CLASS ACTION AND PAGA SETTLEMENT AGREEMENT, RELEASE AND CLASS NOTICE

DANIELLE FERRIERA on behalf of herself and the putative California class members and other "aggrieved employees" under the Private Attorneys General Act ("PAGA")

v.

ANDERSON MERCHANDISERS, LLC* and *RETAIL EXECUTION WEST, LLC, et al.

IT IS HEREBY STIPULATED AND AGREED that the Parties to this settlement agreement (hereinafter, "Settlement" or "Agreement") are (1) defendants **Anderson Merchandisers, LLC** ("Anderson") **and Retail Execution West, LLC** ("REW")[1] and (2) plaintiff **Danielle Ferriera** ("Plaintiff"). Collectively, the Defendants and Plaintiff are the "Parties" of the Action (as defined below).

This Settlement encompasses the Action entitled (1) *DANIELLE FERRIERA, individually and on behalf of all others similarly situated, Plaintiffs, v. ANDERSON MERCHANDISERS, LLC, et al., Defendants,* Case No. S-CV-0049211 filed in the Superior Court of California, County of Placer.

This Settlement is subject to the approval of the Court, pursuant to California Civil Code of Procedure, California Labor Code section 2699, and is made for the sole purpose of attempting to consummate settlement of the Action on a class-wide and representative basis subject to the following terms and conditions.

Subject to the approval of the Court, the settlement of the Action and Released Claims (as defined below) shall be effectuated upon and subject to the following terms and conditions in this Settlement. The Parties agree that this settlement shall fully, finally, and forever discharge and resolve the Action and Released Claims, upon and subject to the terms and conditions hereof. To that end, the Parties agree that this Action shall be, upon approval by the Court, ended, settled, resolved, and concluded without any admission of fault or liability, as set forth in this Settlement and for the consideration set forth herein, including but not limited to, a release of claims by Plaintiff as set forth herein.

1. FACTUAL BACKGROUND, PROCEDURAL HISTORY, AND RECITALS

1.01. Plaintiff is a former hourly and non-exempt employee who alleges various wage and hour violations on behalf of herself, allegedly "aggrieved employees," and the putative class for the state of California.

1.02. On September 30, 2022, Plaintiff filed a class action against Defendants in Placer County Superior Court. The lawsuit was initially filed as a putative wage and hour class action purportedly on behalf of all Defendants' non-exempt California employees and asserting eight different violations of California's wage and hour laws, in which Plaintiff alleged (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods;

[1] Anderson and REW together will hereinafter be referred to as "Defendants."

(4) Failure to Permit Rest Breaks; (5) Failure to Provide Accurate Itemized Wage Statements; (6) Failure to Pay Wages Timely During Employment; (7) Failure to Pay All Wages Due Upon Separation of Employment; and (8) Violation of Business and Professions Code §§ 17200, *et seq*. ("Complaint").

1.03. On December 20, 2022, Plaintiff amended her Complaint to add a ninth cause of action under the Private Attorneys' General Act of 2004 to enforce Labor Code § 2698, *et seq.* ("PAGA Claim") based on the same factual allegations with emphasis on the violations of Labor Code Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1 1198, 2698, 2699.3 *et seq.* and the IWC Wages Orders, which includes allegations of (a) Failure to timely pay all earned wages (including minimum wage and overtime wages); (b) Failure to provide meal periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal periods; (c) Failure to permit rest breaks to Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods; (d) Failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees; and (e) Failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees (hereinafter, "First Amended Complaint").

1.04. Between December 15, 2022 and December 20, 2022, the Parties met and conferred regarding an arbitration agreement that Plaintiff allegedly signed. The Parties ultimately stipulated to dismiss Plaintiff's individual and putative class action claims without prejudice and leave only the PAGA Claim pending.

1.05. On December 21, 2022, Plaintiff's counsel filed a Request for Dismissal and declaration pursuant to California Rules of Court, Rule 3.0770 for dismissal of Plaintiff's individual and class action claims without prejudice, leaving only her PAGA Claim pending.

1.06. On or before January 25, 2023, the Parties agreed to attend mediation with mediator Eve Wagner on October 28, 2023. The Parties further agreed to engage in an informal exchange of documents and to informally stay the Action until after the mediation.

1.07. On January 25, 2023, the Parties also agreed that Plaintiff would need to proceed with her individual claims in arbitration. However, in light of the Parties' agreement to mediate, the Parties agreed that Plaintiff would hold off filing an arbitration demand with the understanding that Plaintiff's individual claims would be settled as a part of any settlement of the PAGA Claim. That way, neither side was incurring fees or costs moving this matter to arbitration, and the parties were not expending time and effort that otherwise could be used to resolve this case. In return for this agreement, Defendants stipulated that Plaintiff's individual claims would be tolled while the Parties were attempting to resolve the case, and thus she would not be waiving her right to pursue her claims.

1.08. On February 16, 2023, the Court issued an order granting Plaintiff's request for dismissal of her individual and class claims without prejudice, leaving only her PAGA Claim pending.

1.09. The Parties engaged in informal discovery and exchange of information based on a 20% random and representative sampling of electronic time and pay data for the putative class members and alleged aggrieved employees, and Defendants provided information concerning meal and rest period premiums paid during the relevant periods, and other related information and documents requested *inter alia:* (a) the total number of current and former putative class members and aggrieved employees who worked during the relevant time periods; (b) the number of former putative class members and aggrieved employees that ended their employment with Defendants during the relevant time periods; (c) the total number of workweeks at issue during the relevant time periods; (d) the total number of pay periods at issue during the relevant time periods; (e) the start and end date of employment for each putative class member; (f) the final hourly rate paid to each putative class member and alleged aggrieved employee during the Class Period and PAGA Period, respectively; (g) the average hourly rate for the putative class members and alleged aggrieved employees; (h) description of how any incentive pay, bonuses, shift differentials, and commissions are calculated; (i) all versions of employee handbooks used during the relevant periods; (j) all documents, including handbooks, manuals, policies, memoranda, training and on-boarding/orientation documents applicable to Class Members and/or the alleged aggrieved employees and/or their supervisors during the relevant period, evidencing Defendants' policies and practices; (k) Defendants' timekeeping policies, including policies regarding clocking-in and clocking-out, attendance and tardiness, employee schedules, payment of wages, and meal period and rest break policies; and (l) other relevant information, including Plaintiff's personnel file, wage statements, and time records.

1.10. On October 28, 2023, after informally exchanging documents, data, and information, the Parties attended a full day mediation session with Eve Wagner, an experienced wage and hour class action and PAGA-action mediator to resolve the instant Action in its entirety. After a full day of arms-length negotiations, the Parties reached an agreement to settle all of the claims alleged in Plaintiff's First Amended Complaint as well as the individual and class claims that the Court had previously dismissed without prejudice on February 16, 2023.

1.11. On October 29, 2023, the parties entered into and fully executed a Memorandum of Understanding ("MOU") summarizing the terms of the settlement. The MOU is incorporated herein by this reference. This MOU is intended to and shall be fully enforceable pursuant to the terms of California Code of Civil Procedure section 664.6 and/or applicable federal law counterpart.

1.12. The Parties accepted the MOU, reaching agreement on the terms of the class- and PAGA-wide settlement that, once approved by the Court, will resolve the Action in its entirety, and will settle all class claims running from July 10, 2020, up to the date of the Preliminary Approval of the Settlement, or whenever the total Workweeks at Issue reaches 30,800 workweeks, whichever comes earlier if Defendant makes such an election allowed by the escalator provision set forth in Paragraph 4.5. The PAGA Period was defined to mean the period from September 27, 2021, through the date of court approval of the settlement. The Parties intend this Agreement to bind Plaintiff, Class Members and all PAGA Releasees.

1.13. Class Counsel has conducted a thorough investigation of the claims that Plaintiff asserted against Defendants in this Action and/or that relate to or could have arisen out of the same facts alleged in the Action or relating to the employment of the Plaintiff and Class Members, including both asserted and unasserted claims. Based on their independent investigation and evaluation, Class Counsel believes that the settlement with Defendants for the consideration of and on the terms set forth in this Agreement is fair, reasonable, and adequate, and is in the best interest of Plaintiff, Class Members, and the alleged aggrieved employees in light of all known facts and circumstances, including (a) the substantial factual and legal defenses available to Defendants to the claims asserted in the Action, which render the outcome of the Action substantially uncertain; (b) the potential difficulties Plaintiff and Class Members would encounter in establishing the elements of their claims; (c) the substantial benefits made available to Class Members and PAGA Releasees pursuant to the Settlement; (d) the fact that the Settlement ensures that Class Members will receive relief in the most expeditious and efficient manner practicable, and thus much sooner than would be possible were the claims to be litigated successfully through trial and appeal; and (e) the fact that the Settlement allows persons who would otherwise fall within the definition of the Class, if they so desire, to opt out of the Class Action and individually pursue any Released Claims that he or she may have.

1.14. Defendants categorically deny all of the contentions and allegations raised and in support of the claims in the Action. To that end, Defendants have denied and continue to deny each, and all of the allegations and claims alleged by Plaintiff in the Action and have further denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged in the Action. Defendants contend that they complied in good faith with wage and hour laws and have dealt legally and fairly with Plaintiff and putative Class Members and alleged Aggrieved Employees. Defendants further contend that, for any purpose other than settling the Action, these claims are not appropriate for class or representative treatment. Nonetheless, the Parties have concluded that further proceedings in the Action would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement. To dispose of burdensome and protracted litigation, and to permit the operation of Defendants' businesses without further expensive litigation and the distraction and diversion of their respective personnel with respect to matters at issue in the Action, the Parties agreed to resolve the Action. Defendants have also considered the uncertainty and risks inherent in any litigation, especially in complex cases such as the Action. Defendants have, therefore, determined that it is desirable and beneficial to it that the Action be settled in the manner and upon the terms and conditions set forth in this Agreement.

1.15. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants of liability or wrongdoing. Accordingly, without admitting any wrongdoing or liability, Defendants are willing to agree to the terms of the Agreement in order to settle, compromise, and fully resolve the Action and Released Claims. Defendants make no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendants reserve the right to contest any issues relating to manageability, trial plans, and liability if the Settlement is not approved.

1.16. It is the desire and intention of the Parties that this Agreement shall, fully, finally, and forever completely settle, compromise, release, and discharge any and all of Plaintiff's Released Claims, Settlement Class Members' Released Claims, and the PAGA Claim, as they are defined above and below. The Parties jointly believe this Settlement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement and Agreement after lengthy, extensive arms-length negotiations, facilitated by an experienced wage and hour class action mediator, considering all relevant factors, present and potential. This Agreement shall not be construed in favor of or against any of the Parties because of their participation in the drafting of this Agreement.

1.17. Plaintiff, on behalf of herself, the Class Members and the alleged Aggrieved Employees, along with Defendants, and subject to the approval of the Court, stipulate that the Action will be compromised and settled pursuant to the terms and conditions set forth in this Agreement and that after the date of the Court's final approval of this Agreement, judgment shall be entered, subject to the continuing jurisdiction of the Court as set forth below, subject to the recitals set forth above which by this reference become an integral part of this Agreement, and subject to the following definitions, terms and conditions:

2. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified below. To the extent the terms or phrases used in this Agreement are not specifically defined below, but are defined elsewhere in this Agreement, they are incorporated by reference into this definition section.

2.01. "**Action**" means the Plaintiff's lawsuit alleging wage and hour violations against Defendants captioned *Danielle Ferriera, et al. v. Anderson Merchandisers, LLC, et al.* initiated on September 30, 2022 and pending in Superior Court of the State of California, County of Placer with Case No. S-CV-0049211, and the LWDA Letter that was submitted to the Labor and Workforce Development Agency ("LWDA"), on or about September 27, 2022.

2.02. "**Aggrieved Employee**" means all California citizens currently or formerly employed by Defendants as a non-exempt employee in the State of California at any time during the PAGA Period.

2.03. "**Anderson**" means Anderson Merchandisers, LLC.

2.04. **"Class"** or **"Class Members"** means all current and former hourly-paid or non-exempt employees employed by Defendants within the State of California at any time during the Settlement Period. Any Class Member who does not opt out or submit a Request for Exclusion is a "Settlement Class Member" and shall be bound by the terms of the Agreement.

2.05. **"Class Counsel,"** refers to Kashif Haque, Samuel Wong, Jessica L. Campbell of Aegis Law Firm, PC., and any other attorney(s) associated with the law firm.

2.06. "**Class Notice**" refers to the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL as set forth in the form of "**Exhibit A**" attached hereto, or as otherwise modified or approved by the Court, which is to be mailed to the Class Members.

2.07. **"Class Settlement"** means the non-PAGA portion of this Settlement and release of class claims that is subject to the Court's preliminary and final approval.

2.08. "**Class Representative**" means Plaintiff Danielle Ferriera.

2.09. **"Court"** means Superior Court of California, County of Placer.

2.10. "**Defendants**" shall mean Defendants Anderson Merchandisers, LLC, and Retail Executed West, LLC

2.11. "**Defendants' Counsel,**" "**Defense Counsel,**" or "**Counsel for Defendants**," means Littler Mendelson, P.C., and any attorney(s) associated with the law firm, including Wesley Stockard, and Hovannes "Hovik" Nalbandyan.

2.12. **"Effective Date"** means thirty (30) calendar days after the Court has entered a Final Approval Order if no objections to the Settlement are filed, or if any objections to the Settlement are filed and subsequently withdrawn. If objections are filed and overruled, and no appeal of the Final Approval Order is filed, then the Effective Date will be sixty (60) calendar days following the date the Final Approval Order is entered. In the event an appeal is filed, the Effective Date is the day after the date on which the appeal is disposed of in the Parties' favor, dismissed or otherwise resolved in a manner that upholds the Settlement in its entirety and is no longer subject to review by any court, whether by appeal, petition for rehearing or re-argument, petition for review, or otherwise. Should any appeal not result in approval of the Parties' Settlement as described herein, the Agreement shall be *void ab initio* and of no further force or effect, and the Parties shall be returned in all respects to their respective positions. In the event an appeal, writ, motion challenging the judgment or other collateral attack is made, the Gross Settlement Amount shall not be distributed until the challenge is resolved in a manner that upholds the Agreement in its entirety. This definition presupposes that the Agreement has been signed by the Parties and Class Counsel, the Court has entered the Preliminary Approval Order, and that the Class Notice has been mailed to the Class Members as ordered by the Court in this Agreement.

2.13. "**Employee's Taxes and Required Withholdings**" means the employee's share of any and all applicable federal, state or local payroll taxes, including those collected under authority of the Federal Insurance Contributions Act ("FICA"), FUTA and/or SUTA on the portion of the Individual Settlement Payment that constitutes wages. The Employee's Taxes and Required Withholdings will be withheld from and paid out of the Net Settlement Amount.

2.14. "**Employer Taxes**" means and refers to the employer's share of corporate federal, state and/or local payroll taxes, including Medicare taxes, Social Security taxes, federal unemployment taxes, state unemployment insurance taxes, and employment training taxes, that is owed on the Individual Settlement Payment that constitutes wages, and if applicable, any portion of the Service Award that constitutes wages. The Employer Taxes shall be paid separate and apart from the Gross Settlement Amount.

2.15. "**Final Approval Hearing**" refers to the hearing at which the Court will make a final determination whether the Settlement and the terms of the Agreement are fair, reasonable, and adequate for the Class and meet all applicable requirements for final approval.

2.16. **"Final Approval Order"** refers to the entry of the final Court order approving the Settlement following the Final Approval Hearing and entering final judgment in accordance with the terms herein and under the specific terms requested. Any judgement entered will be subject to the continuing jurisdiction of the Court as set forth below and pursuant to the terms of California Code of Civil Procedure section 664.6. The Court will retain jurisdiction over the enforcement, implementation, construction, administration, and interpretation of the Agreement.

2.17. "**Gross Settlement Amount**" **(also referred to herein as "GSA")** refers to the maximum payment of **One Hundred Seventy-Five Thousand Dollars and Zero Cents ($175,000.00**), subject only to a *pro-rata* increase based upon the escalator provision set forth in Paragraph 4.5, to be paid by Defendants to fully and finally settle, resolve and conclude the Action, without any admission of fault or liability and subject to the terms and conditions of this Agreement. The GSA represents an "all in" figure and includes all payments made to Settlement Class Members (excluding any appropriate and lawfully required Employer Taxes owed by Defendants on such payments which Defendants shall be separately responsible for apart from the GSA), the Service Award paid to the Class Representative, all costs and expenses associated with the Settlement Administrator, the PAGA Payment, and all attorneys' fees and litigation costs and expenses to Class Counsel, as approved by the Court. Expect as otherwise specified herein, Defendants shall not be required to pay any additional monies beyond the amount of the GSA plus the Employer Taxes.

2.18. "**Individual Settlement Payment**" means the amount which is ultimately distributed to each Settlement Class Member from the Net Settlement Amount, net of any Employee's Taxes and Required Withholdings, and separate and distinct from the Settlement Class Member's share of the PAGA Payment.

2.19. "**LWDA Letter**" refers to the PAGA letter, dated September 27, 2022, that was submitted to the LWDA by Jessica L. Campbell of Aegis Law Firm, PC, under Case No: LWDA-CM-910493-22, and that outlines the allegation of various wage and hour claims, and PAGA penalties, asserted in the First Amended Complaint, including violation of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699, and 2699.3, and applicable IWC Wage Orders, including section 11.

2.20. "**Mailing Date**" means the date that the Settlement Administrator initially mails by U.S. Mail the Class Notice to the Class Members and the PAGA Releasees.

2.22. "**Net Settlement Amount**" **(also referred to herein as "NSA")** is the GSA minus Court-approved attorney's fees and litigation costs, PAGA Payment, Court-approved Settlement Administrator's costs, fees and expenses, and Court-approved Service Award. The NSA is the maximum amount that will be available for distribution to Settlement Class Members. To the extent that the Court approves and awards an amount for the Service Award to the Plaintiff, Settlement Administration Costs to the Settlement Administrator, and/or the award to Class Counsel for attorneys' fees and costs, that is less than the amount(s) requested by Plaintiff, the difference shall be included in the Net Settlement Amount and distributed to the Settlement Class Members, as set forth herein. The Net Settlement Amount is currently estimated at **$63,216.67.**

2.23. **"Notice Period" or "Response Deadline"** refers to a date that is forty-five (45) calendar days from the date that the Class Notice is mailed to Class Members and the deadline by which Class Members' Requests for Exclusion, disputes regarding Weeks at Issue credited to them, and/or Objections must be postmarked in order to be timely. An Objection or Request for Exclusion must be mailed to the Settlement Administrator with a postmark dated during the Notice Period for it to be considered. Similarly, a written notice disputing the number of Workweeks at Issue must be returned to the Settlement Administrator with a postmark dated during the Notice Period for the Class Member to raise a valid dispute regarding the number of Workweeks at Issue used to determine his or her Individual Settlement Payment.

2.24. "**Objection**" means a written statement by a Class Member setting forth his or her objection to this Settlement, which must be completed and mailed to the Settlement Administrator in the manner set forth in this Agreement and the Class Notice.

2.25. **"Operative Complaint"** refers to the Second Amended Class Action Complaint that Plaintiff shall file as a condition of this Settlement to incorporate the individual and class claims and allegations that were previously dismissed.

2.26 "**PAGA Check**" means the check issued to each PAGA Releasee for his/her share of the PAGA Payment.

2.27. "**PAGA Claims**" means all disputes, claims, and/or causes of action that are premised in whole or in part on any of the claims asserted in the Operative Complaint or the LWDA Letter.

2.28. "**PAGA Payment**" means the payment to the State of California LWDA and the PAGA Releasees in settlement of all claims for PAGA penalties.

