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12 Attorneys for Plaintiff,

13 LUIS LARRABURU, and all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF LOS ANGELES**

16 **(UNLIMITED JURISDICTION)**

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

21 *Plaintiff(s),*

22 vs.

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

26 *Defendant(s).*

Case No. 21STCV17704

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

Hearing Date: November 21, 2023

Hearing Time: 10:00 a.m.

Hearing Dept.: SSC-9, The Honorable
Yvette M. Palazuelos

Action filed: May 11, 2021



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

6 1. The Court grants preliminary approval of the Settlement and the Settlement Class
7 based upon the terms set forth in the Settlement filed as Exhibit 19 to the Supplemental
8 Declaration of David Spivak in Support of Plaintiff’s Motion for Preliminary Approval. All terms
9 herein shall have the same meaning as defined in the Settlement. The Court has determined there
10 is sufficient evidence to preliminarily determine that (a) the terms of the Settlement appear to be
11 fair, adequate, and reasonable to the Settlement Class and (b) the Settlement falls within the range
12 of reasonableness and appears to be presumptively valid, subject only to any objections that may
13 be raised at the final hearing and final approval by this Court. The Court will make a
14 determination at the hearing on the motion for final approval of class action settlement (the “Final
15 Approval Hearing”) as to whether the Settlement is fair, adequate and reasonable to the
16 Settlement Class.
17

18 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
19 all current and former non-exempt employees who are or were employed by Defendant in the
20 State of California at any time during the Class Period (collectively “Class Members”). The
21 “Class Period” shall mean the period of time from August 25, 2016, through March 15, 2022.
22 Defendant estimated for purposes of mediation that there are 6042 Work Weeks by 115 Class
23 Members for the period of August 25, 2016 through November 15, 2021. These numbers would
24 be expected to increase proportionately for the passage of time between that date and the time of
25 court approval. Before the Parties seek or a Party seeks court approval of the Settlement, the
26 Settlement Administrator will advise Plaintiff’s counsel of Defendant’s report of the total number
27 of Work Weeks and Class Members. If the Work Weeks and/or Class Members as of the date the
28 Court approves the settlement exceeds the referenced 6042 Work Weeks and/or 115 Class



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Members by more than 10%, 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 “Effective Date” means as follows: If no objection to this Settlement or to any of the terms and or conditions of the Settlement are filed by Plaintiff, another member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that the Court enters an order of final approval of this Settlement; however, if any objection to this Settlement or to any of the terms and or conditions of the Stipulation is filed by a member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur upon the expiration of the time for the filing any appeal of the order of final approval of this Settlement. If an appeal is filed or any writ granted, then the Effective Date shall occur after the appeal has been dismissed or the writ dissolved and when there is no further time to appeal the dismissal of the appeal or the dissolution of the writ. The occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay any funds into the Settlement Account.

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

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



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

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

23 b. **Mailing of Class Notice.** By Phoenix Settlement Administrators,
24 approximately fourteen (14) days after receiving the Class Members' Data, or
25 as soon thereafter as it can do so, the Settlement Administrator will mail the
26 Class Notice to all identified Class Members via first-class U.S. mail using
27 the mailing address information provided by Defendant, unless modified by
28



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

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

e. **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:

i. **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 (sixty (60) days from the initial mailing of the Class Notice by the Settlement Administrator). 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:

Peter Choi, Esq.
 Matthew Theriault, Esq.
 Gordon Rees Scully Mansukhani, LLP
 633 West Fifth Street, 52nd Floor
 Los Angeles, CA 90071

ii. **Objections to Settlement.** The Class Notice will provide that any Class Member who does not request exclusion from the Action and

1 who wishes to object to the Settlement should submit an objection in
2 writing to the Settlement Administrator by sixty (60) days after the
3 Settlement Administrator mails the Class Notice, a written objection
4 to the Settlement which sets forth the grounds for the objection and
5 the other information required by this paragraph. The objection should
6 be mailed to the Settlement Administrator at the address provided on
7 the Class Notice. The Settlement Administrator shall transmit the
8 objections to counsel for the Parties as follows:
9

10 *To Class Counsel:*

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

To Defense Counsel:

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

26 If the objecting Class Member does not formally intervene in the action
27 and/or the Court rejects the Class Member's objection, the Class
28



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Member may still be bound by the terms of this Agreement.

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

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

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

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

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

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

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

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

13. A Final Approval Hearing shall be held on _____ at _____ **.m.** in the Superior Court for the State of California, County of Los Angeles, located at the Los Angeles Courthouse, 312 North Spring Street, Los Angeles, CA 90012 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees and costs

1 and the Class Representative Payment to the Class Representative. The notice of motion and all
2 briefs and materials in support of the motion for final approval of class action settlement and
3 motion for attorneys' fees and litigation costs shall be served and filed with this Court sixteen
4 (16) Court days before the Final Approval Hearing.

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

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

13 **IT IS SO ORDERED.**

14 DATED: _____

15 **THE HONORABLE YVETTE M. PALAZUELOS**
16 **JUDGE OF THE SUPERIOR COURT**



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