

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

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

6 **I. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 approval of the Settlement without material change.

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

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

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

8 **II. RECITALS**

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

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

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

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

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

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

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

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

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

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

13 **III. SETTLEMENT TERMS AND CONDITIONS**

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

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

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

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

10 **1. To Plaintiff.**

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

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

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

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

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

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

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

28 **(b) Settlement Ratio Calculation.** The Settlement Administrator

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

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

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

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

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

21 **IV. PROCEDURES FOR APPROVING SETTLEMENT**

22 **A. Motion for Preliminary Approval of Settlement by the Court.** Class Counsel
23 will move the Court for an order granting Preliminary Approval of the Settlement (the "Motion
24 for Preliminary Approval"), setting a date for the Final Approval Hearing, and approving the
25 Class Notice (attached as **Exhibit A** to this Agreement), the Exclusion Request form (attached
26 as **Exhibit B** to this Agreement), and the Work Weeks Dispute form (attached as **Exhibit C** to
27 this Agreement). Any disagreement among the Parties concerning the Class Notice or other
28 documents necessary to implement the Settlement will be referred to the Court.

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

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

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

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

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

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

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

27 **2. Mailing of Class Notice.** Within fourteen (14) days after receiving the
28 Class Members’ Data, or as soon thereafter as it can do so, the Settlement Administrator will

1 mail the Class Notice to all identified Class Members via first-class U.S. mail using the mailing
2 address information provided by Defendant, unless modified by any updated address information
3 that the Settlement Administrator obtains in the course of administration of the Settlement.

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

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

24 **C. Disputed Class Member Settlement Shares.** If a Class Member disputes his/her
25 estimated Settlement Share, the Class Member may produce evidence to the Settlement
26 Administrator for the Class Period. In order for the dispute to be considered, he/she must follow
27 the directions on the Class Notice. To be valid and timely, all disputes and supporting documents
28 must be postmarked by the date specified in the Class Notice (no less than 60 days from the initial

mailing of the Class Notice by the Settlement Administrator). A Class Member may use the Work Weeks Dispute form (**Exhibit C** to this Settlement), though a Class Member is not obligated to do so to request exclusion from the Settlement.

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

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

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

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

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

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

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

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

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

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

1 **H. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the
2 terms and conditions of this Agreement, and that no Class Member timely objects to the
3 Settlement and formally intervenes into the action as required under the California Supreme
4 Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260, 228 Cal. Rptr. 3d 106
5 (2018) or files a motion pursuant to Civil Procedure Code section 663, Defendant, and its
6 respective counsel hereby waive, except as provided for in this Agreement or prohibited by law,
7 any and all rights to appeal from the Judgment, including all rights to any post-judgment
8 proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new
9 trial, any extraordinary writ, and any appeal, and the Judgment therefore will become non-
10 appealable at the time it is entered. The waiver of appeal does not include any waiver of the right
11 to oppose any appeal, appellate proceedings, or post-judgment proceedings. If an appeal is taken
12 from the Judgment, the time for consummation of the Settlement (including making any
13 payments under the Settlement) will be suspended until the appeal is fully and finally resolved
14 and the Judgment, consistent with the terms of this Agreement, becomes Final.

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

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

5 **K. Payment of Settlement Shares.** Within ten (10) calendar days of receipt of the
6 Gross Settlement Amount, the Settlement Administrator shall pay Settlement Shares, from the
7 Settlement Account, to all Class Members (who do not submit valid requests to be excluded from
8 the Action). The Settlement Administrator shall pay each Settlement Share by sending a check
9 in the appropriate amount to the Class Member at the address indicated in the list of Class
10 Member names and addresses provided by Defendant, or as subsequently determined by the
11 Settlement Administrator to be the correct address.

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

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

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

25 **V. RELEASE OF CLAIMS**

26 **A. Plaintiff and Class Members.** The Parties agree that it is their intent that the
27 resolution set forth in this Settlement will release any further attempt, by lawsuit, administrative
28 claim or action, arbitration, demand, or other action of any kind by each and all of the Settlement

1 Class Members (including participation to any extent in any representative or collective action),
2 against Defendant and all of those entities' and individual's past, present and future agents,
3 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
4 stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations, divisions,
5 joint venturers, assigns, predecessors, successors, service providers, insurers, consultants,
6 subcontractors, joint employers, employee benefit plans and fiduciaries thereof, affiliated
7 organizations, and all persons acting under, by, through or in concert with any of them, and each
8 of them, arising during the period August 25, 2016 through preliminary approval order date or
9 March 15, 2022, whichever is earlier, and arising from, could have been asserted, or related in
10 any way to the claims asserted in the Action against Defendant based on the facts pleaded in the
11 Operative Complaint. The Settlement Class Members will release and discharge Defendant, and
12 any of its former and present parents, subsidiaries, owners, shareholders, officers, directors,
13 employees, affiliates, successors, assigns, agents, attorneys, legal representatives ("Released
14 Parties"). This release will not take effect until Defendant has paid the Gross Settlement Amount
15 in full per this Settlement Agreement.

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

25 **C. Released Claims.** Released Claims by the Participating Class Members include
26 all claims alleged in the operative First Amended Complaint along with related claims that could
27 have been alleged based on the facts alleged in the operative First Amended Complaint including:
28 (1) claims for unpaid wages (including but not limited to overtime pay, minimum wage, regular

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

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

1 **VI. NON-PUBLICITY PROVISION**

2 The Parties and their counsel agree that they will not issue any press releases, initiate any
3 contact with the press, respond to any press inquiry, or have any communication with the press
4 about the fact, amount, or terms of the Settlement. In addition, the Parties and their counsel agree
5 that they will not engage in any advertising or distribute any marketing materials relating to the
6 Settlement of this case in any manner that identifies the Defendant, including but not limited to
7 any postings on any websites maintained by Class Counsel. Neither Plaintiff nor Class Counsel
8 will discuss the terms or the fact of the Settlement with third parties other than (1) their immediate
9 family members, (2) their respective accountants or lawyers as necessary for tax purposes; or (3)
10 other Class Members. Plaintiff and Class Counsel agree not to publish any of the terms or
11 conditions of this Settlement in any manner that identifies the Defendant. However, Class
12 Counsel may identify this Settlement in other matters to demonstrate their adequacy as counsel
13 in such other matters.

14 **VII. MISCELLANEOUS TERMS**

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

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

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

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

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

27 **F. Modification of Agreement.** This Agreement, and all parts of it, may be
28 amended, modified, changed, or waived only by an express written instrument signed by all

Parties or their successors-in-interest.

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

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

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

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: 03 / 07 / 2022

By: 
LUIS LARRABURU

Dated: 03/15/2022

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

THE SPIVAK LAW FIRM

Dated: 03 / 07 / 2022

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

UNITED EMPLOYEES LAW GROUP

Dated: March 7, 2022

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

LEWIS BRISBOIS BISGAARD & SMITH,
LLP

Dated: March 15, 2022

By: /s/ Efthalia S. Rofos
EFTHALIA S. ROFOS, Attorneys for
Defendant, AMERICAN
MERCHANDISING SPECIALISTS,
INC.

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EXHIBIT A

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

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

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

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

Please provide current address (if different) here:

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

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

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

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

- The settlement resolves a lawsuit entitled *Luis Larraburu v. American Merchandising Specialists, Inc.*, Case No. 21STCV17704 (the “Action”) for Defendant’s alleged failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, and other legal consequences that would follow from these failures, including claims under California’s Business & Professions Code and PAGA. This settlement avoids the costs and risks from continuing the Action, pays money to persons like you, and releases Defendant from alleged liability.
- The Court has not made a determination of the validity of the claims in the Action. Defendant denies any and all liability arising from any of the claims and contends that at all relevant times it properly compensated the Class Members, provided lawful meal periods, authorized and permitted lawful rest breaks, reimbursed for all work expenses, provided accurate itemized wage statements, timely paid wages, and fully complied with all applicable laws.
- Class Members will receive a payment based on the number of Work Weeks, rounded up to the nearest full Work Week, during the Class Period.

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

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

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

WHO IS INCLUDED IN THE PAGA SETTLEMENT CLASS?

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

HOW MUCH WILL I GET?

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

It is expected that you will receive approximately <<Individual Settlement Payment amount>> from this Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

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

IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT

1. Why did I get this Class Notice?

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

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

2. What is the Action about?

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

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3. Why is there a settlement?

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

4. What is a class action settlement?

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

5. What should I do?

You can do nothing, and if you are entitled to a payment, you will be paid. Be mindful, however, that if this Class Notice reaches you and the address where you now live is different, you need 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.

6. How much will my payment be?

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

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

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

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

7. When would I get my payment?

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

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

8. What am I releasing?

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

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

Members will release and discharge Defendant, and any of its former and present parents, subsidiaries, owners, shareholders, officers, directors, employees, affiliates, successors, assigns, agents, attorneys, legal representatives.

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

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

9. How can I opt out of this settlement?

You can opt out of this settlement and retain your rights. To do so, you must send a letter by mail to the Settlement Administrator with the following sentence, or something similar, stating: "I request to be excluded from the class action proceedings in the matter of *Luis Larraburu v. American Merchandising Specialists, Inc.*, Case No. 21STCV17704." You may use the enclosed "Election not to Participate in Settlement Form" for this purpose. You will have **60 days** from

1 the date of mailing of this Class Notice to do so. Your Opt-Out request must be in writing and
2 mailed to the Settlement Administrator, Phoenix, <<settlement administrator mailing address>>
3 and be postmarked no later than <<response deadline>>, or it will not be considered and you
4 will be bound by the settlement. If the Settlement Administrator re-mailed your Class Notice to
5 a new address, you will have additional 30 days from the date of the re-mailed Class Notice to
6 opt out. You must include your full name (and former names, if any) and address in your request
7 and you must sign the written request.

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

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

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

16 11. How will the lawyers be paid?

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

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

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

26 You may object to the proposed settlement in writing or in person. You may also appear at the
27 Final Approval Hearing, either in person or through your own attorney. If you appear through
28 your own attorney, you are responsible for paying that attorney. All written objections and
supporting papers should (a) clearly identify the case name and number (*Luis Larraburu v.*
American Merchandising Specialists, Inc., Case No. 21STCV17704), (b) be submitted to the
Settlement Administrator by mailing them to the Settlement Administrator, Phoenix,
<<settlement administrator mailing address>>, and (c) be filed or postmarked on or before
<<response deadline>>. 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 object.
Class Members may appear at the final approval hearing to be heard on their objections, even if
they have not previously served a written objection.

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

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

14. Do I have to come to the hearing?

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

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.

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.

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

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EXHIBIT B

ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM

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

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

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

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

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

(Typed or Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number, Including Area Code)

(Identification Number)

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

Dated: _____

(Signature)

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EXHIBIT C

1 **WORK WEEKS DISPUTE FORM**

2 Superior Court of The State of California

3 For The County of Los Angeles

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

5 Indicate Name/Address Changes, if any:

6 <<Name>>

7 <<Address>>

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

9 XX - XX - _ _ _ _

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

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

18 **YOUR ELIGIBLE WORK WEEK**

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

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

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

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

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

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

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

Plaintiff,

vs.

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

Defendant(s).

Case No. 21STCV17704

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

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

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

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

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

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

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

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

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

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

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

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

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

16 *To Class Counsel:*

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

To Defense Counsel:

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

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21 ii. **Objections to Settlement.** The Class Notice will provide that any
22 Class Member who does not request exclusion from the Action and
23 who wishes to object to the Settlement should submit an objection in
24 writing to the Settlement Administrator by _____, or 60
25 days after the Settlement Administrator mails the Class Notice, a
26 written objection to the Settlement which sets forth the grounds for
27 the objection and the other information required by this paragraph.
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1 The objection should be mailed to the Settlement Administrator at the
2 address provided on the Class Notice. The Settlement Administrator
3 shall transmit the objections to counsel for the Parties as follows:
4

5 *To Class Counsel:*

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

To Defense Counsel:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **IT IS SO ORDERED.**

10 DATED: _____

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

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

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

Plaintiff,

vs.

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

Defendant(s).

Case No. 21STCV17704

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

Action filed: May 11, 2021

Department: 9, The Honorable Yvette M.
Palazuelos

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

1 compromise of all disputed claims on behalf of all current and former non-exempt = employees
2 who are or were employed by Defendant in the State of California at any time during the period
3 of August 25, 2016 to <<preliminary approval order date or March 15, 2022, whichever is
4 earlier>> (“Settlement Class Period”). All capitalized terms used herein shall have the same
5 meaning as defined in the Settlement.
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7 In accordance with the Court’s prior Order Granting Preliminary Approval of Class and
8 PAGA Action Settlement, Class and PAGA Members have been given notice of the terms of the
9 Settlement and the opportunity to submit a claim, request exclusion, comment upon or object to
10 it or to any of its terms. Having received and considered the Settlement, the supporting papers
11 filed by the Parties, and the evidence and argument received by the Court in conjunction with the
12 motions for preliminary and final approval of the Settlement, the Court grants final approval of
13 the Settlement and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE
14 FOLLOWING DETERMINATIONS¹:
15

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12
13
14 DATED: _____

THE HONORABLE YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT