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13 LUIS LARRABURU, and all others similarly situated

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

15 **FOR THE COUNTY OF LOS ANGELES**

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

21 *Plaintiff(s),*

22 vs.

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

26 *Defendant(s).*

Case No. 21STCV17704

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

4 I, DAVID SPIVAK, declare as follows:

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

12 2. A true and correct copy of the Court's ruling dated February 24, 2023 is attached
13 as **Exhibit 18** to this declaration.

14 3. A true and correct copy of the Second Amended Joint Stipulation of Class Action
15 Settlement and Release of Claims is attached as **Exhibit 19** to this declaration. A true and correct
16 copy of the redline comparison of the Second Amended Joint Stipulation of Class Action
17 Settlement and Release of Claims is attached hereto as **Exhibit 20**.

18 4. The Second Amended Settlement has been amended to include a General Release
19 by Plaintiff to conform to the Settlement terms the Parties reached at the mediation. Second
20 Amended Settlement Agreement, §V.D.

21 5. The Second Amended Settlement has been modified to define a "PAGA
22 Member" as "any and all current and former non-exempt employees who are or were employed
23 by Defendant in the State of California at any time during the PAGA Period." Settlement
24 Agreement, §I.J.

25 6. The Second Amended Settlement has been corrected to indicate "within fourteen
26 (14) calendar days". Second Amended Settlement Agreement, §IV.K.

27 7. Pursuant to Lab. Code § 2699(l)(2), Plaintiff Luis Larraburu submitted a copy of
28 the Second Amended Settlement with the Labor and Workforce Development Agency
("LWDA") at the same time Plaintiffs' supplemental briefing is being filed with the Court. A



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1 true and correct copy of Plaintiff's submission to the LWDA and a confirmation email is
2 attached as **Exhibit 21**.

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

5 Executed on Friday, July 28, 2023 at Los Angeles, California.

6 

7 _____
8 DAVID SPIVAK,
9 Declarant



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26 Employee Rights Attorneys

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EXHIBIT 18

FEB 24 2023

David W. Slattery, Executive Officer/Clerk of Court
by Rea, Deputy

FINAL RULINGS/ORDERS RE: MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT; SECOND ADDENDUM (checklist)

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

The Parties' Motion for Preliminary Approval of Class Action Settlement set for March 1, 2023, is **CONTINUED** to the Court's first available date of July 12, 2023, 10 a.m., Department 9. All counsel ordered to appear.

The parties are ordered to address the items listed in the attached addendum (checklist).

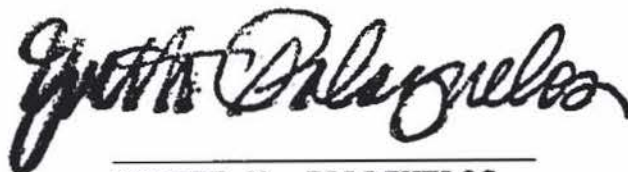
Supplemental papers to be filed and served by June 21, 2023.

Non-Appearance Case Review is set for June 28, 2023, 8:30 a.m., Department 9.

CLERK TO GIVE NOTICE TO MOVING PARTY. THE MOVING PARTY TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: February 24, 2023



YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

ADDENDUM/ (checklist)

The purpose of this checklist is to provide direction on what information and argument the court requires to grant a motion for preliminary approval. The court urges the moving parties to carefully review the checklist and fully comply with each item that applies to your case. The court requests the content of the motion follow the same order as this checklist, since that is how the judge and research attorney review the motion.

You should also consider using the form wage and hour settlement agreements now available on the court's website at <https://www.lacourt.org/forms/all> – “Civil Forms” section. With input and unanimous consensus from an Ad Hoc Wage and Hour Committee, the court has posted: (1) a form class action settlement agreement, (2) a form class action/PAGA settlement agreement, (3) and a form PAGA settlement agreement. Using these forms should cut down on attorney negotiation time and reduce the lag time between a successful mediation and execution of a long form agreement. Filing a motion that is based on a form agreement and includes a redlined copy identifying modifications will also expedite the court's review process and help reduce the current backlog on hearings. These forms are encouraged but entirely optional.

I. MOVING PAPERS (Motion and Declarations)

All facts submitted for the court to consider must be provided in the form of a declaration or other admissible evidence. The court will not consider facts stated only in the motion.

A. Introductory Information

- ☐ Summary of the litigation, including identity of the parties, brief procedural history, claims asserted, and general factual basis for the claims.

B. Dunk/Kullar Analysis

- ☐ Summary of the case, including the legal and factual basis for each claim. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133 (*Kullar*); *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)
- ☐ Summary of the investigation and discovery conducted, including the specific documents reviewed prior to agreeing to settle the case. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802, as modified Sept. 30, 1996 (*Dunk*).) If counsel's analysis was informed by a data sample, show that the sample is statistically reliable.
- ☐ Summary of settlement negotiations, including when the settlement was reached, and whether the parties were assisted by a mediator. (*Dunk, supra*, 48 Cal.App.4th at p. 1802.)
- ☐ A summary of the risks, expenses, complexity, and duration of further litigation if the settlement is not approved.

- ☐ A summary of the risks of achieving and maintaining class action status.
- ☐ Specific information sufficient for the court to make an independent determination that the consideration being received for the release of class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation. (*Kullar, supra*, 168 Cal.App.4th at 129.) This discussion should specify the maximum realistic recovery of each claim asserted in the operative complaint, defenses asserted by Defendant, and any other relevant factors justifying the amount offered in settlement. If the settlement is predicated on a payment plan or is predicated on defendant's financial situation, admissible evidence of Defendant's financial situation should be provided, including appropriate financial documents such as a balance sheet, statement of cash flows, profit and loss statement, and the like.
- ☐ If approval of the settlement of class claims is requested together with approval of non-class claims (such as claims under the Labor Code's Private Attorney General Act (PAGA)) discuss why the amount allocated to the non-class claims is fair to those affected. See *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77 (*Moniz*).

C. Class Certification

- ☐ Numerosity: Total number of members in the settlement class and number of members in each sub-class (if applicable).
- ☐ Ascertainability: The manner by which members of the class will be identified and when. (*Noel v. Thrifty Payless* (2019) 7 Cal.5th 955.)
- ☐ Community of Interest: Discuss specific facts showing that the proposed class representatives have claims or defenses typical of the class and can adequately represent the class. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

☒ Adequacy:

Class Counsel: A summary of Class Counsels' experience and a listing of all prior cases in which each named Class Counsel has been approved by a court to act as lead or co-counsel. (See *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

Class Representative(s): Provide evidence that each proposed class representative has agreed to act as same and understands his or her responsibilities. (See *Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal.App.4th 133, 155-156; *Jones v. Farmers Ins. Exchange* (2013) 221 Cal.App.4th 986, 998-999).

- Plaintiff Larrabaru's declaration at ¶6 states: "I have provided Defendant with a release of any and all claims, known or unknown, I may have against the Defendant." However, the Settlement Agreement does not contain any provision regarding a general release of known or unknown claims by the Plaintiff. Please clarify – Did Plaintiff enter into a separate individual

agreement with Defendant? If so, provide information about the terms, including whether Plaintiff is receiving any payment in addition to that provided in the class settlement agreement and why there isn't a potential conflict of interest with the class.

D. Claim Requirement (if applicable)

- ☐ If class members are required to submit a claim to receive compensation, explain why a claim form is necessary and either 1) provide an estimate of the anticipated claims rate or 2) provide an explanation why a claims rate cannot be provided.
- ☐ Provide a detailed explanation why a "claims made" settlement is appropriate in this case.
- ☐ Indicate what actions class counsel will take to encourage claim submission.
- ☐ Explain why the claims process is not so burdensome that relief would be inaccessible to class members (if applicable).

E. Miscellaneous

- ☐ If appropriate, explain why the settlement includes terms that are outside the scope of the operative complaint. (*Trotsky v. Los Angeles Fed. Savings & Loan Assn.* (1975) 48 Cal.App.3d 134, 148.) If approval of settlement of a PAGA claim is requested provide a copy of Plaintiff's notice letter to the LWDA.
- ☐ If notice will be given in English only, explain why this is sufficient.
- ☐ A statement of any affirmative obligations to be undertaken by the class member or class counsel and the reason for such obligations.
- ☐ Provide information regarding any fee splitting agreement and whether the client has given written approval. (*Mark v. Spencer* (2008) 166 Cal.App.4th 219; Rules Prof. Conduct, rule 1.5.1; Cal. Rules of Court, rule 3.769.)
- ☐ Any agreement that has injunctive relief against a class representative generally is not appropriate in a class action case. Provide the authority and factual reasons why this case is an exception. See *Moniz, supra*, 72 Cal.App.5th at 84. ("[T]he preclusive effect of a prior judgment is determined by the court in which it is asserted, not the court that rendered it." (*Fireside Bank Cases* (2010) 187 Cal.App.4th 1120, 1131 [115 Cal. Rptr. 3d 80].))
- ☐ Explanation as to why any class representative enhancement is reasonable, including what the class representative did beyond the expected services of any class representative. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186

Cal.App.4th 399, 412; *Radcliffe v. Experian Information Solutions Inc.* (9th Cir. 2013) 715 F.3d 1157, 1165.) In PAGA settlements explanation should be provided as to why an incentive award is appropriate.

SETTLEMENT AGREEMENT

The settlement agreement should address the following:

A. The Basics

☒ **Class definition.** If a PAGA representative action is settled with a proposed Class Settlement consider whether there should be separate definitions for Class Members and Aggrieved Employees.

- **See Settlement Agreement ¶I.J. The Court prefers that the PAGA Member definition does not reference the “Settlement Class Members,” but instead should be sufficiently descriptive on its own in specifying the job category of employees that it covers.**

☐ **Class and Release Period:** If the class and release periods extend beyond the preliminary approval explain why this is appropriate.

B. Release of Claims

☐ **Scope:** The scope of any release given by class members must be defined with precision and clarity. Any released claims not presented directly in the operative complaint should be based on the facts alleged in the operative complaint. (See *Amaro v. Anaheim Arena Mgmt.* (2021) 69 Cal. App. 5th 521, 537 and FN. 5; *Uribe v. Crown Building Maintenance Co.* 70 Cal. App. 5th 986, 1005.)

☐ **Class cases which include a PAGA claim** should have a separate release for the PAGA claim tied to the facts alleged in the notice given to the LWDA. *Id.*

☐ **If PAGA and Class Settlement:** The Release should provide an explanation that released claims include all PAGA claims that could have been premised on the facts alleged in the Plaintiff’s Notice and aggrieved employees will release PAGA claims even if class members request exclusion from the class. See *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476.

☐ **A Civil Code section 1542 waiver** is generally not appropriate in a class action case as to the putative class members (if applicable). Provide the authority and factual reasons why this case is an exception. (*Israel-Curley v. California Fair Plan* (2005) 126 Cal.App.4th 123, 129; *Salehi v. Surfside III Condominium Owners’ Assn.* (2011) 200 Cal.App.4th 1146, 1159–1161.)

☐ **Release Effective Date:** Indicate the point in time at which the release will be deemed

effective as to the absent class members. If the release will be effective before settlement funds are paid, explain why this is in the best interest of the class.

☐ Class Data: If there are confidentiality provisions, explain why they are in the best interest of the Class and whether they will impede Class Counsel's ability to discharge fiduciary duties.

C. Monetary Terms of Settlement

☐ Settlement Amount: Indicate the amount of the gross settlement, how and when the settlement will be paid, and information regarding payment plan, if any. If a class claim is being settled with a PAGA claim the amounts allocated should be separated and paid only to the aggrieved employees.

☐ Deductions from the settlement fund: Indicate the amounts to be deducted from the gross settlement for attorneys' fees and costs, plaintiff incentive awards, administrative costs, PAGA payment and allocation of award to LWDA and the parties, and any other existing deductions.

☐ If there are subclasses, explain why the monetary distribution is fair to each subclass. Ensure there is a class representative who fits the definition of each subclass.

☐ Information about how attorney fees will be calculated. The percentage method, with or without a lodestar cross-check, may be used in common fund cases. (*Laffitte v. Robert Half Internat., Inc.* (2016) 1 Cal.5th 480, 503.) In other cases, counsel should fully brief how the fees are calculated.

☐ If wages are involved, explain how Defendant's share of taxes will be paid.

☐ Whether, and under what circumstances, amounts may revert to Defendant, and a justification for such reversion (if applicable). (*Cundiff v. Verizon California, Inc.* (2008) 167 Cal.App.4th 718, 728–729.)

☐ Payment Formula: Amount and manner of distribution of the compensation to each class member, including the estimated amount each class member will receive and the timeline on which payments will be issued.

☐ Tax allocation of settlement payments.

☐ Nature of injunctive relief (if any), and valuation of such relief.

D. Notice Administration

The following issues regarding notice administration should be addressed in the settlement agreement. A copy of the proposed notice must be attached to the settlement agreement as an

exhibit.

- ☐ Indicate the administrator for the settlement and why the bid for administration is fair.
- ☐ Provide the qualifications and experience of the Administrator, including evidence that the settlement administrator has procedures in place to protect the security of class data and adequate insurance in the event of a data breach or defalcation of funds.
- ☐ Indicate how/when the administrator will receive the class list.
- ☐ Indicate whether the list will be updated by the administrator prior to the initial mailing by use of National Change of Address Registry.
- ☐ Provide the deadline for the initial issuance of notice to class members.
- ☐ Ensure the content of the notice complies with California Rules of Court, rule 3.766(d). In wage and hour cases the notice should indicate the specific amount the class member will receive and how that amount was calculated. A separate breakdown for PAGA payments should be provided. The terms of the release(s) should be reflected in the Notice.
- ☐ Ensure the notice accurately reflects the Court's current social distancing procedures for attendance at hearings and review of court files. (Counsel should check the Court website for most current information.)
- ☒ **Indicate how and when payments will be processed.**
 - **See revised ¶IV.K – it now says “Within ten (14) calendar days of receipt of the Gross Settlement Amount...” Please resolve the numerical discrepancy/typo.**
- ☐ Indicate how notices returned to the administrator as undeliverable will be handled.
- ☐ Explain how re-mailed notices, if any, will be handled. Will class members who receive re-mailed notices be given an extended deadline to respond (i.e., opt-out, object, and dispute workweeks)?
- ☐ Explain how notice of any change of the date or location of the will hearing be given.
- ☐ Indicate whether there will be a settlement website. If so, provide the URL.
- ☐ If publication notice will be given indicate the timing, locations, and manner by which publication notice will be disseminated.
- ☐ Explain how notice of final judgment will be given to the class. (Cal. Rules of Court, rule 3.771(b)) (e.g. Posted on claims administrator's website.)

E. Responses to Notice

- ☐ Description of the procedures for submitting written objections, requests for exclusion, claim forms (if applicable) and disputes to estimated payments.
- ☐ Indicate the deadline to submit objections, requests for exclusion, claim forms (if applicable), and/or disputes to workweeks. Confirm the deadline is reasonable and that class members who receive re-mailed notices will be given an extension.
- ☐ The objection procedure the same as the opt-out procedure, with the only requirement being that objections be mailed to the settlement administrator and not filed with the court.
- ☐ Do not include language indicating that class members may only be heard at final approval if they have complied with all objection procedures or that they must use specific language to request exclusion, or, if a specific procedure is sought, explain why it is necessary. In general, the court will hear from any class member who attends the final approval hearing and asks to speak regarding his or her objection.

F. Cy Pres Distribution

- ☐ Indicate the length of time from issuance for which settlement checks will remain valid.
- ☐ Identify the fund to which uncashed checks will be directed and detail the steps that will be taken to ensure compliance with Code of Civil Procedure section 384. The Court's Omnibus Trailer Bill of 2018 replaced the language of the prior statutory distribution scheme under Code of Civil Procedure, section 384 with a requirement that the Court re-open judgments following the final distribution of funds to include the cy pres in the judgment and to include the unclaimed amount, plus an unspecified amount of interest. Such information should be actively contemplated/provided for within the current terms of the settlement.
- ☐ Explain why the cy pres distribution fills the purposes of the lawsuit or is otherwise appropriate. (*State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 472; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 722; *Nachshin v. AOL, Inc.* (9th Cir. 2011) 663 F.3d 1034, 1038–1041; *Dennis v. Kellogg Co.* (9th Cir. 2012) 697 F.3d 858, 865; Code Civ. Proc., § 384.)
- ☐ Provide declarations disclosing the interest or involvement (or lack thereof) by any counsel or party in the governance or work of the cy pres recipient.

G. MISCELLANEOUS

- ☐ Assure the Settlement Agreement and Notice are consistent and that the Settlement Agreement has been signed by all parties and counsel. Carefully proofread both.
- ☐ The Settlement Agreement and paperwork derivative thereof should not suggest that the end result of court approval will be dismissal of the Action with prejudice or entry of a Final Judgment and Order dismissing with prejudice all claims. See California Rules of Court, rule 3.769(h).

III. EXHIBITS TO THE MOTION

☒ **Provide proof of submission of the proposed settlement agreement to the LWDA. (Lab. Code, § 2699, subd. (l)(2).)**

- **This also applies to any further revised versions of the Settlement Agreement.**

☐ Include a proposed Judgment, which should not include a dismissal or any findings not contained in the Final Approval Order. (Cal. Rules of Court, rule 3.769(h).)

☐ All exhibits should be bookmarked, as set forth in the Presiding Judge's First Amended General Order of May 3, 2019 re: Electronic Filing, available on the Court website.

If the Settlement Agreement is modified pursuant to this checklist, please submit both a red-lined copy showing changes made as well as a final version signed by all parties. Do not submit an addendum in lieu of a full amended settlement agreement including all operative settlement terms.

Modify Notice to match any alterations to the Settlement Agreement.

EXHIBIT 19

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10 Attorneys for Plaintiff,

11 LUIS LARRABURU, and all others similarly situated

12 (Additional attorneys for parties on following page)

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

14 **FOR THE COUNTY OF LOS ANGELES**

15 **(UNLIMITED JURISDICTION)**

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

21 *Plaintiff,*

22 vs.

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

26 *Defendant(s).*

Case No. 21STCV17704

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

Action filed: May 11, 2021

Department: 9, The Honorable Yvette M.
Palazuelos

ADDITIONAL ATTORNEYS FOR PLAINTIFF

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Attorneys for Defendant,
AMERICAN MERCHANDISING SPECIALISTS, INC.

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

6 **I. DEFINITIONS.**

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

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

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

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

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

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

1 post-Settlement compliance procedures.

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

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

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

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

12 **J. “PAGA Member”** shall mean any and all current and former non-exempt
13 employees who are or were employed by Defendant in the State of California at any time between
14 August 20, 2019 through March 15, 2022 (the PAGA Period).

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

17 **L. “PAGA Penalties”** shall mean the amount that the Parties have agreed to allocate
18 for settlement of claims for civil penalties arising under PAGA. The Parties have agreed to
19 allocate Four Thousand Dollars and Zero Cents (\$4,000) of the Gross Settlement Amount as
20 PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties in the amount of Three
21 Thousand Dollars and Zero Cents (\$3,000) shall be paid directly to the LWDA in accordance
22 with PAGA. The remaining Twenty-Five percent (25%) of the PAGA Penalties in the amount of
23 One Thousand Dollars and Zero Cents (\$1,000), shall be distributed to PAGA Members. PAGA
24 Members will receive payment from the employee portion of the PAGA Penalties regardless of
25 their decision to participate in the class portion of the Settlement if the allocation for PAGA
26 Penalties is approved by the Court.

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

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

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

7 **O. “Defense Counsel”** shall mean the attorneys representing Defendant in the
8 Action: Peter Choi and Matthew Theriault of Gordon Rees Scully Mansukhani, LLP.

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

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

21 **R. “Gross Settlement Amount”** shall mean the Gross Settlement Amount of Two
22 Hundred and Fifteen Thousand Dollars and No Cents (\$215,000) payable by Defendant as
23 provided by this Agreement, plus Defendant’s employer-side payroll taxes. Defendant estimated
24 for purposes of mediation that there are 6,042 Work Weeks by 115 Class Members for the period
25 of August 25, 2016 through November 15, 2021. These numbers would be expected to increase
26 proportionately for the passage of time between that date and the time of court approval. Before
27 the Parties seek or a Party seeks court approval of the Settlement, the Settlement Administrator
28 will advise Plaintiff’s counsel of Defendant’s report of the total number of Work Weeks and

1 Class Members. If the Work Weeks and/or Class Members as of the date the Court approves the
2 settlement exceeds the referenced 6,042 Work Weeks and/or 115 Class Members by more than
3 10%, the Gross Settlement Amount, including the Class Counsel Fees Payment, the Class
4 Representative Payment, and the LWDA payment, will increase proportionally according to the
5 number of additional Work Weeks or Class Members, whichever results in a higher increase in
6 the Gross Settlement Amount.

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

10 **T. “Net Settlement Amount”** shall mean \$215,000 payable by Defendant pursuant
11 to this Settlement, less:

- 12 **1.** the Class Representative Payment approved by the Court;
- 13 **2.** the Class Counsel Fees Payment (one-third or 33 and 1/3% of Gross
14 Settlement Amount) and the Class Counsel Litigation Expenses Payment (of not more than
15 \$17,500) approved by the Court;
- 16 **3.** the Settlement Administrator’s reasonable fees and expenses approved by
17 the Court (not to exceed \$10,000);
- 18 **4.** the amount of \$4,000 paid to the Labor Workforce Development Agency
19 of California and PAGA members for the PAGA claim;
- 20 **5.** any other fees or expenses (other than attorneys’ fees and expenses)
21 incurred by Plaintiff in implementing the terms and conditions of this Agreement as approved by
22 the Court.

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

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

28 **W. “Settlement”** shall mean the disposition of the Action and all related claims

1 effectuated by this Agreement.

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

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

7 **II. RECITALS**

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

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

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

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

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

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

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

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

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

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

12 **III. SETTLEMENT TERMS AND CONDITIONS**

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

20 **B. Gross Settlement Amount.** Subject to the terms and conditions of this
21 Agreement, the Gross Settlement Amount of Two Hundred and Fifteen Thousand Dollars and
22 Zero Cents (\$215,000), plus Defendant's employer share of employer-side payroll taxes, is the
23 maximum amount payable by Defendant. In no event will Defendant be required to pay more
24 than the Gross Settlement Amount for distribution to the Plaintiff, Class Counsel, Class
25 Members, LWDA, and Settlement Administrator. However, if the number of Class Members
26 increases by more than 10%, the Defendant will pay a pro rata increase in the Gross Settlement
27 Amount, including pro rata increases in the Class Counsel Fees Payment, and allocation to the
28 Private Attorneys General Act claim. Likewise, if the number of Work Weeks increases by more

1 than 10%, the Defendant will pay a pro rata increase in the Gross Settlement Amount, including
2 pro rata increases in the Class Counsel Fees Payment, Class Representative Payment, and
3 allocation to the Private Attorneys General Act claim. The release provisions of this Settlement
4 will not take effect until Defendant has paid the Gross Settlement Amount in full per this
5 Settlement Agreement.

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

9 **1. To Plaintiff.**

10 **(a) Class Representative Payment.** In addition to his Settlement
11 Share, Plaintiff will apply to the Court for an award of not more than Fifteen Thousand Dollars
12 and No Cents (\$15,000) as his Class Representative Payment. Defendant will not oppose a Class
13 Representative Payment of not more than \$15,000. Plaintiff will receive no other payment other
14 than his Settlement Share and Class Representative Payment, and acknowledges that he is aware
15 of no other facts or circumstances related to his employment with Defendant that could give rise
16 to any additional entitlement to any further payments. The Settlement Administrator will pay the
17 Class Representative Payment approved by the Court out of the Gross Settlement Amount.
18 Payroll taxes, withholdings, and deductions will not be taken from the Class Representative
19 Payment, and instead a Form 1099 will be issued to Plaintiff with respect to that payment.
20 Plaintiff agrees to assume all responsibility and liability for the payment of taxes due on the Class
21 Representative Payment. Any portion of the Class Representative Payment not awarded to
22 Plaintiff will not revert to Defendant, but instead shall be returned to the Net Settlement Amount.

23 **2. To Class Counsel.** Class Counsel will apply to the Court for an award of
24 not more than Seventy One Thousand Six Hundred Sixty Six Dollars and Sixty Six Cents
25 (\$71,666.66) (which is 33 and 1/3% of the Gross Settlement Amount) as their Class Counsel
26 Fees Payment and an amount not more than Seventeen Thousand Five Hundred Dollars and No
27 Cents (\$17,500) as their Class Counsel Litigation Expenses Payment, and Defendant will not
28 oppose this request. The Settlement Administrator will pay the amount approved by the Court

(but not more than Seventy One Thousand Six Hundred Sixty Six Dollars and Sixty Six Cents (\$71,666.66) in fees and not more than Seventeen Thousand Five Hundred Dollars and No Cents (\$17,500) in expenses) out of the Gross Settlement Amount. Withholding and deductions will not be taken from the Class Counsel Fees and Litigation Expenses Payment and one or more Forms 1099 will be issued to Class Counsel with respect to those payments. United Employees Law Group, PC will receive 25% of the Class Counsel Fees Payment and The Spivak Law Firm shall receive the remaining 75% of the Class Counsel Fees Payment.

3. To the Settlement Administrator. The Settlement Administrator will be paid from the Gross Settlement Amount its reasonable fees and expenses as approved by the Court in an amount currently estimated to not exceed Ten Thousand Dollars and No Cents (\$10,000).

4. To the LWDA. The Parties will jointly apply to the Court for approval of a settlement of claims under the Private Attorneys General Act (“PAGA”), California Labor Code section 2698, *et seq.*, for Four Thousand Dollars and No Cents (\$4,000), of which, payment from the Gross Settlement Amount to the LWDA will be made in the amount of Three Thousand Dollars and No Cents (\$3,000), which is 75% of the PAGA settlement. One Thousand Dollars and No Cents (\$1,000), 25% of the PAGA settlement, will remain in the Net Settlement Amount for distribution to the PAGA Members.

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

(a) Participating Class Members’ Settlement Shares. The settlement shares are allocated 15% to wages (for which employment taxes will be deducted and W-2s issued) and 85% to penalties (for which 1099s will be issued).

(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
12 Individual Settlement Amount for each PAGA Member will be calculated by the Settlement
13 Administrator using the Class Data provided by Defendant. The Settlement Administrator will
14 calculate the number of PAGA Work Weeks by calculating the number of days each PAGA
15 Member was employed using their original hire date and final termination date, excluding any
16 time they were unemployed in between during that time period, during the PAGA Period,
17 dividing by seven (7), and rounding up to the nearest whole number. PAGA Members shall
18 receive their portion of 25% of the PAGA Penalties regardless of their decision to opt-out of the
19 class settlement.

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

1 Amount or Net Settlement Amount.

2 **E. Appointment of Settlement Administrator.** The Parties will ask the Court to
3 appoint Phoenix Settlement Administrators, a qualified administrator, to serve as the Settlement
4 Administrator, which, as a condition of appointment, will agree to be bound by this Agreement
5 with respect to the performance of its duties and its compensation. The Settlement
6 Administrator's duties will include preparing, printing, and mailing the Class Notice to all Class
7 Members; and using reasonable measures to contact all Class Members, including conducting a
8 National Change of Address search on all Class Members before mailing the Class Notice to
9 each Class Member's address. The Settlement Administrator's duties will also include re-mailing
10 the Class Notice to the Class Member's new address for those Class Members whose address has
11 changed; providing the Parties with weekly status reports about the delivery of Class Notice;
12 calculating Settlement Shares; issuing and distributing checks to effectuate the payments due
13 under the Settlement; reporting to the Court as required; and otherwise administering the
14 Settlement pursuant to this Agreement. The Settlement Administrator's reasonable fees and
15 expenses, including the cost of printing and mailing the Class Notice, will be paid out of the
16 Gross Settlement Amount, as set forth herein, subject to Court approval. Any portion of the of
17 the Settlement Administrator's fees and expenses that are not used or which are not awarded by
18 the Court will not revert to Defendant, but instead will be part of the Net Settlement Amount for
19 distribution to Participating Class Members. If the Settlement Administrator's fees and expenses
20 exceed Ten Thousand Dollars and No Cents (\$10,000), such cost will be deducted from the Net
21 Settlement Amount.

22 **IV. PROCEDURES FOR APPROVING SETTLEMENT**

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

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

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

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

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

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

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

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

25 **(c)** If any of the Class Members’ Data are unavailable to Defendant,
26 Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct
27 or otherwise agree upon the Class Members’ Data prior to when it must be submitted to the
28 Settlement Administrator. Class Members’ Data will otherwise remain confidential and will not

1 be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to
2 Defendant's express written authorization or by order of the Court.

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

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

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

28 **C. Disputed Class Member Settlement Shares.** If a Class Member disputes his/her

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

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

11 **1. Request for Exclusion from Settlement.** A Class Member may request
12 to be excluded from the effect of this Agreement, and any payment of amounts under this
13 Agreement, by timely mailing a letter to the Settlement Administrator stating that the Class
14 Member wants to be excluded from this Action. This letter must include the Class Member's
15 name, address, telephone number, and signature. To be valid and timely, the request to be
16 excluded must be postmarked by the date specified in the Class Notice (no more than 60 days
17 from the initial mailing of the Class Notice by the Settlement Administrator). A Class Member
18 may use the Exclusion Request form (**Exhibit B** to this Settlement), though a Class Member is
19 not obligated to do so to request exclusion from the Settlement. A Class Member who properly
20 submits a valid and timely request to be excluded from the Action shall not receive any payment
21 of any kind in connection with this Agreement or this Action, shall not be bound by or receive
22 any benefit of this Agreement, and shall have no standing to object to the Settlement. Although,
23 PAGA Members will be entitled to their portion of the PAGA Payment regardless of whether or
24 not the Participating Class Member opts-out or excludes him or herself from the Class. A request
25 for exclusion must be mailed to the Settlement Administrator at the address provided on the Class
26 Notice. The Settlement Administrator shall transmit the request for exclusion to counsel for the
27 Parties as follows:
28

To Class Counsel:

To Defense Counsel:

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

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

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

To Class Counsel:

To Defense Counsel:

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

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

Counsel will promptly file such objection with the Court.

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

Regardless of whether an objecting Class Member complies with the objection procedure encouraged above, the Court will provide a Class Member with the opportunity to speak at the

1 final approval hearing regardless of whether he or she has filed an appearance or submitted a
2 written opposition beforehand. If the objecting Class Member does not formally intervene in the
3 action and/or the Court rejects the Class Member's objection, the Class Member will still be
4 bound by the terms of this Agreement.

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

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

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

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

1 and Class Counsel may file replies in support of their motions for the Class Representative
2 Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.

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

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

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

25 **H. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the
26 terms and conditions of this Agreement, and that no Class Member timely objects to the
27 Settlement and formally intervenes into the action as required under the California Supreme
28 Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260, 228 Cal. Rptr. 3d 106

(2018) or files a motion pursuant to Civil Procedure Code section 663, Defendant, and its respective counsel hereby waive, except as provided for in this Agreement or prohibited by law, any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, any extraordinary writ, and any appeal, and the Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making any payments under the Settlement) will be suspended until the appeal is fully and finally resolved and the Judgment, consistent with the terms of this Agreement, becomes Final.

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

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

1 **K. Payment of Settlement Shares.** Within fourteen (14) calendar days of receipt of
2 the Gross Settlement Amount, the Settlement Administrator shall pay Settlement Shares, from
3 the Settlement Account, to all Class Members (who do not submit valid requests to be excluded
4 from the Action). The Settlement Administrator shall pay each Settlement Share by sending a
5 check in the appropriate amount to the Class Member at the address indicated in the list of Class
6 Member names and addresses provided by Defendant, or as subsequently determined by the
7 Settlement Administrator to be the correct address.

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

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

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

21 **V. RELEASE OF CLAIMS**

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

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

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

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

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

21 **D. General Release by Plaintiff.** As of the date Defendant funds the settlement
22 (**Section 4.J.**), and for the consideration set forth in this Agreement, Plaintiff waives, releases,
23 acquits and forever discharges the Defendant from any and all claims, whether known or
24 unknown, which exist or may exist on her behalf as of the date of this Agreement, including but
25 not limited to any and all tort claims, contract claims, wage claims, wrongful termination claims,
26 disability claims, benefit claims, public policy claims, retaliation claims, statutory claims,
27 personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims,
28

1 fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or
2 other governmental statute, law, regulation or ordinance, including, but not limited to claims for
3 violation of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of
4 California's Industrial Welfare Commission, other states' wage and hour laws, the Americans
5 with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee
6 Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair
7 Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act,
8 California's Whistleblower Protection Act, California Business & Professions Code Section
9 17200 et seq., and any and all claims arising under any federal, state or other governmental
10 statute, law, regulation or ordinance. Plaintiff also waives and relinquishes any and all claims,
11 rights or benefits that she may have under California Civil Code § 1542, which provides as
12 follows:

13
14 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
15 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
16 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
17 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
18 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE***
19 ***DEBTOR OR RELEASED PARTY.***

20 Thus, notwithstanding the provisions of section 1542, and to implement a full and complete
21 release and discharge of the Defendant, Plaintiff expressly acknowledges this Settlement
22 Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not
23 know or suspect to exist in Plaintiff's favor at the time of signing this Settlement Agreement, and
24 that this Settlement Agreement contemplates the extinguishment of any such claims. Plaintiff
25 warrants that Plaintiff has read this Settlement Agreement, including this waiver of California
26 Civil Code section 1542, and that Plaintiff has consulted with or had the opportunity to consult
27 with counsel of Plaintiff's choosing about this Settlement Agreement and specifically about the
28 waiver of section 1542, and that Plaintiff understands this Settlement Agreement and the section

1 1542 waiver, and so Plaintiff freely and knowingly enters into this Settlement Agreement.
2 Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition
3 to those Plaintiff now knows or believes to be true regarding the matters released or described in
4 this Settlement Agreement, and even so Plaintiff agrees that the releases and agreements
5 contained in this Settlement Agreement shall remain effective in all respects notwithstanding any
6 later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of
7 any mistake in connection with the true facts involved in the matters, disputes, or controversies
8 released or described in this Settlement Agreement or with regard to any facts now unknown to
9 Plaintiff relating thereto.
10

11 **E. Dismissal of the *Rollman* Action.** Ten calendar days following the preliminary
12 approval of the settlement, the Parties will stipulate to dismiss with prejudice *Shane Rollman v.*
13 *American Merchandising Specialists, Inc.* action, USDC Case No.: 2:20-CV-02371-KJM-JDP.
14

15 **VI. NON-PUBLICITY PROVISION**

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

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1 **VII. MISCELLANEOUS TERMS**

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

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

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

26 **D. Integrated Agreement.** After this Agreement is signed and delivered by all
27 Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement
28 between the Parties relating to the Settlement, and it will then be deemed that no oral

1 representations, warranties, covenants, or inducements have been made to any Party concerning
2 this Agreement or its exhibits other than the representations, warranties, covenants, and
3 inducements expressly stated in this Agreement and its exhibits.

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

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

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

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

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

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

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

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

6
7 *To Class Counsel:*
8 David G. Spivak, Esq.
9 The Spivak Law Firm
10 8605 Santa Monica Blvd., PMB 42554
11 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

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

18
19
20 Dated: 07 / 27 / 2023

By:



LUIS LARRABURU

21
22 Dated:

By:

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

23
24
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26 ///

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9 The Spivak Law Firm
10 8605 Santa Monica Blvd., PMB 42554
11 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

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15 signed counterparts. Facsimile signatures will be presumptive evidence of execution of the
16 original, which shall be produced on reasonable request. Any executed counterpart will be
17 admissible to prove the existence and contents of this Agreement.
18

19
20 Dated:

By:

LUIS LARRABURU

21
22 Dated: July 28, 2023

By:

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

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THE SPIVAK LAW FIRM

Dated: 07 / 26 / 2023

By: 

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

UNITED EMPLOYEES LAW GROUP, PC

Dated:

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

GORDON REES SCULLY MANSUKHANI,
LLP

Dated:

By: _____
PETER CHOI,
MATTHEW THERIAULT,
Attorneys for Defendant, AMERICAN
MERCHANDISING SPECIALISTS,
INC.

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THE SPIVAK LAW FIRM

Dated:

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

UNITED EMPLOYEES LAW GROUP, PC

Dated: July 25, 2023

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

GORDON REES SCULLY MANSUKHANI,
LLP

Dated:

By: _____
PETER CHOI,
MATTHEW THERIAULT,
Attorneys for Defendant, AMERICAN
MERCHANDISING SPECIALISTS,
INC.

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THE SPIVAK LAW FIRM

Dated:

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

UNITED EMPLOYEES LAW GROUP, PC

Dated:

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

GORDON REES SCULLY MANSUKHANI,
LLP

Dated: July 28, 2023

By: Matteo Theriault
PETER CHOI,
MATTHEW THERIAULT,
Attorneys for Defendant, AMERICAN
MERCHANDISING SPECIALISTS,
INC.

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EXHIBIT A

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

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

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

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

Please provide current address (if different) here:

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

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

- 18 • A proposed settlement of \$215,000 (the “Gross Settlement Amount”) will be used to pay
19 claims to: All persons Defendant American Merchandising Specialists, Inc. employed as non-
20 exempt employees in the State of California during the “Class Period” of August 25, 2016 to
21 March 15, 2022 (the “Class Members”). The Gross Settlement Amount includes (a) expenses
22 and fees of the Settlement Administrator up to \$10,000; (b) a Class Representative Payment
23 of \$15,000 to the Plaintiff Luis Larraburu as the class representative; (c) attorneys’ fees of up
24 to \$71,666.66 and litigation expenses of up to \$17,500 to Class Counsel; and (d) \$4,000
25 allocated to settle claims brought pursuant to the Private Attorneys General Act, California
26 Labor Code Section 2698, *et seq.* (“PAGA”)(75% of which will go to the California Labor
27 & Workforce Development Agency (“LWDA”) and 25% of which will go to PAGA
28 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 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 Work Weeks and/or 115 Class 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

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

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

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

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

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

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

WHO IS INCLUDED IN THE PAGA SETTLEMENT CLASS?

Any and all current and former non-exempt employees who are or were employed by Defendant in the State of California at any time during the period of August 20, 2019 to March 15, 2022 (“PAGA Period”). The PAGA Members includes any person worked during the PAGA Period even if that person submits a request for exclusion 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 Period

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

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

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 Settlement Share 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. You can speak to the Court about the Settlement whether or not you comply with this objection procedure.

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

1 settlement allows. This Class Notice explains the Action, the proposed settlement, your legal
2 rights, and what benefits are available and how to receive them.

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

2. What is the Action about?

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

3. Why is there a settlement?

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

4. What is a class action settlement?

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

5. What should I do?

27 You can do nothing, and if you are entitled to a payment, you will be paid. Be mindful, however,
28 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.

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

3 6. How much will my payment be?

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

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

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

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

19 7. When would I get my payment?

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

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

1 8. What am I releasing?

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

4 The Parties agree that it is their intent that the resolution set forth in this Settlement will
5 release any further attempt, by lawsuit, administrative claim or action, arbitration,
6 demand, or other action of any kind by each and all of the Settlement Class Members
7 (including participation to any extent in any representative or collective action), against
8 Defendant and all of those entities' and individual's past, present and future agents,
9 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
10 stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations,
11 divisions, joint venturers, assigns, predecessors, successors, service providers, insurers,
12 consultants, subcontractors, joint employers, employee benefit plans and fiduciaries
13 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
March 15, 2022, 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.

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

1 including claims for damages, reimbursement, restitution, losses, penalties, fines, liens,
2 attorney's fees, costs, expenses, debts, interest, injunctive or declaratory relief, liquidated
3 damages or similar relief. The Final Judgment shall cover and bar each and every
4 Participating Class Member from asserting any Released Claims in the future. PAGA
5 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.

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

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

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

16 However, even if you opt-out of the class action settlement, you will still be entitled to your
17 portion of the PAGA penalties and you give up any claim to civil penalties under PAGA in
18 another legal action.

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

20 The Court has appointed David G. Spivak and The Spivak Law Firm, 8605 Santa Monica Blvd.,
21 PMB 42554, West Hollywood, CA 90069, telephone (213) 725-9094, david@spivaklaw.com,
22 and Walter L. Haines and United Employees Law Group, 4276 Katella Ave., Suite 301, Los
23 Alamitos, CA, 90720, telephone (562) 256-1047, walter@uelglaw.com, to represent you and
24 other Class Members in the Action. These lawyers are called Class Counsel. They will be
compensated from the Gross Settlement Amount as discussed in this Class Notice. If you want
to be represented by your own lawyer, you may hire one at your own expense.

25 11. How will the lawyers be paid?

26 Class Counsel will ask the Court to award them fees of up to \$ 71,666.66, approximately 33 and
27 1/3% (one-third) of the Gross Settlement Amount. Class Counsel will also ask the Court to award
28

1 them costs incurred in connection with the Action. The Court may choose to award less than the
2 amount requested by Class Counsel.

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

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

7 You may object to the proposed settlement in writing or in person. You may also appear at the
8 Final Approval Hearing, either in person or through your own attorney. If you appear through
9 your own attorney, you are responsible for paying that attorney. All written objections and
10 supporting papers should (a) clearly identify the case name and number (*Luis Larraburu v.*
11 *American Merchandising Specialists, Inc.*, Case No. 21STCV17704), (b) be submitted to the
12 Settlement Administrator by mailing them to the Settlement Administrator, Phoenix,
13 <<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.

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

15 The Court will hold a fairness hearing on <<final approval hearing date>> at <<final approval
16 hearing time>> .m at the Los Angeles County Superior Court, 312 North Spring Street, Los
17 Angeles, CA 90012 (The Honorable Yvette M. Palazuelos). At this hearing, the Court will
18 consider whether the settlement is fair, reasonable, and adequate. If there are objections that were
19 properly made, the Court will consider them. The Court will listen to people who have asked to
speak at the hearing regardless of whether they complied with the objection procedure outlined
above. 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.

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

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

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

26 Regardless of whether you properly objected to the settlement, you may speak at the fairness
27 hearing.
28

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.

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

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

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EXHIBIT B

ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM

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

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

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

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

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

(Typed or Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number, Including Area Code)

(Identification Number)

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

Dated: _____

(Signature)

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EXHIBIT C

1 **WORK WEEKS DISPUTE FORM**

2 Superior Court of The State of California

3 For The County of Los Angeles

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

5 Indicate Name/Address Changes, if any:

6 <<Name>> _____

7 <<Address>> _____

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

9 XX - XX - _____

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

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

17 **YOUR ELIGIBLE WORK WEEKS**

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

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

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

26 If you wish to dispute the number of Individual Work Weeks credited to you, or anything else about your
27 employment status, you must complete and return this form by indicating what you believe is incorrect on the blank
28 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.

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

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Case No. 21STCV17704

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

VS.

Defendant(s).

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1 subject only to any objections that may be raised at the final hearing and final approval by this
2 Court. The Court will make a determination at the hearing on the motion for final approval of
3 class action settlement (the “Final Approval Hearing”) as to whether the Settlement is fair,
4 adequate and reasonable to the Settlement Class.

5 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
6 all current and former non-exempt employees who are or were employed by Defendant in the
7 State of California at any time during the Class Period (collectively “Class Members”). The
8 “Class Period” shall mean the period of time from August 25, 2016, through March 15, 2022.
9 Defendant estimated for purposes of mediation that there are 6042 Work Weeks by 115 Class
10 Members for the period of August 25, 2016 through November 15, 2021. These numbers would
11 be expected to increase proportionately for the passage of time between that date and the time
12 of court approval. Before the Parties seek or a Party seeks court approval of the Settlement, the
13 Settlement Administrator will advise Plaintiff’s counsel of Defendant’s report of the total
14 number of Work Weeks and Class Members. If the Work Weeks and/or Class Members as of
15 the date the Court approves the settlement exceeds the referenced 6042 Work Weeks and/or 115
16 Class Members by more than 10%, the Gross Settlement Amount, including the Class Counsel
17 Fees Payment, the Class Representative Payment, and the LWDA payment will increase
18 proportionally according to the number of additional Work Weeks or Class Members, whichever
19 results in a higher increase in the Gross Settlement Amount. The “Effective Date” means as
20 follows: If no objection to this Settlement or to any of the terms and or conditions of the
21 Settlement are filed by Plaintiff, another member of the Settlement class, or any intervenor to
22 this Lawsuit, the Effective Date shall occur on the day that the Court enters an order of final
23 approval of this Settlement; however, if any objection to this Settlement or to any of the terms
24 and or conditions of the Stipulation is filed by a member of the Settlement class, or any
25 intervenor to this Lawsuit, the Effective Date shall occur upon the expiration of the time for the
26 filing any appeal of the order of final approval of this Settlement. If an appeal is filed or any
27 writ granted, then the Effective Date shall occur after the appeal has been dismissed or the writ
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1 dissolved and when there is no further time to appeal the dismissal of the appeal or the
2 dissolution of the writ. The occurrence of the Effective Date is a prerequisite to any obligation
3 of Defendant to pay any funds into the Settlement Account.

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

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

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

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

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

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

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

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

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

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.
Gordon Rees Scully Mansukhani, LLP
633 West Fifth Street, 52nd Floor
Los Angeles, CA 90071

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

25 *To Class Counsel:*

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

To Defense Counsel:

Peter Choi, Esq.
Matthew Theriault, Esq.

1 West Hollywood, CA 90069

Gordon Rees Scully Mansukhani, LLP
633 West Fifth Street, 52nd Floor
Los Angeles, CA 90071

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

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

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

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

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

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

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

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

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

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

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

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

26 15. The Court expressly reserves the right to adjourn or continue the Final Approval
27 Hearing from time to time without further notice to members of the Class. The Plaintiff shall
28

1 give prompt notice of any continuance to Settlement Class Members who object to the
2 Settlement.

3 **IT IS SO ORDERED.**

4
5 DATED: _____

6 **THE HONORABLE YVETTE M. PALAZUELOS**
7 **JUDGE OF THE SUPERIOR COURT**

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

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

15 *Plaintiff,*

16 vs.

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

20 *Defendant(s).*

Case No. 21STCV17704

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

Action filed: May 11, 2021

Department: 9, The Honorable Yvette M.
Palazuelos

21
22 This matter came on for hearing on _____ at _____.m. in
23 Department 9 of the above-captioned court on Plaintiff’s Motion for Final Approval of Class and
24 PAGA Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the
25 Joint Stipulation of Class Action Settlement and Release of Claims (the “Settlement”) filed
26 herewith which provides for a Gross Settlement Amount (“GSA”) of up to \$215,000 in
27
28

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

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

14 1. The Court has jurisdiction over the subject matter of the Action and over all
15 Parties to the Action, including all Class Members. Pursuant to this Court’s Order Granting
16 Preliminary Approval of Class Action Settlement of _____, the Class Notice was sent
17 to each Class Member by First Class U.S. mail. The Class Notice informed Class Members of
18 the terms of the Settlement, their right to receive their proportional share of the Settlement, their
19 right to request exclusion, their right to comment upon or object to the Settlement, and their right
20 to appear in person or by counsel at the final approval hearing and be heard regarding final
21 approval of the Settlement. Adequate periods of time were provided by each of these procedures.
22
23
24

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

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

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

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

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

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

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

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

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

10 a. Class Counsel fees & costs of \$71,666.66 in attorneys’ fees and \$17,500
11 in litigation costs to Class Counsel;

12 b. \$15,000 as a Class Representative Payment award payable to Plaintiff Luis
13 Larraburu for his service as a Class Representative;

14 c. \$10,000 in costs of the Settlement Administrator payable to Phoenix
15 Settlement Administrators for its services as the Settlement Administrator; and
16

17 d. Payment of \$3,000 (75% of the (\$4,000 PAGA penalty) to the LWDA.

