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10 Attorneys for Plaintiff,
11 LUIS LARRABURU, and all others similarly situated
12 (Additional attorneys for Plaintiff on following page)

13 **FOR THE COUNTY OF LOS ANGELES**

14 **(UNLIMITED JURISDICTION)**

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

20 *Plaintiff,*

21 *vs.*

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

25 *Defendant(s).*

Case No. 21STCV17704

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

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

Action filed: May 11, 2021

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ADDITIONAL ATTORNEYS FOR PLAINTIFF

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

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

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

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

21 4. The Court hereby preliminarily finds that the First Amended Settlement was the
22 product of serious, informed, non-collusive negotiations conducted at arm’s length by the
23 Parties. In making this preliminary finding, the Court considered the nature of the claims set
24 forth in the pleadings, the amounts and kinds of benefits which shall be paid pursuant to the
25 First Amended Settlement, the allocation of First Amended Settlement proceeds to the
26 Settlement Class, and the fact that the First Amended Settlement represents a compromise of
27 the Parties’ respective positions. The Court further preliminarily finds that the terms of the First
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1 Amended Settlement have no obvious deficiencies and do not improperly grant preferential
2 treatment to any individual Class Member. Accordingly, the Court preliminarily finds that the
3 First Amended Settlement was entered into in good faith.

4 5. The Court finds that the dates set forth in the First Amended Settlement for
5 mailing and distribution of the Class Notice meet the requirements of due process and provide
6 the best notice practicable under the circumstances, and constitute due and sufficient notice to
7 all persons entitled thereto, and directs the mailing of the Class Notice by first class mail to the
8 Settlement Class as set forth in the First Amended Settlement. Accordingly, the Court orders the
9 following implementation schedule for further proceedings:

10 a. Within fourteen (14) days of this Order, Defendant shall provide Phoenix
11 Settlement Administrators, the appointed Settlement Administrator, with: (a)
12 An electronic database of all Class Members, last known mailing address,
13 Social Security number and Defendant's employee identification number
14 ("Class Members' Data"); and (b) Corresponding to each Class Member's
15 name, Defendant shall provide a figure indicating the total number of Work
16 Weeks during the Class Period in which Defendant employed the Class
17 Member. That number of Work Weeks shall be referred to as that Class
18 Member's "Individual Work Weeks;" (c) If any of the Class Members' Data
19 are unavailable to Defendant, Defendant will so inform Class Counsel and
20 the Parties will make their best efforts to reconstruct or otherwise agree upon
21 the Class Members' Data prior to when it must be submitted to the Settlement
22 Administrator. Class Members' Data will otherwise remain confidential and
23 will not be disclosed to anyone, except as necessary to applicable taxing
24 authorities, or pursuant to Defendant's express written authorization or by
25 order of the Court.

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

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

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

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

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

26 *To Class Counsel:*

27 David G. Spivak, Esq.
28 The Spivak Law Firm

To Defense Counsel:

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

1 8605 Santa Monica Blvd., PMB 42554
2 West Hollywood, CA 90069

650 Town Center Drive
Suite 1400
Costa Mesa, CA 92626

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

15 *To Class Counsel:*

16 David G. Spivak, Esq.
17 The Spivak Law Firm
18 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

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

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

7 f. **Report.** Not later than fourteen (14) days after the deadline for submission
8 of requests for exclusion, the Settlement Administrator will provide the
9 Parties with a complete and accurate list of all Class Members who sent
10 timely requests to be excluded from the Action and all Class Members who
11 objected to the First Amended Settlement.

12 6. The Court approves, as to form and content, the Class Notice in substantially the
13 form attached as Exhibit A to the First Amended Settlement, the Exclusion Request form in
14 substantially the form attached as Exhibit B to the First Amended Settlement, and the Work
15 Weeks Dispute form in substantially the form attached as Exhibit C to the First Amended
16 Settlement.

17 7. The Court approves, for First Amended Settlement purposes only, David Spivak
18 of The Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class
19 Counsel.

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

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

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

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

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

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

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

18 15. The Court expressly reserves the right to adjourn or continue the Final Approval
19 Hearing from time to time without further notice to members of the Class. The Plaintiff shall
20 give prompt notice of any continuance to Settlement Class Members who object to the First
21 Amended Settlement.

22 **IT IS SO ORDERED.**

23 DATED: _____

THE HONORABLE YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT