

1 **Enrico Ivy v. Made and Modern Hard Goods Incorporated**

2 **Solano County Superior Court Case No. FCS058777**

3 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT**

4 This Class Action and PAGA Settlement Agreement is entered into by and between
5 Plaintiff Enrico Ivy, individually and on behalf of all others similarly situated, and Defendant
6 Made and Modern Hard Goods Incorporated, and is approved by their respective counsel of
7 record, subject to the terms and conditions hereof and the Court's approval.

8 **A. Definitions**

9 1. "Action" or "Lawsuit" means and refers to the case entitled *Ivy v. Made and*
10 *Modern Hard Goods Incorporated*, Case No. FCS058777, filed in the Solano County Superior
11 Court on August 18, 2022.

12 2. "Allegedly Aggrieved Employees" means "all individuals who were employed by
13 Defendant Import Glass Corporation as a non-exempt, hourly employee in California at any time
14 during the PAGA Period."

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

17 4. "Class Claims" or "Released Class Claims" will include all claims, rights,
18 demands, liabilities, penalties, costs, expenses, attorneys' fees, damages, and causes of action that
19 were pled or could have been pled in the operative Complaint, based on the facts alleged therein,
20 except for PAGA Claims (defined below), including, without limitation, claims for failure to pay
21 minimum wages, failure to pay overtime wages, meal and rest break violations, failure to pay
22 meal and rest break premium pay and/or failure to pay such premium pay at the correct rate(s) of
23 pay, failure to provide accurate itemized wage statements, failure to timely pay all wages upon
24 separation of employment, failure to reimburse business expenses, failure to timely pay wages
25 during employment, and unfair and unlawful business practices pursuant to Business and
26 Professions Code §17200 *et seq.*

27 5. "Class Counsel" refers to Mehrdad Bokhour, Esq. of Bokhour Law Group, P.C.
28 and Joshua Falakassa, Esq. of Falakassa Law, P.C.

1 6. “Class Data” means a complete list that Defendant will diligently and in good faith
2 compile from its records and provide to the Settlement Administrator and shall include: each
3 respective Settlement Class Member’s full name; last known address; last known telephone
4 number; Social Security Number; and dates of employment and/or number of Workweeks worked
5 during the Class Period and the number of PAGA Periods worked during the PAGA Period, if
6 applicable. At no time during the Settlement process will any Class Member’s identifying
7 information, as described in this paragraph above, be filed with the Court, except under seal and
8 only if ordered by the Court.

9 7. “Class Period” and “Class Release Period” shall mean August 18, 2018 through
10 July 7, 2023.

11 8. “Class Representative” or “Plaintiff” means and refers to Enrico Ivy.

12 9. “Complaint” refers to the Second Amended Complaint filed in the Action.

13 10. “Court” means the California Superior Court, County of Solano or any Court of
14 competent jurisdiction.

15 11. “Defendant” means and refers to Made and Modern Hard Goods x.

16 12. “Defendant’s Counsel” or “Defense Counsel” means and refers to P. John Veysey
17 of Nelson Mullins Riley & Scarborough, LLP.

18 13. “Effective Date” means the latter of the following dates: (i) if no Class Member
19 objects, timely and properly intervenes, or files a motion to vacate the judgment approving the
20 Settlement Agreement under Code of Civil Procedure § 663, then the date the Court enters an
21 order granting Final Approval of the Settlement; (ii) if a Class Member objects, intervenes, or
22 files a motion to vacate the judgment approving the Settlement Agreement, then sixty-one (61)
23 calendar days following the date the Court enters an order granting final approval of the
24 Settlement, assuming no appeal is filed; or (iii) if a timely appeal is filed, the date of final
25 resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*),
26 resulting in final judicial approval of the Settlement.

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

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

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

7 17. “Individual Settlement Amount” shall have the meaning ascribed to it in Paragraph
8 49(d) below.

9 18. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 49(c)
10 below.

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

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

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

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

23 23. “PAGA Claims” or “Released PAGA Claims” shall include any and all claims,
24 rights, demands, liabilities, penalties, costs, expenses, attorneys’ fees, damages, and causes of
25 action pursuant to the PAGA based on the allegations stated in the PAGA Notice and that were
26 or could have been pled in the operative Complaint, based on the facts alleged therein, including,
27 without limitation, claims for failure to pay minimum wages, failure to pay overtime wages, meal
28 and rest break violations, failure to pay meal and rest break premium pay and/or failure to pay

1 such premium pay at the correct rate(s) of pay, failure to provide accurate itemized wage
2 statements, failure to reimburse business expenses, failure to timely pay all wages upon separation
3 of employment, failure to timely pay wages during employment, and unfair and unlawful business
4 practices pursuant to Business and Professions Code §17200 *et seq.*

5 24. “PAGA Notice” shall refer to the notices sent by Plaintiff, by and through counsel,
6 on or about August 2, 2022, to the Labor and Workforce Development Agency (“LWDA”) and
7 to Defendant, alleging that Defendant engaged in violations of the California Labor Code and
8 California Wage Order(s).

9 25. “PAGA Period” and “PAGA Release Period” shall mean August 2, 2021, through
10 July 7, 2023.

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

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

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

19 29. “Preliminary Approval Order” means the judicial Order to be entered by the Court,
20 upon the application or motion of the Plaintiff, preliminarily approving this Settlement and
21 providing for the issuance of the Notice to the Settlement Class Members, an opportunity to opt
22 out of settlement of the Class Claims, an opportunity to submit timely objections to the terms of
23 this Settlement related to the Class Claims, and setting a hearing on the fairness of the terms of
24 Settlement, including approval of attorneys’ fees and costs.

25 30. “QSF” means the Qualified Settlement Fund set up by the Settlement
26 Administrator for the benefit of the Final Settlement Class, and from which the settlement
27 payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue
28 Code Section 468.

1 31. “Release” shall mean the release and discharge of the Class Claims by Plaintiff
2 and all of the Participating Class Members and the release and discharge of the PAGA Claims by
3 Plaintiff and all of the Allegedly Aggrieved Employees.

4 32. “Released Parties” shall refer to Defendant, and each of its former and present
5 directors, officers, principals, trustees, shareholders, owners, managers, employees, managing
6 agents, attorneys, accountants, auditors, consultants, insurers, predecessors, successors, heirs,
7 assigns, DBAs, representatives, parents, subsidiaries, and affiliates.

8 33. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 72(a)
9 below.

10 34. “Second Amended Complaint” means the Second Amended Complaint that
11 Plaintiff has filed in this Action.

12 35. “Service Payment” or “Service Award” means the amount approved by the Court
13 to be paid to Class Representative in addition to his Individual Settlement Amount as a
14 Participating Class Member.

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

21 37. “Settlement Administrator” means and refers to ILYM Group, Inc., which the
22 Parties have mutually agreed will provide the Notice to the Class Members and distribute the
23 settlement amounts as described in this Agreement.

24 38. “Settlement Amount” or “Gross Settlement Amount” shall have the meaning
25 ascribed to it in Paragraph 49(a) below.

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

28 40. “Settlement Class” and “Settlement Class Members” refers to “all individuals who

1 were employed by Defendant Import Glass Corporation as a non-exempt, hourly employee in
2 California at any time during the Class Period.”

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

14 **B. General Terms**

15 42. On or about August 17, 2022, Plaintiff filed a Class Action Complaint in the Court
16 against Defendant, including allegations of: (1) failure to pay minimum wages, (2) failure to pay
17 overtime wages, (3) meal period violations, (4) rest period violations, (5) wage statement
18 violations, (6) failure to reimburse business expenses, and (7) unfair competition. On or about
19 October 12, 2022, Plaintiff filed a First Amended Complaint to add a cause of action for PAGA
20 penalties based on the underlying Labor Code violations asserted in the PAGA Notice. Plaintiff
21 will file a Second Amended Complaint to add a cause of action for failure to timely pay wages
22 upon separation of employment.

23 43. Defendant denies Plaintiff’s claims and allegations in the PAGA Notice, the
24 original Class Action Complaint and the amended complaints in their entirety and contends that
25 the Action is meritless and is not suitable for class certification and/or representative treatment.
26 Nothing in this Agreement is intended or will be construed as an admission by Defendant that the
27 claims in the Action have merit or that Defendant bears any liability to Plaintiff, the Settlement
28 Class Members or the Allegedly Aggrieved Employees on those claims or any other claims.

1 Nevertheless, Defendant has taken into account the uncertainty and risks inherent in any litigation
2 and has also concluded that further defense of the Action would be protracted and expensive.
3 Defendant, therefore, has determined that it is desirable and beneficial that the Action be settled
4 in a manner and upon the terms and conditions set forth in this Settlement Agreement.

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

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

21 46. On May 4, 2023, the Parties participated in mediation before Todd Smith, Esq., a
22 highly experienced class and PAGA/representative action mediator. After a full-day mediation
23 and the issuance of a mediator's proposal and subsequent negotiations, the Parties reached a
24 settlement. The Parties agree that the terms and conditions of this Agreement are the result of
25 lengthy, intensive, arms-length negotiations between the Parties supervised by a highly
26 experienced class and representative action mediator. This Agreement represents a compromise
27 and settlement of highly disputed claims, and is intended to settle, compromise and discharge the
28 Released Claims against the Released Parties fully, finally, and forever.

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

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

21 **C. Terms of Settlement**

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

23 (a) Gross Settlement Amount: The Parties agree to settle this Action for Four
24 Hundred Seventeen Thousand Five Hundred Dollars (\$417,500) (the "Gross Settlement
25 Amount"). The Gross Settlement Amount is the maximum amount that will be paid by Defendant,
26 and includes Individual Settlement Amounts, attorneys' fees of Class Counsel, costs and
27 expenses, the Service Payment to Class Representative, all Settlement Administration Costs, and
28 payment to the Labor Workforce Development Agency (LWDA) for PAGA penalties. The

1 Participating Class Members are responsible for the employee's share of payroll taxes, which
2 shall be deducted from their Individual Settlement Payment. Defendant shall separately pay the
3 employers' share of applicable payroll taxes. Except for employer-side payroll taxes, and as
4 provided for in Paragraph 49(b) of this Agreement, under no circumstances shall Defendant be
5 required to pay more than the Gross Settlement Amount.

6 (b) The Gross Settlement Amount is based on Defendant's representation that there
7 are approximately 7,000 total workweeks. In the event that the actual number of workweeks
8 worked by all Participating Class Members during the Class Period increases by more than 10%
9 of this figure, then there shall be a pro rata upward adjustment to the Gross Settlement Amount
10 equal to the percentage increase in the number of workweeks worked by Participating Class
11 Members above 10% (*i.e.*, if there is a 12% increase in the number of workweeks worked by
12 Participating Class Members, Defendant shall increase the Gross Settlement Amount by 2%).

13 (c) Net Settlement Amount: The "Net Settlement Amount" is defined as the Gross
14 Settlement Amount less attorneys' fees and litigation costs as approved and awarded by the Court,
15 the Service Payment to Class Representative as approved and awarded by the Court, the PAGA
16 Amount, and the Settlement Administration Costs as approved and awarded by the Court. In the
17 event that the Court reduces the attorneys' fees and litigation costs or Service Awards, Settlement
18 Administration Costs, or either increases or decreases the amount allocated to PAGA penalties,
19 the Net Settlement Sum shall be increased or decreased accordingly.

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

24 i. PAGA Amount: \$10,000 of the Gross Settlement Amount has been
25 designated to the PAGA claims. Twenty-five percent (25%), or \$2,500.00, shall be paid out to
26 Allegedly Aggrieved Employees, while seventy-five percent (75%), or \$7,5000.00, will be paid
27 to the LWDA. Each Allegedly Aggrieved Employee shall receive a portion of the \$2,500.00
28 proportionate to the number of PAGA Pay Periods Worked by the Allegedly Aggrieved

1 Employees during the PAGA Period compared to the total number of PAGA Pay Periods Worked
2 by all Allegedly Aggrieved Employees during the PAGA Period. Allegedly Aggrieved
3 Employees shall have their settlement amount for the Released PAGA claims paid one hundred
4 percent (100%) as civil penalties for which no taxes will be withheld and for which a Form 1099
5 will be issued by the Settlement Administrator.

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

15 (e) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts
16 will be allocated for tax purposes based on the allegations in the Action as follows: one hundred
17 percent (100%) of any PAGA Amount portion will be paid as penalties; twenty percent (20%) of
18 any Class Amount portion will be paid as wages subject to withholding of all applicable local,
19 state, and federal taxes; forty percent (40%) of any Class Amount portion will be paid as interest;
20 and forty percent (40%) of any Class Amount portion will be paid as penalties. Pursuant to, *e.g.*,
21 California Labor Code Sections 203, 226, no taxes will be withheld from any portions that will
22 be paid as interest and as civil penalties. The Settlement Administrator will issue to each
23 Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms
24 with respect to the wage allocation, and a Form 1099 with respect to the civil penalties and interest
25 allocations.

26 (f) Service Payment to Class Representative: The amount awarded to Class
27 Representative as a Service Payment will be set by the Court in its discretion, not to exceed Ten
28 Thousand Dollars (\$10,000). Defendant agrees not to oppose this request. The Service Payment

1 to Class Representative will be paid out of the Gross Settlement Amount. Class Representative
2 will be issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally
3 responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount
4 awarded by the Court as the Service Payment to Plaintiff less than the requested amount shall not
5 be a basis for Plaintiff or Class Counsel to void this Agreement. Should the Court approve a lesser
6 amount for the Service Payment, the difference shall be added to the Net Settlement Amount to
7 be distributed to the Participating Class Members. In the event of any appeal of the amount of the
8 service awards (if any) approved by the Court, if, after the exhaustion of any such appellate
9 review, additional amounts not awarded to Class Representative shall be added to the Net
10 Settlement Amount to be distributed to the Participating Class Members.

