

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

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**ADDITIONAL ATTORNEYS FOR PLAINTIFF**

WALTER L. HAINES (SBN 71075)  
    walter@uelglaw.com  
UNITED EMPLOYEES LAW GROUP  
4276 Katella Ave, Suite 301  
Los Alamitos, CA 90720  
Telephone: (562) 256-1047  
Facsimile: (562) 256-1006

**ATTORNEYS FOR DEFENDANT**

EFTHALIA S. ROFOS (SBN 309065)  
    Thalia.Rofos@lewisbrisbois.com  
LEWIS BRISBOIS BISGAARD & SMITH, LLP  
Thalia S. Rofos Esq.  
650 Town Center Drive  
Suite 1400  
Costa Mesa, CA 92626  
Telephone: (714) 850-1030  
Facsimile: (714) 850-1030  
  
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.

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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:

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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  
4 in this Notice.

#### 5 HOW MUCH WILL I GET?

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

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

#### 11 YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

|                                                  |                                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12 DO NOTHING                                    | 13 Receive a payment and give up your legal rights to pursue claims<br>14 released by the settlement of the Action.                                                                                                                                                                                                                                                                                    |
| 15 OPT OUT                                       | 16 Receive no payment and retain your legal rights to pursue class<br>17 claims that would otherwise be released by the settlement of the<br>18 Action.                                                                                                                                                                                                                                                |
| 19 OBJECT TO THE<br>20 SETTLEMENT                | 21 If you do not opt out, you may write to the Settlement<br>22 Administrator, Phoenix, about why you do not like the settlement<br>23 and they will forward your concerns to counsel which will then be<br>24 provided to the Court.                                                                                                                                                                  |
| 25 DISPUTE THE WORK<br>26 WEEK<br>27 CALCULATION | 28 If you feel that you worked a different amount of Work Weeks as<br>a non-exempt employee by Defendant than identified above, you<br>may dispute that calculation by writing to the Settlement<br>Administrator.                                                                                                                                                                                     |
| ATTEND A HEARING                                 | You have the right to attend a fairness hearing that will be<br>conducted by the Court, but you are not required to attend. If you<br>timely file and serve a written objection, and if you also want to<br>speak about your objection at the hearing, you should send a letter<br>to the Settlement Administrator, Phoenix, providing notice of your<br>intention to appear and speak at the hearing. |

### 29 IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT

#### 30 1. Why did I get this Class Notice?

31 You were sent this Class Notice because you have a right to know about the proposed settlement  
32 in the Action and about all of your options before the Court rules on whether to finally approve  
33 the settlement. If the Court approves the settlement, and after any objections and appeals are  
34 resolved, a “Settlement Administrator” appointed by the Court will make the payments that the  
35 settlement allows. This Class Notice explains the Action, the proposed settlement, your legal  
36 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 ///

9 ///

## 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  
Fund with the identity of the Class Member to whom the funds belong, to be held for the Class  
Member.

25 8. What am I releasing?

26  
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,  
28

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)

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(Address)

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(City, State, Zip Code)

\_\_\_\_\_  
(Telephone Number, Including Area Code)

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(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: \_\_\_\_\_  
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(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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Case No. 21STCV17704

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

VS.

*Defendant(s).*

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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.  
28

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)**

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 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 DETERMINATIONS<sup>1</sup>:  
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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24

25 \_\_\_\_\_  
26 <sup>1</sup> 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.  
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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**