2.29. "**PAGA Releasee**" means an individual who was employed by Defendants within the State of California at any time as a non-exempt or hourly-paid employee during the PAGA Settlement Period.

2.30. "**PAGA Settlement**" means the PAGA portion of the Gross Settlement Amount embodied in this Agreement, which is subject to the Court's approval.

2.31. "**PAGA Settlement Period**" means the period beginning on September 27, 2021, through the date of Preliminary Approval Order of the Settlement, or whenever the total Workweeks at Issue reaches 30,800 workweeks, whichever comes earlier if Defendant makes such an election allowed by the escalator provision set forth in Paragraph 4.5.

2.32. "**PAGA Pay Periods**" means the number of pay periods worked by PAGA Releasees between September 27, 2021, and Preliminary Approval Order of the Settlement, or whenever the total Workweeks at Issue reaches 30,800 workweeks, whichever comes earlier if Defendant makes such an election allowed by the escalator provision set forth in Paragraph 4.5.

2.33. **"Parties"** refers to the Plaintiff and Defendants, and, in the singular, refers to any of them, as the context makes apparent.

2.34. "**Payout Calculation**" refers to the amounts calculated under this Agreement for Plaintiff and each Settlement Class Member.

2.35. **"Plaintiff"** means Plaintiff Danielle Ferriera. Where required by the context of the Agreement, this term includes all persons acting under Plaintiff's direction or control or on her behalf, and/or any other agent, heir, beneficiary, devisee, legatee, executor, administrator, trustee, conservator, guardian, estate, personal representative, successor-in-interest, and/or assign.

2.36. "**Plaintiff's Released Claims**" means the claims that Plaintiff releases, remises, and forever discharges against Defendants and the Released Parties from any and all demands, damages, debts, liabilities, actions, causes of action, obligations, and claims of every kind and nature whatsoever, whether now known or unknown, suspected or unsuspected, which she ever had or now has against the Defendants or the Released Parties arising or accruing at any time before the date of her signature on this agreement. Plaintiff's Released Claims include, but are not limited to, all the claims and causes of action asserted in the Operative Complaint, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law. Plaintiff's Released Claims also include, but are not limited to, any applicable California law, wage and hour claims and all other claims for willful misclassification, unpaid wages, unpaid commissions, overtime compensation, liquidated damages, willful exemplary damages, interest, hours worked, minimum wages, unpaid meal or rest period premiums, miscalculated wages, improper deduction(s), late payment of wages, frequency of pay, premium pay, incentives, bonuses, non-compliant wage statements, failure to reimburse business expenses, failure to keep accurate and complete payroll records, and any other claims or relief of any kind under statute, tort, contract, quasi-contract, injunctive relief theories or claims, including those permitted under California labor code § 2699, *et seq.* (PAGA), and as alleged in the LWDA Letter (as defined above), and claims for exemplary, punitive, or penalty damages, interest, and attorneys' fees and costs beyond those provided for or contemplated as part of this Agreement, other damages, and/or any other form of relief, as permitted by law. Plaintiff expressly acknowledges that this Agreement and the release contained herein extends to all claims that she has or might have against the Released Parties, including those which are presently unknown to her. Plaintiff may hereafter discover facts in addition to or different from those which she now knows or believes to be true, but stipulates and agrees that, upon the Defendants' deposit of the GSA with the Settlement Administrator, she fully, finally, and forever settles and releases any and all claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity and without regard to the subsequent discovery or existence of such different or additional facts. Plaintiff further remises, releases, and forever discharges the Released Parties from any and all manner of actions, causes of actions, suits, debts, accounts, contracts, agreements, torts, controversies, judgments, damages, claims, charges, liabilities, and demands of any kind or nature whatsoever, she ever had or now has, or may have, against Defendants or the Released

Parties arising from the Plaintiff's contractual relationship with Defendants. Plaintiff is deemed by operation of the Final Approval Order of the Settlement to have agreed not to sue or otherwise make a claim against any of the Released Parties for any claim arising out of her employment relationship with Defendants. Plaintiff acknowledges that she has had the opportunity to review, and has reviewed, California Civil Code section 1542, which provides:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT 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 THE DEBTOR OR RELEASED PARTY.**

Being fully informed of this provision of the Civil Code and understanding its provisions, Plaintiff agrees to waive any rights under that section and any rights and benefits she may have under laws of any state that are similar to California Civil Code section 1542. The above-defined scope of released claims by Plaintiff is meant to be as broad as possible as permitted by law. Plaintiff also releases claims against Defendants and Released Parties for attorneys' fees, costs and expenses related to this litigation, beyond those provided for or contemplated as part of this Settlement. In consideration for the release described herein and service to the Class, and subject to approval by the Court, the Plaintiff will receive additional monetary compensation by way of the Service Award (as defined below).

2.37. "**Preliminary Approval Hearing**" means the hearing held to determine whether the Court will enter a Preliminary Approval Order preliminarily approving this Settlement.

2.38. "**Preliminary Approval Order**" means an entry of an order from the Court preliminarily approving this Agreement and the settlement of the Action.

2.39 "**Released Class Claims**" means all claims, charges, complaints, liens, demands, causes of action, obligations, damages, and liabilities, known or unknown, suspected or unsuspected, relating to the allegations that were asserted, or could have been asserted, based on the facts alleged in the Operative Complaint. Settlement Class Members shall release all Released Class Claims that accrued during the Settlement Period as to the Released Parties upon Defendants' funding of the GSA, as set forth herein. The scope of the Released Class Claims by each Settlement Class Member is meant to be as broad as possible as permitted under the law and includes all claims that are asserted or could have been asserted based on the same factual predicate alleged in the Operative Complaint. Such allegations include assertions that Plaintiff or Class Members were not properly or timely compensated for all hours worked, and were subject to wage and hour law violations, regardless of whether such claims arise under California law, common law, local law, or federal law, or any statute, ordinance, regulation, or applicable wage and hour law. The Released Class Claims include, but are not limited to, the causes of actions alleged in the Action and the Operative Complaint, which are asserted as follows: **(1)** Failure to pay all minimum wages; **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the applicable IWC Wage Order(s); **(3)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage Order(s); **(4)** failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the applicable IWC Wage Order(s); **(5)** failure to furnish complete and accurate wage statements in violation of Labor Code sections 226 and 226; **(6)** failure to pay wages timely during employment in violation of Labor Code sections 204, 210; **(7)** failure to pay all wages earned, due and unpaid at separation of employment in violation of Labor Code sections 201, 202, and 203; **(8)** Violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200, *et seq*.) and **(9)** all other provisions of the Labor Code. The release shall include all claims and/or causes of action arising from or related to the Action under any federal, state or local law or administrative order that were pled or could have been pled in this case based on the facts alleged in the operative complaint, letter to the Labor and Workforce Development Agency, or which arise out of or directly or indirectly relate to such facts, whether known or unknown, including but not limited to, the failure to pay wages, the failure to pay for all hours worked, including "off the clock" claims, and other claims whatsoever that were alleged in this case or which arise out of, or directly or indirectly relate to such facts, including without limitation, all related claims for restitution and other equitable relief, conversion, liquidated damages, punitive damages, penalties, statutory penalties, civil penalties, and any other related claims and/or penalties of any nature. The Released Claims encompass all types of relief available for the foregoing claims, including, without limitation, any claims for damages, restitution, losses, penalties, fines, attorneys' fees, costs, expenses, interest, injunctive relief, declaratory relief, or liquidated damages. The Settlement Class Members also release claims against Released Parties for attorneys' fees, costs and expenses related to this litigation, beyond those provided for or contemplated as part of this Settlement. Notwithstanding the foregoing, nothing in this Agreement releases any claims that may not be released as a matter of law.

2.40. "**Released PAGA Claims**" PAGA Releasees shall release all Released PAGA Claims that accrued during the PAGA Settlement Period as to the Released Parties upon Defendants' funding of the GSA, as set forth herein. The scope of the Released PAGA Claims by each PAGA Releasee includes all claims that are asserted or could have been asserted based on the same factual predicate alleged in the LWDA Notice and Operative Complaint. The Released PAGA Claims include, but are not limited to: **(1)** Civil Penalties Pursuant to the Private Attorney's General Act of 2004 ("PAGA"), Labor Code Section 2698, *et seq.* for (a) Failure to pay wages for all hours worked at the legal minimum wage, (b) Failure to pay wages for overtime hours worked at the overtime rate of pay, (c) Failure to provide reporting time pay, (d) Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant meal periods, (e) Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant rest periods, (f) Failure to timely pay earned wages during employment, (g) Failure to provide complete and accurate wage statements, and (h) Failure to pay employees all wages due at time of termination/resignation**,** and all other claims asserted in the Operative Complaint and the LWDA Letter.

2.41. "**Released Parties**" means Defendants, and any of Defendants' predecessors and successors in interest, current or former parent companies, subsidiaries, affiliates, assigns, trustees, guarantors, fiduciaries, and present and former owners. The Released Parties also include, but are not limited to, companies acquiring any or all of Defendants' assets, Defendants' past or present customers, clients, contractors, vendors, and divisions, and any other individual or entity which could be jointly liable with Defendants for the Released Claims. The Released Parties also include, but are not limited to, the current or former officers, directors, shareholders, managers, agents, attorneys, representatives, accountants, administrators, employees, insurers, beneficiaries, reinsurers, or carriers of any of the foregoing persons or entities.

2.42. "**Request for Exclusion,**" refers to a written request by a Class Member to be excluded from the Settlement, which must be made in writing and in conformity with the requirements set forth in the Class Notice, the Agreement, and the Court's Preliminary Approval Order, as applicable, and must be mailed to the Settlement Administrator and postmarked on or before the Notice Period has ended.

2.43. "**Service Award**," means the monetary award made to the Plaintiff, in the amount set forth in this Agreement, or other lesser amount as approved by the Court, for her service as Class Representative and in recognition of her efforts for prosecuting this Action on behalf of herself, the Class Members, PAGA Releasees, and for the broader release of her claims (as defined above in "Plaintiff's Released Claims"). The Service Award is to be paid from the GSA, and is subject to approval by the Court, as described below.

2.44. **"Settlement" or "Agreement"** means this Class and PAGA Action Settlement Agreement and Release, including any attached exhibits. Settlement also refers to the settlement of the Action effectuated by this Agreement between the Parties.

2.45. "**Settlement Administrator**" refers to the third-party administrator mutually selected by the Parties, ILYM Group, Inc., subject to approval by the Court, to perform the notice, claims administration, and distribution functions further described in this Agreement.

2.46. **"Settlement Administration Costs"** refers to the costs and expenses of the administrator, to perform its tasks and duties as provided by this Agreement. These costs will be paid out of the GSA.

2.47. **"Settlement Class Members"** means all Class Members who have not timely and properly submitted a Request for Exclusion. All Settlement Class Members shall be bound by the terms of the Agreement.

2.48. "**Settlement Period**" refers to July 10, 2020, up to the date of preliminary approval of the Settlement, or whenever the total Workweeks at Issue reaches 30,800 workweeks, whichever comes earlier if Defendant makes such an election allowed by the escalator provision set forth in Paragraph 4.5.

2.49. **"Workweeks at Issue"** means all workweeks that each Settlement Class Member worked on at least one day (excluding vacation and leaves of absence) during the Settlement Period as a non-exempt or hourly employee of Defendants, which shall be calculated based on information that Defendants provide to the Settlement Administrator. Estimations and approximations may be used to the extent that there may be gaps in the information that Defendants provide to the Settlement Administrator. If needed, the Settlement Administrator will calculate the number of Workweeks at Issue by calculating the number of weeks in which each Settlement Class Member earned non-vacation wages from Defendants during the Settlement Period. Any Settlement Class Member with less than one complete week of employment will be credited with one workweek, even if they only worked one day during that period.

3. **LIMITATIONS ON USE OF THIS SETTLEMENT AGREEMENT**

3.1. **No Admission/Denial of Liability:** The Parties enter into this Settlement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Agreement, Defendants do not admit, and specifically deny, that they have violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract, violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to Plaintiff or any Class Member or PAGA Releasee. Nothing in this Agreement is intended as or may be construed as an admission or concession of liability, unlawful conduct, or wrongdoing by Defendants (and/or any of the Released Parties) in any way, shape or form. Defendants and the Released Parties deny any liability or wrongdoing of any kind associated with the claims alleged in the Action. Nothing in this Agreement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants. The Parties to this Settlement agree that it reflects their good faith compromise of the claims raised in the Action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel. Defendants further deny that they have engaged in any unlawful activity, deny that they have failed to comply with the law in any respect, deny they have any liability to anyone under the claims asserted in this matter, and contend that but for this Settlement, the Action would not be able to proceed as a class or representation action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. This Agreement and the fact that the Plaintiff and Defendants are willing to settle the Action shall have no bearing on, and shall not be admissible in connection with, any litigation (other than solely in connection with approval and enforcement of this Agreement).

3.2. **Non-Evidentiary Use.** Except for purposes of effectuating the Settlement pursuant to the terms and conditions herein, and/or for Defendants (and/or a Released Party) to establish that a Settlement Class Member has resolved any of his/her claims released through this Agreement, and regardless of whether the Final Approval Order is entered, neither this Agreement nor any of its terms (including, but not limited to, the payment of the GSA) nor the Settlement itself shall be construed as, offered, or admitted in evidence as, received as, or deemed to be evidence, in any further proceeding in the Action, or any other civil, criminal, and/or administrative action or proceeding, for any purpose adverse to Defendants or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication, or admission by Defendants or any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage.

3.3. **Effect of Settlement Not Being Final**. In the event the Court does not enter a Final Approval Order granting approval of the Settlement, the Agreement shall become null and void, and its terms and all documents setting out its terms shall be inadmissible in further litigation of this or any other case. Specifically, in the event (a) the Court should for any reason fail to approve this Settlement consistent with the specific terms agreed to by the Parties as set forth in this Agreement, except to the extent of a reduction in amount for Attorneys' Fees and Costs, the Service Award, and/or Settlement Administration Costs; (b) any government agency objects, intervenes or otherwise interferes with the enforcement of the Settlement embodied in this Agreement; (c) the Court should for any reason fail to enter the Preliminary Approval Order and Order Approving PAGA Settlement, and/or Final Approval Order; (d) the Final Approval Order is reversed, modified, or declared or rendered void; (e) the Settlement does not become final for any other reasons; (f) should the LWDA provide notice of intent to investigate the alleged violations set forth in the LWDA Letter; or (g) judgment is not entered by the Court that binds the Plaintiff, Settlement Class Members, or PAGA Releasees, then this Settlement shall automatically be considered null and void, and any order entered by the Court in furtherance of this Settlement shall be treated as void from the beginning. In that instance, (i) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (ii) all Parties to this Agreement and the pleadings in these Action shall stand in the same litigation position they were prior to the signing of this Agreement, without prejudice to either party; and (iii) Defendants shall not have any obligation to pay any portion of the GSA to anyone under the terms of this Agreement, and (iv) all previous disbursements (if any) from the GSA shall immediately be paid back to Defendants. Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety, unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect. Prior to enforcing this Paragraph, the Parties shall meet in good faith to resolve issues pursuant to the Cooperation Clause. Specifically, the Parties must meet and confer in good faith to ensure that the Settlement can be approved as drafted and each Party is able to completely satisfy all the material terms and conditions as required by the Agreement.

3.4. **Not Mere Recitals and Invalidation of Agreement for Failure to Satisfy Conditions.** The terms and provisions of this Agreement are not recitals but are deemed to constitute contractual terms. In the event that any of the material terms or conditions set forth in this Agreement are not fully and completely satisfied by Plaintiff, this Agreement shall terminate and terms of the Agreement including, but not limited to, the conditional certification of the Class, the payment of Individual Settlement Payments to Settlement Class Members, the payment of Attorneys' Fees and Costs to Class Counsel, the Service Award to the Plaintiff, the payment of the PAGA Payment, and any other payment shall be null and void. In such an event, nothing in this Agreement shall be used, construed or admissible as evidence by or against any Party or Released Party as a determination, admission, or concession of any issue of law or fact in the Action, or in any other proceeding for any purpose; and the Parties do not waive, and instead expressly reserve, their respective rights to prosecute and defend the Action as if this Agreement never existed. In addition, notwithstanding the generality of the foregoing, if this Settlement is terminated for failure to satisfy any of the material terms or conditions of this Agreement, Defendants shall not be obligated to create or maintain any type of settlement fund, and shall not be obligated to pay any amount in the GSA to any Class Member or PAGA Releasee, to Class Counsel, to the Settlement Administrator, to the State of California, or to the Plaintiff. In the event the Court has approved the PAGA Payment and release of the PAGA Claims set forth in this Agreement and Defendants has issued the PAGA Payment, the release of the PAGA Claims shall be binding.

4. **TERMS OF SETTLEMENT AND ALLOCATION OF SETTLEMENT PROCEEDS**

4.1. **Settlement**. The Parties agree this Action and any claims, damages, or cause of action arising out of the dispute, which is the subject of the Action, or which could have been alleged in the Action, be settled subject to court approval and under the terms set forth in this Settlement. This Settlement is a "non-claims-made" and "non-revisionary" settlement. Each Settlement Class Member will be entitled to a share of the NSA in accordance with the formula set forth below. Payments will be made from the NSA only to Settlement Class Members, as set forth herein.

4.2. **Scope of Settlement.** Subject to Court approval, the Settlement shall cover all eligible members of the Settlement Class Members.

4.2.1. **Settlement of California Class Action:** The Settlement shall bind all Settlement Class Members during the Settlement Period to the extent of the Released Class Claims.

4.2.2. **Settlement of Individual Claims:** The Settlement shall bind the Plaintiff to the extent of the Plaintiff's Released Claims.

4.2.3. **Settlement of PAGA Action:** The Settlement shall bind all Aggrieved Employees during the PAGA Settlement Period to the extent of the Released PAGA Claims.

4.3. **Filing of Amended Complaint:** In an effort to preserve judicial resources, prevent unnecessary expense and cost, while avoiding conflicting judgments, the Parties agree that Class and Defense Counsel shall stipulate for Plaintiff to amend the First Amended Complaint to add back in the individual and Class Claims and allegations asserted in the Complaint filed on September 30, 2022, and shall thereafter stipulate to stay the Action during the settlement approval process. To effectuate the amending of the First Amended Complaint, Defendants shall stipulate to the filing of an amended complaint. The Operative Complaint shall be subject to reasonable review and approval by Defendants prior to filing. Defendants shall not be required to file an answer or other responsive pleading to the Operative Complaint. It is the understanding of the Parties that this Settlement shall cover the claims in the Action as alleged in the Complaint, First Amended Complaint, LWDA Letter, and the subsequently filed Operative Complaint subject to this paragraph.

4.4. **Settlement Sum**. In exchange for the releases, obligations, and promises set forth in this Settlement (and subject to the terms and conditions contained in this Settlement), Defendants agree to pay the Gross Settlement Amount of **One Hundred Seventy-Five Thousand Dollars and Zero Cents ($175,000.00),** subject only to a pro-rata increase based upon the escalator provision set forth in Paragraph 4.5, which is the total and all-inclusive amount Defendants shall be obligated to pay under the Settlement embodied by this Agreement (except that Defendants shall pay the Employer Taxes and withholdings with respect to the wages portion of Individual Settlement Payment separately and in addition to the GSA), for the full resolution of the Action and Released Claims. The GSA includes amounts appropriated to the Settlement Class Members, the PAGA Payment, Settlement Administration Costs to the Settlement Administrator, Attorney's Fees and Costs to Class Counsel, and the Service Award. Defendants will deposit money into a Qualified Settlement Fund ("QSF"), established by the Settlement Administrator, in an amount equal to the GSA.

4.5. **Escalator Clause**. If it is determined that the number of Class Members exceed 850 or the number of workweeks exceeds 28,000 by more than 10%, Defendants shall have the option to select between whether the GSA will be increased *pro rata* per additional Class Member or additional workweek, whichever is greater, or the release period shall cut off at the date that the workweeks exceed 30,800 workweeks. If Defendants elect to exercise its option to trigger the escalator clause, they must make such an election and give written notice to Plaintiff's counsel within 10 days of the Settlement Administrator sending its calculations of the class size and workweek count prior to mailing the Class Notice. If Defendants do not exercise the escalator clause, the Settlement Period and PAGA Settlement Period shall be cutoff on January 6, 2024. If the class size or workweek count is disputed, or there is a miscalculation of the total workweek count, which then triggers the escalator clause after the Class Notice is mailed, the escalator clause will be triggered such that the GSA will be increased to account for corrected total workweek count and the release period will be adjusted accordingly as provided above.

4.6 **Distribution of Net Settlement Amount.** The Net Settlement Amount shall be allocated among the members of the Settlement Class on a *pro rata* basis based on the number of Workweeks at Issue for each Settlement Class Member, and number of PAGA Pay Periods for each PAGA Releasee. The allocations to the Class Settlement Amount and the PAGA Settlement Amount is based on Workweeks at Issue and PAGA Pay Periods within each allocation group and the applicable statute of limitations periods. The initial calculation prior to the mailing of the Class Notice shall estimate (1) the gross Individual Settlement Payment that each Settlement Class Member may be eligible to receive based on their Workweeks at Issue, assuming that no Class Members opt out of the Class Settlement; and (2) the gross PAGA Payment that each PAGA Releasee may be eligible to receive based on the PAGA Pay Periods. To the extent that individuals are both Settlement Class Members and PAGA Releasees, they shall be eligible to receive both an Individual Settlement Payment and a PAGA Payment. Separate check payments may be issued for Individual Settlement Payment checks and PAGA Payment checks; thus, individuals that are both Settlement Class Members and PAGA Releasees may be issued two separate check payments. The Net Settlement Amount shall be fully distributed, as follows:

4.6.1. Class Members who do not opt out of the Class Settlement (i.e., Settlement Class Members) will receive a *pro rata* share of the Class Settlement Amount, as follows:

a. Settlement Class Members will receive a *pro rata* share of the Net Settlement Amount, based on their respective number of Workweeks at Issue in the Settlement Period as compared to the total Workweeks of all Settlement Class Members in the Settlement Period;

b. Settlement Class Members shall have one hundred eighty (180) calendar days from the date of mailing of their Individual Settlement Payment check to cash their Individual Settlement Payment check. The Settlement Administrator shall mail a check cashing reminder postcard to those Settlement Class Members who have not negotiated their Individual Settlement Payment checks within ninety (90) days of mailing. Any failure of a Settlement Class Member to deposit a check shall not affect the enforceability of the release of all Released Class Claims, as the Parties jointly agree that valid consideration for same is the offer of monetary consideration by means of the offer of settlement and mailing of settlement checks. In the event that any Individual Settlement Payment checks are not deposited, cashed, or otherwise negotiated within the 180-day period**,** shall be void. Any funds not distributed after the expiration of the Individual Settlement Payment checks shall escheat to the State of California Controller's Office to be held in the name of the Settlement Class Member who is the payee of the check.

4.6.2. Pursuant to *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 528 (2021), the Parties agree that an opt-in process is not needed for Settlement Class Members to release their FLSA claims. As the Court held in *Amaro*, "The FLSA's written consent requirement does not apply to a release in a class settlement of state wage and hour claims." In the event the Court orders otherwise, the Parties agree that any individual who worked for Defendants during the FLSA period from September 30, 2019 to the present, and that cashes, deposits, or otherwise negotiates the Individual Settlement Payment check shall be deemed to have opted into *DANIELLE FERRIERA, et al. v. ANDERSON MERCHANDISERS, LLC, et al.,* Case No. S-CV-0049211*,* for purposes of fully and finally releasing all FLSA claims that they may have against Defendants and/or the Released Parties.

4.6.3. No settlement check shall be issued until the Settlement Administrator provides final calculations of the Individual Settlements Payments to Defense counsel, who shall confirm or object to said calculations within five (5) calendar days of receipt.

4.6.4. The amount distributed to Settlement Class Members, plus all required withholdings (if any), shall not exceed the NSA.

4.6.5 If a Class Member timely and validly submits a Request for Exclusion, as set forth herein, his or her share of the NSA will remain part of the NSA and will be distributed to the Settlement Class Members in accordance with the above formula.

4.7. **PAGA Payment**. Subject to Court approval, the Parties agree to allocate an amount of **Ten Thousand Dollars and Zero Cents ($10,000.00)** to the settlement of all claims for civil penalties under the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("PAGA Payment"), which will be paid from the Gross Settlement Amount. Of this, an amount of **Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00),** which is 75% of the PAGA Payment, shall be paid to the State of California LWDA. The remaining 25% of the **$10,000.00** PAGA Payment, which amounts to **Two Thousand Five Hundred Dollars and Zero Cents ($2,500.00),** shall be distributed *pro rata* to all PAGA Releasees, based on the number of PAGA Pay Periods worked by a PAGA Releasee, as a fraction of the total PAGA Pay Periods worked of all PAGA Releasees. The portion of the PAGA payment to the PAGA Releasees shall be treated entirely as penalties. Although the PAGA Settlement will be subject to Court approval, PAGA Releasees will not have the opportunity to opt-out or object to the PAGA Payment or the release of PAGA Claims set forth in this Agreement. In the event the LWDA or the Court rejects this allocation, the Parties will meet and confer with the Court and the LWDA to reach a penalty allocation acceptable to all parties that does not materially alter the terms of Settlement, nor require Defendants to pay more than the GSA. Concurrently, when Plaintiff files her Motion for Preliminary Approval, Plaintiff shall send a copy of the Settlement to the LWDA pursuant to the 2016 amendments to PAGA. The PAGA Payment shall be paid from the Gross Settlement Amount. There are approximately 18,701 PAGA Pay Periods at the time of signing this Agreement. This amount will be impacted if Defendant elects to exercise the escalator provision set forth in Paragraph 4.5.

4.8. **Attorneys' Fees, Costs, and Expenses**. Class Counsel shall request attorneys' fees up to one-third of the GSA, i.e., **$58,333.33,** for attorneys' fees; and **up to $25,000** for reimbursement of reasonable out-of-pocket litigation costs and expenses ("Attorneys' Fees and Costs"). Class Counsel agrees not to seek from Defendants any additional attorneys' fees, costs and/or expenses stemming from their involvement in the Action. Plaintiff and Class Counsel will apply to the Court for payment of Class Counsel's request for Attorneys' Fees and Costs. Defendants agree not to oppose Class Counsel's request for Attorneys' Fees and Costs in these amounts. The terms of this Agreement will not be abrogated and will continue in full force even if the Court awards a lesser amount of Attorneys' Fees and Costs than requested by Class Counsel. The outcome of the Court's ruling on the application for Attorneys' Fees and Costs shall not terminate the Settlement or otherwise affect the Court's ruling on the Final Approval Order. To the extent the Court does not approve payment of Attorneys' Fees and Costs in the amount set forth herein, the amount that is not awarded to Class Counsel shall remain a part of the NSA for distribution to the Settlement Class Members on a *pro rata* basis. Except as provided in this Paragraph, upon final approval, each Party shall bear her or its own attorneys' fees, costs, and expenses incurred in the prosecution, defense, and settlement of the Action. Attorneys' Fees and Costs shall be paid without withholding, and an IRS Form 1099 will be issued for such payments. Class Counsel will provide the Settlement Administrator with IRS Form W-9, with all corresponding taxpayer identification entered, so that an IRS Form 1099 may be issued.

4.9. **Service Award to Plaintiff**. In return for services rendered to the Class Members, Plaintiff will request that the Court approve a Service Award of up to **Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00)** for herself from the GSA. Defendants will not oppose such an application. The terms of this Agreement will not be abrogated and will continue in full force even if the Court awards a lesser amount for the Service Award. The outcome of the Court's ruling on the application for a Service Award shall not terminate this Settlement or otherwise affect the Court's ruling on the Final Approval Order. Any amount not approved by the Court shall become part of the Net Settlement Amount for distribution to the Settlement Class Members on a *pro rata* basis. In return for the Service Award, Plaintiff will release Plaintiff's Released Claims upon Defendants' funding of the GSA. The Service Award payable to Plaintiff shall be in addition to any Individual Settlement Payments she may receive. Notwithstanding the foregoing, nothing in this Agreement releases any claims that may not be released as a matter of law.

4.10. **Costs of Settlement Administration.** The Parties have mutually agreed to the selection of the Settlement Administrator to undertake the administration of the Settlement in this Action. The reasonable Settlement Administration Costs through and beyond the Final Approval Hearing are estimated not to exceed **Ten Thousand Nine Hundred Fifty Dollars and Zero Cents ($10,950.00)** and shall be paid from the Gross Settlement Amount subject to Court approval. The terms of this Settlement Agreement will not be abrogated and will continue in full force even if the Court awards a lesser amount for Settlement Administration Costs. The outcome of the Court's ruling on Settlement Administration Costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Final Approval Order. Any amount not approved by the Court shall become part of the Net Settlement Amount for distribution to the Settlement Class Members on a *pro rata* basis.

4.11. **Taxes & Tax Treatment**. Each Settlement Class Member's payment shall be treated 33.33% as wages and will be reported as such to each Settlement Class Member on an IRS Form W-2; 33.33% as civil penalties or liquidated damages and will be reported as such to each Settlement Class Member on an IRS Form 1099, if applicable; and 33.33% as interest and will be reported as such to each Settlement Class Member on an IRS Form 1099, if applicable. The wage portion shall be paid net of all Employee's Taxes and Required Withholdings, including federal, state, and local income tax, FICA taxes, and federal and state unemployment taxes. The Parties further agree that the PAGA Payment distributed to each PAGA Releasee will be treated entirely as civil penalties and will be reported as such to each PAGA Releasee on an IRS Form 1099, if applicable.

4.11.1. Defendants shall transmit to the Settlement Administrator for payment of the employer share of all payroll taxes imposed by law separately and in addition to the Gross Settlement Amount ("Employer Taxes"). All Employer Taxes withheld and paid by the Settlement Administrator shall be reported by the Settlement Administrator to the appropriate taxing authorities under the payee's name and social security number.

4.11.2. **Tax Treatment of Attorneys' Fees and Cost Award**. Class Counsel will receive an IRS Form 1099 for any amount awarded to Class Counsel in the form of attorneys' fees and/or costs and will be responsible for payment of any taxes owing on said amount. Class Counsel will transmit to the Settlement Administrator by e-mail a signed IRS W-9 form, with all corresponding taxpayer identification entered.

4.11.3. All Settlement Class Members are obligated to pay their respective share of any taxes, local, state or federal, which may become due and owing on the monies received under this Settlement.

4.11.4. In the event that any taxing body determines that different amounts should have been withheld from the payments (or any portion thereof) provided for in this Paragraph, the Settlement Class Member shall be liable for the payment of any such employee's share of taxes and agree to defend, indemnify and hold the Released Parties harmless for the payment of such taxes, the failure to withhold, and any interest and penalties imposed thereon. In the event that any taxing body determines that different amounts should have been withheld from the payments (or any portion thereof) provided for in this Paragraph, Defendants shall be accountable for the payment of any such employer's share of taxes.

4.11.5. None of the payments provided under the Settlement shall be taken into account for purposes of determining benefits under any qualified or non-qualified plans of Defendants or their affiliated companies.

4.11.6. The Parties agree that the Gross Settlement Amount will qualify as a QSF pursuant to the requirements of section 468(B)(g) of the Internal Revenue Code of 1986, as amended, and section 1.468B-1. *et seq*. of the income tax regulations. Furthermore, the Settlement Administrator is hereby designated as the "Administrator" of the qualified settlement funds for purposes of section 1.46B-2(k) of the income tax regulations. As such, to the extent applicable, all taxes imposed on the gross income of the Gross Settlement Amount and any tax-related expenses arising from any income tax return or other reporting document that may be required by the Internal Revenue Service or any state or local taxing body will be paid from the Gross Settlement Amount.

4.11.7. **No Tax Advice.** All Parties represent that they have not received, and shall not rely on, advice or representations from the other Party or her/its agents regarding the tax treatment of payments under federal, state or local law. To that end, neither Plaintiff nor Defendants, nor the Parties' attorneys, shall give or are giving any tax advice in connection with the Settlement or any payments to be made pursuant to this Settlement. Each Settlement Class Member agrees to indemnify, and hold harmless Defendants from any liability for employee-side taxes and/or related fees, costs, or assessments resulting from his or her failure to timely pay his or her share of employee-side taxes and/or related interest, fees, or penalties owed.

4.11.8. **Tax Treatment of Service Award.** Plaintiff will receive an IRS Form 1099 for her Service Award and will be responsible for payment of any taxes owing on said amount.

4.12. **Conditional Nature of Stipulation for Certification of the Class Action Claims:** Solely for purposes of this Settlement, the Parties shall stipulate to the certification of the California Class. