles
11 Courthouse, 312 North Spring Street, Los Angeles, CA 90012 to consider the fairness, adequacy
12 and reasonableness of the proposed Settlement preliminarily approved by this Preliminary
13 Approval Order, and to consider the application of Class Counsel for attorneys' fees and costs
14 and the Class Representative Payment to the Class Representative. The notice of motion and all
15 briefs and materials in support of the motion for final approval of class action settlement and
16 motion for attorneys' fees and litigation costs shall be served and filed with this Court on or
17 before _____.

18 14. If for any reason the Court does not execute and file a final approval order and
19 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason,
20 the proposed Settlement that is the subject of this order, and all evidence and proceedings had
21 in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to
22 the litigation, as more specifically set forth in the Settlement.

23 15. The Court expressly reserves the right to adjourn or continue the Final Approval
24 Hearing from time to time without further notice to members of the Class. The Plaintiff shall
25 give prompt notice of any continuance to Settlement Class Members who object to the
26 Settlement.

27 **IT IS SO ORDERED.**

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DATED: _____

THE HONORABLE YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)

12 LUIS LARRABURU, on behalf of himself and all
13 others similarly situated, and as an “aggrieved
14 employee” on behalf of other “aggrieved
Attorneys General Act of 2004,

15 *Plaintiff,*

16 vs.

17 AMERICAN MERCHANDISING
18 SPECIALISTS, INC., a North Carolina
19 corporation; and DOES 1–50, inclusive,

20 *Defendant(s).*

Case No. 21STCV17704

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING CLASS
ACTION SETTLEMENT**

Action filed: May 11, 2021

Department: 9, The Honorable Yvette M.
Palazuelos

21
22 This matter came on for hearing on _____ at _____.m. in
23 Department 9 of the above-captioned court on Plaintiff’s Motion for Final Approval of Class and
24 PAGA Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the
25 Joint Stipulation of Class Action Settlement and Release of Claims (the “Settlement”) filed
26 herewith which provides for a Gross Settlement Amount (“GSA”) of up to \$215,000.00 in
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1 compromise of all disputed claims on behalf of all current and former non-exempt = employees
2 who are or were employed by Defendant in the State of California at any time during the period
3 of August 25, 2016 to March 15, 2022 (“Settlement Class Period”). All capitalized terms used
4 herein shall have the same meaning as defined in the Settlement.

5 In accordance with the Court’s prior Order Granting Preliminary Approval of Class and
6 PAGA Action Settlement, Class and PAGA Members have been given notice of the terms of the
7 Settlement and the opportunity to submit a claim, request exclusion, comment upon or object to
8 it or to any of its terms. Having received and considered the Settlement, the supporting papers
9 filed by the Parties, and the evidence and argument received by the Court in conjunction with the
10 motions for preliminary and final approval of the Settlement, the Court grants final approval of
11 the Settlement and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE
12 FOLLOWING DETERMINATIONS¹:
13

14 1. The Court has jurisdiction over the subject matter of the Action and over all
15 Parties to the Action, including all Class Members. Pursuant to this Court’s Order Granting
16 Preliminary Approval of Class Action Settlement of _____, the Class Notice was sent
17 to each Class Member by First Class U.S. mail. The Class Notice informed Class Members of
18 the terms of the Settlement, their right to receive their proportional share of the Settlement, their
19 right to request exclusion, their right to comment upon or object to the Settlement, and their right
20 to appear in person or by counsel at the final approval hearing and be heard regarding final
21 approval of the Settlement. Adequate periods of time were provided by each of these procedures.
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25 _____
26 ¹ A true and correct copy of the Court’s ruling on the Motion for Final Approval of Class Action
27 Settlement entered on _____ is attached hereto as **Exhibit A** and incorporated by
28 reference. A true and correct copy of the Court’s Minute Order dated _____ is
attached hereto as **Exhibit B** and incorporated by reference.

1 No member of the Settlement Class presented written objections to the proposed Settlement as
2 part of this notice process, stated an intention to appear, or actually appeared at the final approval
3 hearing.

4 2. For purposes of this Final Order and Judgment, the Class Members are all persons
5 non-exempt employees employed by Defendant in California during the Class Period. at any time
6 during the period of August 25, 2016 to March 15, 2022 (“Settlement Class Period”).
7

8 3. The Court finds and determines that the notice procedure afforded adequate
9 protections to Class Members and provides the basis for the Court to make an informed decision
10 regarding final approval of the Settlement based on the responses of Class Members. The Court
11 finds and determines that the notice provided in this case was the best notice practicable, which
12 satisfied the requirements of law and due process as to all persons entitled to such notice.
13

14 2. **Release by Plaintiff and Class and PAGA Members.** The Settlement will
15 release any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or
16 other action of any kind by each. and all of the Settlement Class Members (including participation
17 to any extent in any representative or collective action), against Defendant and all of those
18 entities’ and individual’s past, present and future agents, employees, servants, officers, directors,
19 partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries,
20 equity sponsors, related corporations, divisions, joint venturers, assigns, predecessors,
21 successors, service providers, insurers, consultants, subcontractors, joint employers, employee
22 benefit plans and fiduciaries thereof, affiliated organizations, and all persons acting under, by,
23 through or in concert with any of them, and each of them, arising during the period August 25,
24 2016 through March 15, 2022, and arising from, could have been asserted, or related in any way
25 to the claims asserted in the Action against Defendant based on the facts pleaded in the Operative
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1 Complaint. The Settlement Class Members will release and discharge Defendant, and any of its
2 former and present parents, subsidiaries, owners, shareholders, officers, directors, employees,
3 affiliates, successors, assigns, agents, attorneys, legal representatives (“Released Parties”).
4 However, the release provisions of this Settlement will not take effect until Defendant has paid
5 the Gross Settlement Amount in full per this Settlement Agreement.
6

7 3. **Released Claims.** Released Claims by the Participating Class Members include
8 all claims alleged in the operative First Amended Complaint along with related claims that could
9 have been alleged based on the facts alleged in the operative First Amended Complaint including:
10 (1) claims for unpaid wages (including but not limited to overtime pay, minimum wage, regular
11 wages, missed meal period premium pay, missed rest period premium pay, failure to pay wages
12 of terminated or resigned employees, or other benefits), and claims for interest, penalties, or
13 premiums in connection therewith, as well as any claims under the California Labor Code, any
14 applicable California Wage Order(s); (2) claims for failure to comply with the employee itemized
15 wage statement provision under California Labor Code section 226; (3) claims for failure to
16 provide or make available meal and rest periods as required under California Labor Code §512
17 and IWC Wage Orders; (4) claims for failure to indemnify as required under California Labor
18 Code §§1198 and 2802; (5) penalties for violations of the California Labor Code; (6) violation
19 of California Business and Professions Code Section 17200, et seq.; and (7) all other claims under
20 California common law, the California Labor Code, California Wage Orders, the California
21 Business and Professions Code, set forth in the Complaint including alleged violation of
22 California Labor Code sections 201-204, 210, 215-216, 218.5, 225.5, 226, 226.3, 226.6, 226.7,
23 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699, 2699.3,
24 2699.5, 2802, California Civil Code sections 1021.5, 3287, 3288, California Business and
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1 Professions Code sections 17000 and 17200 et. seq., the relevant Wage Orders issued by the
2 Industrial Welfare Commission, or any other claim for any statutory or civil penalty that have
3 been, or could have been, asserted based on the facts alleged in the First Amended Complaint
4 under California law that arise from the allegations as pled including claims for damages,
5 reimbursement, restitution, losses, penalties, fines, liens, attorney's fees, costs, expenses, debts,
6 interest, injunctive or declaratory relief, liquidated damages or similar relief. The Final Judgment
7 shall cover and bar each and every Participating Class Member from asserting any Released
8 Claims in the future. PAGA claims – include the underlying claims alleged in the PAGA notice
9 letter and Plaintiff's Operative Complaint - will be released, and PAGA Members will be entitled
10 to their portion of the PAGA Payment, regardless of whether or not the Participating Class
11 Member opts-out or excludes him or herself from the Class.
12

13 4. The Court further finds and determines that the terms of the Settlement are fair,
14 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
15 provisions of the Settlement, including the release of claims contained therein, should be and
16 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
17 according to its terms. As of the Effective Date of Settlement, and for the duration of the
18 Settlement Class Period, all Class Members are hereby deemed to have waived and released all
19 Released Claims and are forever barred and enjoined from prosecuting the Released Claims
20 against the Releasees as fully set forth in the Settlement. No objections were received by the
21 Parties or the Court through the date of this Final Order and Judgment. The Court finds _____
22 Class Member(s)—_____—submitted a request for exclusion from the Settlement
23 as determined by the Settlement Administrator and therefore is/are not in the Settlement Class.
24
25

26 5. The Court finds and determines that (a) the Settlement Shares to be paid to
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1 Participating Class Members and (b) the LWDA payment as civil penalties under the California
2 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
3 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
4 final approval to, and orders the payment of, those amounts be made to the Participating Class
5 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
6 accordance with the terms of the Settlement.
7

8 6. The Court further grants final approval to and orders that the following payments
9 be made in accordance with the terms of the Settlement:

10 a. Class Counsel fees & costs of \$71,666.66 in attorneys’ fees and
11 \$17,500.00 in litigation costs to Class Counsel;

12 b. \$15,000.00 as a Class Representative Payment award payable to Plaintiff
13 Luis Larraburu for his service as a Class Representative;

14 c. \$10,000.00 in costs of the Settlement Administrator payable to Phoenix
15 Settlement Administrators for its services as the Settlement Administrator; and
16

17 d. Payment of \$3,000.00 (75% of the (\$4,000.00 PAGA penalty) to the
18 LWDA.

19 7. The settlement shall proceed as directed in the Settlement, and no payments
20 pursuant to the Settlement shall be distributed until after the Effective Date of Settlement.
21 Without affecting the finality of this Final Order and Judgment in any way, the Court retains
22 jurisdiction of all matters relating to the interpretation, administration, implementation,
23 effectuation and enforcement of this Final Order and Judgment and the Settlement pursuant to
24 California Rule of Court 3.769(h).
25

26 8. Within 10 calendar days of the Effective Date of Settlement, Defendant shall
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1 deposit the Settlement proceeds in an account designated by the Settlement Administrator: (i) the
2 total amount of all Settlement Shares to Participating Class Members, (ii) the Court approved
3 Class Counsel fees & costs, (iii) the Court-approved Class Representative Payment, (iv) the
4 Court-approved costs of the Settlement Administrator, and (v) the payment to the LWDA.

5 9. Defendant's payment of such sums shall be the sole financial obligation of
6 Defendant under the Settlement, and shall be in full satisfaction of all claims released herein,
7 including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and
8 expenses.
9

10 10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have
11 one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement
12 Share check. After the expiration of the 180-day period, on Defendant's behalf, the Settlement
13 Administrator shall remit any amounts from Voided Settlement Checks and otherwise unclaimed
14 (the "Residue"), plus interest on the Residue at the legal rate of interest from the date of entry of
15 the initial judgement to the California Unclaimed Property Fund.
16

17 11. The Parties shall file a final accounting report by _____. A non-
18 appearance case review re submission of a final report is scheduled for _____ at
19 _____. **m. in Department 9.** The Parties shall also prepare and file a stipulation and
20 proposed order and proposed Amended Final Order and Judgment by _____ which
21 includes the amount of distribution of unpaid cash Residue, and unclaimed or abandoned funds
22 to the non-party, the accrued interest on that sum. The stipulation shall be signed by counsel for
23 the class and defense counsel in accord with the proposed Amended Final Order and Judgment.
24 If there are objections by any party or non-party, class counsel shall immediately notify the Court
25 and the matter will be set for further hearing. A non-appearance hearing for the lodging of the
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1 stipulation and proposed order and separate amended judgment is scheduled for
2 _____ at _____.m. in Department 9.

3 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
4 Parties' obligations under the Settlement or hereunder, including the requirement that Defendant
5 deposit funds for distribution by the Settlement Administrator to Participating Class Members in
6 accordance with the Settlement.
7

8 13. The Court hereby enters final judgment in this case in accordance with the terms
9 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this
10 Final Order and Judgment.

11 14. The Parties are hereby ordered to comply with the terms of the Settlement.

12 15. The Parties shall bear their own costs and attorneys' fees except as otherwise
13 provided by the Settlement and this Final Order and Judgment.
14

15 16. The Settlement is not an admission by Defendant nor is this Final Order and
16 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by
17 Defendant. Furthermore, the Settlement is not a concession by Defendant and shall not be used
18 as an admission of any fault, omission, or wrongdoing by Defendant. Neither this Final Order
19 and Judgment, the Settlement, any document referred to herein, any exhibit to any document
20 referred to herein, any action taken to carry out the Settlement, nor any negotiations or
21 proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an
22 admission or concession with regard to, the denials or defenses of Defendant, and shall not be
23 offered in evidence in any proceeding against the Parties hereto in any Court, administrative
24 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this
25 Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto,
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1 and any other papers and records on file in the Action may be filed in this Court or in any other
2 litigation as evidence of the settlement by Defendant to support a defense of res judicata,
3 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to
4 the Released Claims.

5 17. This document shall constitute a Judgment for purposes of California Rule of
6 Court 3.769(h).
7

8 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

9
10 DATED: _____

11 **THE HONORABLE YVETTE M. PALAZUELOS**
12 **JUDGE OF THE SUPERIOR COURT**
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EXHIBIT 13

1 DAVID G. SPIVAK (SBN 179684)

2 david@spivaklaw.com

3 MAYA CHEAITANI (SBN 335777)

4 maya@spivaklaw.com

5 THE SPIVAK LAW FIRM

6 8605 Santa Monica Blvd., PMB 42554

7 West Hollywood, CA 90069

8 Telephone: (213) 725-9094

9 Facsimile: (213) 634-2485

10 Attorneys for Plaintiff,

11 LUIS LARRABURU, and all others similarly situated

12 (Additional attorneys for parties on following page)

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF LOS ANGELES**

15 **(UNLIMITED JURISDICTION)**

16 LUIS LARRABURU, on behalf of himself and
17 all others similarly situated, and as an “aggrieved
18 employee” on behalf of other “aggrieved
19 employees” under the Labor Code Private
20 Attorneys General Act of 2004,

21 *Plaintiff,*

22 vs.

23 AMERICAN MERCHANDISING
24 SPECIALISTS, INC., a North Carolina
25 corporation; and DOES 1–50, inclusive,

26 *Defendant(s).*

Case No. 21STCV17704

**FIRST AMENDED JOINT
STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE OF
CLAIMS**

Action filed: May 11, 2021

Department: 9, The Honorable Yvette M.
Palazuelos

1 This Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement
2 Agreement” or “Agreement”) is made and entered into by and between Plaintiff Luis Larraburu
3 (“Plaintiff” or “Class Representative”), individually and on behalf of all putative class members,
4 on the one hand, and Defendant American Merchandising Specialists, Inc. (“Defendant”).
5 Plaintiff and Defendant are collectively referred to herein as the “Parties.”

6 **I. DEFINITIONS.**

7 The following definitions are applicable to this Settlement Agreement, in addition to other
8 terms defined elsewhere in the Agreement:

9 **A. “Action”** shall mean: (1) the civil action commenced on May 11, 2021, by
10 Plaintiff against Defendant in the Superior Court of California, County of LOS ANGELES, Case
11 No. 21STCV17704, entitled: “Luis Larraburu, on behalf of himself, and all others similarly
12 situated, and as an ‘aggrieved employee’ on behalf of other ‘aggrieved employees’ under the
13 Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. American Merchandising
14 Specialists, Inc., a North Carolina corporation; and DOES 1 through 50, inclusive,
15 *Defendant(s)*.”

16 **B. “Class,” “Class Members,” or “Settlement Class”** shall mean all current and
17 former non-exempt employees who are or were employed by Defendant in the State of California
18 at any time during the Class Period. Defendant estimates that there were approximately 115
19 members.

20 **C. “Work Weeks”** for each Settlement Class Members means each workweek in
21 which a Participating Class Member worked at least one day for Defendant in California during
22 the Class Period, according to Defendant’s records.

23 **D. “Class Counsel”** shall mean the attorneys representing Plaintiff in the Action:
24 David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law
25 Group.

26 **E. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses**
27 **Payment”** shall mean the amounts awarded to Class Counsel by the Court to compensate them
28 for, respectively, their fees and expenses in connection with the Action, including their pre-filing

1 investigation, their filing of the Action and all related litigation activities, this Settlement, and all
2 post-Settlement compliance procedures.

3 **F. “Class Notice”** shall mean the Notice of Proposed Settlement attached as **Exhibit**
4 **A** and incorporated by reference into this Agreement.

5 **G. “Class Period”** shall mean the period of time from August 25, 2016 through
6 ~~preliminary approval order date or~~ March 15, 2022, ~~whichever is earlier.~~

7 **H. “Class Representative Payment”** shall mean the special payment made to
8 Plaintiff in his capacity as Class Representative to compensate him for initiating the Action,
9 performing work in support of the Action, and undertaking the risk of liability for attorneys’ fees
10 and expenses in the event he was unsuccessful in the prosecution of the Action.

11 **I. “PAGA”** shall mean the California Labor Code Private Attorneys General Act of
12 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”).

13 **J. “PAGA Member”** shall mean any and all Settlement Class Members who worked
14 for Defendant from August 20, 2019 through ~~preliminary approval order date or~~ March 15, 2022,
15 ~~whichever is earlier.~~

16 **K. “PAGA Period”** shall mean the time between August 20, 2019 through
17 ~~preliminary approval order date or~~ March 15, 2022, ~~whichever is earlier.~~

18 **L. “PAGA Penalties”** shall mean the amount that the Parties have agreed to allocate
19 for settlement of claims for civil penalties arising under PAGA. The Parties have agreed to
20 allocate Four Thousand Dollars and Zero Cents (\$4,000.00) of the Gross Settlement Amount as
21 PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties in the amount of Three
22 Thousand Dollars and Zero Cents (\$3,000.00) shall be paid directly to the LWDA in accordance
23 with PAGA. The remaining Twenty-Five percent (25%) of the PAGA Penalties in the amount of
24 One Thousand Dollars and Zero Cents (\$1,000.00), shall be distributed to PAGA Members.
25 PAGA Members will receive payment from the employee portion of the PAGA Penalties
26 regardless of their decision to participate in the class portion of the Settlement if the allocation
27 for PAGA Penalties is approved by the Court.

28 **M. “PAGA Work Weeks”** shall mean the number of weeks of employment for each

1 PAGA Member as a non-exempt employee during the PAGA Period. The Settlement
2 Administrator will calculate the number of PAGA Work Weeks by calculating the number of
3 days each PAGA Member was employed using their original hire date and final termination date,
4 excluding any time they were unemployed in between during that time period, during the PAGA
5 Period, dividing by seven (7), and rounding up to the nearest whole number.

6 N. “**Court**” shall mean the Superior Court for the County of Los Angeles, 312 North
7 Spring Street, Los Angeles, CA 90012.

8 O. “**Defense Counsel**” shall mean the attorneys representing Defendant in the
9 Action: Thalia S. Rofos of Lewis Brisbois Bisgaard & Smith, LLP.

10 P. “**Effective Date**” is defined as follows: If no objection to this Settlement or to any
11 of the terms and or conditions of the Settlement are filed by Plaintiff, another member of the
12 Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that
13 the Court enters an order of final approval of this Settlement; however, if any objection to this
14 Settlement or to any of the terms and or conditions of the Stipulation is filed by a member of the
15 Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur upon the
16 expiration of the time for the filing any appeal of the order of final approval of this Settlement.
17 If an appeal is filed or any writ granted, then the Effective Date shall occur after the appeal has
18 been dismissed or the writ dissolved and when there is no further time to appeal the dismissal of
19 the appeal or the dissolution of the writ.

20 Q. “**Final Approval Hearing**” shall mean the hearing to be conducted by the Court
21 to determine whether to approve finally and implement the terms of this Agreement.

22 R. “**Gross Settlement Amount**” shall mean the Gross Settlement Amount of Two
23 Hundred and Fifteen Thousand Dollars and No Cents (\$215,000.00) payable by Defendant as
24 provided by this Agreement, plus Defendant’s employer-side payroll taxes. Defendant estimated
25 for purposes of mediation that there are 6,042.00 Work Weeks by 115 Class Members for the
26 period of August 25, 2016 through November 15, 2021. These numbers would be expected to
27 increase proportionately for the passage of time between that date and the time of court
28 approval. Before the Parties seek or a Party seeks court approval of the Settlement, the Settlement

1 Administrator will advise Plaintiff's counsel of Defendant's report of the total number of Work
2 Weeks and Class Members. If the Work Weeks and/or Class Members as of the date the Court
3 approves the settlement exceeds the referenced 6,042.00 Work Weeks and/or 115 Class Members
4 by more than 10.00%, the Gross Settlement Amount, including the Class Counsel Fees Payment,
5 the Class Representative Payment, and the LWDA payment, will increase proportionally
6 according to the number of additional Work Weeks or Class Members, whichever results in a
7 higher increase in the Gross Settlement Amount.

8 **S. "Judgment"** shall mean the Order of Final Judgment entered by the Court that
9 the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in
10 this Action.

11 **T. "Net Settlement Amount"** shall mean \$215,000.00 payable by Defendant
12 pursuant to this Settlement, less:

- 13 **1.** the Class Representative Payment approved by the Court;
- 14 **2.** the Class Counsel Fees Payment (one-third or 33 and 1/3% of Gross
15 Settlement Amount) and the Class Counsel Litigation Expenses Payment (of not more than
16 \$17,500.00) approved by the Court;
- 17 **3.** the Settlement Administrator's reasonable fees and expenses approved by
18 the Court (not to exceed \$10,000.00);
- 19 **4.** the amount of \$4,000.00 paid to the Labor Workforce Development
20 Agency of California and PAGA members for the PAGA claim;
- 21 **5.** any other fees or expenses (other than attorneys' fees and expenses)
22 incurred by Plaintiff in implementing the terms and conditions of this Agreement as approved by
23 the Court.

24 ///

25 **U. "Participating Class" or "Participating Class Members"** shall mean all
26 Settlement Class members who do not submit a valid letter requesting to be excluded from the
27 Settlement, consistent with the terms set forth in this Settlement Agreement.

28 **V. "Preliminary Approval of the Settlement"** shall mean the Court's preliminary

1 approval of the Settlement without material change.

2 **W. “Settlement”** shall mean the disposition of the Action and all related claims
3 effectuated by this Agreement.

4 **X. “Settlement Administrator”** shall mean Phoenix. or another administrator
5 proposed by the Parties and appointed by the Court to administer the Settlement.

6 **Y. “Settlement Share”** shall mean each Class Member’s allocated share of the Net
7 Settlement Amount as provided by this Agreement.

8 **II. RECITALS**

9 **A.** On or about December 3, 2021, Plaintiff, through his attorneys, sent a letter to the
10 Labor Workforce Development Agency (“LWDA”) alleging the following against Defendant:
11 failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods,
12 failure to indemnify for business expenses, failure to issue proper wage statements, failure to
13 timely pay wages and related allegations (the “PAGA letter”). Plaintiff asserted these
14 representative claims on behalf of all Class Members who are or were employed during the
15 applicable statutory period.

16 **B.** On May 11, 2021, Plaintiff filed a class action complaint in the Los Angeles
17 Superior Court, alleging the same wage and hour claims as set forth in the earlier PAGA letter
18 and adding a cause of action for unfair competition. On December 23, 2021, Plaintiff filed a first
19 amended class action complaint in the Los Angeles County Superior Court, adding causes of
20 action under Labor Code section 226 for incomplete and inaccurate wage statements and the
21 Labor Code Private Attorneys General Act of 2004 (“PAGA”). The first amended complaint is
22 the “Operative Complaint.”

23 **C.** On January 23, 2022, Defendant answered Plaintiff’s First Amended Complaint
24 and denied, and continues to deny, all of Plaintiff’s material allegations. Specifically, Defendant
25 denies that Plaintiff and putative class members are entitled to additional wages and overtime
26 pay. Defendant contends it paid the putative class members for all hours worked as required by
27 law, including all vacation and sick days. Defendant denies the Class Members were deprived of
28 meal and rest periods, allege that it had meal and rest break policies and procedures in place to

1 ensure compliance with California law, and alleges that employees were allowed to take their
2 rest and meal periods. Defendant further alleges that the unpaid wage, improper wage statement,
3 and rest and meal period claims are not amenable to class treatment because common issues do
4 not predominate. Defendant asserts that the waiting time penalties claim will fail as to former
5 Class Members who cannot prevail on the claims described above. Defendant denies that it failed
6 to issue accurate itemized wage statements, or otherwise failed to keep accurate and complete
7 employment records. Defendant denied that it failed to reimburse Class Members for mileage
8 and telecom expenses.

9 **D.** The Parties thereafter engaged in an informal, voluntary exchange of information
10 in the context of privileged settlement discussions to facilitate an early mediation. Defendant
11 produced Plaintiff's and Class Member Shane Rollman's entire personnel file (including policies
12 and agreements he signed and acknowledged), copies of its relevant company written policies,
13 time-keeping records, and paycheck data and records for the putative class, and more detailed
14 time and payroll data for a random sample of putative class members specifically selected by
15 Plaintiff's counsel.

16 **E.** On November 15, 2021, following much of the foregoing informal discovery and
17 exchange of information, the Parties participated in a mediation session presided over by
18 Mediator David Phillips, an experienced class action mediator. During the mediation, the Parties
19 had a full day of productive negotiations and reached agreement on a class-wide settlement
20 during the second mediation session. During the mediation sessions, each side, represented by
21 its respective counsel, recognized the risk of an adverse result in the Action and agreed to settle
22 the Action and all other matters covered by this Agreement pursuant to the terms and conditions
23 of this Agreement.

24 **F.** Based on their own thorough, independent investigation and evaluation of this
25 case, Class Counsel are of the opinion that the settlement with Defendant for the consideration
26 and on the terms set forth in this Agreement is fair, reasonable, adequate, and in the best interest
27 of the Settlement Class in light of all known facts and circumstances, including the risk of
28 significant costs and delay, the risk of non-certification of the Class, the defenses asserted by

1 Defendant, the risks of adverse determinations on the merits, and numerous potential appellate
2 issues. Although Defendant contends it has no liability in this case, Defendant's counsel shares
3 Class Counsel's belief that the Agreement represents a fair and adequate settlement given the
4 respective risks associated with the case.

5 **G.** This Agreement represents a compromise and settlement of highly disputed
6 claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant
7 that Plaintiff's claims in the Action have merit or that it has any liability to Plaintiff or the Class
8 on those claims or to the State, or as an admission by Plaintiff that Defendant's defenses raised
9 in the Action have merit. This Agreement is intended to fully, finally, and forever compromise,
10 release, resolve, discharge, and settle the released claims subject to the terms and conditions set
11 forth in this Agreement.

12 Based on the foregoing Recitals, the Parties agree as follows:

13 **III. SETTLEMENT TERMS AND CONDITIONS**

14 **A. Certification for Settlement Purposes.** Solely for the purposes of effectuating
15 this Settlement, and subject to Court approval, the Parties hereby stipulate to the conditional
16 certification of the Settlement Class. The Parties agree that if for any reason the Settlement is not
17 preliminarily and finally approved, the conditional certification of the Settlement Class will be
18 of no force or effect, does not constitute an admission by Defendant that class certification is
19 proper, and will not be deemed admissible in this or any other proceeding, and that the Parties
20 will litigate the issue of class certification.

21 **B. Gross Settlement Amount.** Subject to the terms and conditions of this
22 Agreement, the Gross Settlement Amount of Two Hundred and Fifteen Thousand Dollars and
23 Zero Cents (\$215,000.00), plus Defendant's employer share of employer-side payroll taxes, is
24 the maximum amount payable by Defendant. In no event will Defendant be required to pay more
25 than the Gross Settlement Amount for distribution to the Plaintiff, Class Counsel, Class
26 Members, LWDA, and Settlement Administrator. However, if the number of Class Members
27 increases by more than 10.00%, the Defendant will pay a pro rata increase in the Gross Settlement
28 Amount, including pro rata increases in the Class Counsel Fees Payment, and allocation to the

1 Private Attorneys General Act claim. Likewise, if the number of Work Weeks increases by more
2 than 10.00%, the Defendant will pay a pro rata increase in the Gross Settlement Amount,
3 including pro rata increases in the Class Counsel Fees Payment, Class Representative Payment,
4 and allocation to the Private Attorneys General Act claim. The release provisions of this
5 Settlement will not take effect until Defendant has paid the Gross Settlement Amount in full per
6 this Settlement Agreement.

7 **C. Payments to Plaintiff and Class Counsel and Others.** Subject to the terms and
8 conditions of this Agreement, the Settlement Administrator will make the following payments
9 out of the Gross Settlement Amount as follows:

10 **1. To Plaintiff.**

11 **(a) Class Representative Payment.** In addition to his Settlement
12 Share, Plaintiff will apply to the Court for an award of not more than Fifteen Thousand Dollars
13 and No Cents (\$15,000.00) as his Class Representative Payment. Defendant will not oppose a
14 Class Representative Payment of not more than \$15,000.00. Plaintiff will receive no other
15 payment other than his Settlement Share and Class Representative Payment, and acknowledges
16 that he is aware of no other facts or circumstances related to his employment with Defendant that
17 could give rise to any additional entitlement to any further payments. The Settlement
18 Administrator will pay the Class Representative Payment approved by the Court out of the Gross
19 Settlement Amount. Payroll taxes, withholdings, and deductions will not be taken from the Class
20 Representative Payment, and instead a Form 1099 will be issued to Plaintiff with respect to that
21 payment. Plaintiff agrees to assume all responsibility and liability for the payment of taxes due
22 on the Class Representative Payment. Any portion of the Class Representative Payment not
23 awarded to Plaintiff will not revert to Defendant, but instead shall be returned to the Net
24 Settlement Amount.

25 **2. To Class Counsel.** Class Counsel will apply to the Court for an award of
26 not more than Seventy One Thousand Six Hundred Sixty Six Dollars and Sixty Six Cents
27 (\$71,666.66) (which is 33 and 1/3% of the Gross Settlement Amount) as their Class Counsel
28 Fees Payment and an amount not more than Seventeen Thousand Five Hundred Dollars and No

1 Cents (\$17,500.00) as their Class Counsel Litigation Expenses Payment, and Defendant will not
2 oppose this request. The Settlement Administrator will pay the amount approved by the Court
3 (but not more than Seventy One Thousand Six Hundred Sixty Six Dollars and Sixty Six Cents
4 (\$71,666.66) in fees and not more than Seventeen Thousand Five Hundred Dollars and No Cents
5 (\$17,500.00) in expenses) out of the Gross Settlement Amount. Withholding and deductions will
6 not be taken from the Class Counsel Fees and Litigation Expenses Payment and one or more
7 Forms 1099 will be issued to Class Counsel with respect to those payments. [United Employees](#)
8 [Law Group, PC will receive 25% of the Class Counsel Fees Payment and The Spivak Law Firm](#)
9 [shall receive the remaining 75% of the Class Counsel Fees Payment.](#)

10 **3. To the Settlement Administrator.** The Settlement Administrator will be
11 paid from the Gross Settlement Amount its reasonable fees and expenses as approved by the
12 Court in an amount currently estimated to not exceed Ten Thousand Dollars and No Cents
13 (\$10,000.00).

14 **4. To the LWDA.** The Parties will jointly apply to the Court for approval of
15 a settlement of claims under the Private Attorneys General Act (“PAGA”), California Labor Code
16 section 2698, *et seq.*, for Four Thousand Dollars and No Cents (\$4,000.00), of which, payment
17 from the Gross Settlement Amount to the LWDA will be made in the amount of Three Thousand
18 Dollars and No Cents (\$3,000.00), which is 75% of the PAGA settlement. One Thousand Dollars
19 and No Cents (\$1,000.00), 25% of the PAGA settlement, will remain in the Net Settlement
20 Amount for distribution.

21 **D. Allocation of Net Settlement Amount and Calculation of Settlement Shares.**
22 Subject to the terms and conditions of this Agreement, the Settlement Administrator will
23 distribute a payment from the Net Settlement Amount to each Participating Class Member. The
24 Settlement Share for each Participating Class Member will be calculated as follows,
25 understanding that the formulas below do not constitute an admission by either party, and are
26 intended only to provide a practical means to simplify and administer the claims process:

27 **(a) Participating Class Members’ Settlement Shares.** The
28 settlement shares are allocated 15.00% to wages (for which employment taxes will be deducted

1 and W-2s issued) and 85.00% to penalties (for which 1099s will be issued).

2 **(b) Settlement Ratio Calculation.** The Settlement Administrator
3 shall assign to each Class Member a “Settlement Ratio,” which shall be a fractional number
4 comprised of (a) that Class Member’s Individual Work Weeks as the numerator, and (b) the
5 aggregate total of all Class Members’ Individual Work Weeks as the denominator. The
6 Settlement Administrator shall assign to each Class Member the “Settlement Share” which shall
7 be calculated by multiplying that Class Member’s Settlement Ratio by amount allocated to Class
8 Members from the Net Settlement Amount.

9 **2. Settlement Share Worksheet.** Upon calculation of the Class Members’
10 Settlement Share, the Settlement Administrator shall furnish to Class Counsel and Defense
11 counsel a worksheet containing a list unique identifying numbers for each of the Class Members
12 with their corresponding Individual Work Weeks and Settlement Shares.

13 **3. Individual Settlement Amounts for the PAGA Payments.** The
14 Individual Settlement Amount for each PAGA Member will be calculated by the Settlement
15 Administrator using the Class Data provided by Defendant. The Settlement Administrator will
16 calculate the number of PAGA Work Weeks by calculating the number of days each PAGA
17 Member was employed using their original hire date and final termination date, excluding any
18 time they were unemployed in between during that time period, during the PAGA Period,
19 dividing by seven (7), and rounding up to the nearest whole number. PAGA Members shall
20 receive their portion of the PAGA Penalties regardless of their decision to opt-out of the class
21 settlement.

22 **4. Taxes and Withholdings.** Each Settlement Share is intended, in part, to
23 settle the Class Members’ claims for unpaid wages. Each Class Member shall be individually
24 responsible for the employee’s share of applicable payroll tax withholdings and deductions.
25 Accordingly, each Settlement Share allocated to wages will be reduced by applicable employee-
26 side payroll tax withholdings and deductions, and the Settlement Administrator will issue a Form
27 W-2 to each Participating Class Member. Defendant will be responsible for the normal
28 employer’s share of any payroll tax attributable to the wage portion of the Settlement Share

1 payments. Defendant's payment of the normal employer's share of payroll taxes attributable to
2 the wage portion of the Settlement Share payments will be in addition to the Gross Settlement
3 Amount or Net Settlement Amount.

4 **E. Appointment of Settlement Administrator.** The Parties will ask the Court to
5 appoint Phoenix Settlement Administrators, a qualified administrator, to serve as the Settlement
6 Administrator, which, as a condition of appointment, will agree to be bound by this Agreement
7 with respect to the performance of its duties and its compensation. The Settlement
8 Administrator's duties will include preparing, printing, and mailing the Class Notice to all Class
9 Members; and using reasonable measures to contact all Class Members, including conducting a
10 National Change of Address search on all Class Members before mailing the Class Notice to
11 each Class Member's address. The Settlement Administrator's duties will also include re-mailing
12 the Class Notice to the Class Member's new address for those Class Members whose address has
13 changed; providing the Parties with weekly status reports about the delivery of Class Notice;
14 calculating Settlement Shares; issuing and distributing checks to effectuate the payments due
15 under the Settlement; reporting to the Court as required; and otherwise administering the
16 Settlement pursuant to this Agreement. The Settlement Administrator's reasonable fees and
17 expenses, including the cost of printing and mailing the Class Notice, will be paid out of the
18 Gross Settlement Amount, as set forth herein, subject to Court approval. Any portion of the of
19 the Settlement Administrator's fees and expenses that are not used or which are not awarded by
20 the Court will not revert to Defendant, but instead will be part of the Net Settlement Amount for
21 distribution to Participating Class Members. If the Settlement Administrator's fees and expenses
22 exceed Ten Thousand Dollars and No Cents (\$10,000.00), such cost will be deducted from the
23 Net Settlement Amount.

24 **IV. PROCEDURES FOR APPROVING SETTLEMENT**

25 **A. Motion for Preliminary Approval of Settlement by the Court.** Class Counsel
26 will move the Court for an order granting Preliminary Approval of the Settlement (the "Motion
27 for Preliminary Approval"), setting a date for the Final Approval Hearing, and approving the
28 Class Notice (attached as **Exhibit A** to this Agreement), the Exclusion Request form (attached

1 as **Exhibit B** to this Agreement), and the Work Weeks Dispute form (attached as **Exhibit C** to
2 this Agreement). Any disagreement among the Parties concerning the Class Notice or other
3 documents necessary to implement the Settlement will be referred to the Court.

4 **1.** At the hearing on the Motion for Preliminary Approval, the Parties
5 anticipate that they will appear and support the granting of the motion, and that Class Counsel
6 will submit an Order Granting Preliminary Approval of Settlement, Approval of Notice to Class
7 and Setting Hearing for Final Approval of Settlement.

8 **2.** Should the Court decline to approve the Settlement, the Settlement will be
9 null and void and the Parties will have no further obligations under it.

10 **B. Notice to Class Members.** After the Court enters its order granting Preliminary
11 Approval of the Settlement, every Class Member will be provided with a “Class Notice.”

12 **1. List of Class Members.** Within fourteen (14) days after the Court grants
13 Preliminary Approval of the Settlement, Defendant shall provide to the Settlement Administrator
14 only:

15 **(a)** An electronic database of all Class Members, last known mailing
16 address, Social Security number, Defendant’s employee identification number, and dates of
17 employment as non-exempt employees (“Class Members’ Data”).

18 **(b)** Corresponding to each Class Member’s name, Defendant shall
19 provide a figure indicating the dates of employment as a non-exempt employee in the State of
20 California at any time during the Class Period so that the Settlement Administrator can calculate
21 the total number of Work Weeks during the Class Period in which that Class Member was
22 employed by Defendant as a Class Member. That number of Work Weeks shall be referred to as
23 that Class Member’s “Individual Work Weeks.”

24 **(c)** If any of the Class Members’ Data are unavailable to Defendant,
25 Defendant will so inform Class Counsel and the Parties will make its best efforts to reconstruct
26 or otherwise agree upon the Class Members’ Data prior to when it must be submitted to the
27 Settlement Administrator. Class Members’ Data will otherwise remain confidential and will not
28 be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to

1 Defendant's express written authorization or by order of the Court.

2 **2. Mailing of Class Notice.** Within fourteen (14) days after receiving the
3 Class Members' Data, or as soon thereafter as it can do so, the Settlement Administrator will
4 mail the Class Notice to all identified Class Members via first-class U.S. mail using the mailing
5 address information provided by Defendant, unless modified by any updated address information
6 that the Settlement Administrator obtains in the course of administration of the Settlement.

7 **3. Returned Class Notice.** If a Class Notice is returned because of an
8 incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days
9 from receipt of the returned Class Notice, search for a more current address for the Class Member
10 and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the
11 Class Members' Data and otherwise work with Defendant's Counsel and Class Counsel to find
12 a more current address. The Settlement Administrator will be responsible for taking reasonable
13 steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing
14 address of any Class Member for whom a Class Notice is returned as undeliverable by the U.S.
15 Postal Service. These reasonable steps shall include the tracking of all undelivered mail;
16 performing address searches for all mail returned without a forwarding address, including but not
17 limited to a skip trace; and promptly re-mailing to Class Members for whom new addresses are
18 found. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records
19 and notify Class Counsel and Defendant's Counsel of the date and address of each such re-
20 mailing as part of a weekly status report provided to the Parties.

21 **4. Declaration of Settlement Administrator.** Not later than twenty-one
22 (21) court days prior to the Final Approval Hearing, the Settlement Administrator will provide
23 the Parties for filing with the Court a declaration of due diligence setting forth its compliance
24 with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement
25 Administrator will supplement its declaration of due diligence if any material changes occur from
26 the date of the filing of its prior declaration.

27 **C. Disputed Class Member Settlement Shares.** If a Class Member disputes his/her
28 estimated Settlement Share, the Class Member may produce evidence to the Settlement

1 Administrator for the Class Period. In order for the dispute to be considered, he/she must follow
2 the directions on the Class Notice. To be valid and timely, all disputes and supporting documents
3 must be postmarked by the date specified in the Class Notice (no less than 60 days from the initial
4 mailing of the Class Notice by the Settlement Administrator). A Class Member may use the Work
5 Weeks Dispute form (**Exhibit C** to this Settlement), though a Class Member is not obligated to
6 do so to request exclusion from the Settlement.

7 **D. Requests for Exclusion from Settlement; and Objections to Settlement.** Class
8 Members may submit requests to be excluded from the effect of the Settlement, or objections to
9 the Settlement, pursuant to the following procedures:

10 **1. Request for Exclusion from Settlement.** A Class Member may request
11 to be excluded from the effect of this Agreement, and any payment of amounts under this
12 Agreement, by timely mailing a letter to the Settlement Administrator stating that the Class
13 Member wants to be excluded from this Action. This letter must include the Class Member's
14 name, address, telephone number, and signature. To be valid and timely, the request to be
15 excluded must be postmarked by the date specified in the Class Notice (no more than 60 days
16 from the initial mailing of the Class Notice by the Settlement Administrator). A Class Member
17 may use the Exclusion Request form (**Exhibit B** to this Settlement), though a Class Member is
18 not obligated to do so to request exclusion from the Settlement. A Class Member who properly
19 submits a valid and timely request to be excluded from the Action shall not receive any payment
20 of any kind in connection with this Agreement or this Action, shall not be bound by or receive
21 any benefit of this Agreement, and shall have no standing to object to the Settlement. A request
22 for exclusion must be mailed to the Settlement Administrator at the address provided on the Class
23 Notice. The Settlement Administrator shall transmit the request for exclusion to counsel for the
24 Parties as follows:

25 *To Class Counsel:*

26 David G. Spivak, Esq.
27 The Spivak Law Firm
28 8605 Santa Monica Blvd., PMB 42554

To Defense Counsel:

Thalia S. Rofos, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
Thalia S. Rofos Esq.

1 West Hollywood, CA 90069

650 Town Center Drive
Suite 1400
Costa Mesa, CA 92626

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4 **2. Objections to Settlement.** The Class Notice will provide that any Class
5 Member who does not request exclusion from the Action and who wishes to object to the
6 Settlement should submit an objection in writing to the Settlement Administrator not later than
7 60 days after the Settlement Administrator mails the Class Notice. The written objection to the
8 Settlement should set forth the grounds for the objection and the other information required by
9 this paragraph. The objection should be mailed to the Settlement Administrator at the address
10 provided on the Class Notice. The Settlement Administrator shall transmit the objections to
11 counsel for the Parties as follows:

12 *To Class Counsel:*

To Defense Counsel:

13 David G. Spivak, Esq.
14 The Spivak Law Firm
15 8605 Santa Monica Blvd., PMB 42554
16 West Hollywood, CA 90069

Thalia S. Rofos, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
Thalia S. Rofos Esq.
650 Town Center Drive
Suite 1400
Costa Mesa, CA 92626

17 Counsel will promptly file such objection with the Court.

18 The written objection should state the objecting Class Member's full name, address, and
19 the approximate dates of his or her employment with Defendant. The written objection should
20 state the basis for each specific objection and any legal support in clear and concise terms. The
21 written objection also should state whether the Class Member intends to formally intervene and
22 become a party of record in the action, and upon formally intervening, appear and argue at the
23 Final Approval Hearing.

24 Regardless of whether an objecting Class Member complies with the objection procedure
25 encouraged above, the Court will provide a Class Member with the opportunity to speak at the
26 final approval hearing regardless of whether he or she has filed an appearance or submitted a
27 written opposition beforehand. If the objecting Class Member does not formally intervene in the
28

1 action and/or the Court rejects the Class Member's objection, the Class Member will still be
2 bound by the terms of this Agreement.

3 **E. Report.** Not later than fourteen (14) days after the deadline for submission of
4 requests for exclusion, the Settlement Administrator will provide the Parties with a complete and
5 accurate list of all Class Members who sent timely requests to be excluded from the Action and
6 all Class Members who objected to the settlement.

7 **F. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
8 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member
9 to seek exclusion from the Settlement, object to the Settlement, or to appeal from the Judgment.
10 If Class Members accounting for more than 5.00% of the Class submit valid requests to be
11 excluded from the Settlement, then Defendant shall have the unilateral right to void this
12 Settlement. Defendant may do so by giving notice to Class Counsel and the Court of its election
13 to void the Settlement not later than seven (7) days before the Final Approval Hearing. No sums
14 shall be payable by Defendant if this Agreement is voided as provided for herein with one
15 exception: Defendant agrees to pay any fees owing to the Settlement Administrator for services
16 rendered in the event Defendant exercises its right to void the Settlement.

17 **G. Additional Briefing and Final Approval.** Plaintiff will file with the Court a
18 motion for final approval of the Settlement and payment of the Settlement Administrator's
19 reasonable fees and expenses and a memorandum in support of their motion; and Plaintiff and
20 Class Counsel will serve on Defendant and file with the Court a motion for awards of the Class
21 Representative Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation
22 Expenses Payment pursuant to this Settlement, and memoranda in support of their motions.

23 Before the Final Approval Hearing, the Parties shall be entitled to file and serve a
24 response to any Class Member's objection to the Settlement and/or reply in support of their
25 motion for final approval of the Settlement, and payment of the Settlement Administrator's
26 reasonable fees and expenses to the extent that any opposition to the motion is filed; and Plaintiff
27 and Class Counsel may file replies in support of their motions for the Class Representative
28 Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.

1 If the Court ultimately does not grant final approval of the Settlement or grants final
2 approval conditioned on any material change to the Settlement, then either Party will have the
3 unilateral right to void the Settlement in its entirety; if that occurs, the Parties will have no further
4 obligations under the Settlement, including any obligation by Defendant to pay the Gross
5 Settlement Amount or any amounts that otherwise would have been payable under this
6 Agreement, except that Defendant and Plaintiff will jointly and equally pay the Settlement
7 Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the
8 right to void the Settlement under this Paragraph. However, an award by the Court of a lesser
9 amount than that sought by Plaintiff and Class Counsel for the Class Representative Payment,
10 the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not
11 constitute a material modification to the Settlement within the meaning of this Paragraph and
12 shall not render the Settlement voidable. Plaintiff and Class Counsel shall retain the right to
13 appeal awards of attorneys' fees and costs less than requested.

14 Upon final approval of the Settlement by the Court at or after the Final Approval Hearing,
15 the Parties will present for the Court's approval and entry a Proposed Final Order and Judgment.
16 The Final Order and Judgment shall permanently bar all Participating Class Members from
17 prosecuting against Defendant any claims within the scope of the Releases contained in this
18 Agreement.

19 After entry of the Judgment, the Court will have continuing jurisdiction over the Action
20 and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement
21 administration matters, and (iii) addressing such post-Judgment matters as may be appropriate
22 under court rules or applicable law.

23 **H. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the
24 terms and conditions of this Agreement, and that no Class Member timely objects to the
25 Settlement and formally intervenes into the action as required under the California Supreme
26 Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260, 228 Cal. Rptr. 3d 106
27 (2018) or files a motion pursuant to Civil Procedure Code section 663, Defendant, and its
28 respective counsel hereby waive, except as provided for in this Agreement or prohibited by law,

1 any and all rights to appeal from the Judgment, including all rights to any post-judgment
2 proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new
3 trial, any extraordinary writ, and any appeal, and the Judgment therefore will become non-
4 appealable at the time it is entered. The waiver of appeal does not include any waiver of the right
5 to oppose any appeal, appellate proceedings, or post-judgment proceedings. If an appeal is taken
6 from the Judgment, the time for consummation of the Settlement (including making any
7 payments under the Settlement) will be suspended until the appeal is fully and finally resolved
8 and the Judgment, consistent with the terms of this Agreement, becomes Final.

9 **I. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
10 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
11 motion, petition, writ, application, or appeal, the reviewing court vacates, reverses, or modifies
12 the Judgment such that there is a material modification to the Settlement, and that court's decision
13 is not completely reversed and the Judgment is not fully affirmed on review by a higher court,
14 then either Plaintiff or Defendant will have the unilateral right to void the Settlement, which the
15 Party must do by giving written notice to the other Parties, the reviewing court, and the Court,
16 not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or
17 materially modifying the Judgment becomes final. The Party exercising its right to unilaterally
18 void the Settlement pursuant to this provision agrees to pay any fees owing to the Settlement
19 Administrator for services rendered. An order vacating, reversing or modifying the Court's award
20 of the Class Representative Payment, or the Class Counsel Fees Payment and/or Class Counsel
21 Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of
22 the Judgment within the meaning of this paragraph, and shall not render the Settlement voidable.

23 **J. Establishment of Settlement Account.** The Settlement Administrator shall
24 establish a Settlement Account for distributing Settlement Shares and Payments identified in this
25 Agreement. Within fourteen (14) calendar days of the Effective Date, Defendant shall pay the
26 Gross Settlement Amount into the Settlement Account.

27 **K. Payment of Settlement Shares.** Within ten (~~10~~14) calendar days of receipt of the
28 Gross Settlement Amount, the Settlement Administrator shall pay Settlement Shares, from the

1 Settlement Account, to all Class Members (who do not submit valid requests to be excluded from
2 the Action). The Settlement Administrator shall pay each Settlement Share by sending a check
3 in the appropriate amount to the Class Member at the address indicated in the list of Class
4 Member names and addresses provided by Defendant, or as subsequently determined by the
5 Settlement Administrator to be the correct address.

6 **L. Uncashed Settlement Share Checks.** Any check issued by the Settlement
7 Administrator to Class Members who do not timely and validly opt out shall be negotiable for
8 one hundred and eighty (180) calendar days. Those funds represented by checks returned as
9 undeliverable and those checks remaining un-cashed for more than 180 days after issuance
10 (collectively, “Voided Settlement Checks”), plus any interest that has accrued on those funds,
11 will be paid to the California Unclaimed Property Fund.

12 **M.** The Settlement Administrator will mail or wire all required payments no later than
13 fourteen (14) calendar days after receipt of the funds representing the Gross Settlement Amount
14 from Defendant. Proof of payment will be filed with the Court.

15 **N. Final Report by Settlement Administrator to Court.** Within ten (10) calendar
16 days after final disbursement of all funds from the Settlement Account, the Settlement
17 Administrator will serve on the Parties for filing with the Court a declaration providing a final
18 summary report on the disbursements of all funds from the Settlement Account.

19 **V. RELEASE OF CLAIMS**

20 **A. Plaintiff and Class Members.** The Parties agree that it is their intent that the
21 resolution set forth in this Settlement will release any further attempt, by lawsuit, administrative
22 claim or action, arbitration, demand, or other action of any kind by each and all of the Settlement
23 Class Members (including participation to any extent in any representative or collective action),
24 against Defendant and all of those entities’ and individual’s past, present and future agents,
25 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
26 stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations, divisions,
27 joint venturers, assigns, predecessors, successors, service providers, insurers, consultants,
28 subcontractors, joint employers, employee benefit plans and fiduciaries thereof, affiliated

1 organizations, and all persons acting under, by, through or in concert with any of them, and each
2 of them, arising during the period August 25, 2016 through ~~preliminary approval order date or~~
3 March 15, 2022, ~~whichever is earlier~~, and arising from, could have been asserted, or related in
4 any way to the claims asserted in the Action against Defendant based on the facts pleaded in the
5 Operative Complaint. The Settlement Class Members will release and discharge Defendant, and
6 any of its former and present parents, subsidiaries, owners, shareholders, officers, directors,
7 employees, affiliates, successors, assigns, agents, attorneys, legal representatives (“Released
8 Parties”). This release will not take effect until Defendant has paid the Gross Settlement Amount
9 in full per this Settlement Agreement.

10 **B. Class Counsel.** As of the date the Judgment becomes Final, and except as
11 otherwise provided by this Agreement, Class Counsel and any counsel associated with Class
12 Counsel (The Spivak Law Firm and United Employees Law Group), including without limitation
13 David G. Spivak, Esq. and Walter L. Haines, Esq., waive any claim to costs and attorneys’ fees
14 and expenses against Defendant or the Releasees arising from or related to the Action, except
15 those incurred to enforce this Agreement and collect the Judgment, including but not limited to
16 claims based on the California Labor Code, the California Civil Code, the California Code of
17 Civil Procedure, the Fair Labor and Standards Act, or any other statute or law (the “Class Counsel
18 Released Claims”).

19 **C. Released Claims.** Released Claims by the Participating Class Members include
20 all claims alleged in the operative First Amended Complaint along with related claims that could
21 have been alleged based on the facts alleged in the operative First Amended Complaint including:
22 (1) claims for unpaid wages (including but not limited to overtime pay, minimum wage, regular
23 wages, missed meal period premium pay, missed rest period premium pay, failure to pay wages
24 of terminated or resigned employees, or other benefits), and claims for interest, penalties, or
25 premiums in connection therewith, as well as any claims under the California Labor Code, any
26 applicable California Wage Order(s); (2) claims for failure to comply with the employee itemized
27 wage statement provision under California Labor Code section 226; (3) claims for failure to
28 provide or make available meal and rest periods as required under California Labor Code §512

1 and IWC Wage Orders; (4) claims for failure to indemnify as required under California Labor
2 Code §§1198 and 2802); (5) penalties for violations of the California Labor Code; (6) violation
3 of California Business and Professions Code Section 17200, et seq.; and (7) all other claims under
4 California common law, the California Labor Code, California Wage Orders, the California
5 Business and Professions Code, set forth in the Complaint including alleged violation of
6 California Labor Code sections 201-204, 210, 215-216, 218.5, 225.5, 226, 226.3, 226.6, 226.7,
7 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699, 2699.3,
8 2699.5, 2802, California Civil Code sections 1021.5, 3287, 3288, California Business and
9 Professions Code sections 17000 and 17200 et. seq., the relevant Wage Orders issued by the
10 Industrial Welfare Commission, or any other claim for any statutory or civil penalty that have
11 been, or could have been, asserted based on the facts alleged in the First Amended Complaint
12 under California law that arise from the allegations as pled including claims for damages,
13 reimbursement, restitution, losses, penalties, fines, liens, attorney's fees, costs, expenses, debts,
14 interest, injunctive or declaratory relief, liquidated damages or similar relief. The Final Judgment
15 shall cover and bar each and every Participating Class Member from asserting any Released
16 Claims in the future. PAGA claims – include the underlying claims alleged in the PAGA notice
17 letter and Plaintiff's Operative Complaint - will be released, and PAGA Members will be entitled
18 to their portion of the PAGA Payment, regardless of whether or not the Participating Class
19 Member opts-out or excludes him or herself from the Class.

20 **D. Dismissal of the *Rollman* Action.** Ten calendar days following the preliminary
21 approval of the settlement, the Parties will stipulate to dismiss with prejudice *Shane Rollman v.*
22 *American Merchandising Specialists, Inc.* action, USDC Case No.: 2:20-CV-02371-KJM-JDP.

23 **VI. NON-PUBLICITY PROVISION**

24 The Parties and their counsel agree that they will not issue any press releases, initiate any
25 contact with the press, respond to any press inquiry, or have any communication with the press
26 about the fact, amount, or terms of the Settlement. In addition, the Parties and their counsel agree
27 that they will not engage in any advertising or distribute any marketing materials relating to the
28 Settlement of this case in any manner that identifies the Defendant, including but not limited to

1 any postings on any websites maintained by Class Counsel. Neither Plaintiff nor Class Counsel
2 will discuss the terms or the fact of the Settlement with third parties other than (1) their immediate
3 family members, (2) their respective accountants or lawyers as necessary for tax purposes; or (3)
4 other Class Members. Plaintiff and Class Counsel agree not to publish any of the terms or
5 conditions of this Settlement in any manner that identifies the Defendant. However, Class
6 Counsel may identify this Settlement in other matters to demonstrate their adequacy as counsel
7 in such other matters.

8 **VII. MISCELLANEOUS TERMS**

9 **A. No Effect on Other Benefits.** The Settlement Shares will not result in any
10 additional employee benefit payments (such as pension, ERISA, 401(k), vacation, or bonus) and
11 shall not have any effect on the eligibility for, or calculation of, any employee benefit. Plaintiff
12 and Class Members will be deemed to have waived all such claims, whether known or unknown
13 by them, as part of their release of claims under this Agreement.

14 **B. No Admission of Liability.** Defendant denies that it has engaged in any unlawful
15 activity, has failed to comply with the law in any respect, or has any liability to anyone under the
16 claims asserted in the Action. This Agreement is entered into solely for the purpose of
17 compromising highly disputed claims. Nothing in this Agreement is intended or will be construed
18 as an admission of liability or wrongdoing by Defendant, or an admission by Plaintiff that any of
19 his claims was non-meritorious or any defense asserted by Defendant was meritorious. This
20 Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have
21 no bearing on, and will not be admissible in connection with, any litigation (other than solely in
22 connection with the Settlement).

23 **C.** Whether or not the Judgment becomes Final, neither the Settlement, this
24 Agreement, any document, statement, proceeding or conduct related to the Settlement or the
25 Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or
26 admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to
27 Defendant or any other Releasees, including, but not limited to, evidence of a presumption,
28 concession, indication or admission by any of the Releasees of any liability, fault, wrongdoing,

1 omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any
2 of the Releasees, in any further proceeding in the Action, or any other civil, criminal or
3 administrative action or proceeding except for purposes of effectuating the Settlement pursuant
4 to this Agreement.

5 **D. Integrated Agreement.** After this Agreement is signed and delivered by all
6 Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement
7 between the Parties relating to the Settlement, and it will then be deemed that no oral
8 representations, warranties, covenants, or inducements have been made to any Party concerning
9 this Agreement or its exhibits other than the representations, warranties, covenants, and
10 inducements expressly stated in this Agreement and its exhibits.

11 **E. Attorney Authorization.** Class Counsel and Defense Counsel warrant and
12 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
13 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
14 its terms, and to execute any other documents required to effectuate the terms of this Agreement.
15 The Parties and their counsel will cooperate with each other and use their best efforts to effect
16 the implementation of the Settlement. In the event the Parties are unable to reach agreement on
17 the form or content of any document needed to implement the Agreement, or on any supplemental
18 provisions that may become necessary to effectuate the terms of this Agreement, the Parties will
19 seek the assistance of the Court, and in all cases, all such documents, supplemental provisions
20 and assistance of the court will be consistent with this Agreement.

21 **F. Modification of Agreement.** This Agreement, and all parts of it, may be
22 amended, modified, changed, or waived only by an express written instrument signed by all
23 Parties or their successors-in-interest.

24 **G. Agreement Binding on Successors.** This Agreement will be binding upon, and
25 inure to the benefit of, the successors of each of the Parties.

26 **H. Applicable Law.** All terms and conditions of this Agreement and its exhibits will
27 be governed by and interpreted according to the laws of the State of California, without giving
28 effect to any conflict of law principles or choice of law principles.

1 **I. Cooperation in Drafting.** The Parties have cooperated in the drafting and
2 preparation of this Agreement. This Agreement will not be construed against any Party on the
3 basis that the Party was the drafter or participated in the drafting.

4 **J. Fair Settlement.** The Parties and their respective counsel believe and warrant that
5 this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived
6 at this Agreement through arms-length negotiations, considering all relevant factors, current and
7 potential.

8 **K. Headings.** The descriptive heading of any section or paragraph of this Agreement
9 is inserted for convenience of reference only and does not constitute a part of this Agreement.

10 **L. Notice.** All notices, demands or other communications given under this
11 Agreement will be in writing and deemed to have been duly given as of the third calendar day
12 after mailing by United States mail, addressed as follows:

13
14 *To Class Counsel:*
15 David G. Spivak, Esq.
16 The Spivak Law Firm
17 8605 Santa Monica Blvd., PMB 42554
18 West Hollywood, CA 90069

To Defense Counsel:
 Thalia S. Rofos, Esq.
 Lewis Brisbois Bisgaard & Smith, LLP
 Thalia S. Rofos Esq.
 650 Town Center Drive
 Suite 1400
 Costa Mesa, CA 92626

19 **M. Execution in Counterpart.** This Agreement may be executed in one or more
20 counterparts. All executed counterparts and each of them will be deemed to be one and the same
21 instrument provided that counsel for the Parties will exchange between themselves original
22 signed counterparts. Facsimile signatures will be presumptive evidence of execution of the
23 original, which shall be produced on reasonable request. Any executed counterpart will be
24 admissible to prove the existence and contents of this Agreement.

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26 Dated:

By:

LUIS LARRABURU

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Dated:

By:

ANGELA FOX
Vice President of Human Resources
AMERICAN MERCHANDISING
SPECIALISTS, INC.

THE SPIVAK LAW FIRM

Dated:

By:

DAVID G. SPIVAK,
MAYA CHEAITANI, Attorneys for
Plaintiff, LUIS LARRABURU, and all
others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated:

By:

WALTER L. HAINES, Attorney for
Plaintiff, LUIS LARRABURU, and all
others similarly situated

LEWIS BRISBOIS BISGAARD & SMITH,
LLP

Dated:

By:

EFTHALIA S. ROFOS, Attorneys for
Defendant, AMERICAN
MERCHANDISING SPECIALISTS,
INC.

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EXHIBIT A

1 **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND**
2 **HEARING DATE FOR COURT APPROVAL**

3 *Luis Larraburu v. American Merchandising Specialists, Inc., Case No. 21STCV17704*

4 **As a current or former non-exempt employees of American Merchandising Specialists,**
5 **Inc. in California, you may be entitled to receive money from a class action settlement.**

6 Phoenix ID: <<Phoenix ID>>
7 <<Name>>
8 <<Address1>>
9 <<Address2>>
10 <<City>>, <<State>> <<Zip
11 Code>>

Please provide current address (if different) here:

12 *The Los Angeles County Superior Court has authorized this Class Notice.*
13 *This is not a solicitation from a lawyer.*

14 YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION
15 SETTLEMENT IF YOU ARE A CURRENT OR FORMER NON-EXEMPT EMPLOYEE OF
16 AMERICAN MERCHANDISING SPECIALISTS, INC. WHO WORKED IN THE STATE OF
17 CALIFORNIA BETWEEN AUGUST 25, 2016 AND ~~PRELIMINARY APPROVAL~~
18 ~~ORDER DATE OR~~ MARCH 15, 2022, ~~WHICHEVER IS EARLIER~~.

- 19 • A proposed settlement of \$215,000.00 (the “Gross Settlement Amount”) will be used to pay
20 claims to: All persons Defendant American Merchandising Specialists, Inc. employed as non-
21 exempt employee in the State of California during the “Class Period” of August 25, 2016 to
22 ~~PRELIMINARY APPROVAL ORDER DATE OR~~ March 15, 2022, ~~WHICHEVER IS EARLIER~~ (the “Class
23 Members”). The Gross Settlement Amount includes (a) expenses and fees of the Settlement
24 Administrator up to \$10,000.00; (b) a Class Representative Payment of \$15,000.00 to the
25 Plaintiff Luis Larraburu as the class representative; (c) attorneys’ fees of up to \$71,666.66
26 and litigation expenses of up to \$17,500.00 to Class Counsel; and (d) \$4,000.00 allocated to
27 settle claims brought pursuant to the Private Attorneys General Act, California Labor Code
28 Section 2698, *et seq.* (“PAGA”)(75% of which will go to the California Labor & Workforce
Development Agency (“LWDA”) and 25% of which will go to Class Members). The Court
must approve these payments at the Final Approval Hearing.
- Defendant estimated for purposes of settlement negotiations leading up to the Settlement that
there are 6042.00 Work Weeks by 115 Class Members for the period of August 25, 2016
through November 15, 2021. These numbers would be expected to increase proportionately
for the passage of time between that date and the time of court approval. Before the Parties
seek or a Party seeks final court approval of the Settlement, the Settlement Administrator will
advise Plaintiff’s counsel of Defendant’s report of the total number of Work Weeks and Class
Members. If the Work Weeks and/or Class Members as of the date the Court approves the
settlement exceeds the referenced 6042.00 Work Weeks and/or 115 Class Members by more
than 10.00%, the Gross Settlement Amount, including the Class Counsel Fees Payment, the

Class Representative Payment, and the LWDA payment, will increase proportionally according to the number of additional Work Weeks or Class Members, whichever results in a higher increase in the Gross Settlement Amount.

The Settlement Administrator shall assign to each Class Member a “Settlement Ratio,” which shall be a fractional number comprised of (a) that Class Member’s Individual Work Weeks as the numerator, and (b) the aggregate total of all Class Members’ Individual Work Weeks as the denominator. The Settlement Administrator shall assign to each Class Member the “Settlement Share” which shall be calculated by multiplying that Class Member’s Settlement Ratio by amount allocated to Class Members from the Net Settlement Amount. Class Members will receive a payment based on the number of Work Weeks, rounded up to the nearest full Work Week, during the Class Period.

- The Individual Settlement Amount for each PAGA Member will be calculated by the Settlement Administrator using the Class Data provided by Defendant. The Settlement Administrator will calculate the number of PAGA Work Weeks by calculating the number of days each PAGA Member was employed using their original hire date and final termination date, excluding any time they were unemployed in between during that time period, during the PAGA Period, dividing by seven (7), and rounding up to the nearest whole number. PAGA Members shall receive their portion of the PAGA Penalties regardless of their decision to opt-out of the class settlement.
- The settlement resolves a lawsuit entitled *Luis Larraburu v. American Merchandising Specialists, Inc.*, Case No. 21STCV17704 (the “Action”) for Defendant’s alleged failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, and other legal consequences that would follow from these failures, including claims under California’s Business & Professions Code and PAGA. This settlement avoids the costs and risks from continuing the Action, pays money to persons like you, and releases Defendant from alleged liability.
- The Court has not made a determination of the validity of the claims in the Action. Defendant denies any and all liability arising from any of the claims and contends that at all relevant times it properly compensated the Class Members, provided lawful meal periods, authorized and permitted lawful rest breaks, reimbursed for all work expenses, provided accurate itemized wage statements, timely paid wages, and fully complied with all applicable laws.

~~• Class Members will receive a payment based on the number of Work Weeks, rounded up to the nearest full Work Week, during the Class Period.~~

**PLEASE READ THIS ENTIRE CLASS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED BY IT.**

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

1 All current and former non-exempt employees who work or worked for Defendant at any time
2 during the period of August 25, 2016 to ~~<<preliminary approval order date or~~ March 15, 2022,
3 ~~whichever is earlier>>~~ ("Class Period"). The "Participating Class Members" does not include
any person who submits a timely and valid request for exclusion as provided in this Notice.

4 WHO IS INCLUDED IN THE PAGA SETTLEMENT CLASS?

5 All Participating Class Members who worked for Defendant at any time during the period of
6 August 20, 2019 to ~~<<preliminary approval order date or~~ March 15, 2022, ~~whichever is earlier>>~~
("PAGA Period"). The PAGA Members includes any person worked during the PAGA Period
even if that person submits a request for exclusions as provided in this Notice.

7 HOW MUCH WILL I GET?

8 You have a total number of ~~<<number of Work Weeks>>~~ Work Weeks during the Class
9 ~~and Period~~ You have a total number of ~~<<number of Work Weeks>>~~ Work Weeks during the
PAGA ~~Periods~~ Period.

10 It is expected that you will receive approximately ~~<<<<\$ >> from this Settlement as~~
11 ~~your Settlement Share and <<\$ >> as your~~ Individual Settlement Payment ~~amount>> from~~
~~this Settlement~~ form the PAGA Payment.

13 YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

14 DO NOTHING	Receive a payment and give up your legal rights to pursue claims released by the settlement of the Action.
15 OPT OUT	Receive no payment and retain your legal rights to pursue class claims that would otherwise be released by the settlement of the Action.
17 OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, Phoenix, about why you do not like the settlement and they will forward your concerns to counsel which will then be provided to the Court.
19 DISPUTE THE WORK WEEK CALCULATION	If you feel that you worked a different amount of Work Weeks as a non-exempt employee by Defendant than identified above, you may dispute that calculation by writing to the Settlement Administrator.
21 ATTEND A HEARING	You have the right to attend a fairness hearing that will be conducted by the Court, but you are not required to attend. If you timely file and serve a written objection, and if you also want to speak about your objection at the hearing, you should send a letter to the Settlement Administrator, Phoenix, providing notice of your intention to appear and speak at the hearing.

25 IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT

26 1. Why did I get this Class Notice?

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

5 The Court in charge of this case is the Los Angeles County Superior Court. The person who sued
6 is called “Plaintiff” and the organization he sued is called “Defendant.”

7 2. What is the Action about?

8 In the Action, Luis Larraburu (“Plaintiff”) alleged multiple violations of the California Labor
9 Code, the California Business & Professions Code, and PAGA, including causes of action for:
10 failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods,
11 failure to indemnify for business expenses, failure to issue proper wage statements, failure to
timely pay wages, unfair competition under California’s Business & Professions Code, and
claims for civil penalties for violations of the PAGA.

12 ///

13 ///

14 3. Why is there a settlement?

15 The parties disagree on the probable outcome of the case with respect to liability, damages, and
16 how much money could be recovered if the Plaintiff won at trial. Defendant believes the Plaintiff
17 would not prevail if this case went to trial. The Court has not decided in favor of the Plaintiff or
18 Defendant. There has been no trial in this case. Instead, both sides recognize the risks, expenses,
19 and disruption associated with continued litigation and they have therefore chosen to resolve
20 their differences by entering into a settlement. By doing so, the parties can avoid the cost of a
trial, yet Class Members are still entitled to receive payments if they comply with the instructions
in this Class Notice. The parties entered into this settlement after arms-length negotiations while
using the services of an experienced and neutral mediator. The Plaintiff and Class Counsel
believe that the proposed settlement is fair and reasonable and is in the best interest of the Class
Members.

21 4. What is a class action settlement?

22 The Court must approve the terms of the proposed settlement as fair and reasonable. Once
23 approved, the settlement will affect all Class Members, except those who have properly opted
24 out. This Class Notice explains your legal rights, the terms of the settlement, what you must do
25 to participate, and the amount of money you may receive. Please read this entire Class Notice
carefully.

26 5. What should I do?

1 You can do nothing, and if you are entitled to a payment, you will be paid. Be mindful, however,
2 that if this Class Notice reaches you and the address where you now live is different, you need
3 to contact the Settlement Administrator and provide updated information so that any future
correspondence or the settlement check itself reaches you and is not returned as an address
unknown.

4 [Class Members will be notified of the final judgment through a website maintained by the](#)
5 [Settlement Administrator. The Settlement Administrator will set up the website and post all](#)
6 [relevant documents including the notice of the final judgment](#)

6. How much will my payment be?

7 After all fees, costs, and offsets are taken as set forth under the Settlement Agreement (which is
8 available for review), the remainder will be used to pay Class Members a pro-rata payment based
9 on the number of Work Weeks each Class Member worked during the Class Period (“Pro-Rata
Share”).

10 The Settlement Administrator shall determine by how many Work Weeks each such Class
11 Member has.

12 Your estimated payment is listed above, on page 2 of this document. If you do not dispute your
13 Work Weeks calculation, and do not opt out of the settlement, you will be bound by the
14 settlement and receive a settlement payment. **In other words, you do not need to take any
action to receive a settlement payment.**

15 If you wish to dispute the number of Work Weeks credited to you or anything else about your
16 employment status, you must write to the Settlement Administrator indicating what you believe
17 is incorrect and return it on or before <<date>> [60 days after initial mailing] via U.S. Mail with
18 proof of the submission date (such as a postmark or delivery service date stamp). You may use
19 the enclosed Work Weeks Dispute Form for this purpose. If the Settlement Administrator re-
20 mailed your Class Notice to a new address, you will have additional 30 days from the date of the
21 re-mailed Class Notice to write to the Settlement Administrator to dispute your Work Weeks
information. You must also send any documents or other information that you contend supports
your belief that the information set forth above is incorrect. The Settlement Administrator will
resolve any dispute based upon Defendant’s records and any information you provide. Please be
advised that the information on this Notice is presumed to be correct unless the documents you
submit are company records from Defendant.

7. When would I get my payment?

23 The Court will hold a hearing on <<final approval hearing date>> at <<final approval hearing
24 time>> .m to decide whether to approve the proposed settlement. If the Court approves the
25 settlement and anyone objects, there may be appeals. It is always uncertain when these objections
26 and appeals can be resolved, and resolving them can take time. To check on the progress of the
settlement, call the Settlement Administrator at <<settlement administrator phone number>>, or
contact Class Counsel (see below for Class Counsel’s contact information.). Please be patient.

1 You will have 180 days to cash your settlement check. If a mailed individual settlement payment
2 is not cashed by <<check cashing deadline>> (within 180 days of the date printed on the check),
3 all uncashed funds will be paid to the California State Controller's Office Unclaimed Property
4 Fund with the identity of the Class Member to whom the funds belong, to be held for the Class
5 Member.

6 8. What am I releasing?

7 If you do not exclude yourself from the settlement (according to the procedures explained below),
8 you will release certain claims as follows:

9 The Parties agree that it is their intent that the resolution set forth in this Settlement will
10 release any further attempt, by lawsuit, administrative claim or action, arbitration,
11 demand, or other action of any kind by each and all of the Settlement Class Members
12 (including participation to any extent in any representative or collective action), against
13 Defendant and all of those entities' and individual's past, present and future agents,
14 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
15 stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations,
16 divisions, joint venturers, assigns, predecessors, successors, service providers, insurers,
17 consultants, subcontractors, joint employers, employee benefit plans and fiduciaries
18 thereof, affiliated organizations, and all persons acting under, by, through or in concert
19 with any of them, and each of them, arising during the period August 25, 2016 through
20 ~~preliminary approval order date or~~ March 15, 2022, ~~whichever is earlier~~, and arising from,
21 could have been asserted, or related in any way to the claims asserted in the Action against
22 Defendant based on the facts pleaded in the Operative Complaint. The Settlement Class
23 Members will release and discharge Defendant, and any of its former and present parents,
24 subsidiaries, owners, shareholders, officers, directors, employees, affiliates, successors,
25 assigns, agents, attorneys, legal representatives.

26 Released Claims by the Participating Class Members include all claims alleged in the
27 operative First Amended Complaint along with related claims that could have been
28 alleged based on the facts alleged in the operative First Amended Complaint including:
(1) claims for unpaid wages (including but not limited to overtime pay, minimum wage,
regular wages, missed meal period premium pay, missed rest period premium pay, failure
to pay wages of terminated or resigned employees, or other benefits), and claims for
interest, penalties, or premiums in connection therewith, as well as any claims under the
California Labor Code, any applicable California Wage Order(s); (2) claims for failure to
comply with the employee itemized wage statement provision under California Labor
Code section 226; (3) claims for failure to provide or make available meal and rest periods
as required under California Labor Code §512 and IWC Wage Orders; (4) claims for
failure to indemnify as required under California Labor Code §§1198 and 2802; (5)
penalties for violations of the California Labor Code; (6) violation of California Business
and Professions Code Section 17200, et seq.; and (7) all other claims under California
common law, the California Labor Code, California Wage Orders, the California
Business and Professions Code, set forth in the Complaint including alleged violation of
California Labor Code sections 201-204, 210, 215-216, 218.5, 225.5, 226, 226.3, 226.6,

1 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699,
2 2699.3, 2699.5, 2802, California Civil Code sections 1021.5, 3287, 3288, California
3 Business and Professions Code sections 17000 and 17200 et. seq., the relevant Wage
4 Orders issued by the Industrial Welfare Commission, or any other claim for any statutory
5 or civil penalty that have been, or could have been, asserted based on the facts alleged in
6 the First Amended Complaint under California law that arise from the allegations as pled
7 including claims for damages, reimbursement, restitution, losses, penalties, fines, liens,
8 attorney's fees, costs, expenses, debts, interest, injunctive or declaratory relief, liquidated
9 damages or similar relief. The Final Judgment shall cover and bar each and every
10 Participating Class Member from asserting any Released Claims in the future. PAGA
11 claims – include the underlying claims alleged in the PAGA notice letter and Plaintiff's
12 Operative Complaint - will be released, and PAGA Members will be entitled to their
13 portion of the PAGA Payment, regardless of whether or not the Participating Class
14 Member opts-out or excludes him or herself from the Class.

15 The release provisions of this Settlement will not take effect until Defendant has paid the Gross
16 Settlement Amount in full per this Settlement Agreement.

17 9. How can I opt out of this settlement?

18 You can opt out of this settlement and retain your rights. To do so, you must send a letter by mail
19 to the Settlement Administrator with the following sentence, or something similar, stating: "I
20 request to be excluded from the class action proceedings in the matter of *Luis Larraburu v.*
21 *American Merchandising Specialists, Inc.*, Case No. 21STCV17704." You may use the enclosed
22 "Election not to Participate in Settlement Form" for this purpose. You will have **60 days** from
23 the date of mailing of this Class Notice to do so. Your Opt-Out request must be in writing and
24 mailed to the Settlement Administrator, Phoenix, <<settlement administrator mailing address>>
25 and be postmarked no later than <<response deadline>>, or it will not be considered and you
26 will be bound by the settlement. If the Settlement Administrator re-mailed your Class Notice to
27 a new address, you will have additional 30 days from the date of the re-mailed Class Notice to
28 opt out. You must include your full name (and former names, if any) and address in your request
and you must sign the written request.

However, even if you opt-out of the class action settlement, you will still be entitled to your
portion of the PAGA penalties.

10. Do I have a lawyer in this case?

The Court has appointed David G. Spivak and The Spivak Law Firm, 8605 Santa Monica Blvd.,
PMB 42554, West Hollywood, CA 90069, telephone (213) 725-9094, david@spivaklaw.com,
to represent you and other Class Members in the Action. These lawyers are called Class Counsel.
They will be compensated from the Gross Settlement Amount as discussed in this Class Notice.
If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

1 Class Counsel will ask the Court to award them fees of approximately 33 and 1/3% (one-third)
2 of the Gross Settlement Amount. Class Counsel will also ask the Court to award them costs
3 incurred in connection with the Action. The Court may choose to award less than the amount
4 requested by Class Counsel.

4 12. How do I tell the Court that I do not like the settlement?

5 You can ask the Court to deny approval by objecting. You cannot ask the Court to order a larger
6 settlement; the Court can only approve or deny the settlement. If the Court denies the settlement,
7 no settlement payments will be sent out and the Action will continue. If that is what you want to
8 happen, you must object.

8 You may object to the proposed settlement in writing or in person. You may also appear at the
9 Final Approval Hearing, either in person or through your own attorney. If you appear through
10 your own attorney, you are responsible for paying that attorney. All written objections and
11 supporting papers should (a) clearly identify the case name and number (*Luis Larraburu v.*
12 *American Merchandising Specialists, Inc.*, Case No. 21STCV17704), (b) be submitted to the
13 Settlement Administrator by mailing them to the Settlement Administrator, Phoenix,
14 <<settlement administrator mailing address>>, and (c) be filed or postmarked on or before
15 <<response deadline>>. If the Settlement Administrator re-mailed your Class Notice to a new
16 address, you will have additional 30 days from the date of the re-mailed Class Notice to object.
17 Class Members may appear at the final approval hearing to be heard on their objections, even if
18 they have not previously served a written objection.

15 13. When and where will the Court decide whether to approve the settlement?

16 The Court will hold a fairness hearing on <<final approval hearing date>> at <<final approval
17 hearing time>> .m at the Los Angeles County Superior Court, 312 North Spring Street, Los
18 Angeles, CA 90012 (The Honorable Yvette M. Palazuelos). At this hearing, the Court will
19 consider whether the settlement is fair, reasonable, and adequate. If there are objections that were
20 properly made, the Court will consider them. The Court will listen to people who have asked to
21 speak at the hearing. The Court may also decide how much to pay to Class Counsel. At or after
22 the hearing, the Court will decide whether to approve the settlement. We do not know how long
23 this decision will take.

21 14. Do I have to come to the hearing?

22 No. Class Counsel will answer any questions that the Court may have. But, you are welcome to
23 come at your own expense. If you sent an objection, you do not have to come to Court to talk
24 about it. As long as you timely mailed your written objection, the Court will consider it. You
25 may also pay your own lawyer to attend, but it is not required.

25 15. May I speak at the hearing?

26 Regardless of whether you properly objected to the settlement, you may speak at the fairness
27 hearing.
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16. What happens if I do nothing at all?

7 You will participate in the settlement and receive payment. You will be bound by the release as
8 set forth herein.

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GETTING MORE INFORMATION

17 This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel
18 or the Settlement Administrator if you would like more information about the case. You may
19 call <<settlement administrator phone number>> or write the Settlement Administrator,
Phoenix, located at <<settlement administrator mailing address>>.

20 You can also access the Los Angeles County Superior Court's Online Services at
21 <https://www.>, or by visiting the Clerk's Office at the Los Angeles County
22 Superior Court, 312 North Spring Street, Los Angeles, CA 90012, between _:0 a.m. and _:0
23 p.m., Monday through Friday, excluding Court holidays.