11 (g) Attorneys' Fees and Costs: Defendant agrees not to oppose a request by Class
12 Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of the Gross Settlement
13 Amount (approximately \$139,166), plus reasonable litigation costs not to exceed Twenty
14 Thousand Dollars (\$20,000) (the "Attorneys' Fees and Cost Award"). For purposes of this
15 Settlement, Defendant agrees not to oppose any contention by Class Counsel that attorneys' fees
16 should be based on the common fund theory. The Attorneys' Fees and Cost Award shall be paid
17 from the Gross Settlement Amount, and except for this award, Defendant shall have no further
18 obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court
19 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to
20 the Net Settlement Amount to be distributed to the Participating Class Members. Any Court order
21 awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
22 Settlement Agreement or otherwise void the Settlement. In the event of any appeal of the amount
23 of the awards of attorneys' fees and costs (if any) approved by the Court, final funding and
24 administration of the portion of the attorneys' fees and/or costs award in dispute will be
25 segregated and stayed pending the exhaustion of appellate review. If, after the exhaustion of any
26 such appellate review, additional amounts not awarded to attorneys' fees and costs shall be added
27 to the Net Settlement Amount to be distributed to the Participating Class Members and/or
28 Allegedly Aggrieved Employees. The Settlement Administrator shall issue to Class Counsel an

1 IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the Court. Class
2 Counsel agrees that any allocation of fees between or among Class Counsel and any other attorney
3 representing or claiming to represent the Class Members shall be the sole responsibility of Class
4 Counsel.

5 (h) Settlement Administration Costs: The fees and other charges of the Settlement
6 Administrator will be paid from the Gross Settlement Amount, not to exceed \$7,500 subject to
7 Court approval, unless approved by all Parties and the Court.

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

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

24 50. No Credit Towards Benefit Plans. The Individual Settlement Amount payments
25 made to Participating Class Members and/or Allegedly Aggrieved Employees under this
26 Settlement Agreement, as well as any other payment made pursuant to this Settlement Agreement,
27 will not be utilized to calculate any additional benefits under any benefit plans to which any
28 Participating Class Members and/or Allegedly Aggrieved Employees may be eligible, including

but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect the rights, contributions, or amounts to which any Participating Class Member and/or Allegedly Aggrieved Employees may be entitled under benefit plans.

51. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under no circumstances will any portion of the Settlement Amount revert to Defendant. Final Settlement Class Members will not have to make a claim to receive an Individual Settlement Amount. Distributions, in the form of Individual Settlement Amounts, will be made directly to each Final Settlement Class Member. Any check sent to a Final Settlement Class Member that is not negotiated within one hundred eighty (180) calendar days of mailing to a Final Settlement Class Member shall be sent to the California Unclaimed Property Fund in the name of the Final Settlement Class Member. The Settlement Administrator shall be responsible for accurately and timely reporting any remittance obligations with respect to unclaimed funds as a result of a Final Settlement Class Member not cashing an Individual Settlement Amount by the check cashing deadline, as set forth herein.

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

D. Release by Plaintiff and the Final Settlement Class

53. Upon the date that Defendant fully funds the settlement, Plaintiff and each Participating Class Member, for themselves and for their respective agents, spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, predecessors, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Release Period.

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

55. Upon the Effective Date of this Settlement, Plaintiff, the LWDA, and each

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

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

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

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

27 59. Class Representative, on behalf of himself and the Participating Settlement Class
28 Members, acknowledges and agrees that the Class Claims or Released Class Claims are disputed,

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

5 An employer shall not require the execution of any release of any claim or right on
6 account of wages due, or to become due, or made as an advance on wages to be
7 earned, unless payment of those wages has been made.

8 **E. Release by Class Representative**

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

25 61. Without limiting the generality of the foregoing release, Class Representative also
26 expressly releases all claims or rights against Released Parties arising out of or relating to alleged
27 violations of any contracts, express or implied (including but not limited to any contract of
28 employment); any contract or covenant of good faith and fair dealing (express or implied); any

1 tort, including but not limited to, negligence, fraud, misrepresentation and violation of California
2 Labor Code Section 970, negligent infliction of emotional distress, intentional infliction of
3 emotional distress, defamation, “retaliation” claims and claims for violation of public policy, any
4 claim for improper or unauthorized wage deductions, failure to pay the applicable wage, unpaid
5 wages, unpaid vacation benefits, penalties, liquidated damages, other damages, overtime, and
6 alleged “off the clock” work under federal and state law, including, but not limited to, California
7 Labor Code Sections 204 and 558, waiting time penalties pursuant to California Labor Code
8 Section 203, damages, or penalties pursuant to California Labor Code Section 226, meal period
9 and rest break payments and penalties pursuant to California Labor Code Sections 226.7 and 512,
10 failure to provide itemized wage statements pursuant to California Labor Code Section 226,
11 statutory or civil penalties pursuant to California Labor Code Section 210, failure to indemnify
12 for business expenses pursuant to Labor Code Section 2802, failure to provide one day of rest in
13 seven pursuant to California Labor Code Sections 551 and 552, unfair competition and unfair
14 business practices pursuant to Business and Professions Code Section 17200, *et seq.*, interest and
15 costs pursuant to California Civil Code Section 3287 and California Labor Code Section 218.6,
16 statutory or common law rights to attorneys’ fees and costs, including those pursuant to California
17 Labor Code Section 1194 *et seq.*; claims under the Private Attorneys General Act of 2004, Labor
18 Code Sections 2699, *et seq.*, and the alleged violation or breach of any other state or federal
19 statute, rule, and or regulation or local ordinance; including all applicable Industrial Welfare
20 Commission Wage Orders, and all similar causes of action, including but not limited to, any claim
21 for restitution, equitable relief, interest, penalties, costs, or attorneys’ fees in connection with any
22 of the foregoing, negligent infliction of emotional distress, intentional infliction of emotional
23 distress, and defamation; any “wrongful discharge,” “constructive discharge,” and “retaliation”
24 claims; any claims relating to any breach of public policy; any legal restrictions on Defendant’s
25 right to discharge employees; and any federal, state, or other governmental statute, regulation, or
26 ordinance, including, without limitation: (1) Title VII of the Civil Rights Act of 1964 (race, color,
27 religion, sex, and national origin discrimination or harassment, including retaliation for reporting
28 discrimination or harassment); (2) 42 U.S.C. Section 1981 (discrimination); (3) Equal Pay Act,

29 U.S.C. Section 209(d)(1) and California Labor Code Section 1197.5 (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. Section 12100, *et seq.* (disability discrimination); (5) Family and Medical Leave Act, 29 U.S.C. Section 2601, *et seq.* (family/medical leave); (6) California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.* (discrimination or harassment in employment and/or housing, including discrimination or harassment based on race, religious creed, color, national origin, ancestry, disability, marital status, sex (including pregnancy), age, or any other protected characteristic, including retaliation for reporting discrimination or harassment); (7) California Family Rights Act, Cal. Government Code Section 12945.1, *et seq.* (family/medical leave); (8) California Labor Code, including but not limited to, Section 1720 *et seq.*, or any Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or harassment); (10) Executive Order 11141 (age discrimination); (11) Sections 503 and 504 of the Rehabilitation Act of 1973 (handicap discrimination); (12) the Fair Labor Standards Act; (13) Employee Retirement Income Security Act, 29 U.S.C. § 1000 *et seq.* (employee benefits); (14) the California Civil Code; (15) the California Labor Code; (16) the California Constitution; (17) the National Labor Relations Act; (18) the Americans with Disabilities Act of 1990; (19) the Occupational Safety and Health Act; (20) the Consolidated Omnibus Budget Reconciliation Act of 1985; (21) the Worker Adjustment and Retraining Notification Act (“WARN”); (22) the Employee Retirement Income Security Act of 1974; (23) the Rehabilitation Act of 1973; (23) the Internal Revenue Code of 1986, as amended; (24) the California Government Code; (25) the California Constitution; (26) the Families First Coronavirus Response Act; (27) the California Healthy Workplace Healthy Family Act; and (28) any other federal, state, or local statute or legislation. Further, Class Representative agrees to the fullest extent permitted by law, that other than this Action, Class Representative will not pursue any putative class action, collective action, or representative action against the Released Parties, or any of them, and that if such action is filed by any other person, Class Representative will withdraw as a participant.

62. Class Representative expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and does so understanding

1 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
2 of the State of California states:

3 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
4 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
5 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
6 **THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD**
7 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
8 **THE DEBTOR OR RELEASED PARTY.”**

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

17 **F. Interim Stay of Proceedings**

18 63. Pending completion of all prerequisites necessary to effectuate this Settlement,
19 including amending the operative complaint (if applicable), the Parties agree, subject to Court
20 approval, to a stay of all proceedings in the Action except such as are necessary to effectuate the
21 Settlement.

22 **G. Notice Process**

23 64. Appointment of Settlement Administrator. The Parties have agreed to the
24 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
25 including mailing the Notice, using standard devices to obtain forwarding addresses,
26 independently reviewing and verifying documentation associated with any claims or opt-out
27 requests, resolving any disputes regarding the calculation or application of the formula for
28 determining the Individual Settlement Amounts, drafting and mailing the settlement checks to
Final Settlement Class Members, issuing Forms W-2 and 1099, reporting to taxing authorities,

1 due diligence, reporting and remittance obligations, calculating and advising Defendant of the
2 total amount owed in employer-side payroll taxes, and performing such other tasks as set forth
3 herein or as the Parties mutually agree or that the Court orders. The Settlement Administrator
4 shall also be responsible for issuing to Plaintiff, Defendant, Final Settlement Class Members, and
5 Class Counsel any Forms W-2, Forms 1099, or other Tax Forms as may be required by law for
6 all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be
7 responsible for setting up all necessary tax accounts and forwarding all payroll taxes and penalties
8 to the appropriate government authorities.

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

16 66. Class Data. Within fifteen (15) calendar days after entry of the Preliminary
17 Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The
18 Settlement Administrator will run a check of the Class Members' addresses against those on file
19 with the U.S. Postal Service's National Change of Address List. The Class Data provided to the
20 Settlement Administrator will not be provided to Class Counsel and it will remain confidential, it
21 shall be used solely to administer the Settlement, and it will not be used or disclosed to anyone,
22 except as required by applicable tax authorities, pursuant to Defendant's express written consent,
23 or by order of the Court.

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

1 68. Returned Notices. The Settlement Administrator will take steps to ensure that the
2 Notice is received by all Settlement Class Members, including utilization of the National Change
3 of Address Database maintained by the United States Postal Service to review the accuracy of
4 and, if possible, update a mailing address. If no forwarding address is provided, the Settlement
5 Administrator will promptly attempt to determine the correct address using a skip-trace, or other
6 search using the name, address, and/or Social Security number of the Class Member involved and
7 will then perform a single re-mailing. In the event the procedures in this Paragraph are followed
8 and the intended recipient of a Notice packet still does not receive the Notice packet, the Class
9 Member shall be bound by all terms of the Settlement and any Judgment entered by the Court if
10 the Settlement is approved by the Court. Notices will be re-mailed to any Settlement Class
11 Member for whom an updated address is located within ten (10) calendar days following both the
12 Settlement Administrator learning of the failed mailing and its receipt of the updated address. The
13 Notice shall be identical to the original Notice, except that it shall notify the Settlement Class
14 Member that the exclusion (opt-out) request or objection must be returned by the later of the
15 Notice Response Deadline or fifteen (15) calendar days after the remailing of the Notice.

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

19 70. Disputes Regarding Class Data. Settlement Class Members are deemed to
20 participate in the Settlement unless they opt-out. The Notice will inform Settlement Class
21 Members of his/her/their estimated Individual Settlement Amount and the number of Workweeks
22 Worked during the Class Period and PAGA Periods Worked during the PAGA Period. Settlement
23 Class Members may dispute their Workweeks Worked if they feel they were employed more
24 workweeks in the Class Period in California than Defendant's records show by timely submitting
25 evidence to the Settlement Administrator. Defendant's records will be presumed determinative
26 absent reliable evidence to rebut Defendant's records, but the Settlement Administrator will
27 evaluate the evidence submitted by the Settlement Class Member and provide the evidence
28 submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith

1 about the evidence to determine the Class Member's actual number of Workweeks Worked and
2 estimated Individual Settlement Amount. If Class Counsel and Defense Counsel are unable to
3 agree, they agree to submit the dispute to the Settlement Administrator to render a final decision.
4 All disputes will be decided within ten (10) business days of the Notice Response Deadline.
5 Settlement Class Members will have until the Notice Response Deadline to dispute Workweeks
6 Worked, object, or opt out, unless extended by the Court. In the event that the Settlement
7 Administrator increases the number of Workweeks Worked for any Settlement Class Member,
8 then the Settlement Administrator will recalculate the Participating Class Members' Individual
9 Settlement Amounts; accordingly, in no event will Defendant be required to increase the Gross
10 Settlement Amount.

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

14 72. Settlement Class Members' Rights. Each Settlement Class Member will be fully
15 advised of the Settlement, the ability to object to the provisions in the Settlement related to the
16 Class Claims, and the ability to opt out or request exclusion from the Class Claims provisions of
17 the Settlement. The Notice will inform the Settlement Class Members of the Court-established
18 deadlines for filing objections or requesting exclusion from the Class Claims provisions of the
19 Settlement in accordance with the following guidelines:

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

25 I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN
26 THE IVY V. MADE & MODERN LAWSUIT. I UNDERSTAND THAT
27 IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I
28 WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF
THE CLASS CLAIMS IN THIS LAWSUIT.

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

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

27 (d) Failure to Object. Any Settlement Class Member who desires to object
28 with respect to the Class Claims but fails to timely submit a written objection waives any right to

1 object will be foreclosed from making any objection to this Settlement. Any Settlement Class
2 Member who does not timely and properly become a party of record by intervening or filing a
3 motion to vacate the judgment waives any and all rights to appeal from the judgment, including
4 all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate
5 judgment, motion for new trial, a motion under California Code of Civil Procedure Section 473,
6 and extraordinary writs.

7 (e) Responses to Objections. Counsel for the Parties may file a response to any
8 objections submitted by Objecting Settlement Class Members at least five (5) court days before
9 the date of the Final Approval hearing.

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

16 74. Funding of the Settlement Amount. Defendant shall fully fund the Gross
17 Settlement Amount and the amounts necessary to pay Defendant's share of employer payroll
18 taxes as calculated and directed by the Settlement Administrator, by transmitting the funds into
19 the QSF within 30 days after the Effective Date.

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

1 to a Final Settlement Class Member who is both a Participating Class Members and Allegedly
2 Aggrieved Employees.

3 76. Deadline for Cashing Settlement Checks. Final Settlement Class Members shall
4 have one hundred eighty (180) calendar days after mailing by the Settlement Administrator to
5 cash their settlement checks. If any Final Settlement Class Member's check is not cashed within
6 that period, the check will be void and a stop-payment will be issued. All unclaimed funds after
7 the 180-day deadline shall be sent to the California Unclaimed Property Fund in the name of the
8 class member thereby leaving no "unpaid residue" subject to the requirements of California Code
9 of Civil Procedure Section 384, subd. (b). The release will be binding upon all Participating Class
10 Members regardless of whether or not they cash their checks within the 180-day period. The
11 release will be binding upon all Final Settlement Class Members who do not cash their checks
12 within the 180-day period. In the event that any settlement check is returned to the Settlement
13 Administrator within one hundred eighty (180) days of mailing, the Settlement Administrator
14 will, within five (5) business days of receipt of the returned settlement check, perform a skip trace
15 to locate the individual. If a new address is located by these means, the Settlement Administrator
16 will have ten (10) business days to re-issue the check and will notify Defense Counsel and Class
17 Counsel that a re-issued check has been sent. Neither Defendant, Defense Counsel, Class Counsel,
18 Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement
19 checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks.
20 Without limiting the foregoing, in the event a Final Settlement Class Member notifies the
21 Settlement Administrator that he/she/they believe that a settlement check has been lost or stolen,
22 the Settlement Administrator shall immediately stop payment on such check. If the check in
23 question has not been negotiated prior to the stop payment order, the Settlement Administrator
24 will issue a replacement check.

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

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

6 **H. Duties of the Parties Prior to the Court's Approval**

7 79. Plaintiff will move the Court for Preliminary Approval of this Settlement and entry
8 of the Preliminary Approval Order accomplishing the following:

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

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

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

15 (d) Preliminarily approving this Settlement; and

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

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

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

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

28 **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;

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

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

84. In accordance with Section 2699(1)(3) of the California Labor Code, upon entry of the Final Approval Order by the Court, Class Counsel shall submit a copy of the Final Approval Order to the LWDA.

J. Voiding the Agreement

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

86. If ten percent (10%) or more of the Settlement Class Members timely submit a Request for Exclusion, Defendant shall have the option of terminating or modifying this Agreement without prejudice to its pre-settlement positions and defenses in the Action. If Defendant exercises such option under this paragraph, it shall be relieved of any obligation to pay the Gross Settlement Amount or any other obligations from the Settlement by giving notice to Class Counsel and the Settlement Administrator within fifteen (15) calendar days of the Notice Response Deadline and Defense Counsel's receipt of the final Request for Exclusion report from

the Settlement Administrator. If Defendant exercises its option under this paragraph, Defendant shall be solely responsible for all Settlement Administration Costs incurred up to the date Defendant exercises its option.

87. If the Settlement is voided or fails for any reason, Plaintiff and Defendant 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 owed under this 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

1 necessary, gather Class Data from all applicable entities. As soon as practicable after execution
2 of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
3 Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary
4 and final approval of the settlement and the final entry of judgment. This shall include Class
5 Counsel providing Defense Counsel with drafts of the proposed Preliminary Approval Order and
6 proposed Final Approval Order and/or Judgment for review, comment and approval within a
7 reasonable time before the aforementioned documents are filed or submitted to the Court. Class
8 Counsel and Defense Counsel will meet and confer regarding any proposed revisions to the
9 foregoing documents in advance of the documents being submitted to the Court, and if any
10 unresolved issue remains, counsel will bring the outstanding issue or concern to the Court's
11 attention at the appropriate hearing.

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

16 94. No Admission of Liability. Defendant denies any and all liability to Plaintiff
17 and/or any Settlement Class Member or Allegedly Aggrieved Employee in this Action, as to any
18 and all causes of action that were asserted or that might have been asserted in this Action.
19 Nonetheless, Defendant wishes to settle and compromise to avoid further substantial litigation
20 expense and the inconvenience and distraction of protracted litigation. Defendant also has taken
21 into account the uncertainty and risks inherent in litigation, and without conceding any infirmity
22 in the defenses that they have asserted or could assert against Plaintiff, have determined that it is
23 desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and
24 conditions set forth in this Agreement. The Parties understand and agree that this Settlement is
25 the result of a good faith compromise of disputed claims, and no part of this Settlement, or any
26 conduct or written or oral statements made in connection with this Settlement, whether or not the
27 Settlement is finally approved, or the negotiations leading to the Settlement, or any document
28 filed or exchanged in support thereof, should be construed as an admission or concession of any

kind by Defendant or of any of the Released Parties.

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

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

To the Settlement Class Members and Allegedly Aggrieved Employees:

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

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

To Defendant:

P. John Veysey, Esq.
john.veysey@nelsonmullins.com
19191 South Vermont Avenue
Torrance, CA 90502
Tel: (424) 221-7400; Fax (424) 221-7499

97. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or their counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

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

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

100. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiff and Defendant agree to seek the help of the mediator identified in this Agreement to resolve any dispute they are unable to resolve informally. The successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions. This provision shall not apply to any legal action or other proceeding instituted by any person or entity

1 other than Plaintiff or Defendant.

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

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

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

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

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

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

27 107. Counterparts. This Settlement Agreement may be executed in counterparts, and
28 when each Party has signed and delivered at least one such counterpart, each counterpart shall be

1 deemed an original, and, when taken together with other signed counterparts, shall constitute one
2 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
3 Electronic signatures shall have the same force and effect as an original.

4 108. Publicity. Plaintiff and Class Counsel agree that they will not issue any press
5 releases, initiate any contact with the press, respond to any press inquiry, post any new material
6 on any internet websites, or have any communication with the press about the Lawsuit, and/or the
7 fact, amount, or terms of the Settlement. Plaintiff and Class Counsel will not initiate any contact
8 with the Class Members or anyone else about the Settlement, except that: (a) Class Counsel, if
9 contacted by a Class Member, may respond that a settlement has been reached and that the details
10 will be communicated in a forthcoming Court-approved notice; and (b) Plaintiff, if contacted by
11 a Settlement Class Member or Allegedly Aggrieved Employee, may respond only that the
12 Settlement Class Member or Allegedly Aggrieved Employee should contact Class Counsel.
13 Nothing in this paragraph shall prevent Class Counsel and Plaintiff from undertaking all required
14 submissions to the LWDA as required by the PAGA statute in connection with this Settlement.
15 Class Counsel and Plaintiff will also provide Defendant's Counsel with a copy of the papers
16 submitted to the LWDA, either prior to or on the same day as the submission to the LWDA.

17 **APPROVAL AND EXECUTION BY PARTIES:**

18
19 Dated: July __, 2023

CLASS REPRESENTATIVE:

20
21
22
23 _____
Enrico Ivy

24 Dated: July 19, 2023

DEFENDANT:
MADE AND MODERN HARD
GOODS INCORPORATED

25
26
27
28 By _____
Its


CEO

1 **APPROVED AS TO FORM:**

2 **CLASS COUNSEL**

3 Dated: July __, 2023

4 **FALAKASSA LAW, P.C.**

5
6 _____
7 Joshua Falakassa, Esq.
8 Attorneys for Plaintiff,
9 Enrico Ivy

10 Dated: July __, 2023

11 **BOKHOUR LAW GROUP, P.C.**

12 _____
13 Mehrdad Bokhour, Esq.
14 Attorneys for Plaintiff,
15 Enrico Ivy

16 Dated: July 19, 2023

17 **DEFENDANT'S COUNSEL:**

18 **NELSON MULLINS RILEY & SCARBOROUGH LLP**

19 _____
20 P. John Veysey, Esq.
21 Attorneys for Defendant,
22 Made and Modern Hard Goods Incorporated
23
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