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

25 8. Within 10 calendar days of the Effective Date of Settlement, Defendant shall
26 deposit the Settlement proceeds in an account designated by the Settlement Administrator: (i) the
27
28

1 total amount of all Settlement Shares to Participating Class Members, (ii) the Court approved
2 Class Counsel fees & costs, (iii) the Court-approved Class Representative Payment, (iv) the
3 Court-approved costs of the Settlement Administrator, and (v) the payment to the LWDA.

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

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

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

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

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

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

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

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

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

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

8
9 DATED: _____

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

EXHIBIT 20

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

27 **~~FIRST~~SECOND AMENDED JOINT**
28 **STIPULATION OF CLASS ACTION**
SETTLEMENT AND RELEASE OF
CLAIMS

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

ADDITIONAL ATTORNEYS FOR PLAINTIFF

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ATTORNEYS FOR DEFENDANT

~~EFTHALIA S. ROFO~~ [PETER CHOI](#) (SBN ~~309065~~ [249482](#))
~~Thalia.Rofos@lewisbrisboispchoi@grsm.com~~
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Facsimile: ~~(714) 850-1030~~ [\(213\) 680-4470](#)

Attorneys for Defendant,
AMERICAN MERCHANDISING SPECIALISTS, INC.

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

6 **I. DEFINITIONS.**

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

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

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

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

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

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

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

J. “PAGA Member” shall mean any and all ~~Settlement Class Members~~current and former non-exempt employees who ~~worked for~~are or were employed by Defendant ~~from in the State of California at any time between~~ August 20, 2019 through March 15, 2022, ~~(the PAGA Period).~~

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

L. “PAGA Penalties” shall mean the amount that the Parties have agreed to allocate for settlement of claims for civil penalties arising under PAGA. The Parties have agreed to allocate Four Thousand Dollars and Zero Cents (\$4,000-~~00~~) of the Gross Settlement Amount as PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties in the amount of Three Thousand Dollars and Zero Cents (\$3,000-~~00~~) shall be paid directly to the LWDA in accordance with PAGA. The remaining Twenty-Five percent (25%) of the PAGA Penalties in the amount of One Thousand Dollars and Zero Cents (\$1,000-~~00~~), shall be distributed to PAGA Members. PAGA Members will receive payment from the employee portion of the PAGA Penalties regardless of their decision to participate in the class portion of the Settlement if the allocation for PAGA Penalties is approved by the Court.

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

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

9 **O. “Defense Counsel”** shall mean the attorneys representing Defendant in the
10 Action: [Thalia S. Refos of Lewis Brisbois Bisgaard & Smith](#) [Peter Choi and Matthew Theriault](#)
11 [of Gordon Rees Scully Mansukhani](#), LLP.

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

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

24 **R. “Gross Settlement Amount”** shall mean the Gross Settlement Amount of Two
25 Hundred and Fifteen Thousand Dollars and No Cents (\$215,000-~~00~~) payable by Defendant as
26 provided by this Agreement, plus Defendant’s employer-side payroll taxes. Defendant estimated
27 for purposes of mediation that there are 6,042-~~00~~ Work Weeks by 115 Class Members for the
28 period of August 25, 2016 through November 15, 2021. These numbers would be expected to

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

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

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

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

26 ##

27 **U. "Participating Class" or "Participating Class Members"** shall mean all
28 Settlement Class members who do not submit a valid letter requesting to be excluded from the

Settlement, consistent with the terms set forth in this Settlement Agreement.

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

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

X. “Settlement Administrator” shall mean Phoenix- [Settlement Administrator](#) or another administrator proposed by the Parties and appointed by the Court to administer the Settlement.

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

II. RECITALS

A. On or about December 3, 2021, Plaintiff, through his attorneys, sent a letter to the Labor Workforce Development Agency (“LWDA”) alleging the following against Defendant: 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 related allegations (the “PAGA letter”). Plaintiff asserted these representative claims on behalf of all Class Members who are or were employed during the applicable statutory period.

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

C. On January 23, 2022, Defendant answered Plaintiff’s First Amended Complaint and denied, and continues to deny, all of Plaintiff’s material allegations. Specifically, Defendant denies that Plaintiff and putative class members are entitled to additional wages and overtime

1 pay. Defendant contends it paid the putative class members for all hours worked as required by
2 law, including all vacation and sick days. Defendant denies the Class Members were deprived of
3 meal and rest periods, allege that it had meal and rest break policies and procedures in place to
4 ensure compliance with California law, and alleges that employees were allowed to take their
5 rest and meal periods. Defendant further alleges that the unpaid wage, improper wage statement,
6 and rest and meal period claims are not amenable to class treatment because common issues do
7 not predominate. Defendant asserts that the waiting time penalties claim will fail as to former
8 Class Members who cannot prevail on the claims described above. Defendant denies that it failed
9 to issue accurate itemized wage statements, or otherwise failed to keep accurate and complete
10 employment records. Defendant denied that it failed to reimburse Class Members for mileage
11 and telecom expenses.

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

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

27 **F.** Based on their own thorough, independent investigation and evaluation of this
28 case, Class Counsel are of the opinion that the settlement with Defendant for the consideration

1 and on the terms set forth in this Agreement is fair, reasonable, adequate, and in the best interest
2 of the Settlement Class in light of all known facts and circumstances, including the risk of
3 significant costs and delay, the risk of non-certification of the Class, the defenses asserted by
4 Defendant, the risks of adverse determinations on the merits, and numerous potential appellate
5 issues. Although Defendant contends it has no liability in this case, Defendant's counsel shares
6 Class Counsel's belief that the Agreement represents a fair and adequate settlement given the
7 respective risks associated with the case.

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

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

16 **III. SETTLEMENT TERMS AND CONDITIONS**

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

24 **B. Gross Settlement Amount.** Subject to the terms and conditions of this
25 Agreement, the Gross Settlement Amount of Two Hundred and Fifteen Thousand Dollars and
26 Zero Cents (\$215,000.00), plus Defendant's employer share of employer-side payroll taxes, is
27 the maximum amount payable by Defendant. In no event will Defendant be required to pay more
28 than the Gross Settlement Amount for distribution to the Plaintiff, Class Counsel, Class

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

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

1. To Plaintiff.

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

2. To Class Counsel. Class Counsel will apply to the Court for an award of

not more than Seventy One Thousand Six Hundred Sixty Six Dollars and Sixty Six Cents (\$71,666.66) (which is 33 and 1/3% of the Gross Settlement Amount) as their Class Counsel Fees Payment and an amount not more than Seventeen Thousand Five Hundred Dollars and No Cents (\$17,500.00) as their Class Counsel Litigation Expenses Payment, and Defendant will not oppose this request. The Settlement Administrator will pay the amount approved by the Court (but not more than Seventy One Thousand Six Hundred Sixty Six Dollars and Sixty Six Cents (\$71,666.66) in fees and not more than Seventeen Thousand Five Hundred Dollars and No Cents (\$17,500.00) in expenses) out of the Gross Settlement Amount. Withholding and deductions will not be taken from the Class Counsel Fees and Litigation Expenses Payment and one or more Forms 1099 will be issued to Class Counsel with respect to those payments. United Employees Law Group, PC will receive 25% of the Class Counsel Fees Payment and The Spivak Law Firm shall receive the remaining 75% of the Class Counsel Fees Payment.

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

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

D. Allocation of Net Settlement Amount and Calculation of Settlement Shares. Subject to the terms and conditions of this Agreement, the Settlement Administrator will distribute a payment from the Net Settlement Amount to each Participating Class Member. The Settlement Share for each Participating Class Member will be calculated as follows, understanding that the formulas below do not constitute an admission by either party, and are

intended only to provide a practical means to simplify and administer the claims process:

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

(b) **Settlement Ratio Calculation.** The Settlement Administrator shall assign to each Class Member a "Settlement Ratio," which shall be a fractional number comprised of (a) that Class Member's Individual Work Weeks as the numerator, and (b) the aggregate total of all Class Members' Individual Work Weeks as the denominator. The Settlement Administrator shall assign to each Class Member the "Settlement Share" which shall be calculated by multiplying that Class Member's Settlement Ratio by amount allocated to Class Members from the Net Settlement Amount.

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

3. **Individual Settlement Amounts for the PAGA Payments.** The Individual Settlement Amount for each PAGA Member will be calculated by the Settlement Administrator using the Class Data provided by Defendant. The Settlement Administrator will calculate the number of PAGA Work Weeks by calculating the number of days each PAGA Member was employed using their original hire date and final termination date, excluding any time they were unemployed in between during that time period, during the PAGA Period, dividing by seven (7), and rounding up to the nearest whole number. PAGA Members shall receive their portion of 25% of the PAGA Penalties regardless of their decision to opt-out of the class settlement.

4. **Taxes and Withholdings.** Each Settlement Share is intended, in part, to settle the Class Members' claims for unpaid wages. Each Class Member shall be individually responsible for the employee's share of applicable payroll tax withholdings and deductions. Accordingly, each Settlement Share allocated to wages will be reduced by applicable employee-

side payroll tax withholdings and deductions, and the Settlement Administrator will issue a Form W-2 to each Participating Class Member. Defendant will be responsible for the normal employer's share of any payroll tax attributable to the wage portion of the Settlement Share payments. Defendant's payment of the normal employer's share of payroll taxes attributable to the wage portion of the Settlement Share payments will be in addition to the Gross Settlement Amount or Net Settlement Amount.

E. Appointment of Settlement Administrator. The Parties will ask the Court to appoint Phoenix Settlement Administrators, a qualified administrator, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing the Class Notice to all Class Members; and using reasonable measures to contact all Class Members, including conducting a National Change of Address search on all Class Members before mailing the Class Notice to each Class Member's address. The Settlement Administrator's duties will also include re-mailing the Class Notice to the Class Member's new address for those Class Members whose address has changed; providing the Parties with weekly status reports about the delivery of Class Notice; calculating Settlement Shares; issuing and distributing checks to effectuate the payments due under the Settlement; reporting to the Court as required; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Class Notice, will be paid out of the Gross Settlement Amount, as set forth herein, subject to Court approval. Any portion of the of the Settlement Administrator's fees and expenses that are not used or which are not awarded by the Court will not revert to Defendant, but instead will be part of the Net Settlement Amount for distribution to Participating Class Members. If the Settlement Administrator's fees and expenses exceed Ten Thousand Dollars and No Cents (\$10,000-00), such cost will be deducted from the Net Settlement Amount.

IV. PROCEDURES FOR APPROVING SETTLEMENT

A. Motion for Preliminary Approval of Settlement by the Court. Class Counsel

will move the Court for an order granting Preliminary Approval of the Settlement (the “Motion for Preliminary Approval”), setting a date for the Final Approval Hearing, and approving the Class Notice (attached as **Exhibit A** to this Agreement), the Exclusion Request form (attached as **Exhibit B** to this Agreement), and the Work Weeks Dispute form (attached as **Exhibit C** to this Agreement). Collectively, the Class Notice (attached as Exhibit A to this Agreement), the Exclusion Request form (attached as Exhibit B to this Agreement), and the Work Weeks Dispute form (attached as Exhibit C to this Agreement) are the “Notice Packet.” Any disagreement among the Parties concerning the Class-Notice Packet or other documents necessary to implement the Settlement will be referred to the Court.

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

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

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

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

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

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

1 that Class Member’s “Individual Work Weeks.”

2 (c) If any of the Class Members’ Data are unavailable to Defendant,
3 Defendant will so inform Class Counsel and the Parties will make ~~its~~their best efforts to
4 reconstruct or otherwise agree upon the Class Members’ Data prior to when it must be submitted
5 to the Settlement Administrator. Class Members’ Data will otherwise remain confidential and
6 will not be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant
7 to Defendant’s express written authorization or by order of the Court.

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

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

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

7 **C. Disputed Class Member Settlement Shares.** If a Class Member disputes his/her
8 estimated Settlement Share, the Class Member may produce evidence to the Settlement
9 Administrator for the Class Period. In order for the dispute to be considered, he/she must follow
10 the directions on the Class Notice. To be valid and timely, all disputes and supporting documents
11 must be postmarked by the date specified in the Class Notice (no less than 60 days from the initial
12 mailing of the Class Notice by the Settlement Administrator). A Class Member may use the Work
13 Weeks Dispute form (**Exhibit C** to this Settlement), though a Class Member is not obligated to
14 do so to ~~request exclusion~~dispute the Class Member's Work Weeks from the Settlement.

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

18 **1. Request for Exclusion from Settlement.** A Class Member may request
19 to be excluded from the effect of this Agreement, and any payment of amounts under this
20 Agreement, by timely mailing a letter to the Settlement Administrator stating that the Class
21 Member wants to be excluded from this Action. This letter must include the Class Member's
22 name, address, telephone number, and signature. To be valid and timely, the request to be
23 excluded must be postmarked by the date specified in the Class Notice (no more than 60 days
24 from the initial mailing of the Class Notice by the Settlement Administrator). A Class Member
25 may use the Exclusion Request form (**Exhibit B** to this Settlement), though a Class Member is
26 not obligated to do so to request exclusion from the Settlement. A Class Member who properly
27 submits a valid and timely request to be excluded from the Action shall not receive any payment
28 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. [Although, 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.](#) 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. Rofes~~[Peter Choi](#), Esq.
~~Lewis Brisbois Bisgaard & Smith~~[Matthew Theriault](#), Esq.
[Gordon Rees Scully Mansukhani](#), LLP
~~Thalia S. Rofes Esq.~~
~~650 Town Center Drive~~
~~Suite 1400~~
~~Costa Mesa~~[633 West Fifth Street, 52nd Floor](#)
[Los Angeles, CA 9262690071](#)

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

To Class Counsel:

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

To Defense Counsel:

~~Thalia S. Rofes~~[Peter Choi](#), Esq.
~~Lewis Brisbois Bisgaard & Smith~~[Matthew Theriault](#), Esq.
[Gordon Rees Scully Mansukhani](#), LLP
~~Thalia S. Rofes Esq.~~
~~650 Town Center Drive~~

Suite 1400
Costa Mesa 633 West Fifth Street, 52nd Floor
Los Angeles, CA 9262690071

Counsel will promptly file such objection with the Court.

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

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

E. 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.

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

exception: Defendant agrees to pay any fees owing to the Settlement Administrator for services rendered in the event Defendant exercises its right to void the Settlement.

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

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

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

Upon final approval of the Settlement by the Court at or after the Final Approval Hearing,

1 the Parties will present for the Court’s approval and entry a Proposed Final Order and Judgment.
2 The Final Order and Judgment shall permanently bar all Participating Class Members from
3 prosecuting against Defendant any claims within the scope of the Releases contained in this
4 Agreement.

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

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

23 **I. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
24 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
25 motion, petition, writ, application, or appeal, the reviewing court vacates, reverses, or modifies
26 the Judgment such that there is a material modification to the Settlement, and that court’s decision
27 is not completely reversed and the Judgment is not fully affirmed on review by a higher court,
28 then either Plaintiff or Defendant will have the unilateral right to void the Settlement, which the

1 Party must do by giving written notice to the other Parties, the reviewing court, and the Court,
2 not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or
3 materially modifying the Judgment becomes final. The Party exercising its right to unilaterally
4 void the Settlement pursuant to this provision agrees to pay any fees owing to the Settlement
5 Administrator for services rendered. An order vacating, reversing or modifying the Court's award
6 of the Class Representative Payment, or the Class Counsel Fees Payment and/or Class Counsel
7 Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of
8 the Judgment within the meaning of this paragraph, and shall not render the Settlement voidable.

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

13 **K. Payment of Settlement Shares.** Within ~~ten~~fourteen (14) calendar days of receipt
14 of the Gross Settlement Amount, the Settlement Administrator shall pay Settlement Shares, from
15 the Settlement Account, to all Class Members (who do not submit valid requests to be excluded
16 from the Action). The Settlement Administrator shall pay each Settlement Share by sending a
17 check in the appropriate amount to the Class Member at the address indicated in the list of Class
18 Member names and addresses provided by Defendant, or as subsequently determined by the
19 Settlement Administrator to be the correct address.

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

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

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

5 **V. RELEASE OF CLAIMS**

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

23 **B. Class Counsel.** As of the date the Judgment becomes Final, and except as
24 otherwise provided by this Agreement, Class Counsel and any counsel associated with Class
25 Counsel (The Spivak Law Firm and United Employees Law Group), including without limitation
26 David G. Spivak, Esq. and Walter L. Haines, Esq., waive any claim to costs and attorneys' fees
27 and expenses against Defendant or the Releasees arising from or related to the Action, except
28 those incurred to enforce this Agreement and collect the Judgment, including but not limited to

claims based on the California Labor Code, the California Civil Code, the California Code of Civil Procedure, the Fair Labor and Standards Act, or any other statute or law (the “Class Counsel Released Claims”).

C. Released Claims. 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

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

5 **D. General Release by Plaintiff.** As of the date Defendant funds the settlement
6 (Section 4.J.), and for the consideration set forth in this Agreement, Plaintiff waives, releases,
7 acquits and forever discharges the Defendant from any and all claims, whether known or
8 unknown, which exist or may exist on her behalf as of the date of this Agreement, including but
9 not limited to any and all tort claims, contract claims, wage claims, wrongful termination claims,
10 disability claims, benefit claims, public policy claims, retaliation claims, statutory claims,
11 personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims,
12 fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or
13 other governmental statute, law, regulation or ordinance, including, but not limited to claims for
14 violation of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of
15 California’s Industrial Welfare Commission, other states’ wage and hour laws, the Americans
16 with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee
17 Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair
18 Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act,
19 California’s Whistleblower Protection Act, California Business & Professions Code Section
20 17200 et seq., and any and all claims arising under any federal, state or other governmental
21 statute, law, regulation or ordinance. Plaintiff also waives and relinquishes any and all claims,
22 rights or benefits that she may have under California Civil Code § 1542, which provides as
23 follows:

25 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
26 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
27 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
28 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**

MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Defendant, Plaintiff expressly acknowledges this Settlement Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff has read this Settlement Agreement, including this waiver of California Civil Code section 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Settlement Agreement and specifically about the waiver of section 1542, and that Plaintiff understands this Settlement Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or described in this Settlement Agreement, and even so Plaintiff agrees that the releases and agreements contained in this Settlement Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes, or controversies released or described in this Settlement Agreement or with regard to any facts now unknown to Plaintiff relating thereto.

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

VI. NON-PUBLICITY PROVISION

The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communication with the press

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

11 [///](#)

12 **VII. MISCELLANEOUS TERMS**

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

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

27 **C.** Whether or not the Judgment becomes Final, neither the Settlement, this
28 Agreement, any document, statement, proceeding or conduct related to the Settlement or the

1 Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or
2 admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to
3 Defendant or any other Releasees, including, but not limited to, evidence of a presumption,
4 concession, indication or admission by any of the Releasees of any liability, fault, wrongdoing,
5 omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any
6 of the Releasees, in any further proceeding in the Action, or any other civil, criminal or
7 administrative action or proceeding except for purposes of effectuating the Settlement pursuant
8 to this Agreement.

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

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

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

28 **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. Refos~~[Peter Choi](#), Esq.
~~Lewis Brisbois Bisgaard & Smith~~[Matthew](#)
[Therault, Esq.](#)
[Gordon Rees Scully Mansukhani, LLP](#)
~~Thalia S. Refos Esq.~~
~~650 Town Center Drive~~
~~Suite 1400~~
~~Costa Mesa~~[633 West Fifth Street, 52nd Floor](#)
[Los Angeles, CA 9262690071](#)

M. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original

signed counterparts. Facsimile signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Agreement.

Dated: By: _____
LUIS LARRABURU

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

///

///

THE SPIVAK LAW FIRM

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

UNITED EMPLOYEES LAW GROUP, [PC](#)

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

~~LEWIS BRISBOIS BISGAARD &
SMITH~~
[GORDON REES SCULLY
MANSUKHANI, LLP](#)

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Dated:

By:

EFTHALIA S. ROFOS, PETER CHOI,
MATTHEW THERIAULT,
Attorneys for Defendant, AMERICAN
MERCHANDISING SPECIALISTS,
INC.

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EXHIBIT A

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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,
Inc. in California, you may be entitled to receive money from a class action settlement.**

5 Phoenix ID: <<Phoenix ID>> Please provide current address (if different) here:
6 <<Name>> _____
7 <<Address1>> _____
8 <<Address2>> _____
9 <<City>>, <<State>> <<Zip
Code>> _____

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

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

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

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

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

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

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

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

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

WHO IS INCLUDED IN THE PAGA SETTLEMENT CLASS?

~~All Participating Class Members who worked for Defendant~~ Any and all current and former non-exempt employees who are or were employed by Defendant in the State of California at any time during the period of August 20, 2019 to March 15, 2022 ("PAGA Period"). The PAGA Members includes any person worked during the PAGA Period even if that person submits a request for ~~exclusion~~ exclusion 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 Period
You have a total number of <<number of Work Weeks>> Work Weeks during the PAGA Period.

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

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 Settlement Share 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. <u>You can speak to the Court about the Settlement whether or not you comply with this objection procedure.</u>

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. [for there to be a class action settlement](#). 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

1 correspondence or the settlement check itself reaches you and is not returned as an address
2 unknown.

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

6. How much will my payment be?

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

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

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

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

7. When would I get my payment?

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

35 You will have 180 days to cash your settlement check. If a mailed individual settlement payment
36 is not cashed by <<check cashing deadline>> (within 180 days of the date printed on the check),
37 all uncashed funds will be paid to the California State Controller’s Office Unclaimed Property
38

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

3 8. What am I releasing?

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

6 The Parties agree that it is their intent that the resolution set forth in this Settlement will
7 release any further attempt, by lawsuit, administrative claim or action, arbitration,
8 demand, or other action of any kind by each and all of the Settlement Class Members
9 (including participation to any extent in any representative or collective action), against
10 Defendant and all of those entities' and individual's past, present and future agents,
11 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
12 stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations,
13 divisions, joint venturers, assigns, predecessors, successors, service providers, insurers,
14 consultants, subcontractors, joint employers, employee benefit plans and fiduciaries
15 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
March 15, 2022, 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.

16 Released Claims by the Participating Class Members include all claims alleged in the
17 operative First Amended Complaint along with related claims that could have been
18 alleged based on the facts alleged in the operative First Amended Complaint including:
19 (1) claims for unpaid wages (including but not limited to overtime pay, minimum wage,
20 regular wages, missed meal period premium pay, missed rest period premium pay, failure
21 to pay wages of terminated or resigned employees, or other benefits), and claims for
22 interest, penalties, or premiums in connection therewith, as well as any claims under the
23 California Labor Code, any applicable California Wage Order(s); (2) claims for failure to
24 comply with the employee itemized wage statement provision under California Labor
25 Code section 226; (3) claims for failure to provide or make available meal and rest periods
26 as required under California Labor Code §512 and IWC Wage Orders; (4) claims for
27 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 the date of mailing of this Class Notice to do so. Your Opt-Out request must be in writing and mailed to the Settlement Administrator, Phoenix, <<settlement administrator mailing address>> and be postmarked no later than <<response deadline>>, or it will not be considered and you will be bound by the settlement. If the Settlement Administrator re-mailed your Class Notice to a new address, you will have additional 30 days from the date of the re-mailed Class Notice to opt out. You must include your full name (and former names, if any) and address in your request and you must sign the written request.

However, even if you opt-out of the class action settlement, you will still be entitled to your portion of the PAGA penalties [and you give up any claim to civil penalties under PAGA in another legal action.](#)

10. Do I have a lawyer in this case?

The Court has appointed David G. Spivak and The Spivak Law Firm, 8605 Santa Monica Blvd., PMB 42554, West Hollywood, CA 90069, telephone (213) 725-9094, david@spivaklaw.com, and [Walter L. Haines and United Employees Law Group, 4276 Katella Ave., Suite 301, Los Alamitos, CA, 90720, telephone \(562\) 256-1047, \[walter@uelglaw.com\]\(mailto:walter@uelglaw.com\)](#), to represent you and other Class Members in the Action. These lawyers are called Class Counsel. They will be compensated from the Gross Settlement Amount as discussed in this Class Notice. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

1 Class Counsel will ask the Court to award them fees of [up to \\$ 71,666.66](#), approximately 33 and
2 1/3% (one-third) of the Gross Settlement Amount. Class Counsel will also ask the Court to award
3 them costs incurred in connection with the Action. The Court may choose to award less than the
4 amount requested by Class Counsel.

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

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

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

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

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

14. Do I have to come to the hearing?

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

15. May I speak at the hearing?

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

3 **16. What happens if I do nothing at all?**

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

6
7 **GETTING MORE INFORMATION**

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

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

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

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

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EXHIBIT B

Larraburu v. American Merchandising Specialists, Inc.
Superior Court of the State of California, County of Los Angeles, Case No. 21STCV17704

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

WORK WEEKS DISPUTE FORM

Superior Court of The State of California
For The County of Los Angeles
Luis Larraburu v. American Merchandising Specialists, Inc., Case No. 21STCV17704

Indicate Name/Address Changes, if any:

<<Name>> _____
<<Address>> _____
<<City>>, <<State>> <<Zip Code>> _____
XX - XX - ____

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

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

YOUR ELIGIBLE WORK WEEKS

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

YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE

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

If you wish to dispute the number of ~~August 25, 2016~~Individual Work Weeks credited to you, or anything else about your employment 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.

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

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

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

8 Plaintiff,

9 vs.

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

12 Defendant(s).
13

Case No. 21STCV17704

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

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

14
15 The Motion of Plaintiff Luis Larraburu (hereafter referred to as “Plaintiff”) for
16 Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
17 The Honorable Yvette M. Palazuelos presiding. The Court having considered the [Renewed](#)
18 Motion, the [Second Amended](#) Joint Stipulation of Class Action Settlement and Release of
19 Claims (“Settlement” or “Settlement Agreement”), and supporting papers, HEREBY ORDERS
20 THE FOLLOWING:

21 1. The Court grants preliminary approval of the Settlement and the Settlement Class
22 based upon the terms set forth in the Settlement filed as ~~an~~-Exhibit [19](#) to the [Supplemental](#)
23 [Declaration of David Spivak in Support of Plaintiff’s Renewed](#) Motion for Preliminary
24 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
25 has determined there is sufficient evidence to preliminarily determine that (a) the terms of the
26 Settlement appear to be fair, adequate, and reasonable to the Settlement Class and (b) the
27 Settlement falls within the range of reasonableness and appears to be presumptively valid,
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1 subject only to any objections that may be raised at the final hearing and final approval by this
2 Court. The Court will make a determination at the hearing on the motion for final approval of
3 class action settlement (the "Final Approval Hearing") as to whether the Settlement is fair,
4 adequate and reasonable to the Settlement Class.

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

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

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

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

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

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

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

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

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

19 i. **Request for Exclusion from Settlement.** A Class Member may
20 request to be excluded from the effect of this Agreement, and any
21 payment of amounts under this Agreement, by timely mailing a letter
22 to the Settlement Administrator stating that the Class Member wants
23 to be excluded from this Action. This letter must include the Class
24 Member's name, address, telephone number, and signature. To be
25 valid and timely, the request to be excluded must be postmarked by
26 the date specified in the Class Notice (_____, or 60 days
27 from the initial mailing of the Class Notice by the Settlement
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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:

~~Thalia S. Refos~~, ~~Peter Choi~~, Esq.
~~Lewis Brisbois Bisgaard & Smith~~ ~~Matthew~~
~~Theriault, Esq.~~
~~Gordon Rees Scully Mansukhani, LLP~~
~~650 Town Center Drive~~
~~Suite 1400~~
~~Costa Mesa~~ ~~633 West Fifth Street, 52nd Floor~~
~~Los Angeles, CA 92626~~ ~~90071~~

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

To Class Counsel:

To Defense Counsel:

1 David G. Spivak, Esq.
2 The Spivak Law Firm
3 8605 Santa Monica Blvd., PMB 42554
4 West Hollywood, CA 90069

~~Thalia S. Refos~~
~~Lewis Brisbois Bisgaard & Smith~~
~~Esq.~~
~~Matthew Theriault, Esq.~~
~~Gordon Rees Scully Mansukhani, LLP~~
~~650 Town Center Drive~~
~~Suite 1400~~
~~Costa Mesa~~ 633 West Fifth Street, 52nd Floor
Los Angeles, CA 9262690071

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **IT IS SO ORDERED.**

7 DATED: _____

8 **THE HONORABLE YVETTE M. PALAZUELOS**
9 **JUDGE OF THE SUPERIOR COURT**

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**
10 **(UNLIMITED JURISDICTION)**
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12 LUIS LARRABURU, on behalf of himself and all
13 others similarly situated, and as an “aggrieved
14 employee” on behalf of other “aggrieved
Attorneys General Act of 2004,

15 *Plaintiff,*

16 vs.

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

20 *Defendant(s).*
21

Case No. 21STCV17704

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9
10 DATED: _____

11 **THE HONORABLE YVETTE M. PALAZUELOS**
12 **JUDGE OF THE SUPERIOR COURT**
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EXHIBIT 21