24 On April 4, 2022, the Superior Court of Los Angeles lifted its mandatory face mask order while
25 strongly recommending the use of well-fitting medical masks or respirators inside all
26 courthouses to align with the most recent Los Angeles County Department of Public Health
27 (LADPH) Health Order. For more information, please visit the Court's website at
28 <https://www.lacourt.org/>.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE
TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

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EXHIBIT B

ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM

**IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE ELIGIBLE FOR
A SHARE OF THE SETTLEMENT PROCEEDS,
DO NOT FILL OUT THIS FORM.**

**IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, YOU MUST COMPLETE AND
SIGN THIS DOCUMENT AND MAIL IT TO THE ADDRESS BELOW, POSTMARKED NOT LATER
THAN <<RESPONSE DEADLINE>>:**

PLEASE NOTE THAT EVEN IF YOU EXCLUDE YOURSELF FROM THE SETTLEMENT, YOU WILL
STILL BE ENTITLED TO A PORTION OF THE PAGA PENALTIES.

Larraburu v. American Merchandising Specialists, Inc. Class Action Settlement Administrator
c/o _____

I declare as follows: I have received notice of the proposed settlement in this action and I wish to be
excluded from the class and **not** to participate in the proposed settlement. I understand this means that I will not be
bound by the Settlement and also will not share in the settlement proceeds.

(Typed or Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number, Including Area Code)

(Identification Number)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
correct and was executed on _____.

Dated: _____

(Signature)

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EXHIBIT C

1 **WORK WEEKS DISPUTE FORM**

2 Superior Court of The State of California
3 For The County of Los Angeles

4 *Luis Larraburu v. American Merchandising Specialists, Inc.*, Case No. 21STCV17704

5 Indicate Name/Address Changes, if any:

6 <<Name>> _____

7 <<Address>> _____

8 <<City>>, <<State>> <<Zip Code>> _____

9 XX - XX - _____

10 TO ALL NON-EXEMPT EMPLOYEES EMPLOYED BY DEFENDANT IN THE STATE OF CALIFORNIA
11 FROM AUGUST 25, 2016 THROUGH ~~<<PRELIMINARY APPROVAL ORDER DATE OR MARCH 15, 2022,>>~~
12 ~~WHICHEVER IS EARLIER>>~~ March 15, 2022.

13 The amount of your estimated Settlement Award is based upon the number of Eligible Work Weeks you worked
14 between August 25, 2016 and ~~<<preliminary approval order date or March 15, 2022, whichever is earlier>>~~.
15 "Individual Work Weeks" are defined as any Work Week in which you worked at least one (1) day as a non-exempt
16 employee by Defendant of American Merchandising Specialists, Inc. ("Defendant") in California during the
17 calendar week. The number of August 25, 2016 applicable to your claim is set forth below.

18 **YOUR ELIGIBLE WORK WEEK**

19 Defendant's records indicate that you worked <<number of Work Weeks>> Work Weeks between August 25, 2016
20 and ~~preliminary approval order date or March 15, 2022, whichever is earlier.~~

21 **YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE**

22 Under the terms of the Class Action Settlement, you are entitled to receive a settlement payment in the approximate
23 estimated amount of <<\$Settlement Share Amount>>, minus all applicable payroll and tax deductions, after the
24 Court approves the Settlement and it goes into effect. This process may take six months or more. You will receive
25 a Form W-2 reflecting the payment to you. Your Settlement Share reflected on this Notice is only an estimate. The
26 exact amount of the payment could vary, up or down.

27 If you wish to dispute the number of August 25, 2016 credited to you, or anything else about your employment
28 status, you must complete and return this form by indicating what you believe is incorrect on the blank lines below
and return it on or before <<RESPONSE DEADLINE>> to the Settlement Administrator via U.S. Mail with proof
of the submission date (such as a postmark or delivery service date stamp). You must also send any documents or
other information that you contend supports your belief that the information set forth above is incorrect. The
Settlement Administrator will resolve any dispute based upon Defendant's records and any information you provide.
Please be advised that the information on this Work Weeks Dispute Form is presumed to be correct unless the
documents you submit are company records from Defendant.

25 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF WORK WEEKS, RECEIPT
26 OF A DIRECT SETTLEMENT PAYMENT, OR YOUR EMPLOYMENT STATUS, YOU DO NOT NEED
27 TO TAKE ANY ACTION**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)

LUIS LARRABURU, on behalf of himself and all others similarly situated, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff,

vs.

AMERICAN MERCHANDISING SPECIALISTS, INC., a North Carolina corporation; ; ; ; ; and DOES 1–50, inclusive,

Defendant(s).

Case No. 21STCV17704

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Action filed: May 11, 2021
Department: 9, The Honorable Yvette M. Palazuelos

The Motion of Plaintiff Luis Larraburu (hereafter referred to as “Plaintiff”) for Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court, The Honorable Yvette M. Palazuelos presiding. The Court having considered the Motion, the Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement” or “Settlement Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

1. The Court grants preliminary approval of the Settlement and the Settlement Class

1 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
2 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
3 has determined there is sufficient evidence to preliminarily determine that (a) the terms of the
4 Settlement appear to be fair, adequate, and reasonable to the Settlement Class and (b) the
5 Settlement falls within the range of reasonableness and appears to be presumptively valid,
6 subject only to any objections that may be raised at the final hearing and final approval by this
7 Court. The Court will make a determination at the hearing on the motion for final approval of
8 class action settlement (the “Final Approval Hearing”) as to whether the Settlement is fair,
9 adequate and reasonable to the Settlement Class.

10 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
11 all current and former non-exempt employees who are or were employed by Defendant in the
12 State of California at any time during the Class Period (collectively “Class Members”). The
13 “Class Period” shall mean the period of time from August 25, 2016, through ~~preliminary~~
14 ~~approval order date or~~ March 15, 2022, ~~whichever is earlier~~. Defendant estimated for purposes
15 of mediation that there are 6042.00 Work Weeks by 115 Class Members for the period of August
16 25, 2016 through November 15, 2021. These numbers would be expected to increase
17 proportionately for the passage of time between that date and the time of court approval. Before
18 the Parties seek or a Party seeks court approval of the Settlement, the Settlement Administrator
19 will advise Plaintiff’s counsel of Defendant’s report of the total number of Work Weeks and
20 Class Members. If the Work Weeks and/or Class Members as of the date the Court approves the
21 settlement exceeds the referenced 6042.00 Work Weeks and/or 115 Class Members by more
22 than 10.00%, the Gross Settlement Amount, including the Class Counsel Fees Payment, the
23 Class Representative Payment, and the LWDA payment will increase proportionally according
24 to the number of additional Work Weeks or Class Members, whichever results in a higher
25 increase in the Gross Settlement Amount. The “Effective Date” means as follows: If no
26 objection to this Settlement or to any of the terms and or conditions of the Settlement are filed
27 by Plaintiff, another member of the Settlement class, or any intervenor to this Lawsuit, the
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1 Effective Date shall occur on the day that the Court enters an order of final approval of this
2 Settlement; however, if any objection to this Settlement or to any of the terms and or conditions
3 of the Stipulation is filed by a member of the Settlement class, or any intervenor to this Lawsuit,
4 the Effective Date shall occur upon the expiration of the time for the filing any appeal of the
5 order of final approval of this Settlement. If an appeal is filed or any writ granted, then the
6 Effective Date shall occur after the appeal has been dismissed or the writ dissolved and when
7 there is no further time to appeal the dismissal of the appeal or the dissolution of the writ. The
8 occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay any
9 funds into the Settlement Account.

10 3. This action is provisionally certified pursuant to section 382 of the California
11 Code of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action
12 for purposes of settlement only with respect to the proposed Settlement Class.

13 4. The Court hereby preliminarily finds that the Settlement was the product of
14 serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In
15 making this preliminary finding, the Court considered the nature of the claims set forth in the
16 pleadings, the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the
17 allocation of Settlement proceeds to the Settlement Class, and the fact that the Settlement
18 represents a compromise of the Parties' respective positions. The Court further preliminarily
19 finds that the terms of the Settlement have no obvious deficiencies and do not improperly grant
20 preferential treatment to any individual Class Member. Accordingly, the Court preliminarily
21 finds that the Settlement was entered into in good faith.

22 5. The Court finds that the dates set forth in the Settlement for mailing and
23 distribution of the Class Notice meet the requirements of due process and provide the best notice
24 practicable under the circumstances, and constitute due and sufficient notice to all persons
25 entitled thereto, and directs the mailing of the Class Notice by first class mail to the Settlement
26 Class as set forth in the Settlement. Accordingly, the Court orders the following implementation
27 schedule for further proceedings:
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- a. By _____, Defendant shall provide _____, the appointed Settlement Administrator, with: (a) An electronic database of all Class Members, last known mailing address, Social Security number and Defendant’s employee identification number (“Class Members’ Data”); and (b) Corresponding to each Class Member’s name, Defendant shall provide a figure indicating the total number of Work Weeks during the Class Period in which Defendant employed the Class Member. That number of Work Weeks shall be referred to as that Class Member’s “Individual Work Weeks;” (c) If any of the Class Members’ Data are unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Members’ Data prior to when it must be submitted to the Settlement Administrator. Class Members’ Data will otherwise remain confidential and will not be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to Defendant’s express written authorization or by order of the Court.
- b. **Mailing of Class Notice.** By _____, approximately fourteen (14) days after receiving the Class Members’ Data, or as soon thereafter as it can do so, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class U.S. mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
- c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days from receipt of the returned Class Notice, search for a more current address for the Class Member and re-mail the Class Notice to the Class

1 Member. The Settlement Administrator will use the Class Members' Data
2 and otherwise work with Defendant's Counsel and Class Counsel to find a
3 more current address. The Settlement Administrator will be responsible for
4 taking reasonable steps, consistent with its agreed-upon job parameters, court
5 orders, and fee, to trace the mailing address of any Class Member for whom
6 a Class Notice is returned as undeliverable by the U.S. Postal Service. These
7 reasonable steps shall include the tracking of all undelivered mail;
8 performing address searches for all mail returned without a forwarding
9 address; and promptly re-mailing to Class Members for whom new addresses
10 are found. If the Class Notice is re-mailed, the Settlement Administrator will
11 note for its own records and notify Class Counsel and Defendant's Counsel
12 of the date and address of each such re-mailing as part of a weekly status
13 report provided to the Parties.

14 d. **Declaration of Settlement Administrator.** Not later than twenty-one (21)
15 court days prior to the Final Approval Hearing, the Settlement Administrator
16 will provide the Parties for filing with the Court a declaration of due diligence
17 setting forth its compliance with its obligations under this Agreement. Prior
18 to the Final Approval Hearing, the Settlement Administrator will supplement
19 its declaration of due diligence if any material changes occur from the date
20 of the filing of its prior declaration.

21 e. **Requests for Exclusion from Settlement; and Objections to Settlement.**
22 Class Members may submit requests to be excluded from the effect of the
23 Settlement, or objections to the Settlement, pursuant to the following
24 procedures:

25 i. **Request for Exclusion from Settlement.** A Class Member may
26 request to be excluded from the effect of this Agreement, and any
27 payment of amounts under this Agreement, by timely mailing a letter
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1 to the Settlement Administrator stating that the Class Member wants
2 to be excluded from this Action. This letter must include the Class
3 Member's name, address, telephone number, and signature. To be
4 valid and timely, the request to be excluded must be postmarked by
5 the date specified in the Class Notice (_____, or 60 days
6 from the initial mailing of the Class Notice by the Settlement
7 Administrator). A Class Member who properly submits a valid and
8 timely request to be excluded from the Action shall not receive any
9 payment of any kind in connection with this Agreement or this
10 Action, shall not be bound by or receive any benefit of this
11 Agreement, and shall have no standing to object to the Settlement. A
12 request for exclusion must be mailed to the Settlement Administrator
13 at the address provided on the Class Notice. The Settlement
14 Administrator shall transmit the request for exclusion to counsel for
15 the Parties as follows:

16 *To Class Counsel:*

17 David G. Spivak, Esq.
18 The Spivak Law Firm
19 8605 Santa Monica Blvd., PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Thalia S. Rofos, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
650 Town Center Drive
Suite 1400
Costa Mesa, CA 92626

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21 ii. **Objections to Settlement.** The Class Notice will provide that any
22 Class Member who does not request exclusion from the Action and
23 who wishes to object to the Settlement should submit an objection in
24 writing to the Settlement Administrator by _____, or 60
25 days after the Settlement Administrator mails the Class Notice, a
26 written objection to the Settlement which sets forth the grounds for
27 the objection and the other information required by this paragraph.
28

1 The objection should be mailed to the Settlement Administrator at the
2 address provided on the Class Notice. The Settlement Administrator
3 shall transmit the objections to counsel for the Parties as follows:
4

5 *To Class Counsel:*

6 David G. Spivak, Esq.
7 The Spivak Law Firm
8 8605 Santa Monica Blvd., PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Thalia S. Rofos
Lewis Brisbois Bisgaard & Smith, LLP
650 Town Center Drive
Suite 1400
Costa Mesa, CA 92626

9 The written objection should state the objecting Class Member's full
10 name, address, and the approximate dates of his or her employment
11 with Defendant. The written objection should state the basis for each
12 specific objection and any legal support in clear and concise terms.
13 The written objection also should state whether the Class Member
14 intends to formally intervene and become a party of record in the
15 action, and upon formally intervening, appear and argue at the Final
16 Approval Hearing. However, the objectors will be provided with the
17 opportunity to speak at the final approval hearing regardless of
18 whether they have filed an appearance or submitted a written
19 opposition beforehand.

20 If the objecting Class Member does not formally intervene in the action
21 and/or the Court rejects the Class Member's objection, the Class
22 Member may still be bound by the terms of this Agreement.

23 f. **Report.** Not later than fourteen (14) days after the deadline for submission
24 of requests for exclusion, the Settlement Administrator will provide the
25 Parties with a complete and accurate list of all Class Members who sent
26 timely requests to be excluded from the Action and all Class Members who
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objected to the settlement.

6. The Court approves, as to form and content, the Class Notice in substantially the form attached as Exhibit A to the Settlement, the Exclusion Request form in substantially the form attached as Exhibit B to the Settlement, and the Work Weeks Dispute form in substantially the form attached as Exhibit C to the Settlement.

7. The Court approves, for settlement purposes only, David Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

8. The Court approves, for settlement purposes only, Luis Larraburu as the Class Representative.

9. The Court approves Phoenix Settlement Administrators as the Settlement Administrator.

10. The Court preliminarily approves Class Counsel’s request for attorneys’ fees and costs subject to final review by the Court.

11. The Court preliminarily approves the estimated Settlement Administrator costs payable to the Settlement Administrator subject to final review by the Court.

12. The Court preliminarily approves Plaintiff’s Class Representative Payment subject to final review by the Court.

13. A Final Approval Hearing shall be held on _____ at _____.m. in the Superior Court for the State of California, County of Los Angeles, located at the Los Angeles Courthouse, 312 North Spring Street, Los Angeles, CA 90012 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys’ fees and costs and the Class Representative Payment to the Class Representative. The notice of motion and all briefs and materials in support of the motion for final approval of class action settlement and motion for attorneys’ fees and litigation costs shall be served and filed with this Court on or before _____.

14. If for any reason the Court does not execute and file a final approval order and

1 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason,
2 the proposed Settlement that is the subject of this order, and all evidence and proceedings had
3 in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to
4 the litigation, as more specifically set forth in the Settlement.

5 15. The Court expressly reserves the right to adjourn or continue the Final Approval
6 Hearing from time to time without further notice to members of the Class. The Plaintiff shall
7 give prompt notice of any continuance to Settlement Class Members who object to the
8 Settlement.

9 **IT IS SO ORDERED.**

10 DATED: _____

11 **THE HONORABLE YVETTE M. PALAZUELOS**
12 **JUDGE OF THE SUPERIOR COURT**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)

LUIS LARRABURU, on behalf of himself and all
others similarly situated, and as an “aggrieved
employee” on behalf of other “aggrieved
employees” under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff,

vs.

AMERICAN MERCHANDISING
SPECIALISTS, INC., a North Carolina
corporation; and DOES 1–50, inclusive,

Defendant(s).

Case No. 21STCV17704

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING CLASS
ACTION SETTLEMENT**

Action filed: May 11, 2021
Department: 9, The Honorable Yvette M.
Palazuelos

This matter came on for hearing on _____ at _____.m. in
Department 9 of the above-captioned court on Plaintiff’s Motion for Final Approval of Class and
PAGA Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the
Joint Stipulation of Class Action Settlement and Release of Claims (the “Settlement”) filed
herewith which provides for a Gross Settlement Amount (“GSA”) of up to \$215,000.00 in

1 compromise of all disputed claims on behalf of all current and former non-exempt = employees
2 who are or were employed by Defendant in the State of California at any time during the period
3 of August 25, 2016 to ~~<<preliminary approval order date or~~ March 15, 2022, ~~whichever is~~
4 ~~earlier>>~~ (“Settlement Class Period”). All capitalized terms used herein shall have the same
5 meaning as defined in the Settlement.
6

7 In accordance with the Court’s prior Order Granting Preliminary Approval of Class and
8 PAGA Action Settlement, Class and PAGA Members have been given notice of the terms of the
9 Settlement and the opportunity to submit a claim, request exclusion, comment upon or object to
10 it or to any of its terms. Having received and considered the Settlement, the supporting papers
11 filed by the Parties, and the evidence and argument received by the Court in conjunction with the
12 motions for preliminary and final approval of the Settlement, the Court grants final approval of
13 the Settlement and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE
14 FOLLOWING DETERMINATIONS¹:
15

16 1. The Court has jurisdiction over the subject matter of the Action and over all
17 Parties to the Action, including all Class Members. Pursuant to this Court’s Order Granting
18 Preliminary Approval of Class Action Settlement of _____, the Class Notice was sent
19 to each Class Member by First Class U.S. mail. The Class Notice informed Class Members of
20 the terms of the Settlement, their right to receive their proportional share of the Settlement, their
21 right to request exclusion, their right to comment upon or object to the Settlement, and their right
22 to appear in person or by counsel at the final approval hearing and be heard regarding final
23

24
25 _____
26 ¹ A true and correct copy of the Court’s ruling on the Motion for Final Approval of Class Action
27 Settlement entered on _____ is attached hereto as **Exhibit A** and incorporated by
28 reference. A true and correct copy of the Court’s Minute Order dated _____ is
attached hereto as **Exhibit B** and incorporated by reference.

1 approval of the Settlement. Adequate periods of time were provided by each of these procedures.
2 No member of the Settlement Class presented written objections to the proposed Settlement as
3 part of this notice process, stated an intention to appear, or actually appeared at the final approval
4 hearing.

5 2. For purposes of this Final Order and Judgment, the Class Members are all persons
6 non-exempt employees employed by Defendant in California during the Class Period. at any time
7 during the period of August 25, 2016 to ~~<<preliminary approval order date or~~ March 15, 2022;
8 ~~whichever is earlier>>~~ (“Settlement Class Period”).

9
10 3. The Court finds and determines that the notice procedure afforded adequate
11 protections to Class Members and provides the basis for the Court to make an informed decision
12 regarding final approval of the Settlement based on the responses of Class Members. The Court
13 finds and determines that the notice provided in this case was the best notice practicable, which
14 satisfied the requirements of law and due process as to all persons entitled to such notice.

15
16 2. **Release by Plaintiff and Class and PAGA Members.** The Settlement will
17 release any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or
18 other action of any kind by each. and all of the Settlement Class Members (including participation
19 to any extent in any representative or collective action), against Defendant and all of those
20 entities’ and individual’s past, present and future agents, employees, servants, officers, directors,
21 partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries,
22 equity sponsors, related corporations, divisions, joint venturers, assigns, predecessors,
23 successors, service providers, insurers, consultants, subcontractors, joint employers, employee
24 benefit plans and fiduciaries thereof, affiliated organizations, and all persons acting under, by,
25 through or in concert with any of them, and each of them, arising during the period August 25,
26
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1 2016 through ~~<<preliminary approval order date or~~ March 15, 2022, ~~whichever is earlier>>~~, and
2 arising from, could have been asserted, or related in any way to the claims asserted in the Action
3 against Defendant based on the facts pleaded in the Operative Complaint. The Settlement Class
4 Members will release and discharge Defendant, and any of its former and present parents,
5 subsidiaries, owners, shareholders, officers, directors, employees, affiliates, successors, assigns,
6 agents, attorneys, legal representatives (“Released Parties”). However, the release provisions of
7 this Settlement will not take effect until Defendant has paid the Gross Settlement Amount in full
8 per this Settlement Agreement.

