

Patrick Faiaipau v. RUGSUSA, LLC

San Joaquin County Superior Court Case No. STK-CV-UOE-2022-0003707

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement is entered into by and between Plaintiff Patrick Faiaipau, individually and on behalf of all others similarly situated, and Defendant RUGSUSA, LLC, and is approved by their respective counsel of record, subject to the terms and conditions hereof and the Court's approval.

A. Definitions

1. "Action" or "Lawsuit" means and refers to the case entitled *Patrick Faiaipau v. RUGS USA LLC*, Case No. STK-CV-UOE-2022-00003707, filed on May 12, 2022 and pending in the San Joaquin County Superior Court.

2. "Allegedly Aggrieved Employees" means "all individuals who were employed by Defendant RUGSUSA, LLC as a non-exempt, hourly employee in California at any time during the PAGA Period."

3. "Agreement," "Settlement Agreement," "Settlement," or "Stipulation" shall mean this Class Action and PAGA Settlement Agreement, including any attached Exhibits.

4. "Class Claims" or "Released Class Claims" will include all claims and causes of action that were pled or could have been pled in the operative Complaint, based on the facts alleged therein, except for the claim under the PAGA, including claims for failure to pay overtime wages, failure to pay sick time, meal and rest break violations, failure to pay meal and rest break premium pay and/or failure to pay such premium pay at the correct rate(s) of pay, failure to provide accurate itemized wage statements, failure to timely pay all wages upon separation of employment, and unfair and unlawful business practices pursuant to Business and Professions Code §17200 *et seq.* This also includes, but is not limited to, any and all claims alleged or that could have been alleged based on the facts of the Complaint or any amended complaint for unpaid wages, and all other associated damages and/or penalties, including but not limited to claims under Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 227.3, 246, 510, 512, 516, 558, 1174, 1174.4, 1174.5, 1194, 1194.2 1197, 1197.1, 1198, 1199, 2699 *et seq.* all applicable IWC

1 Wage Orders, and Business and Professions Code section 17200 *et seq.* For Plaintiff and the
2 Participating Class Members, the Released Class Claims shall include all released claims which
3 arose during the Class Period.

4 5. “Class Counsel” refers to Mehrdad Bokhour, Esq. of Bokhour Law Group, P.C.
5 and Joshua Falakassa, Esq. of Falakassa Law, P.C.

6 6. “Class Data” means Class Member identifying information in Defendant's
7 possession including Class Member’s name; last known mailing address; Social Security
8 Number; and dates of employment and/or number of Workweeks worked during the Class Period
9 and the number of PAGA Periods worked during the PAGA Period, if applicable. At no time
10 during the Settlement process will any Class Member’s identifying information, as described in
11 this paragraph above, be filed with the Court, except under seal and only if ordered by the Court.

12 7. “Class Period” and “Class Release Period” shall mean May 12, 2018 through
13 October 1, 2023.

14 8. “Class Representative” or “Plaintiff” means and refers to Patrick Faiaipau.

15 9. “Complaint” refers to the First Amended Complaint filed in the Action on
16 November 3, 2022.

17 10. “Court” means the California Superior Court, County of San Joaquin or any Court
18 of competent jurisdiction.

19 11. “Defendant” means and refers to RUGSUSA, LLC.

20 12. “Defendant’s Counsel” or “Defense Counsel” means and refers to Marissa
21 Alguire, Esq. and Mojan Anari, Esq. of Akerman LLP.

22 13. “Effective Date” means the date by when both of the following have occurred: (a)
23 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
24 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
25 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if
26 one or more Participating Class Members objects to the Settlement, the day after the deadline for
27 filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the
28 day after the appellate court affirms the Judgment and issues a remittitur.

1 14. “Final” means that the Settlement has been granted “Final Approval” by the Court
2 and the “Effective Date” has occurred.

3 15. “Final Approval” refers to the order of the Court granting final approval of this
4 Settlement Agreement and entering a judgment approving this Settlement on substantially the
5 same terms provided herein or as may be modified by subsequent agreement of the Parties or
6 order of the Court.

7 16. “Final Settlement Class” means, collectively, all Participating Class Members and
8 all Allegedly Aggrieved Employees.

9 17. “First Amended Complaint” means the First Amended Complaint that Plaintiff has
10 filed in this Action.

11 18. “Individual Settlement Amount” shall have the meaning ascribed to it in Paragraph
12 49(d) below.

13 19. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 49(c)
14 below.

15 20. “Notice” means the Notice of Proposed Class Action Settlement and Final
16 Approval Hearing that will be sent to the Settlement Class Members and Allegedly Aggrieved
17 Employees. The Notice will be substantially similar to the draft Notice that is attached to this
18 Agreement as Exhibit “A”, subject to the resolution by the Court of any and all outstanding issues
19 between the Parties as to the terms contained therein and approval by the Court.

20 21. “Notice Response Deadline” is forty-five (45) calendar days from the date the
21 Notice is mailed to the Settlement Class Members.

22 22. “Objecting Settlement Class Member” means a Settlement Class Member, other
23 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
24 respect to the Class Claims pursuant to Paragraph 72(c) below.

25 23. “PAGA” shall refer to the California Labor Code Private Attorneys General Act
26 of 2004, California Labor Code Sections 2698–2699.5.

27 24. “PAGA Claims” or “Released PAGA Claims” shall include any and all claims and
28 causes of action pursuant to the PAGA based on the allegations stated in the PAGA Notice and

that were or could have been pled in the operative Complaint, based on the facts alleged therein, including claims for failure to pay overtime wages, failure to pay sick time, meal and rest break violations, failure to pay meal and rest break premium pay and/or failure to pay such premium pay at the correct rate(s) of pay, failure to provide accurate itemized wage statements, failure to timely pay all wages upon separation of employment, and unfair and unlawful business practices pursuant to Business and Professions Code §17200 *et seq.* This also includes but is not limited to claims for civil penalties under Labor Code section 2698, *et seq.*, Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 227.3, 246, 510, 512, 516, 558, 1174, 1174.4, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and all applicable IWC Wage Orders.

25. “PAGA Notice” shall refer to the notice sent by Plaintiff, by and through counsel, on or about May 10, 2022, to the Labor and Workforce Development Agency (“LWDA”) and to Defendant, alleging that Defendant engaged in violations of the California Labor Code and California Wage Order(s).

26. “PAGA Period” and “PAGA Release Period” shall mean May 10, 2021, through October 1, 2023.

27. “Participating Class Member” means any and all Settlement Class Members who are deemed to participate and receive an Individual Settlement Amount for the Class Claims and who do not opt-out of the settlement of the Class Claims by submitting timely valid Requests for Exclusion.

28. “Parties” or “Settling Parties” mean Plaintiff, individually and on behalf of the Settlement Class Members and the Allegedly Aggrieved Employees, and Defendant, collectively.

29. “Preliminary Approval Date” means the date the Court preliminarily approves the Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

30. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement and providing for the issuance of the Notice to the Settlement Class Members, an opportunity to opt out of settlement of the Class Claims, an opportunity to submit timely objections to the terms of this Settlement related to the Class Claims, and setting a hearing on the fairness of the terms of

1 Settlement, including approval of attorneys' fees and costs.

2 31. "QSF" means the Qualified Settlement Fund set up by the Settlement
3 Administrator for the benefit of the Final Settlement Class, and from which the settlement
4 payments shall be made.

5 32. "Release" shall mean the release and discharge of the Class Claims by Plaintiff
6 and all of the Participating Class Members and the release and discharge of the PAGA Claims by
7 Plaintiff and all of the Allegedly Aggrieved Employees.

8 33. "Released Parties" shall refer to Defendant, all entities affiliated with it, and all
9 officers, directors, representatives, owners, partners, subsidiaries, parent and affiliated
10 companies, joint venturers, clients, vendors, joint employers, predecessors, managers, servants,
11 successors-in-interest, assigns, current and former employees of Defendant, including but not
12 limited to agents, insurers, attorneys and all persons or entities acting in concert with or affiliated
13 with any of them.

14 34. "Request for Exclusion" shall have the meaning ascribed to it in Paragraph 72(a)
15 below.

16 35. "Service Payment" or "Service Award" means the amount approved by the Court
17 to be paid to Class Representative in addition to his Individual Settlement Amount as a
18 Participating Class Member.

19 36. "Settlement Administration Costs" means the costs payable from the Settlement
20 Amount to the Settlement Administrator for administering this Settlement, including, but not
21 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, due
22 diligence, reporting and remittance obligations, distributing the Settlement Amount, and
23 providing necessary reports and declarations, as requested by the Parties and the Court. The
24 Settlement Administration Costs shall be paid from the Settlement Amount.

25 37. "Settlement Administrator" means and refers to ILYM Group, Inc., which the
26 Parties have mutually agreed will provide the Notice to the Class Members and distribute the
27 settlement amounts as described in this Agreement.

28 38. "Settlement Amount" or "Gross Settlement Amount" shall have the meaning

ascribed to it in Paragraph 49(a) below.

39. “Settlement Class Member” or “Class Member” refers to individual members of the Settlement Class.

40. “Settlement Class” and “Settlement Class Members” refers to “all individuals who were employed by Defendant RUGSUSA, LLC as a non-exempt, hourly employee in California at any time during the Class Period.”

41. “Workweeks Worked” and “PAGA Pay Periods Worked” for each Settlement Class Member and Allegedly Aggrieved Employee means any workweek during the Class Period and/or pay period during the PAGA Period, as applicable, in which the Settlement Class Member and/or Allegedly Aggrieved Employee was employed by Defendant as a non-exempt, hourly employee in California and worked at least one shift during the workweek or pay period, respectively, for or on behalf of Defendant for which a prior release of claims has not been signed. Workweeks Worked and PAGA Pay Periods Worked shall not include weeks or pay periods where a Settlement Class Member and/or Allegedly Aggrieved Employee was on leave, or otherwise did not record any actual work time in Defendant’s timekeeping system. Workweeks Worked and PAGA Pay Periods Worked will be calculated based on Defendant’s business records.

B. General Terms

42. On or about May 12, 2022, Plaintiff filed a Class Action Complaint in the Court against Defendant, including allegations of: (1) failure to pay overtime wages, (2) failure to pay sick time, (3) meal period violations, (4) rest period violations, (5) wage statement violations, (6) waiting time penalties, and (7) unfair competition. On or about November 3, 2022, Plaintiff filed a First Amended Complaint to add a cause of action for PAGA penalties based on the underlying Labor Code violations asserted in the PAGA Notice.

43. Defendant denies Plaintiff’s claims and allegations in the PAGA Notice, the original Class Action Complaint and the First Amended Complaint in their entirety and contends that the Action is meritless and is not suitable for class certification and/or representative treatment. Nothing in this Agreement is intended or will be construed as an admission by

1 Defendant that the claims in the Action have merit or that Defendant bears any liability to
2 Plaintiff, the Settlement Class Members or the Allegedly Aggrieved Employees on those claims
3 or any other claims. Nevertheless, Defendant has taken into account the uncertainty and risks
4 inherent in any litigation and has also concluded that further defense of the Action would be
5 protracted and expensive. Defendant, therefore, has determined that it is desirable and beneficial
6 that the Action be settled in a manner and upon the terms and conditions set forth in this
7 Settlement Agreement.

8 44. Class Representative believes he can proceed with his class and representative
9 claims, that the Action is meritorious, and that class certification is appropriate.

10 45. The Parties have conducted a thorough investigation into the facts of the Action.
11 This includes conducting extensive exchange of informal discovery, including Defendant's
12 written policies and practices and the production of a representative sample of payroll and
13 timekeeping records for Settlement Class Members and Allegedly Aggrieved Employees. Class
14 Counsel is both knowledgeable about and has done extensive research with respect to the
15 applicable law and potential defenses to the claims of the Settlement Class Members and
16 Allegedly Aggrieved Employees. Class Counsel has diligently pursued an investigation of the
17 Class Members' claims against Defendant. Based on the foregoing data and on their own
18 independent investigation and evaluation, Class Counsel is of the opinion that the settlement with
19 Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair,
20 reasonable, and adequate and is in the best interest of the Settlement Class Members and
21 Allegedly Aggrieved Employees in light of all known facts and circumstances, including the risk
22 of significant delay and uncertainty associated with litigation, various defenses asserted by
23 Defendant, and numerous potential appellate issues.

24 46. On August 1, 2023, the Parties participated in mediation before Hon. Carl J. West
25 (Ret.), a highly experienced class and PAGA/representative action mediator. After a full-day
26 mediation, the Parties reached a settlement. The Parties agree that the terms and conditions of this
27 Agreement are the result of lengthy, intensive, arms-length negotiations between the Parties
28 supervised by a highly experienced class and representative action mediator. This Agreement

1 represents a compromise and settlement of highly disputed claims, and is intended to settle,
2 compromise and discharge the Released Claims against the Released Parties fully, finally, and
3 forever.

4 47. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
5 to be performed or judgments to be entered pursuant to the terms of the Settlement and
6 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
7 any statute or law or liability on the claims or allegations in the Action.

8 48. Stipulation for Class Certification and Representative Treatment. For settlement
9 purposes only, Defendant will stipulate that the Settlement Class Members described herein who
10 do not Request Exclusion from the Settlement Class may be conditionally certified as a settlement
11 class and that the Allegedly Aggrieved Employees are appropriate for representative treatment
12 for purposes of settlement. This stipulation to certification and representative treatment is in no
13 way an admission that class action certification and/or representative treatment is proper and shall
14 not be admissible in this or in any other action except for the sole purposes of enforcing this
15 Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties'
16 stipulation to class certification and representative treatment as part of the Settlement shall
17 become null and void *ab initio* and shall have no bearing on and shall not be admissible in
18 connection with the issue of whether or not class certification and/or representative treatment
19 would be appropriate in a non-settlement context. Defendant expressly reserves its rights and
20 declares that it will continue to oppose class certification, representative treatment, and the
21 substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly
22 reserves his rights and declares that he will continue to pursue class certification and
23 representative treatment and a trial should the Court fail to issue Final Approval.

24 **C. Terms of Settlement**

25 49. The financial terms of the Settlement are as follows:

26 (a) Gross Settlement Amount: The Parties agree to settle this Action for Three
27 Hundred Seventy-Five Thousand Dollars (\$375,000) ("the Gross Settlement Amount"). The
28 Gross Settlement Amount is the maximum amount that will be paid by Defendant, and includes

1 Individual Settlement Amounts, attorneys' fees of Class Counsel, costs and expenses, the Service
2 Payment to Class Representative, all Settlement Administration Costs, and payment to the Labor
3 Workforce Development Agency (LWDA) for PAGA penalties. Defendant shall separately pay
4 the employers' share of applicable payroll taxes. Except for employer-side payroll taxes, and as
5 provided for in Paragraph 49(b) of this Agreement, under no circumstances shall Defendant be
6 required to pay more than the Gross Settlement Amount.

7 (b) The Gross Settlement Amount is based on Defendant's representation that there
8 are approximately 7,335 total workweeks as of the date the Parties participated in mediation. In
9 the event that the actual number of workweeks worked by all Participating Class Members during
10 the Class Period increases by more than 10% of this figure (e.g., reaches 8,069), then the Class
11 Period and PAGA Period will either, at Defendant's option, end on the date on which total number
12 of workweeks is equal to or close to without exceeding the 8,069 workweeks or Defendant agrees
13 to increase the Gross Settlement Amount by 10%. If the Escalator Clause is triggered, Defendant
14 shall notify Plaintiff in writing of their selection within 10 business days of being notified by the
15 third-party administrator that the Escalator Clause has been triggered.

16 (c) Net Settlement Amount: The "Net Settlement Amount" is defined as the Gross
17 Settlement Amount less attorneys' fees and litigation costs as approved by the Court, the Service
18 Payment to Class Representative as approved by the Court, the Settlement Administration Costs
19 as approved by the Court, and the Twenty Thousand Dollars (\$20,000.00) allocated to payment
20 for PAGA penalties as described in paragraph 49(d) below. The remainder is to be paid to
21 Participating Class Members as Individual Class Settlements. In the event that the Court reduces
22 the attorneys' fees and litigation costs or Service Awards, Settlement Administration Costs, or
23 either increases or decreases the amount allocated to PAGA penalties, the Net Settlement Sum
24 shall be increased or decreased accordingly.

25 (d) Individual Settlement Amounts for the Final Settlement Class: The Settlement
26 Administrator will use the Class Data provided by Defendant to calculate each Participating Class
27 Member's and Allegedly Aggrieved Employee's "Individual Settlement Amounts" based on the
28 following formula:

i. PAGA Amount: \$20,000 of the Gross Settlement Amount has been designated to the PAGA claims. Twenty-five percent (25%), or \$5,000.00, shall be paid out to Allegedly Aggrieved Employees, while seventy-five percent (75%), or \$15,000.00, will be paid to the LWDA. Each Allegedly Aggrieved Employee shall receive a portion of the \$5,000.00 proportionate to the number of PAGA Pay Periods Worked by the Allegedly Aggrieved Employees during the PAGA Period compared to the total number of PAGA Pay Periods Worked by all Allegedly Aggrieved Employees during the PAGA Period. Allegedly Aggrieved Employees shall have their settlement amount for the Released PAGA claims paid one hundred percent (100%) as civil penalties for which no taxes will be withheld and for which a Form 1099 will be issued by the Settlement Administrator.

ii. Class Amount: The Net Settlement Amount shall be allocated to each Participating Class Member based on his/her/their proportionate Workweeks Worked during the Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the numerator of which is the Participating Class Member's total Workweeks Worked during the Class Period, and the denominator of which is the total Workweeks Worked by all Participating Class Members during the Class Period. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Amount allocated toward Released Class Claims.

(e) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts will be allocated for tax purposes based on the allegations in the Action as follows: one hundred percent (100%) of any PAGA Amount portion will be paid as penalties; twenty percent (20%) of any Class Amount portion will be paid as wages subject to withholding of all applicable local, state, and federal taxes; forty percent (40%) of any Class Amount portion will be paid as interest; and forty percent (40%) of any Class Amount portion will be paid as penalties. Pursuant to, *e.g.*, California Labor Code Sections 203, 226, no taxes will be withheld from any portions that will be paid as interest and as civil penalties. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms

1 with respect to the wage allocation, and a Form 1099 with respect to the civil penalties and interest
2 allocations.

3 (f) Service Payment to Class Representative: The amount awarded to Class
4 Representative as a Service Payment will be set by the Court in its discretion, not to exceed Ten
5 Thousand Dollars (\$10,000). Defendant agrees not to oppose this request. The Service Payment
6 to Class Representative will be paid out of the Gross Settlement Amount. Class Representative
7 will be issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally
8 responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount
9 awarded by the Court as the Service Payment to Plaintiff less than the requested amount shall not
10 be a basis for Plaintiff or Class Counsel to void this Agreement. Should the Court approve a lesser
11 amount for the Service Payment, the difference shall be added to the Net Settlement Amount to
12 be distributed to the Participating Class Members. In the event of any appeal of the amount of the
13 service awards (if any) approved by the Court, if, after the exhaustion of any such appellate
14 review, additional amounts not awarded to Class Representative shall be added to the Net
15 Settlement Amount to be distributed to the Participating Class Members.

16 (g) Attorneys' Fees and Costs: Defendant agrees not to oppose a request by Class
17 Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of the Gross Settlement
18 Amount (approximately \$125,000), plus reasonable litigation costs not to exceed Twenty
19 Thousand Dollars (\$20,000) ("Attorneys' Fees and Cost Award"). For purposes of this
20 Settlement, Defendant agrees not to oppose any contention by Class Counsel that attorneys' fees
21 should be based on the common fund theory. The Attorneys' Fee and Cost Award shall be paid
22 from the Gross Settlement Amount, and except for this award, Defendant shall have no further
23 obligation to pay any attorneys' fees, costs, or expenses to Class Counsel, Class Representative,
24 Class Members or Allegedly Aggrieved Employees. Should the Court approve a lesser amount
25 than what is sought by Class Counsel, the difference shall be added to the Net Settlement Amount
26 to be distributed to the Participating Class Members. Any Court order awarding less than the
27 amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or
28 otherwise void the Settlement. In the event of any appeal of the amount of the awards of attorneys'

1 fees and costs (if any) approved by the Court, final funding and administration of the portion of
2 the attorneys' fees and/or costs award in dispute will be segregated and stayed pending the
3 exhaustion of appellate review. If, after the exhaustion of any such appellate review, additional
4 amounts not awarded to as attorneys' fees and costs shall be added to the Net Settlement Amount
5 to be distributed to the Participating Class Members and/or Allegedly Aggrieved Employees. The
6 Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount
7 of attorneys' fees and costs awarded by the Court. Class Counsel agrees that any allocation of
8 fees between or among Class Counsel and any other attorney representing or claiming to represent
9 the Class Members shall be the sole responsibility of Class Counsel.

10 (h) Settlement Administration Costs: The fees and other charges of the Settlement
11 Administrator will be paid from the Gross Settlement Amount, not to exceed \$6,000 subject to
12 Court approval, unless approved by all Parties and the Court.

13 (i) Tax Liability: Class Counsel, Defendant, and Defendant's Counsel make no
14 representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder,
15 and Plaintiff and the Settlement Class Members are not relying on any statement or representation
16 by Class Counsel, Defendant, or Defendant's Counsel in this regard. Plaintiff and Final Settlement
17 Class Members understand and agree that they will be solely responsible for the payment of any
18 taxes and penalties assessed on their respective Settlement Amounts described herein. Income tax
19 withholding will also be made pursuant to applicable federal, state, and/or local withholding codes
20 or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner
21 required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Settlement
22 Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, are
23 changed after the date of this Agreement, the processes set forth in this Section may be modified
24 in a manner to bring Defendant into compliance with any such changes.

25 (j) No Tax Advice. Neither Plaintiff, Class Counsel, Defendant, nor Defense Counsel
26 are providing any advice regarding taxes or taxability, nor shall anything in this Settlement
27 Agreement be relied upon as such within the meaning of United States Treasury Department
28 Circular 230 (31 CFR Part 10, as amended) or otherwise.

1 50. No Credit Towards Benefit Plans. The Individual Settlement Amount payments
2 made to Participating Class Members and/or Allegedly Aggrieved Employees under this
3 Settlement Agreement, as well as any other payment made pursuant to this Settlement Agreement,
4 will not be utilized to calculate any additional benefits under any benefit plans to which any
5 Participating Class Members and/or Allegedly Aggrieved Employees may be eligible, including
6 but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation
7 plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention
8 that this Settlement Agreement will not affect the rights, contributions, or amounts to which any
9 Participating Class Member and/or Allegedly Aggrieved Employees may be entitled under benefit
10 plans.

11 51. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
12 no circumstances will any portion of the Settlement Amount revert to Defendant. Final Settlement
13 Class Members will not have to make a claim to receive an Individual Settlement Amount.
14 Distributions, in the form of Individual Settlement Amounts, will be made directly to each Final
15 Settlement Class Member. The Settlement Administrator shall be responsible for accurately and
16 timely reporting any remittance obligations with respect to unclaimed funds as a result of a Final
17 Settlement Class Member not cashing an Individual Settlement Amount by the check cashing
18 deadline, as set forth herein.

19 52. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
20 adequate, and will so represent same to the Court.

21 **D. Release by Plaintiff and the Final Settlement Class**

22 53. Upon the Effective Date of this Settlement, Plaintiff and each Participating Class
23 Member, for themselves and for their respective former and present agents, spouses, domestic
24 partners, marital community, children, estates, trusts, attorneys, heirs, predecessors, successors,
25 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
26 assigns, and representatives, will forever completely release and discharge the Released Parties
27 from all claims, demands, rights, liabilities, causes of action with respect to the Released Class
28 Claims during the Class Release Period. The Release Period is the same as the Class Period.

1 54. Each Participating Class Member will be deemed to have made the foregoing
2 Release as if by manually signing it.

3 55. Upon the Effective Date of this Settlement, Plaintiff, the LWDA, and each
4 Allegedly Aggrieved Employee, for themselves and for their respective former and present
5 agents, spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs,
6 predecessors, successors, beneficiaries, devisees, legatees, executors, administrators, trustees,
7 conservators, guardians, assigns, and representatives, will forever completely release and
8 discharge the Released Parties from the Released PAGA Claims for the PAGA Release Period.
9 The foregoing release shall be binding on Plaintiff, the Allegedly Aggrieved Employees, and the
10 State of California, and shall bar by res judicata any claim under the PAGA brought by any person,
11 including the Allegedly Aggrieved Employees, individually and on behalf of the State of
12 California, as to any claims predicated on the Released PAGA Claims.

13 56. Each Allegedly Aggrieved Employee and the LWDA will be deemed to have made
14 the foregoing Release as if by manually signing it.

15 57. Plaintiff and Defendant intend that the Settlement described in this Agreement will
16 release and preclude any further claim, whether by lawsuit, administrative claim or action,
17 arbitration, demand, or other action of any kind, by each and all of the Participating Class
18 Members to obtain a recovery based on, arising out of, and/or related to any and all of the Released
19 Class Claims. The Settlement Class Members shall be notified in the Notice. This paragraph does
20 not apply to any Settlement Class Member who timely and validly opts out of the Settlement for
21 purposes of Class Claims.

22 58. Plaintiff and Defendant intend that the Settlement described in this Agreement will
23 release and preclude any further claim, whether by lawsuit, administrative claim or action,
24 arbitration, demand, or other action of any kind, by each and all of the Allegedly Aggrieved
25 Employees and the LWDA to obtain a recovery based on, arising out of, and/or related to any and
26 all of the Released PAGA Claims. The Allegedly Aggrieved Employees and the LWDA shall be
27 so notified in the Notice. Allegedly Aggrieved Employees who timely and validly opt out of the
28 Settlement for purposes of Class Claims will nevertheless be bound by the release of the Released

1 Class Claims.

2 59. Class Representative, on behalf of himself and the Participating Settlement Class
3 Members, acknowledges and agrees that the Class Claims or Released Class Claims are disputed,
4 and that the payments set forth herein constitute payment of all sums allegedly due to him. Class
5 Representative, on behalf of himself and the Participating Settlement Class Members,
6 acknowledges and agrees that California Labor Code Section 206.5 is not applicable to the Parties
7 hereto. Section 206.5 provides in pertinent part as follows:

8
9 An employer shall not require the execution of a release of a claim or right on
10 account of wages due, or to become due, or made as an advance on wages to be
11 earned, unless payment of those wages has been made.

12 **E. Release by Class Representative**

13 60. As a material inducement to Defendant to enter into this Settlement Agreement, in
14 addition to Class Representative's release of the Released Class Claims and Released PAGA
15 Claims, as discussed in Paragraphs 53 and 55 above, Class Representative does hereby, for
16 himself and for his respective former and present agents, spouses, domestic partners, marital
17 community, children, estates, trusts, attorneys, heirs, predecessors, successors, beneficiaries,
18 devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and
19 representatives, forever completely release and discharge the Released Parties from any and all
20 charges, complaints, claims, liabilities, obligations, promises, agreements, contracts,
21 controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and
22 expenses (including for back wages, meal and rest break premium pay, statutory penalties, civil
23 penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of any
24 nature whatsoever, from the beginning of time through the execution of this Settlement
25 Agreement, whether known or unknown, suspected or unsuspected, concealed or hidden,
26 including but not limited to all claims arising out of, based upon, or relating to Class
27 Representative's employment with Defendant or the remuneration for or termination of such
28 employment (collectively, the "Class Representative's Claims").

61. Without limiting the generality of the foregoing release, Class Representative also expressly releases all claims or rights against Released Parties arising out of or relating to his employment or relating to alleged violations of any contracts, express or implied (including but not limited to any contract of employment); conversion; promissory estoppel; any contract or covenant of good faith and fair dealing (express or implied); any tort, including but not limited to, intentional and unintentional torts, invasion of privacy, defamation, slander, libel, assault, battery, negligence, fraud, misrepresentation and violation of California Labor Code Section 970, negligent infliction of emotional distress, intentional infliction of emotional distress, pain and suffering, whistleblowing or “retaliation” claims and claims for violation of public policy (whether based on federal, state or local law, statutory or decisional),, any claim for improper or unauthorized wage deductions, failure to pay the applicable wage, unpaid wages, unpaid vacation benefits, penalties, liquidated damages, other damages, overtime, and alleged “off the clock” work under federal and state law, including, but not limited to, California Labor Code Sections 204 and 558, waiting time penalties pursuant to California Labor Code Section 203, damages, or penalties pursuant to California Labor Code Section 226, meal period and rest break payments and penalties pursuant to California Labor Code Sections 226.7 and 512, failure to provide itemized wage statements pursuant to California Labor Code Section 226, statutory or civil penalties pursuant to California Labor Code Section 210, failure to indemnify for business expenses pursuant to Labor Code Section 2802, failure to provide one day of rest in seven pursuant to California Labor Code Sections 551 and 552, unfair competition and unfair business practices pursuant to Business and Professions Code Section 17200, *et seq.*, interest and costs pursuant to California Civil Code Section 3287 and California Labor Code Section 218.6, statutory or common law rights to attorneys’ fees and costs, including those pursuant to California Labor Code Section 1194 *et seq.*; claims under the Private Attorneys General Act of 2004, Labor Code Sections 2699, *et seq.*, and the alleged violation or breach of any other state or federal statute, rule, and or regulation or local ordinance; including all applicable Industrial Welfare Commission Wage Orders, and all similar causes of action, including but not limited to, any claim for restitution, equitable relief, interest, penalties, costs, or attorneys’ fees in connection with any

1 of the foregoing, negligent infliction of emotional distress, intentional infliction of emotional
2 distress, and defamation; any “wrongful discharge,” “constructive discharge,” and “retaliation”
3 claims; any claims relating to any breach of public policy; any legal restrictions on Defendant’s
4 right to discharge employees; and any federal, state, or other governmental statute, regulation, or
5 ordinance, including, without limitation, any and all claims under: (1) Title VII of the Civil Rights
6 Act of 1964 (race, color, religion, sex, and national origin discrimination or harassment, including
7 retaliation for reporting discrimination or harassment); (2) 42 U.S.C. Section 1981
8 (discrimination); (3) Equal Pay Act, 29 U.S.C. Section 209(d)(1) and California Labor Code
9 Section 1197.5 (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. Section 12100, *et seq.*
10 (disability discrimination); (5) Family and Medical Leave Act, 29 U.S.C. Section 2601, *et*
11 *seq.* (family/medical leave); (6) California Fair Employment and Housing Act, Cal. Government
12 Code Section 12900, *et seq.* (discrimination or harassment in employment and/or housing,
13 including discrimination or harassment based on race, religious creed, color, national origin,
14 ancestry, disability, marital status, sex (including pregnancy), age, or any other protected
15 characteristic, including retaliation for reporting discrimination or harassment); (7) California
16 Family Rights Act, Cal. Government Code Section 12945.1, *et seq.* (family/medical leave); (8)
17 California Labor Code, including but not limited to, Section 1720 *et seq.*, or any Industrial
18 Welfare Commission Wage Order; (9) Executive Order 11246 (race, color, religion, sex, and
19 national origin discrimination or harassment); (10) Executive Order 11141 (age discrimination);
20 (11) Sections 503 and 504 of the Rehabilitation Act of 1973 (handicap discrimination); (12) the
21 Fair Labor Standards Act; (13) Employee Retirement Income Security Act, 29 U.S.C. § 1000 *et*
22 *seq.* (employee benefits) (other than claims with regard to vested benefits); (14) the California
23 Civil Code; (15) the California Labor Code; (16) the California Constitution; (17) the National
24 Labor Relations Act; (18) the Americans with Disabilities Act of 1990; (19) the Occupational
25 Safety and Health Act; (20) the Consolidated Omnibus Budget Reconciliation Act of 1985; (21)
26 the Worker Adjustment and Retraining Notification Act (“WARN”); (22) the Employee
27 Retirement Income Security Act of 1974; (23) the Rehabilitation Act of 1973; (23) the Internal
28 Revenue Code of 1986, as amended; (24) the California Government Code; (25) the California

1 Constitution; (26) the Families First Coronavirus Response Act; (27) the California Healthy
2 Workplace Healthy Family Act; (28) Age Discrimination in Employment Act of 1967 (the
3 “ADEA”); (29) the Older Workers Benefit Protection Act (“OWBPA”), 29 U.S.C. § 621 *et seq.*;
4 (30) the Genetic Information Nondiscrimination Act (“GINA”); (31) the Immigration Reform and
5 Control Act, the Corporate and Criminal Fraud Accountability Act of 2002; (32) the Uniformed
6 Services Employment and Reemployment Rights Act, the Sarbanes-Oxley Act of 2002; (33) the
7 Fair Credit Reporting Act, California Family Rights Act – Cal. Gov’t Code § 12945.2; (34)
8 California Unruh Civil Rights Act – Cal. Civ. Code § 51 *et seq.*; (35) Statutory Provisions
9 Regarding the Confidentiality of AIDS Information – Cal. Health & Safety Code § 120775 *et*
10 *seq.*; (36) California Confidentiality of Medical Information Act – Cal. Civ. Code § 56 *et seq.*;
11 (37) California Military Personnel Bias Law – Cal. Mil. & Vet. Code § 394; (38) the California
12 Consumer Credit Reporting Agencies Act – Cal. Civ. Code § 1785 *et seq.*, California Investigative
13 Consumer Reporting Agencies Act – Cal. Civ. Code § 1786 *et seq.*; and (39) any other federal,
14 state, or local statute, legislation, human rights law, and California common law and California
15 Constitution and any and all claims for damages of any kind whatsoever, including without
16 limitation compensatory, punitive, treble, liquidated and/or consequential damages or any and all
17 claims for attorneys’ fees, paralegals’ fees, costs, disbursements, wages, leave, bonuses, benefits,
18 vacation and/or the like. Further, Class Representative agrees to the fullest extent permitted by
19 law, that other than this Action, Class Representative will not pursue any putative class action,
20 collective action, or representative action against the Released Parties, or any of them, and that if
21 such action is filed by any other person, Class Representative will withdraw as a participant.

22 62. Class Representative expressly waives and relinquishes all rights and benefits
23 afforded by Section 1542 of the Civil Code of the State of California and does so understanding
24 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
25 of the State of California states:

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

1 **THE DEBTOR OR RELEASED PARTY.”**

2
3 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
4 full and complete release and discharge of all Released Parties, Class Representative, and Class
5 Counsel expressly acknowledge that this Settlement Agreement is intended to include in its effect,
6 without limitation, all claims that Class Representatives knew of, as well as all claims that they
7 do not know or suspect to exist in their favor against the Released Parties, or any of them, for the
8 time period from the beginning of time to the execution of this Settlement Agreement, and that
9 this Settlement Agreement contemplates the extinguishment of any and all such Class
10 Representative’s claims.

11 **F. Interim Stay of Proceedings**

12 63. Pending completion of all of the prerequisites necessary to effectuate this
13 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
14 except such as are necessary to effectuate the Settlement.

15 **G. Notice Process**

16 64. Appointment of Settlement Administrator. The Parties have agreed to the
17 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
18 including mailing the Notice, using standard devices to obtain forwarding addresses,
19 independently reviewing and verifying documentation associated with any claims or opt-out
20 requests, resolving any disputes regarding the calculation or application of the formula for
21 determining the Individual Settlement Amounts, drafting and mailing the settlement checks to
22 Final Settlement Class Members, issuing Forms W-2 and 1099, reporting to taxing authorities,
23 due diligence, reporting and remittance obligations, calculating and advising Defendant of the
24 total amount owed in employer-side payroll taxes, and performing such other tasks as set forth
25 herein or as the Parties mutually agree or that the Court orders. The Settlement Administrator
26 shall also be responsible for issuing to Plaintiff, Final Settlement Class Members, and Class
27 Counsel any Forms W-2, Forms 1099, or other Tax Forms as may be required by law for all
28 amounts paid pursuant to this Agreement. The Settlement Administrator shall also be responsible
for setting up all necessary tax accounts and forwarding all payroll taxes and penalties to the

appropriate government authorities.

65. Disputes Regarding Settlement Administration. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify the Court that all payments and obligations contemplated by this Settlement Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention.

66. Class Data. Within twenty (20) calendar days after entry of the Preliminary Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement Administrator will not be provided to Class Counsel and it will remain confidential, it shall be used solely to administer the Settlement, and it will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court.

67. Notice. The Notice, as approved by the Court, shall be sent by the Settlement Administrator to the Settlement Class Members, by first class mail, in English and Spanish, within seven (7) calendar days following the Settlement Administrator's receipt of the Class Data. The Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses of Settlement Class Members if any envelopes are returned.

68. Returned Notices. The Settlement Administrator will take steps to ensure that the Notice is received by all Settlement Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address, and/or Social Security number of the Class Member involved and will then perform a single re-mailing. In the event the procedures in this Paragraph are followed

1 and the intended recipient of a Notice packet still does not receive the Notice packet, the Class
2 Member shall be bound by all terms of the Settlement and any Judgment entered by the Court if
3 the Settlement is approved by the Court. Notices will be re-mailed to any Settlement Class
4 Member for whom an updated address is located within ten (10) calendar days following both the
5 Settlement Administrator learning of the failed mailing and its receipt of the updated address. The
6 Notice shall be identical to the original Notice, except that it shall notify the Settlement Class
7 Member that the exclusion (opt-out) request or objection must be returned by the later of the
8 Notice Response Deadline or fifteen (15) calendar days after the remailing of the Notice.

9 69. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
10 if an envelope has not been returned within thirty (30) calendar days of the mailing that the
11 Settlement Class Member received the Notice.

12 70. Disputes Regarding Class Data. Settlement Class Members are deemed to
13 participate in the Settlement unless they opt-out. The Notice will inform Settlement Class
14 Members of his/her/their estimated Individual Settlement Amount and the number of Workweeks
15 Worked during the Class Period and PAGA Periods Worked during the PAGA Period. Settlement
16 Class Members may dispute their Workweeks Worked if they feel they were employed more
17 workweeks in the Class Period in California than Defendant's records show by timely submitting
18 evidence to the Settlement Administrator. Defendant's records will be presumed determinative
19 absent reliable evidence to rebut Defendant's records, but the Settlement Administrator will
20 evaluate the evidence submitted by the Settlement Class Member and provide the evidence
21 submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith
22 about the evidence to determine the Class Member's actual number of Workweeks Worked and
23 estimated Individual Settlement Amount. If Class Counsel and Defense Counsel are unable to
24 agree, they agree to submit the dispute to the Settlement Administrator to render a final decision.
25 All disputes will be decided within ten (10) business days of the Notice Response Deadline.
26 Settlement Class Members will have until the Notice Response Deadline to dispute Workweeks
27 Worked, object, or opt out, unless extended by the Court. In the event that the Settlement
28 Administrator increases the number of Workweeks Worked for any Settlement Class Member,

1 then the Settlement Administrator will recalculate the Participating Class Members' Individual
2 Settlement Amounts; accordingly, in no event will Defendant be required to increase the Gross
3 Settlement Amount.

4 71. Declaration of Due Diligence. The Settlement Administrator shall provide counsel
5 for the Parties, at least twenty-five (25) calendar days prior to the final approval hearing, a
6 declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

7 72. Settlement Class Members' Rights. Each Settlement Class Member will be fully
8 advised of the Settlement, the ability to object to the provisions in the Settlement related to the
9 Class Claims, and the ability to opt out or request exclusion from the Class Claims provisions of
10 the Settlement. The Notice will inform the Settlement Class Members of the Court-established
11 deadlines for filing objections or requesting exclusion from the Class Claims provisions of the
12 Settlement in accordance with the following guidelines:

13 (a) Requests for Exclusion from Participating Settlement Class. Any
14 Settlement Class Member, other than Plaintiff, may request to be excluded from the Participating
15 Settlement Class by submitting a "Request for Exclusion" to the Settlement Administrator,
16 postmarked on or before the Notice Response Deadline. The Request for Exclusion should state
17 in words to this effect:

18 I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN
19 THE RUGSUSA, LLC LAWSUIT. I UNDERSTAND THAT IF I ASK
20 TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT
21 RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS
CLAIMS IN THIS LAWSUIT.

22 Any Request for Exclusion must include the full name, address, telephone number, last
23 four digits of the social security number or date of birth, and signature of the Settlement Class
24 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
25 Settlement Administrator at the specified address in the Notice. Any such Request for Exclusion
26 must be made in accordance with the terms set forth in the Notice. A Request for Exclusion will
27 be timely only if postmarked by the Notice Response Deadline, unless the Parties otherwise agree
28 in writing. Any Settlement Class Member who timely requests exclusion in compliance with these

requirements: (i) will not have any rights under this Agreement with respect to the Class Claims, including the right to object, appeal, or comment on the Settlement; (ii) will not be entitled to receive any payments under this Agreement with respect to Class Claims; and (iii) will not be bound by this Agreement, or the Judgment, with respect to the Class Claims. Settlement Class Members who are also Allegedly Aggrieved Employees submitting a Request for Exclusion will nevertheless receive their pro-rata share of the PAGA Amount allocated as PAGA penalties as described in paragraph 49(d) and be bound by the release of the Released PAGA Claims.

(b) Binding Effect on Final Settlement Class Members. Except for those Settlement Class Members who exclude themselves with respect to the Released Class Claims in compliance with the procedures set forth above, all Settlement Class Members will: (i) be deemed to be Final Settlement Class Members for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement. Participating Class Members will be bound by all terms of this Agreement, and Allegedly Aggrieved Employees will be bound by the release of the Released PAGA Claims, regardless of whether that Final Settlement Class Member receives and cashes his/her/their Individual Settlement Amount check.

(c) Objections to Settlement of Class Claims. Any Settlement Class Member, other than Plaintiff, may object to the terms of this Agreement with respect to the Class Claims and may appear at the Final Approval Hearing and object whether or not they have filed a written objection as outlined herein. To object, a Settlement Class Member shall inform the Settlement Administrator, in writing, of his/her/their objection, which must be postmarked by the Notice Response Deadline at the address set forth in the Notice. Such objection shall include the full name, address, telephone number, dates of employment with Defendant of the Objecting Settlement Class Member, the case name and number, the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is represented by counsel, the name and address of his/her/their counsel. If any Objecting Settlement Class Member

1 wishes to speak at the Final Approval Hearing with respect to the Class Claims, that Objecting
2 Settlement Class Member's written submission should include a request to be heard, and the Court
3 will determine whether Objecting Settlement Class Members will be permitted to speak. The
4 Settlement Administrator shall provide objections, if any, to Class Counsel and Defense Counsel
5 within three (3) calendar days of receipt, and the Settlement Administrator shall attach the same
6 to its declaration of due diligence it files with the Court prior to the Final Approval Hearing. Any
7 Participating Class Member who files an objection remains eligible to receive monetary
8 compensation from the Settlement and will be bound by the terms of this Agreement including
9 all releases. Plaintiff and Defendant shall not be responsible for any fees, costs, or expenses
10 incurred by any Settlement Class Member and/or his/her/their counsel related to any objections
11 to the Settlement. Submitting an objection does not preserve the right to appeal a final judgment.
12 Rather, the right to appeal is preserved by becoming a party of record by timely and properly
13 intervening or filing a motion to vacate the judgment under Code of Civil Procedure Section 663.
14 Settlement Class Members and Allegedly Aggrieved Employees may not object to or opt out of
15 the Settlement with respect to the PAGA Claims. At no time will any of the Parties or their
16 counsel seek to solicit or otherwise encourage Settlement Class Members to submit Requests for
17 Exclusion, Notices of Objection, or disputes regarding Class Data or to appeal from the Final
18 Approval judgment. To the extent a timely Notice of Objection is withdrawn before Final
19 Approval, such an objection shall be treated as though no objection has been made.

20 (d) Failure to Object. Any Settlement Class Member who desires to object
21 with respect to the Class Claims but fails to timely submit a written objection waives any right to
22 object will be foreclosed from making any objection to this Settlement. Any Settlement Class
23 Member who does not timely and properly become a party of record by intervening or filing a
24 motion to vacate the judgment waives any and all rights to appeal from the judgment, including
25 all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate
26 judgment, motion for new trial, a motion under California Code of Civil Procedure Section 473,
27 and extraordinary writs.

28 (e) Responses to Objections. Counsel for the Parties may file a response to any

1 objections submitted by Objecting Settlement Class Members at least five (5) court days before
2 the date of the Final Approval hearing.

3 73. Settlement Class Members will have until the Notice Response Deadline to object
4 or submit a Request for Exclusion or a dispute regarding Class Data to the Settlement
5 Administrator by U.S. Mail. The Settlement Administrator shall disclose jointly to Class Counsel
6 and Defendant's Counsel what objections or Requests for Exclusion or disputes regarding Class
7 Data were timely submitted on a weekly basis, and upon the request of Class Counsel or Defense
8 Counsel.

9 74. Funding of the Settlement Amount. Defendant shall fully fund the Gross
10 Settlement Amount and the amounts necessary to pay Defendant's share of employer payroll
11 taxes as calculated and directed by the Settlement Administrator, by transmitting the funds into
12 the QSF 30 days after final approval.

13 75. Distribution of Funds. Prior to the disbursement of any funds, the Settlement
14 Administrator will provide a disbursement summary of the calculations for the payments
15 described above for review and approval by Class Counsel and Defense Counsel. Following
16 approval by Class Counsel and Defense Counsel, and no later than seven (7) calendar days after
17 deposit of the Gross Settlement Payment into the QSF, the Settlement Administrator will mail the
18 payments to the Participating Class Members, the payments to Allegedly Aggrieved Employees,
19 the payment for the attorneys' fees and costs to Class Counsel, any Service Payment to the Class
20 Representatives, the payment to the LWDA for PAGA penalties, and will pay itself the Settlement
21 Administration Costs. The Settlement Administrator may combine in a single check the payment
22 to a Final Settlement Class Member who is both a Participating Class Members and Allegedly
23 Aggrieved Employees.

24 76. Deadline for Cashing Settlement Checks. Final Settlement Class Members shall
25 have one hundred eighty (180) calendar days after mailing by the Settlement Administrator to
26 cash their settlement checks. If any Final Settlement Class Member's check is not cashed within
27 that period, the check will be void and a stop-payment will be issued. All unclaimed funds after
28 the 180-day deadline shall be sent to the California Unclaimed Property Fund in the name of the

class member thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). The release will be binding upon all Participating Class Members regardless of whether or not they cash their checks within the 180-day period. The release will be binding upon all Final Settlement Class Members who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Settlement Administrator within one hundred eighty (180) days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual. If a new address is located by these means, the Settlement Administrator will have ten (10) business days to re-issue the check and will notify Defense Counsel and Class Counsel that a re-issued check has been sent. Neither Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Final Settlement Class Member notifies the Settlement Administrator that he/she/they believe that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement check.

77. No person shall have any claim against Defendant, Defendant’s Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on mailings, distributions, payments, or reports made in accordance with or pursuant to this Agreement. This provision does not, however, prevent a Party from seeking enforcement of this Agreement.

78. Without prejudice to any other remedies, the Settlement Administrator shall agree to be responsible for any breach of its obligations (whether committed by the Settlement Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from and against all liabilities, claims, causes of action, costs and expenses (including legal fees and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

H. Duties of the Parties Prior to the Court’s Approval

79. Plaintiff will move the Court for Preliminary Approval of this Settlement and entry

of the Preliminary Approval Order accomplishing the following:

(a) Scheduling the Final Approval hearing on the issue of whether this Settlement should be finally approved as fair, reasonable, and adequate as to the Class Members and a hearing on fees, costs, and the Service Payment;

(b) Approving as to form and content the proposed Notice;

(c) Directing the mailing of the Notice by first class mail to the Settlement Class Members;

(d) Preliminarily approving this Settlement; and

(e) Preliminarily certifying the class for purposes of this Settlement only.

80. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this Settlement Agreement, and will include the proposed Notice packet, which will include the Notice of Class Action Settlement document and proposed Mailing Envelope.

81. In accordance with Section 2699(1)(2) of the California Labor Code, Plaintiff shall provide a copy of this Settlement Agreement to the LWDA on the same day that Plaintiff files his motion for Preliminary Approval of this Settlement with the Court.

82. Reallocation of Settlement Proceeds. In the event the Court fails, on its first hearing, to approve this Agreement because the amount of the PAGA penalties is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within this Agreement, to try to achieve Final Approval of the Agreement upon any subsequent Court hearings.

I. Duties of the Parties Following Court's Final Approval

83. In connection with the Final Approval hearing provided for in this Settlement Agreement, Class Counsel shall submit a proposed Final Approval Order:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement;

1 (c) Entering judgment approving settlement, thereby permanently barring all
2 Participating Class Members from prosecuting any Released Class Claims against any of the
3 Released Parties and permanently barring all Allegedly Aggrieved Employees and the LWDA
4 from prosecuting any Released PAGA Claims against any of the Released Parties; and

5 (d) Scheduling a conference or hearing to confirm all payments referenced above have
6 been made in accordance with this Agreement and to dismiss the Action.

7 84. In accordance with Section 2699(l)(3) of the California Labor Code, upon entry of
8 the Final Approval Order by the Court, Class Counsel shall submit a copy of the Final Approval
9 Order to the LWDA.

10 **J. Voiding the Agreement**

11 85. If the Court fails or refuses to issue the Final Approval Order or fails to approve
12 any material condition of this Settlement Agreement which effects a fundamental change of the
13 Settlement, the entire Settlement Agreement shall be rendered voidable and unenforceable as to
14 all Parties herein at the option of either Party.

15 86. If ten percent (10%) or more of the Settlement Class Members timely submit a
16 Request for Exclusion, Defendant shall have the option of terminating or modifying this
17 Agreement without prejudice to its pre-settlement positions and defenses in the Action. If
18 Defendant exercises such option under this paragraph, it shall be relieved of any obligation to pay
19 the Gross Settlement Amount or any other obligations from the Settlement by giving notice to
20 Class Counsel and the Settlement Administrator within ten (10) business days of the Notice
21 Response Deadline and Defense Counsel's receipt of the final Request for Exclusion report from
22 the Settlement Administrator. If Defendant exercises its option under this paragraph, Defendant
23 shall be solely responsible for all Settlement Administration Costs incurred up to the date
24 Defendant exercises its option.

25 87. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will
26 have no further obligations under the Settlement, including any obligation by Defendant to pay
27 the Gross Settlement Amount, or any amounts that otherwise would have been owed under this
28 Settlement.

88. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

K. Other Terms

89. Full and Complete Defense. This Agreement may be pleaded by any Released Party as a full and complete defense to and may be used as the basis for an injunction against, any action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted, asserting any Released Claim.

90. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

91. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

92. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable, Defense Counsel shall, with the assistance and cooperation of Defendant and Class Counsel, to the extent it may become necessary, gather Class Data from all applicable entities. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement and the final entry of judgment. This shall include Class Counsel providing Defense Counsel with drafts of the proposed Preliminary Approval Order and proposed Final Approval Order and/or Judgment for review, comment and approval within a reasonable time before the aforementioned documents are filed or submitted to the Court. Class

Counsel and Defense Counsel will meet and confer regarding any proposed revisions to the foregoing documents in advance of the documents being submitted to the Court, and if any unresolved issue remains, counsel will bring the outstanding issue or concern to the Court's attention at the appropriate hearing.

93. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights released and discharged by this Settlement Agreement.

94. No Admission. Defendant denies any and all liability to Plaintiff and/or any Settlement Class Member or Allegedly Aggrieved Employee in this Action, as to any and all causes of action that were asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and compromise to avoid further substantial litigation expense and the inconvenience and distraction of protracted litigation. Defendant also has taken into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that they have asserted or could assert against Plaintiff, have determined that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

95. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and it, along with all related documents such as the notices, and motions for Preliminary Approval and Final Approval, shall, pursuant to California Evidence Code Section 1152 and/or Federal Rule of Evidence Section 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the Settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part of this Settlement Agreement is for settlement

1 purposes only and if, for any reason the settlement is not approved, the stipulation will be of no
2 force or effect.

3 96. Notices. Unless otherwise specifically provided herein, all notices, demands, or
4 other communications given hereunder shall be in writing via email and United States mail and
5 shall be deemed to have been duly given as of the third business day after mailing by United
6 States registered or certified mail, return receipt requested, addressed:

7 To the Settlement Class Members and Allegedly Aggrieved Employees:

8 Mehrdad Bokhour, Esq.
9 *mehrdad@bokhourlaw.com*
10 1901 Avenue of the Stars, Suite 450
11 Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

12 Joshua Falakassa, Esq.
13 *josh@falakassalaw.com*
14 1901 Avenue of the Stars, Suite 450
15 Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (888) 505-0868

16 To Defendant:

17 Marrisa Alguire, Esq.
18 *Marissa.alguire@akerman.com*
19 Mojan Anari, Esq.
20 *mojan.anari@akerman.com*
21 AKERMAN LLP
22 601 West Fifth Street, Suite 300
Los Angeles, California 90071
Tel: (213) 688-9500; Fax: (213) 627-6342

23 97. Construction. The Parties hereto agree that the terms and conditions of this
24 Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the
25 Parties and that this Settlement Agreement shall not be construed in favor of or against any Party
26 by reason of the extent to which any Party or their counsel participated in the drafting of this
27 Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory
28 rule of construction that ambiguities should be construed against the drafter of an agreement and

1 further agree, covenant, and represent that the language in all parts of this Agreement shall be in
2 all cases construed as a whole, according to its fair meaning.

3 98. Captions and Interpretations. Paragraph titles or captions contained herein are
4 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
5 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
6 Settlement Agreement is contractual and not merely a recital.

7 99. Modification. This Settlement Agreement may not be changed, altered, or
8 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
9 Settlement Agreement may not be discharged except by performance in accordance with its terms
10 or by a writing signed by all of the Parties hereto.

11 100. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
12 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide
13 written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and
14 Plaintiff and Defendant agree to seek the help of the mediator identified in this Agreement to
15 resolve any dispute they are unable to resolve informally. During this period, the Parties shall
16 bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other
17 proceeding instituted by any person or entity other than Plaintiff or Defendant.

18 101. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
19 dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure
20 Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action
21 over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations
22 of this Agreement.

23 102. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b), this
24 Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible in
25 a court of law.

26 103. Choice of Law. This Settlement Agreement shall be governed by and construed,
27 enforced, and administered in accordance with the laws of the State of California, without regard
28 to its conflicts-of-law rules.

1 104. Integration Clause. This Settlement Agreement contains the entire agreement
2 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
3 or contemporaneous agreements, understandings, representations, and statements, whether oral
4 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
5 hereunder may be waived except in writing.

6 105. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
7 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
8 successors, and assigns.

9 106. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
10 because the members of the Settlement Class are numerous, it is impossible or impractical to have
11 each Final Settlement Class Member execute this Settlement Agreement. The Notice will advise
12 all Settlement Class Members of the binding nature of the releases provided herein and such shall
13 have the same force and effect as if this Settlement Agreement were executed by each Final
14 Settlement Class Member.

15 107. Counterparts. This Settlement Agreement may be executed in counterparts, and
16 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
17 deemed an original, and, when taken together with other signed counterparts, shall constitute one
18 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
19 Electronic signatures shall have the same force and effect as an original.

20 108. Publicity. Plaintiff and Class Counsel agree that they will not issue any press
21 releases, initiate any contact with the press, respond to any press inquiry, post any new material
22 on any internet websites, or have any communication with the press about the Lawsuit, and/or the
23 fact, amount, or terms of the Settlement. Plaintiff and Class Counsel will not initiate any contact
24 with the Class Members or anyone else about the Settlement, except that: (a) Class Counsel, if
25 contacted by a Class Member, may respond that a settlement has been reached and that the details
26 will be communicated in a forthcoming Court-approved notice; and (b) Plaintiff, if contacted by
27 a Settlement Class Member or Allegedly Aggrieved Employee, may respond only that the
28 Settlement Class Member or Allegedly Aggrieved Employee should contact Class Counsel.

Nothing in this paragraph shall prevent Class Counsel and Plaintiff from undertaking all required submissions to the LWDA as required by the PAGA statute in connection with this Settlement. Class Counsel and Plaintiff will also provide Defendant's Counsel with a copy of the papers submitted to the LWDA, either prior to or on the same day as the submission to the LWDA.

APPROVAL AND EXECUTION BY PARTIES:

Dated: October __, 2023

CLASS REPRESENTATIVE:

Patrick Faiaipau

Dated: October 16, 2023

**DEFENDANT:
RUGSUSA, LLC**

DocuSigned by:

Conor Tobin

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By Conor Tobin
Chief Human Resources Officer

Nothing in this paragraph shall prevent Class Counsel and Plaintiff from undertaking all required submissions to the LWDA as required by the PAGA statute in connection with this Settlement. Class Counsel and Plaintiff will also provide Defendant's Counsel with a copy of the papers submitted to the LWDA, either prior to or on the same day as the submission to the LWDA.

APPROVAL AND EXECUTION BY PARTIES:

Dated: October __, 2023
10/16/2023

CLASS REPRESENTATIVE:

DocuSigned by:

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Patrick Faiaipau

Dated: October __, 2023

**DEFENDANT:
RUGSUSA, LLC**

By Conor Tobin
Chief Human Resources Officer

APPROVED AS TO FORM:

CLASS COUNSEL

Dated: October ___, 2023

FALAKASSA LAW, P.C.

Joshua Falakassa, Esq.
Attorneys for Plaintiff,
Patrick Faiaipau

Dated: October ___, 2023

BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour, Esq.
Attorneys for Plaintiff,
Andrea Cervantes

Dated: October 16, 2023

DEFENDANT'S COUNSEL:

AKERMAN LLP



Marissa Alguire, Esq.
Mojan Anari, Esq.
Attorneys for Defendant,
RugsUSA, LLC

APPROVED AS TO FORM:

CLASS COUNSEL

Dated: October __, 2023
10/13/2023

FALAKASSA LAW, P.C.

DocuSigned by:

Joshua Falakassa

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Joshua Falakassa, Esq.
Attorneys for Plaintiff,
Patrick Faiaipau

Dated: October __, 2023
10/13/2023

BOKHOUR LAW GROUP, P.C.

DocuSigned by:

Mehrdad Bokhour

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Mehrdad Bokhour, Esq.
Attorneys for Plaintiff,
Andrea Cervantes

Dated: October __, 2023

DEFENDANT'S COUNSEL:

AKERMAN LLP

Marissa Alguire, Esq.
Mojan Anari, Esq.
Attorneys for Defendant,
RugsUSA, LLC