10 3. **Released Claims.** Released Claims by the Participating Class Members include
11 all claims alleged in the operative First Amended Complaint along with related claims that could
12 have been alleged based on the facts alleged in the operative First Amended Complaint including:
13 (1) claims for unpaid wages (including but not limited to overtime pay, minimum wage, regular
14 wages, missed meal period premium pay, missed rest period premium pay, failure to pay wages
15 of terminated or resigned employees, or other benefits), and claims for interest, penalties, or
16 premiums in connection therewith, as well as any claims under the California Labor Code, any
17 applicable California Wage Order(s); (2) claims for failure to comply with the employee itemized
18 wage statement provision under California Labor Code section 226; (3) claims for failure to
19 provide or make available meal and rest periods as required under California Labor Code §512
20 and IWC Wage Orders; (4) claims for failure to indemnify as required under California Labor
21 Code §§1198 and 2802); (5) penalties for violations of the California Labor Code; (6) violation
22 of California Business and Professions Code Section 17200, et seq.; and (7) all other claims under
23 California common law, the California Labor Code, California Wage Orders, the California
24 Business and Professions Code, set forth in the Complaint including alleged violation of
25
26
27
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1 California Labor Code sections 201-204, 210, 215-216, 218.5, 225.5, 226, 226.3, 226.6, 226.7,
2 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699, 2699.3,
3 2699.5, 2802, California Civil Code sections 1021.5, 3287, 3288, California Business and
4 Professions Code sections 17000 and 17200 et. seq., the relevant Wage Orders issued by the
5 Industrial Welfare Commission, or any other claim for any statutory or civil penalty that have
6 been, or could have been, asserted based on the facts alleged in the First Amended Complaint
7 under California law that arise from the allegations as pled including claims for damages,
8 reimbursement, restitution, losses, penalties, fines, liens, attorney's fees, costs, expenses, debts,
9 interest, injunctive or declaratory relief, liquidated damages or similar relief. The Final Judgment
10 shall cover and bar each and every Participating Class Member from asserting any Released
11 Claims in the future. PAGA claims – include the underlying claims alleged in the PAGA notice
12 letter and Plaintiff's Operative Complaint - will be released, and PAGA Members will be entitled
13 to their portion of the PAGA Payment, regardless of whether or not the Participating Class
14 Member opts-out or excludes him or herself from the Class.

17 4. The Court further finds and determines that the terms of the Settlement are fair,
18 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
19 provisions of the Settlement, including the release of claims contained therein, should be and
20 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
21 according to its terms. As of the Effective Date of Settlement, and for the duration of the
22 Settlement Class Period, all Class Members are hereby deemed to have waived and released all
23 Released Claims and are forever barred and enjoined from prosecuting the Released Claims
24 against the Releasees as fully set forth in the Settlement. No objections were received by the
25 Parties or the Court through the date of this Final Order and Judgment. The Court finds _____
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27
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1 Class Member(s)——————submitted a request for exclusion from the Settlement
2 as determined by the Settlement Administrator and therefore is/are not in the Settlement Class.

3 5. The Court finds and determines that (a) the Settlement Shares to be paid to
4 Participating Class Members and (b) the LWDA payment as civil penalties under the California
5 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
6 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
7 final approval to, and orders the payment of, those amounts be made to the Participating Class
8 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
9 accordance with the terms of the Settlement.
10

11 6. The Court further grants final approval to and orders that the following payments
12 be made in accordance with the terms of the Settlement:

13 a. Class Counsel fees & costs of \$71,666.66 in attorneys’ fees and
14 \$17,500.00 in litigation costs to Class Counsel;

15 b. \$15,000.00 as a Class Representative Payment award payable to Plaintiff
16 Luis Larraburu for his service as a Class Representative;

17 c. \$10,000.00 in costs of the Settlement Administrator payable to Phoenix
18 Settlement Administrators for its services as the Settlement Administrator; and
19

20 d. Payment of \$3,000.00 (75% of the (\$4,000.00 PAGA penalty) to the
21 LWDA.
22

23 7. The settlement shall proceed as directed in the Settlement, and no payments
24 pursuant to the Settlement shall be distributed until after the Effective Date of Settlement.
25 Without affecting the finality of this Final Order and Judgment in any way, the Court retains
26 jurisdiction of all matters relating to the interpretation, administration, implementation,
27
28

1 effectuation and enforcement of this Final Order and Judgment and the Settlement pursuant to
2 California Rule of Court 3.769(h).

3 8. Within 10 calendar days of the Effective Date of Settlement, Defendant shall
4 deposit the Settlement proceeds in an account designated by the Settlement Administrator: (i) the
5 total amount of all Settlement Shares to Participating Class Members, (ii) the Court approved
6 Class Counsel fees & costs, (iii) the Court-approved Class Representative Payment, (iv) the
7 Court-approved costs of the Settlement Administrator, and (v) the payment to the LWDA.
8

9 9. Defendant's payment of such sums shall be the sole financial obligation of
10 Defendant under the Settlement, and shall be in full satisfaction of all claims released herein,
11 including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and
12 expenses.
13

14 10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have
15 one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement
16 Share check. After the expiration of the 180-day period, on Defendant's behalf, the Settlement
17 Administrator shall remit any amounts from Voided Settlement Checks and otherwise unclaimed
18 (the "Residue"), plus interest on the Residue at the legal rate of interest from the date of entry of
19 the initial judgement to the California Unclaimed Property Fund.
20

21 11. The Parties shall file a final accounting report by _____. A non-
22 appearance case review re submission of a final report is scheduled for _____ at
23 _____. **m. in Department 9.** The Parties shall also prepare and file a stipulation and
24 proposed order and proposed Amended Final Order and Judgment by _____ which
25 includes the amount of distribution of unpaid cash Residue, and unclaimed or abandoned funds
26 to the non-party, the accrued interest on that sum. The stipulation shall be signed by counsel for
27
28

1 the class and defense counsel in accord with the proposed Amended Final Order and Judgment.
2 If there are objections by any party or non-party, class counsel shall immediately notify the Court
3 and the matter will be set for further hearing. A non-appearance hearing for the lodging of the
4 stipulation and proposed order and separate amended judgment is scheduled for
5 _____ at _____.m. in Department 9.

6
7 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
8 Parties' obligations under the Settlement or hereunder, including the requirement that Defendant
9 deposit funds for distribution by the Settlement Administrator to Participating Class Members in
10 accordance with the Settlement.

11 13. The Court hereby enters final judgment in this case in accordance with the terms
12 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this
13 Final Order and Judgment.

14 14. The Parties are hereby ordered to comply with the terms of the Settlement.

15 15. The Parties shall bear their own costs and attorneys' fees except as otherwise
16 provided by the Settlement and this Final Order and Judgment.

17 16. The Settlement is not an admission by Defendant nor is this Final Order and
18 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by
19 Defendant. Furthermore, the Settlement is not a concession by Defendant and shall not be used
20 as an admission of any fault, omission, or wrongdoing by Defendant. Neither this Final Order
21 and Judgment, the Settlement, any document referred to herein, any exhibit to any document
22 referred to herein, any action taken to carry out the Settlement, nor any negotiations or
23 proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an
24 admission or concession with regard to, the denials or defenses of Defendant, and shall not be
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1 offered in evidence in any proceeding against the Parties hereto in any Court, administrative
2 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this
3 Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto,
4 and any other papers and records on file in the Action may be filed in this Court or in any other
5 litigation as evidence of the settlement by Defendant to support a defense of res judicata,
6 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to
7 the Released Claims.
8

9 17. This document shall constitute a Judgment for purposes of California Rule of
10 Court 3.769(h).

11 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

12
13
14 DATED: _____

THE HONORABLE YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

EXHIBIT 14

1 **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND**
2 **HEARING DATE FOR COURT APPROVAL**

3 *Luis Larraburu v. American Merchandising Specialists, Inc., Case No. 21STCV17704*

4 **As a current or former non-exempt employees of American Merchandising Specialists,**
5 **Inc. in California, you may be entitled to receive money from a class action settlement.**

6 Phoenix ID: <<Phoenix ID>>
7 <<Name>>
8 <<Address1>>
9 <<Address2>>
10 <<City>>, <<State>> <<Zip
11 Code>>

Please provide current address (if different) here:

12 *The Los Angeles County Superior Court has authorized this Class Notice.*
13 *This is not a solicitation from a lawyer.*

14 YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION
15 SETTLEMENT IF YOU ARE A CURRENT OR FORMER NON-EXEMPT EMPLOYEE OF
16 AMERICAN MERCHANDISING SPECIALISTS, INC. WHO WORKED IN THE STATE OF
17 CALIFORNIA BETWEEN AUGUST 25, 2016 AND ~~PRELIMINARY APPROVAL~~
18 ~~ORDER DATE OR~~ MARCH 15, 2022, ~~WHICHEVER IS EARLIER~~.

- 19 • A proposed settlement of \$215,000.00 (the “Gross Settlement Amount”) will be used to pay
20 claims to: All persons Defendant American Merchandising Specialists, Inc. employed as non-
21 exempt employee in the State of California during the “Class Period” of August 25, 2016 to
22 ~~PRELIMINARY APPROVAL ORDER DATE OR~~ March 15, 2022, ~~WHICHEVER IS EARLIER~~ (the “Class
23 Members”). The Gross Settlement Amount includes (a) expenses and fees of the Settlement
24 Administrator up to \$10,000.00; (b) a Class Representative Payment of \$15,000.00 to the
25 Plaintiff Luis Larraburu as the class representative; (c) attorneys’ fees of up to \$71,666.66
26 and litigation expenses of up to \$17,500.00 to Class Counsel; and (d) \$4,000.00 allocated to
27 settle claims brought pursuant to the Private Attorneys General Act, California Labor Code
28 Section 2698, *et seq.* (“PAGA”)(75% of which will go to the California Labor & Workforce
Development Agency (“LWDA”) and 25% of which will go to Class Members). The Court
must approve these payments at the Final Approval Hearing.
- Defendant estimated for purposes of settlement negotiations leading up to the Settlement that
there are 6042.00 Work Weeks by 115 Class Members for the period of August 25, 2016
through November 15, 2021. These numbers would be expected to increase proportionately
for the passage of time between that date and the time of court approval. Before the Parties
seek or a Party seeks final court approval of the Settlement, the Settlement Administrator will
advise Plaintiff’s counsel of Defendant’s report of the total number of Work Weeks and Class
Members. If the Work Weeks and/or Class Members as of the date the Court approves the
settlement exceeds the referenced 6042.00 Work Weeks and/or 115 Class Members by more
than 10.00%, the Gross Settlement Amount, including the Class Counsel Fees Payment, the

Class Representative Payment, and the LWDA payment, will increase proportionally according to the number of additional Work Weeks or Class Members, whichever results in a higher increase in the Gross Settlement Amount.

The Settlement Administrator shall assign to each Class Member a “Settlement Ratio,” which shall be a fractional number comprised of (a) that Class Member’s Individual Work Weeks as the numerator, and (b) the aggregate total of all Class Members’ Individual Work Weeks as the denominator. The Settlement Administrator shall assign to each Class Member the “Settlement Share” which shall be calculated by multiplying that Class Member’s Settlement Ratio by amount allocated to Class Members from the Net Settlement Amount. Class Members will receive a payment based on the number of Work Weeks, rounded up to the nearest full Work Week, during the Class Period.

- The Individual Settlement Amount for each PAGA Member will be calculated by the Settlement Administrator using the Class Data provided by Defendant. The Settlement Administrator will calculate the number of PAGA Work Weeks by calculating the number of days each PAGA Member was employed using their original hire date and final termination date, excluding any time they were unemployed in between during that time period, during the PAGA Period, dividing by seven (7), and rounding up to the nearest whole number. PAGA Members shall receive their portion of the PAGA Penalties regardless of their decision to opt-out of the class settlement.
- The settlement resolves a lawsuit entitled *Luis Larraburu v. American Merchandising Specialists, Inc.*, Case No. 21STCV17704 (the “Action”) for Defendant’s alleged failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, and other legal consequences that would follow from these failures, including claims under California’s Business & Professions Code and PAGA. This settlement avoids the costs and risks from continuing the Action, pays money to persons like you, and releases Defendant from alleged liability.
- The Court has not made a determination of the validity of the claims in the Action. Defendant denies any and all liability arising from any of the claims and contends that at all relevant times it properly compensated the Class Members, provided lawful meal periods, authorized and permitted lawful rest breaks, reimbursed for all work expenses, provided accurate itemized wage statements, timely paid wages, and fully complied with all applicable laws.

~~• Class Members will receive a payment based on the number of Work Weeks, rounded up to the nearest full Work Week, during the Class Period.~~

**PLEASE READ THIS ENTIRE CLASS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED BY IT.**

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

1 All current and former non-exempt employees who work or worked for Defendant at any time
2 during the period of August 25, 2016 to ~~<<preliminary approval order date or~~ March 15, 2022,
3 ~~whichever is earlier>>~~ ("Class Period"). The "Participating Class Members" does not include
any person who submits a timely and valid request for exclusion as provided in this Notice.

4 WHO IS INCLUDED IN THE PAGA SETTLEMENT CLASS?

5 All Participating Class Members who worked for Defendant at any time during the period of
6 August 20, 2019 to ~~<<preliminary approval order date or~~ March 15, 2022, ~~whichever is earlier>>~~
("PAGA Period"). The PAGA Members includes any person worked during the PAGA Period
even if that person submits a request for exclusions as provided in this Notice.

7 HOW MUCH WILL I GET?

8 You have a total number of ~~<<number of Work Weeks>>~~ Work Weeks during the Class
9 ~~and Period~~ You have a total number of ~~<<number of Work Weeks>>~~ Work Weeks during the
PAGA ~~Periods~~ Period.

10 It is expected that you will receive approximately ~~<<<<\$ >> from this Settlement as~~
11 ~~your Settlement Share and <<\$ >> as your~~ Individual Settlement Payment ~~amount>> from~~
~~this Settlement~~ form the PAGA Payment.

13 YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

14 DO NOTHING	Receive a payment and give up your legal rights to pursue claims released by the settlement of the Action.
15 OPT OUT	Receive no payment and retain your legal rights to pursue class claims that would otherwise be released by the settlement of the Action.
17 OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, Phoenix, about why you do not like the settlement and they will forward your concerns to counsel which will then be provided to the Court.
19 DISPUTE THE WORK WEEK CALCULATION	If you feel that you worked a different amount of Work Weeks as a non-exempt employee by Defendant than identified above, you may dispute that calculation by writing to the Settlement Administrator.
21 ATTEND A HEARING	You have the right to attend a fairness hearing that will be conducted by the Court, but you are not required to attend. If you timely file and serve a written objection, and if you also want to speak about your objection at the hearing, you should send a letter to the Settlement Administrator, Phoenix, providing notice of your intention to appear and speak at the hearing.

25 IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT

26 1. Why did I get this Class Notice?

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

5 The Court in charge of this case is the Los Angeles County Superior Court. The person who sued
6 is called “Plaintiff” and the organization he sued is called “Defendant.”

7 2. What is the Action about?

8 In the Action, Luis Larraburu (“Plaintiff”) alleged multiple violations of the California Labor
9 Code, the California Business & Professions Code, and PAGA, including causes of action for:
10 failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods,
11 failure to indemnify for business expenses, failure to issue proper wage statements, failure to
timely pay wages, unfair competition under California’s Business & Professions Code, and
claims for civil penalties for violations of the PAGA.

12 ///

13 ///

14 3. Why is there a settlement?

15 The parties disagree on the probable outcome of the case with respect to liability, damages, and
16 how much money could be recovered if the Plaintiff won at trial. Defendant believes the Plaintiff
17 would not prevail if this case went to trial. The Court has not decided in favor of the Plaintiff or
18 Defendant. There has been no trial in this case. Instead, both sides recognize the risks, expenses,
19 and disruption associated with continued litigation and they have therefore chosen to resolve
20 their differences by entering into a settlement. By doing so, the parties can avoid the cost of a
trial, yet Class Members are still entitled to receive payments if they comply with the instructions
in this Class Notice. The parties entered into this settlement after arms-length negotiations while
using the services of an experienced and neutral mediator. The Plaintiff and Class Counsel
believe that the proposed settlement is fair and reasonable and is in the best interest of the Class
Members.

21 4. What is a class action settlement?

22 The Court must approve the terms of the proposed settlement as fair and reasonable. Once
23 approved, the settlement will affect all Class Members, except those who have properly opted
24 out. This Class Notice explains your legal rights, the terms of the settlement, what you must do
25 to participate, and the amount of money you may receive. Please read this entire Class Notice
carefully.

26 5. What should I do?

1 You can do nothing, and if you are entitled to a payment, you will be paid. Be mindful, however,
2 that if this Class Notice reaches you and the address where you now live is different, you need
3 to contact the Settlement Administrator and provide updated information so that any future
correspondence or the settlement check itself reaches you and is not returned as an address
unknown.

4 [Class Members will be notified of the final judgment through a website maintained by the](#)
5 [Settlement Administrator. The Settlement Administrator will set up the website and post all](#)
6 [relevant documents including the notice of the final judgment](#)

6. How much will my payment be?

7 After all fees, costs, and offsets are taken as set forth under the Settlement Agreement (which is
8 available for review), the remainder will be used to pay Class Members a pro-rata payment based
9 on the number of Work Weeks each Class Member worked during the Class Period (“Pro-Rata
Share”).

10 The Settlement Administrator shall determine by how many Work Weeks each such Class
11 Member has.

12 Your estimated payment is listed above, on page 2 of this document. If you do not dispute your
13 Work Weeks calculation, and do not opt out of the settlement, you will be bound by the
14 settlement and receive a settlement payment. **In other words, you do not need to take any
action to receive a settlement payment.**

15 If you wish to dispute the number of Work Weeks credited to you or anything else about your
16 employment status, you must write to the Settlement Administrator indicating what you believe
17 is incorrect and return it on or before <<date>> [60 days after initial mailing] via U.S. Mail with
18 proof of the submission date (such as a postmark or delivery service date stamp). You may use
19 the enclosed Work Weeks Dispute Form for this purpose. If the Settlement Administrator re-
20 mailed your Class Notice to a new address, you will have additional 30 days from the date of the
21 re-mailed Class Notice to write to the Settlement Administrator to dispute your Work Weeks
information. You must also send any documents or other information that you contend supports
your belief that the information set forth above is incorrect. The Settlement Administrator will
resolve any dispute based upon Defendant’s records and any information you provide. Please be
advised that the information on this Notice is presumed to be correct unless the documents you
submit are company records from Defendant.

7. When would I get my payment?

23 The Court will hold a hearing on <<final approval hearing date>> at <<final approval hearing
24 time>> .m to decide whether to approve the proposed settlement. If the Court approves the
25 settlement and anyone objects, there may be appeals. It is always uncertain when these objections
26 and appeals can be resolved, and resolving them can take time. To check on the progress of the
settlement, call the Settlement Administrator at <<settlement administrator phone number>>, or
contact Class Counsel (see below for Class Counsel’s contact information.). Please be patient.

1 You will have 180 days to cash your settlement check. If a mailed individual settlement payment
2 is not cashed by <<check cashing deadline>> (within 180 days of the date printed on the check),
3 all uncashed funds will be paid to the California State Controller's Office Unclaimed Property
4 Fund with the identity of the Class Member to whom the funds belong, to be held for the Class
5 Member.

6 8. What am I releasing?

7 If you do not exclude yourself from the settlement (according to the procedures explained below),
8 you will release certain claims as follows:

9 The Parties agree that it is their intent that the resolution set forth in this Settlement will
10 release any further attempt, by lawsuit, administrative claim or action, arbitration,
11 demand, or other action of any kind by each and all of the Settlement Class Members
12 (including participation to any extent in any representative or collective action), against
13 Defendant and all of those entities' and individual's past, present and future agents,
14 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
15 stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations,
16 divisions, joint venturers, assigns, predecessors, successors, service providers, insurers,
17 consultants, subcontractors, joint employers, employee benefit plans and fiduciaries
18 thereof, affiliated organizations, and all persons acting under, by, through or in concert
19 with any of them, and each of them, arising during the period August 25, 2016 through
20 ~~preliminary approval order date or~~ March 15, 2022, ~~whichever is earlier~~, and arising from,
21 could have been asserted, or related in any way to the claims asserted in the Action against
22 Defendant based on the facts pleaded in the Operative Complaint. The Settlement Class
23 Members will release and discharge Defendant, and any of its former and present parents,
24 subsidiaries, owners, shareholders, officers, directors, employees, affiliates, successors,
25 assigns, agents, attorneys, legal representatives.

26 Released Claims by the Participating Class Members include all claims alleged in the
27 operative First Amended Complaint along with related claims that could have been
28 alleged based on the facts alleged in the operative First Amended Complaint including:
(1) claims for unpaid wages (including but not limited to overtime pay, minimum wage,
regular wages, missed meal period premium pay, missed rest period premium pay, failure
to pay wages of terminated or resigned employees, or other benefits), and claims for
interest, penalties, or premiums in connection therewith, as well as any claims under the
California Labor Code, any applicable California Wage Order(s); (2) claims for failure to
comply with the employee itemized wage statement provision under California Labor
Code section 226; (3) claims for failure to provide or make available meal and rest periods
as required under California Labor Code §512 and IWC Wage Orders; (4) claims for
failure to indemnify as required under California Labor Code §§1198 and 2802; (5)
penalties for violations of the California Labor Code; (6) violation of California Business
and Professions Code Section 17200, et seq.; and (7) all other claims under California
common law, the California Labor Code, California Wage Orders, the California
Business and Professions Code, set forth in the Complaint including alleged violation of
California Labor Code sections 201-204, 210, 215-216, 218.5, 225.5, 226, 226.3, 226.6,

1 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699,
2 2699.3, 2699.5, 2802, California Civil Code sections 1021.5, 3287, 3288, California
3 Business and Professions Code sections 17000 and 17200 et. seq., the relevant Wage
4 Orders issued by the Industrial Welfare Commission, or any other claim for any statutory
5 or civil penalty that have been, or could have been, asserted based on the facts alleged in
6 the First Amended Complaint under California law that arise from the allegations as pled
7 including claims for damages, reimbursement, restitution, losses, penalties, fines, liens,
8 attorney's fees, costs, expenses, debts, interest, injunctive or declaratory relief, liquidated
9 damages or similar relief. The Final Judgment shall cover and bar each and every
10 Participating Class Member from asserting any Released Claims in the future. PAGA
11 claims – include the underlying claims alleged in the PAGA notice letter and Plaintiff's
12 Operative Complaint - will be released, and PAGA Members will be entitled to their
13 portion of the PAGA Payment, regardless of whether or not the Participating Class
14 Member opts-out or excludes him or herself from the Class.

15 The release provisions of this Settlement will not take effect until Defendant has paid the Gross
16 Settlement Amount in full per this Settlement Agreement.

17 9. How can I opt out of this settlement?

18 You can opt out of this settlement and retain your rights. To do so, you must send a letter by mail
19 to the Settlement Administrator with the following sentence, or something similar, stating: "I
20 request to be excluded from the class action proceedings in the matter of *Luis Larraburu v.*
21 *American Merchandising Specialists, Inc.*, Case No. 21STCV17704." You may use the enclosed
22 "Election not to Participate in Settlement Form" for this purpose. You will have **60 days** from
23 the date of mailing of this Class Notice to do so. Your Opt-Out request must be in writing and
24 mailed to the Settlement Administrator, Phoenix, <<settlement administrator mailing address>>
25 and be postmarked no later than <<response deadline>>, or it will not be considered and you
26 will be bound by the settlement. If the Settlement Administrator re-mailed your Class Notice to
27 a new address, you will have additional 30 days from the date of the re-mailed Class Notice to
28 opt out. You must include your full name (and former names, if any) and address in your request
and you must sign the written request.

However, even if you opt-out of the class action settlement, you will still be entitled to your
portion of the PAGA penalties.

10. Do I have a lawyer in this case?

The Court has appointed David G. Spivak and The Spivak Law Firm, 8605 Santa Monica Blvd.,
PMB 42554, West Hollywood, CA 90069, telephone (213) 725-9094, david@spivaklaw.com,
to represent you and other Class Members in the Action. These lawyers are called Class Counsel.
They will be compensated from the Gross Settlement Amount as discussed in this Class Notice.
If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

1 Class Counsel will ask the Court to award them fees of approximately 33 and 1/3% (one-third)
2 of the Gross Settlement Amount. Class Counsel will also ask the Court to award them costs
3 incurred in connection with the Action. The Court may choose to award less than the amount
4 requested by Class Counsel.

4 12. How do I tell the Court that I do not like the settlement?

5 You can ask the Court to deny approval by objecting. You cannot ask the Court to order a larger
6 settlement; the Court can only approve or deny the settlement. If the Court denies the settlement,
7 no settlement payments will be sent out and the Action will continue. If that is what you want to
8 happen, you must object.

8 You may object to the proposed settlement in writing or in person. You may also appear at the
9 Final Approval Hearing, either in person or through your own attorney. If you appear through
10 your own attorney, you are responsible for paying that attorney. All written objections and
11 supporting papers should (a) clearly identify the case name and number (*Luis Larraburu v.*
12 *American Merchandising Specialists, Inc.*, Case No. 21STCV17704), (b) be submitted to the
13 Settlement Administrator by mailing them to the Settlement Administrator, Phoenix,
14 <<settlement administrator mailing address>>, and (c) be filed or postmarked on or before
15 <<response deadline>>. If the Settlement Administrator re-mailed your Class Notice to a new
16 address, you will have additional 30 days from the date of the re-mailed Class Notice to object.
17 Class Members may appear at the final approval hearing to be heard on their objections, even if
18 they have not previously served a written objection.

15 13. When and where will the Court decide whether to approve the settlement?

16 The Court will hold a fairness hearing on <<final approval hearing date>> at <<final approval
17 hearing time>> .m at the Los Angeles County Superior Court, 312 North Spring Street, Los
18 Angeles, CA 90012 (The Honorable Yvette M. Palazuelos). At this hearing, the Court will
19 consider whether the settlement is fair, reasonable, and adequate. If there are objections that were
20 properly made, the Court will consider them. The Court will listen to people who have asked to
21 speak at the hearing. The Court may also decide how much to pay to Class Counsel. At or after
22 the hearing, the Court will decide whether to approve the settlement. We do not know how long
23 this decision will take.

21 14. Do I have to come to the hearing?

22 No. Class Counsel will answer any questions that the Court may have. But, you are welcome to
23 come at your own expense. If you sent an objection, you do not have to come to Court to talk
24 about it. As long as you timely mailed your written objection, the Court will consider it. You
25 may also pay your own lawyer to attend, but it is not required.

25 15. May I speak at the hearing?

26 Regardless of whether you properly objected to the settlement, you may speak at the fairness
27 hearing.

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16. What happens if I do nothing at all?

You will participate in the settlement and receive payment. You will be bound by the release as set forth herein.

GETTING MORE INFORMATION

This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel or the Settlement Administrator if you would like more information about the case. You may call <<settlement administrator phone number>> or write the Settlement Administrator, Phoenix, located at <<settlement administrator mailing address>>.

You can also access the Los Angeles County Superior Court's Online Services at <https://www.lacourt.org/>, or by visiting the Clerk's Office at the Los Angeles County Superior Court, 312 North Spring Street, Los Angeles, CA 90012, between _:_0 a.m. and _:_0 p.m., Monday through Friday, excluding Court holidays.

On April 4, 2022, the Superior Court of Los Angeles lifted its mandatory face mask order while strongly recommending the use of well-fitting medical masks or respirators inside all courthouses to align with the most recent Los Angeles County Department of Public Health (LADPH) Health Order. For more information, please visit the Court's website at <https://www.lacourt.org/>.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE
TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

EXHIBIT 15

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title:	Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.:	21STCV17704
Court:	Los Angeles
Judge:	Yvette M. Palazuelos, Dept. 9
Page subject:	Data

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Friday, May 12, 2017
Lab.Code § 203 (waiting time penalties) period begins:	Saturday, May 12, 2018
Lab.Code § 2699 (civil penalties) period begins:	Wednesday, August 21, 2019
Lab.Code § 226 (pay stub penalties) period begins:	Monday, May 11, 2020
LWDA Notice:	Thursday, August 20, 2020
Lawsuit:	Tuesday, May 11, 2021
Sample begin:	Thursday, August 25, 2016
Sample end:	Monday, October 18, 2021
Sample calendar days:	1,880
Mediation:	Monday, November 15, 2021
Anticipated Settlement Period end date:	Tuesday, March 15, 2022
Settlement Period to Sample Period:	94.04%

Classes / Groups sizes

UCL Class Members:	115
UCL Workweeks:	5,796
UCL Wage Statements:	2,898
UCL Workdays:	28,169
UCL Calendar days:	1,648
UCL Months:	54.18
 Waiting Time Penalties Class Members:	 90
 PAGA Aggrieved Employees:	 70
PAGA Wage Statements:	1,478
 Wage Statement Class Members:	 70
Wage Statement Class Wage Statements:	1,471

Averages

Average Hourly Rate:	\$	19.97
Average Overtime Rate:	\$	29.96
Average Doubletime Rate:	\$	39.94
 Average Work Hours Per Day:		 6.70
Average Work Hours Per Week:		32.33
Average Workdays Per Week:		4.86

Confidential Settlement Communication

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Workdays to Calendar Days (%):

69.43%

Paycycle:

Biweekly

Paychecks Per Year:

26

Confidential Settlement Communication

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Case title:	Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.:	21STCV17704
Court:	Los Angeles
Judge:	Yvette M. Palazuelos, Dept. 9
Page subject:	Unpaid wages
Authority:	Lab.Code §§ 510, 1194, 1194.2, and 1198

Average Hourly Rate:	\$	19.97
Unpaid hours per pay week (travel time):		0.5
Actionable workweeks:		2,898
Interest:		10%

Unpaid wages:	\$	31,830.18
Liquidated damages:	\$	31,830.18

Confidential Settlement Communication

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Case title: Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.: 21STCV17704
Court: Los Angeles
Judge: Yvette M. Palazuelos, Dept. 9
Page subject: **Unpaid Overtime on Nondiscretionary compensation (bonuses, awards, commissions)**

Average Hourly Rate:	\$	19.97
Average Overtime Rate:	\$	29.96
Average Doubletime Rate:	\$	39.94
Average Work Hours Per Day:		6.7
Average Work Hours Per Week:		32.33
Average Workdays Per Week:		4.86
Monthly non-discretionary compensation:	\$	327.33
Weekly non-discretionary compensation:	\$	75.28
Workday non-discretionary compensation:	\$	67.35
Hourly non-discretionary compensation:	\$	2.08
Unpaid hourly non-discretionary overtime pay on nondiscretionary compensation:	\$	1.04
Average overtime hours per week:		4.43
UCL Workweeks:		5,796.00
Interest rate:		10%
Unpaid non-discretionary overtime pay on nondiscretionary compensation:	\$	29,419.73

Confidential Settlement Communication

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Case title:	Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.:	21STCV17704
Court:	Los Angeles
Judge:	Yvette M. Palazuelos, Dept. 9
Page subject:	Unprovided Meal Periods
Authority:	Lab.Code §§ 226.7, 512, and 1198
Average Hourly Rate:	\$ 19.97
Actionable workdays:	28,169
>>Percentage qualifying for meal periods:	86%
Violation rate (%)	25%
Meal period premium wages:	\$ 120,943.12

Confidential Settlement Communication

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Case title:	Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.:	21STCV17704
Court:	Los Angeles
Judge:	Yvette M. Palazuelos, Dept. 9
Page subject:	Unprovided Rest Periods
Authority:	Lab.Code §§ 226.7 and 1198
Average Hourly Rate:	\$ 19.97
Actionable workdays:	28,169
>>Percentage qualifying for rest periods:	95%
Violation rate (%)	25%
Rest period premium wages:	\$ 133,599.96

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title:	Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.:	21STCV17704
Court:	Los Angeles
Judge:	Yvette M. Palazuelos, Dept. 9
Page subject:	Unreimbursed expenses
Authority:	Lab.Code § 2802

Mileage

IRS Mileage Rate:	\$	0.575
Miles Per Year:		12,636.00
Miles Per Month:		1,053.00
Miles Per Workweek:		243.00
Miles Per Workday:		50.00
Defendant's Mileage Rate:	\$	0.58
Unreimbursable regular yearly commute miles		5,054.40
Unreimbursable regular monthly commute miles		421.20
Unreimbursable regular weekly commute miles		97.20
Unreimbursable regular daily commute miles		20.00
UCL Workweeks:		5,796
Interest rate:		10%
Unreimbursed mileage	\$	564,075.41

Unreimbursed expenses:	\$	564,075.41
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Confidential Settlement Communication

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Case title:	Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.:	21STCV17704
Court:	Los Angeles
Judge:	Yvette M. Palazuelos, Dept. 9
Page subject:	Itemized Wage Statements
Authority:	Lab.Code § 226
Wage Statement Class Members:	70
Wage Statement Class Wage Statements:	1,471
Initial penalty:	\$ 50.00
Subsequent penalty:	\$ 100.00
Statutory wage statement penalties:	\$ 143,600.00

Confidential Settlement Communication

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Case title:	Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.:	21STCV17704
Court:	Los Angeles
Judge:	Yvette M. Palazuelos, Dept. 9
Page subject:	Waiting Time / Final Wages
Authority:	Lab.Code § 203

Waiting Time Penalties Class Members:		90
Days waiting:		30
Average Hourly Rate:	\$	19.97
Average Overtime Rate:	\$	29.96
Average Doubletime Rate:	\$	39.94
Average Work Hours Per Day:		6.70
Regular Hours Per Day:		6.70
Overtime Hours Per Day:		-
Doubletime Hours Per Day:		-
Waiting time penalties:	\$	361,257.30

Confidential Settlement Communication

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Case title:	Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.:	21STCV17704
Court:	Los Angeles
Judge:	Yvette M. Palazuelos, Dept. 9
Page subject:	PAGA Civil Penalties
Authority:	Lab.Code §§ 2698, <i>et seq.</i>

Labor Code violation	Labor Code Civil		Subsequent		Pay periods	Total
	Penalty Statute	Initial penalty	penalty			
Minimum wages (Lab.Code § 1197):	Lab.Code § 1197	\$ 100.00	\$ 250.00	1,478	\$	369,350.00
Overtime wages (Lab.Code § 510):	Lab.Code § 558	\$ 50.00	\$ 100.00	1,478	\$	147,750.00
Meal periods Lab.Code § 512):	Lab.Code § 558	\$ 50.00	\$ 100.00	1,478	\$	147,750.00
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	\$ 100.00	\$ 200.00	1,478	\$	295,500.00
Business expenses (Lab.Code § 2802):	Lab.Code § 2699	\$ 100.00	\$ 200.00	1,478	\$	295,500.00
Improper pay stubs (Lab.Code § 226):	.Code § 226.3; 2699	\$ 100.00	\$ 200.00	1,478	\$	295,500.00
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	\$ 200.00	1,478	\$	295,500.00
Total:					\$	1,846,850.00

Confidential Settlement Communication

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Case title:	Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.:	21STCV17704
Court:	Los Angeles
Judge:	Yvette M. Palazuelos, Dept. 9
Page subject:	Totals
Authority:	Various

Restitution	Reduction to		Demand
Unpaid wages:	\$ 31,830.18	80%	\$ 25,464.15
Liquidated damages:	\$ 31,830.18	50%	\$ 15,915.09
Unpaid OT on nondiscretionary compensation:	\$ 29,419.73	100%	\$ 29,419.73
Meal period premium wages:	\$ 120,943.12	25%	\$ 30,235.78
Rest period premium wages:	\$ 133,599.96	25%	\$ 33,399.99
Unreimbursed expenses:	\$ 564,075.41	100%	\$ 564,075.41
Restitution subtotal:	\$ 911,698.59	\$	698,510.15
Penalties			
Statutory wage statement penalties:	\$ 143,600.00	10%	\$ 14,360.00
Waiting time penalties:	\$ 361,257.30	10%	\$ 36,125.73
Minimum wages (Lab.Code § 1197):civil penalties:	\$ 369,350.00	10%	\$ 36,935.00
Overtime wages (Lab.Code § 510):civil penalties:	\$ 147,750.00	10%	\$ 14,775.00
Meal periods Lab.Code § 512):civil penalties:	\$ 147,750.00	10%	\$ 14,775.00
Rest periods (Lab.Code § 1198):civil penalties:	\$ 295,500.00	10%	\$ 29,550.00
Business expenses (Lab.Code § 2802):civil penalties:	\$ 295,500.00	10%	\$ 29,550.00
Improper pay stubs (Lab.Code § 226):civil penalties:	\$ 295,500.00	10%	\$ 29,550.00
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$ 295,500.00	10%	\$ 29,550.00
Penalties subtotal:	\$ 2,351,707.30	\$	235,170.73
Grand total:	\$ 3,263,405.89	\$	933,680.88

EXHIBIT 16



SPIVAK LAW

**ATTORNEY CONSULTATION AND FEE CONTRACT
FOR CONTINGENCY CASES**

THIS FEE CONTRACT FOR CONTINGENCY CASES ("Contract") is made on April 13, 2021, in Encino, between **Luis Larraburu** hereinafter referred to as "Client," and The Spivak Law Firm of Los Angeles County, CA and United Employees Law Group, PC of Orange County, CA hereinafter referred to as "Attorney."

In consideration of the mutual promises herein contained, the parties hereto agree as follows:

I. PURPOSE OF REPRESENTATION

1.01 Client hereby retains and employs Attorney to sue for and recover all damages and compensation to which Client may be entitled as well as to compromise and settle all claims described below:

class action claims and Private Attorneys General Act representative claims against AMS Retail Solutions and related entities for unpaid off the clock work, unpaid bonus overtime wages, unprovided rest and meal periods, and unreimbursed expenses

1.02 This agreement will not become binding on either party, and Attorney will not begin providing legal services, until Client has paid the initial deposit, if any, as described in Paragraph 2.03, and has signed this Agreement. This written agreement supersedes any and all previous agreements between the parties, if any.

1.03 Attorney will provide reasonably necessary legal services and will take steps to keep Client informed of the progress of the case. Attorney will respond within a reasonable time and manner to Client's inquiries. If court action becomes necessary, Attorney will represent Client through trial and post-trial motions. Separate arrangements must be made for any appeal or execution proceedings that client wishes to pursue after judgment, or any other matters for which Client wishes to employ Attorney other than the matter described above.

II. ATTORNEY'S FEE AND EXPENSES

2.01 In consideration of services rendered and to be rendered by Attorney, Client hereby agrees to pay to Attorney in the event of an individual settlement or judgment the following amounts on any settlements, monies, judgments or other consideration which have or may be paid on this legal matter:

- a. Before the filing of a lawsuit or arbitration demand: 33 and 1/3 percent of any recovery.

- b. After the filing of a lawsuit or arbitration demand: 40 percent of any recovery. In the event Client prevails at trial (or arbitration) of this matter, any fee awarded by the court, pursuant to statute or contract, in connection with the subject matter of this representation, shall be paid to Attorney and shall be applied against Client's fee obligation under this Agreement, but shall not limit or discharge Client's fee obligation. In the event there is a fee award by the court upon Client prevailing at trial, the Attorney shall receive either the fee award or 40% of the total award, whichever is greater.

If the total legal fees received in this case are \$250,000.00 or greater, it is agreed that the United Employees Law Group, PC will shall receive 33 and 1/3% of the total legal fees received and the Spivak Law Firm shall receive the remaining 66 and 2/3% of the total legal fees received. If the total legal fees received in this case are less than \$250,000.00, it is agreed that the United Employees Law Group, PC will shall receive 25% of the total legal fees received and the Spivak Law Firm shall receive the remaining 75% of the total legal fees received.

It is agreed and understood that if the amount of attorney's fees on this claim or cause of action are regulated or governed by law, and that law precludes any other fee arrangement other than the amount set by the law or regulation, then the amount payable hereunder to said Attorney shall be limited to the maximum so allowed by law. In the event of a class action settlement or judgment, Private Attorneys General Action settlement or judgment, or other representative settlement or judgment, a court's approval of an award of attorney fees is necessary. Normally with such settlements and judgments, a request for attorney fees will be for no more than one third (33 and 1/3%) of the total value of the settlement or judgment amount. Attorney will apply for an award of attorney fees from the court that may be more or less than the percentages stated above. Under such circumstances. Attorney will also ask the court to separately award Attorney the costs Attorney has advanced for this matter. In advance of such requests to a Court for attorney fees and costs, Attorney will seek Client's written consent to the attorney fees and costs sought.

2.01.1 This section concerns the possibility of settlement of individual claims, attorney fees, and costs in the event representative claims are no longer viable.

Under this Agreement, Attorney agrees to represent Client in Client's pursuit of the claims described in Section 1.01 of this Agreement, stated above. These claims are representative claims because Client agrees that Client will pursue the Claims for Client and all comparable employees and individuals. In this regard, Attorney advises Client of the following material information:

1. Attorney has chosen to represent Client primarily because the Client has claims that Client may be able to bring on behalf of numerous other comparable employees. As a result, Client's claims have the potential to support a class action lawsuit and/or a Private Attorneys General Act lawsuit.

2. Client's individual claims - and those of each of the other comparable employees that Attorney will file the lawsuit on behalf of - are generally worth very small amounts in unpaid wages, unreimbursed work expenses, interest, and/or statutory monetary penalties. Attorney would not have agreed to represent Client if it were not for the strong likelihood that a Court will permit Client's lawsuit to proceed to trial on behalf of numerous other employees with comparable claims to Client's claims.
3. Only by combining the claims of numerous individuals can Attorney reasonably hope to recover the attorney fees and costs Attorney incurs as part of Attorney's contingency representation of Client.
4. For reasons that are unknown at the time of this Agreement and for reasons that are well outside of the control of the Attorney and the Client, Attorney may discover after Client executes this Agreement that numerous comparable employees with comparable claims to Client's claims do not exist. In this instance, the Attorney and the Client may not be able to pursue the class action or Private Attorneys General Act claims any longer.
5. Based on Attorney's prior experience, Defendants (the party or parties Client sues or intends to sue) in class actions and Private Attorneys General Actions often attempt to settle with the Plaintiff (the party suing or intending to sue) for the maximum value of the Plaintiff's individual claims. Such settlements prevent the Plaintiff from continuing to represent comparable individuals (sometimes known as "class members," "putative class members," "proposed class members," and/or "aggrieved employees") who Client brought the lawsuit on behalf of.
6. Based on Attorney's prior experience, the Defendant may offer to settle Client's individual claims for an amount of money that equals or exceeds the maximum value of Client's claims. In this event, the Attorney's fees and costs will likely exceed the maximum value of Client's individual claims. Often in Attorney's experience, the Attorney's fees and costs will far exceed the value of Client's individual claims.
7. Attorney may advise Client to accept an individual settlement of Client's claims if numerous individuals with claims that are comparable to Client's do not exist and an individual settlement is in Client's best interest. Alternatively, Client may choose to enter into a settlement for an amount that equals or exceeds the maximum value of Client's individual claims even if there are numerous individuals with claims that are comparable to Client's claims.
8. Based on evidence Attorney may obtain after entering into this Agreement with client, Attorney's estimate of maximum value of Client's claims may change over the course of the Attorney-Client relationship under this Agreement.

In the event the Defendant offers to settle with Client for an amount of money that equals or exceeds the maximum value of Client's individual claims, Client agrees that, if the Attorney's fees and costs exceed the maximum value of Client's claims, Attorney may elect, solely at Attorney's option, that Client receive only the maximum value of Client's individual claims from the settlement funds and that the Attorney receives the remaining settlement funds to cover all or part of the Attorney's fees and costs and the risks that arise from Attorney's contingency representation of Client. In other words, Client agrees to accept as settlement the amount equal to the estimated maximum value of Client's claims. Attorney discloses that attorney's fees and costs incurred may substantially exceed the client's net recovery.

Within seven days of Client's written request to Attorney, Attorney will provide Client with Attorney's estimate of the maximum value of Client's claims. This estimate of maximum value may change over the course of litigation.

Attorney strongly recommends that Client consult with an independent lawyer about this provision, including whether this provision is in Client's best interests. By initialing below, Client agrees that Attorney has provided Client with a reasonable opportunity to consult with an independent lawyer about this provision and Client consents to this provision.

LEJL

_____ (Client initials here)

2.02 The rates set forth above are not set by law, but are negotiable between an attorney and client.

2.03 Client agrees to grant law firm a lien on any and all claims or causes of action that are the subject of this Agreement. The lien, to ensure payment of any sums owing to law firm at the conclusion of services performed, will attach to any recovery you may obtain. Law firm may compel payment of fees and costs from any such funds recovered on behalf of you, even if law firm has been discharged before the end of the case. You may seek the opinion of an independent lawyer of your choice before agreeing to this lien. By initialing below, Client agrees that Client has had reasonable opportunity to consult an independent law firm, regardless of whether you have actually consulted such law firm, and Client agrees that law firm will have a lien as specified above.

LEJL

_____ (Client initials here)

DS

_____ (Attorney initials here)

III. APPROVAL NECESSARY FOR SETTLEMENT

3.01 Attorney is hereby authorized to enter into any and all settlement negotiations on behalf of those whom Attorney represents as Attorney deems appropriate. This includes, but is not limited to, Attorney's prerogative to pursue cash or structured payment settlement negotiations.

3.02 Client hereby grants unto Attorney a power of attorney to handle negotiations and settlement discussions regarding the obtaining of possession of any and all monies or other things of value subject of the matter due to Client under this claim as fully as Client could do so in person.

a. This expressly includes the right to sign Client's name on and to any insurance company drafts, money orders, cashier's checks, checks or other negotiable instruments made payable to Attorney and Client, Attorney, or to Client without the joinder of Attorney, submitted to Attorney on behalf of Client in full or partial settlement of this case.

b. This limited power of attorney further authorizes Attorney to place these monies, referred to above, in Attorney's trust account and from that trust account, make distributions and payments to Attorney for the agreed to fee stated above, reimbursement to Attorney for any and all expenses incurred by Attorney in handling this case, payments to Client of Client's interest in the monies recovered as stated above, and payments to parties other than Client and Attorney for their services performed, fees charged or bills rendered in connection with representing Client, including but not limited to medical bills, court reporter fees, deposition fees, investigative services, costs of exhibits or other special expenses incurred by Attorney on behalf of Client.

3.03 No settlement of any nature shall be made for any of the aforesaid claims or profits of Client without the complete approval of Client, nor shall Client obtain any settlement on the aforesaid claims without the complete approval of attorney.

3.04 Attorney is granted a limited power of attorney so that Attorney may have full authority to prepare, sign and file all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to conclude this representation, including settlement and/or reduce to possession any and all monies or other things of value due to Client under this claim as fully as Client could do so in person.

IV. REPRESENTATIONS

4.01 It is expressly agreed and understood that no promises or guarantees as to the outcome of the case have been made to Client by Attorney. Attorney has not represented to Client that Client will recover all or any of the funds so desired. Client also acknowledges that obtaining a judgment does not guarantee that the opposing party will be able to satisfy the judgment. It is further expressly understood and agreed that no other representations have been made to Client, except for those set out in this Contract.

V. DEDUCTION OF EXPENSES

5.01 All reasonable expenses incurred by Attorney in the handling of this legal matter shall be deducted from the gross settlement proceeds at the time the case is settled or resolved, and before the contingent fee is calculated.

5.02 The expenses contemplated above, include but are not limited to any and all out-of-pocket expenses incurred in connection with this case, including but not limited to the following expenses: filing fees, court costs, certified copies of documents, pleadings, orders etc., transcripts, depositions,

duplication costs, postage, office supplies, photographs, trial exhibits, long distance phone and fax calls, appraisal fees, consultants, expert witnesses and other fees associated with preparation and trial testimony, investigation fees, delivery charges, overnight mail/parcel services, parking, toll road and mileage expenses, out of town expenses including travel expense, air fare, hotels, meals, and any other expense incurred in connection with the matter.

5.03 Except for the following, all expenses and costs will be charged to Client at Attorney's cost: mileage at \$0.50/mile and photocopying at \$0.25/page.

VI. COOPERATION OF CLIENT

6.01 Client shall keep Attorney advised of Client's whereabouts at all times, and provide Attorney with any changes of address, phone number or business affiliation during the time period which Attorney's services are required, and shall comply with all reasonable requests of Attorney in connection with the preparation and presentation of aforesaid representation.

6.02 Attorney may, at Attorney's option, withdraw from the case and cease to represent Client for any reason, including without limitation Client's failure to timely pay fees and expenses or deposits for same in accordance with this Contract, subject to the professional responsibility requirements to which attorneys are subject.

It is further understood and agreed between the parties that upon such termination of any services of Attorney, any of Client's deposits remaining in Attorney's Trust Account shall be applied to any balance remaining owing to Attorney for fees and/or expenses and any surplus then remaining shall be refunded to Client.

6.03 Duties As A Class Representative In A Class Action or Private Attorney General Action. Client has retained Attorney to prosecute a class action and/or private attorney general action on behalf of Client and comparable employees and other individuals. This section applies only to Client's responsibilities as a class representative or as a private attorney general. Client will have certain duties and responsibilities to the comparable individuals the lawsuit is on behalf of. Certain of these duties are explained in greater detail below.

6.03.01 Attorney may apply to the Court for a special award to compensate the Client as the class representative or private attorney general for Client's contribution to the action and/or Client's release of all individual claims Client may have. Client understands however that unless such an award is approved by the Court, Client will only be entitled to Client's pro rata share of funds available for distribution to all class members, aggrieved employees, and comparable individuals.

6.03.02 A class representative represents the interests of all members of his class in litigation to recover money unpaid wages, penalties, reimbursement, restitution and/or obtain injunctive relief for the class. Likewise, a private attorney general represents the interests of all comparable aggrieved employees in litigation to recover money civil penalties (monetary penalties that traditionally only the

State can sue for) on behalf of the Client, aggrieved employees, and the State of California.

6.03.03 The class or group of aggrieved employees usually consists of all persons who are similarly situated with respect to a common course of conduct or practice. In other words, all those persons who are affected by the challenged behavior.

6.03.04 A class representative or private attorney general has claims that are typical of those of the class or group of aggrieved employees, and thus involve common issues of law or fact. For example, as a class representative, Client's claims against the defendant are typical of the class and private attorney general claims against the defendant, simply because Client was injured by the same unlawful employment practices as the other class members and aggrieved employees.

6.03.05 A class representative and private attorney general always considers the interests of the class and/or aggrieved employees just as Client would consider Client's own interests and in some cases must put the interests of the class and other aggrieved employees before Client's own interests. This means that Client is a champion of the other individuals or a fiduciary litigant.

6.03.06 A class representative or private attorney general always actively participates in the lawsuit, as necessary, by among other things, answering interrogatories, producing documents to the defendants and giving deposition and trial testimony if requested. Client may be required to travel to give such testimony.

6.03.07 A class representative or private attorney general recognizes and accepts that any resolution of the lawsuit by dismissal or settlement, is subject to court approval, and must be designed in the best interest of the class as a whole.

6.03.08 A class representative or private attorney general is not required to be particularly sophisticated or knowledgeable about the subject of the lawsuit. However, a class representative private attorney general should follow the progress of the lawsuit and should provide all relevant facts to the lawyers for the class or aggrieved employees.

6.03.09 A class representative or private attorney general volunteers to represent or champion many other people with similar claims and injuries because of the importance of the case and that necessity that all class members or aggrieved employees benefit from the lawsuit equally; the savings of time, money and effort should benefit all parties and the court. Class actions and private attorney general actions are an important tool to assure compliance with the law even where an individual's losses may be relatively small.

By initially below, Client has reviewed and acknowledges Client's duties as a class representative and/or private attorney general.

LEJL

_____ (Client initials here)

VII. CALIFORNIA LAW TO APPLY

7.01 This Agreement shall be construed under the laws of California, and all obligations of the parties created hereunder are performable in Los Angeles County, CA.

VIII. PARTIES BOUND

8.01 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

IX. LEGAL CONSTRUCTION

9.01 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

X. PRIOR AGREEMENTS SUPERSEDED

10.01 This Agreement constitutes the sole and only agreement by and between the parties. It supersedes any prior understandings or written or oral agreements between the parties concerning the subject matter discussed herein.

XI. RESOLUTION OF DISPUTES BY ARBITRATION

11.01 You have the right to elect arbitration pursuant to the fee arbitration procedures of the State Bar of California, in any dispute subject to the jurisdiction of the State of California over attorneys' fees, charges, costs or expenses, as set forth in California Business and Professions Code Section 6200, et seq. If, after receiving a notice of this right to arbitrate, you do not elect to proceed under the State Bar fee arbitration procedures, and do not file a request for fee arbitration within 30 days, any dispute over fees, charges, costs or expenses, will be resolved by binding arbitration as described below.

11.02 Any controversy between the parties regarding the construction, application or performance of any services under this Agreement, and any claim arising out of or relating to this Agreement or its breach, shall be submitted to binding arbitration upon the written request of one party after the service of that request on the other party. The sole and exclusive venue for the arbitration and or any legal dispute shall be Los Angeles County, California.

11.03 By initialing below, Client and law firm confirm that they have read and understand the paragraphs above, and voluntarily agree to binding arbitration. In doing so, Client and law firm voluntarily give up important constitutional rights to trial by judge or jury, as well as rights to appeal.

Luis Larraburu

4/13/2021

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You are advised that you have the right to have an independent law firm of your choice review these arbitration provisions, and this entire agreement, prior to initialing this provision or signing this Agreement.

LEJL (Client initials here) DS (Attorney initials here)

TAX DISCLOSURE AND ACKNOWLEDGMENT:

CLIENT IS ADVISED TO OBTAIN INDEPENDENT AND COMPETENT TAX ADVICE REGARDING THESE LEGAL MATTERS SINCE LEGAL TRANSACTIONS CAN GIVE RISE TO TAX CONSEQUENCES.

THE UNDERSIGNED LAW FIRM AND ATTORNEY HAVE NOT AGREED TO RENDER ANY TAX ADVICE AND ARE NOT RESPONSIBLE FOR ANY ADVICE REGARDING TAX MATTERS OR PREPARATION OF TAX RETURNS, OR OTHER FILINGS, INCLUDING, BUT NOT LIMITED TO, STATE AND FEDERAL INCOME AND INHERITANCE TAX RETURNS.

FURTHERMORE, CLIENT SHOULD OBTAIN PROFESSIONAL HELP REGARDING THE VALUATION AND LOCATION OF ALL ASSETS WHICH MAY BE THE SUBJECT OF A LEGAL MATTER INCLUDING BUT NOT LIMITED TO PENSIONS, EMPLOYMENT BENEFIT AND PROFIT SHARING RIGHTS THAT MAY BE CONTROLLED BY ANY OTHER PARTY TO THE LEGAL MATTER.

XII. DISCLAIMER OF GUARANTEE

12.01 Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. There can be no assurance that Client will recover any sum or sums in this matter. Attorney's comments about the outcome of this matter are expressions of opinion only. Client acknowledges that Attorney has made no promises or guarantees about the outcome.

XIII. DISCHARGE AND WITHDRAWAL

13.01 Client may discharge Attorney at any time, with written notice. Attorney may withdraw with Client's consent, or for good cause, which includes Client's breach of this Agreement, refusal to cooperate or communicate with Attorney on this matter, or any fact or circumstance that would render Attorney's representation unlawful or unethical. Attorney will, upon Client's request, deliver Client's file and property in Attorney's possession, unless subject to lien as provided above, whether or not Client has completed payment for all services rendered.

Luis Larraburu

4/13/2021

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XIV. EFFECTIVE DATE

14.01 This Agreement will govern all legal services beginning on the date that Attorney began performing work for Client. That date of this document is to be used for reference only. Client will be required to pay Attorney the reasonable value of services performed by Attorney, even if this agreement never takes effect.

I further certify and acknowledge that I have read this Contract, and that I have voluntarily entered into this Contract fully aware of its terms and conditions as of the date Attorney first provided services. All clients signing below agree to be liable, jointly and severally, for all obligations under this agreement.

SIGNED on Apr 13, 2021



Luis Larraburu

SIGNED on 05 / 10 / 2021

The Spivak Law Firm



BY: _____

David G. Spivak
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(818) 582-3086
(818) 582-2561 (telefax)
California Bar No. 179684

United Employees Law Group, PC



BY: _____

Walter L. Haines
5500 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
(562) 256-1047
(562) 256-1006 (telefax)
California Bar No. 71075

STATEMENT OF CLIENT'S RIGHTS FOR CONTINGENCY FEES

Before you, the prospective client, arrange a contingent fee agreement with a lawyer, you should understand this statement of your rights as a client. This statement is not a part of the actual contract between you and your lawyer, but, as a prospective client, you should be aware of these rights.

1. There is no legal requirement that a lawyer charge a client a set fee or a percentage of money recovered in a case. You, the client, have the right to talk with your lawyer about the proposed fee and to bargain about the rate or percentage as in any other contract. If you do not reach an agreement with one (1) lawyer you may talk with other lawyers.

2. Any contingent fee contract must be in writing and you have three (3) business days to reconsider the contract. You may cancel the contract without any reason if you notify your lawyer in writing within 3 business days of signing the contract. If you withdraw from the contract within the first three (3) business days, you do not owe the lawyer a fee although you may be responsible for the lawyer's actual costs during that time. If your lawyer begins to represent you, your lawyer may not withdraw from the case without giving you notice, delivering necessary papers to you, and allowing you time to employ another lawyer. Often, your lawyer must obtain court approval before withdrawing from a case. If you discharge your lawyer without good cause after the 3-day period, you have to pay a fee for work the lawyer has done.

3. Before hiring a lawyer, you, the client, have the right to know about the lawyer's education, training, and experience. If you ask, the lawyer should tell you specifically about the lawyer's actual experience dealing with cases similar to yours. If you ask, the lawyer should provide information about special training or knowledge and give you this information in writing if you request it.

4. Before signing a contingent fee contract with you, a lawyer must advise you whether the lawyer intends to handle your case alone or whether other lawyers will be helping with the case. If you lawyer intends to refer the case to other lawyers, the lawyer should tell you what kind of fee sharing arrangement will be made with the other lawyers. If lawyers from different law firms will represent you, at least one (1) lawyer from each law firm must sign the contingent fee contract.

5. If your lawyer intends to refer your case to another lawyer or counsel with other lawyers, your lawyer should tell you about that at the beginning. If your lawyer takes the case and later decides to refer it to another lawyer or to associate with other lawyers, you should sign a new contract that includes the new lawyers. You, the client, also have the right to consult with each lawyer working on your case and each lawyer is legally responsible to represent your interest and is legally responsible for the acts of the other lawyers involved in the case.

6. You, the client, have the right to know in advance how you will need to pay the expenses and the legal fees at the end of the case. If you pay a deposit in advance for costs, you may ask reasonable questions about how the money has or will be spent and how much of it remains unspent. Your lawyer should give a reasonable estimate about future necessary costs. If your lawyer agrees to

lend or advance you money to prepare or research the case, you have the right to know periodically how much money your lawyer has spent on your behalf. You also have the right to decide, after consulting with your lawyer, how much money is to be spent to prepare a case. If you pay the expenses, you have the right to decide how much to spend. Your lawyer should also inform you whether the fee will be based on the gross amount recovered or on the amount recovered minus the costs.

7. You, the client, have the right to be told by your lawyer about the possible adverse consequences if you lose the case. Those adverse consequences might include money that you might have to pay to your lawyer for costs and liability you might have for attorney's fees, costs, and expenses to the other side.

8. You, the client, have the right to receive and approve a closing statement at the end of the case before you pay any money. The statement must list all of the financial details of the entire case, including the amount recovered, all expenses, and a precise statement of your lawyer's fee. Until you approve the closing statement your lawyer cannot pay any money to anyone, including you, without an appropriate order of the court. You also have the right to have every lawyer or law firm on your case sign this closing statement.

9. You, the client, have the right to ask your lawyer at reasonable intervals how the case is progressing and to have these questions answered to the best of the lawyer's ability.

10. You, the client, have the right to make the final decision regarding settlement of a case. Your lawyer must notify you of all offers of settlement before and after the trial. Offers during the trial must be immediately communicated and you should consult with your lawyer regarding whether to accept a settlement. However, you must make the final decision to accept or reject a settlement.

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11. If at any time you, the client, believe that your lawyer has charged an excessive or illegal fee, you have the right to report the matter to The California Bar, the agency that oversees the practice and behavior of all lawyers in California. For information on how to reach The California Bar, contact the local bar association. Any disagreement between you and your lawyer about a fee can be taken to court and you may wish to hire another lawyer to help you resolve this disagreement. Usually fee disputes must be handled in a separate lawsuit, unless your fee contract provides for arbitration.

SIGNED on Apr 13, 2021



Luis Larraburu

SIGNED on 05 / 10 / 2021

The Spivak Law Firm



BY:

David G. Spivak
16530 Ventura Blvd., Suite 203
Encino, CA 91436
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EXHIBIT 17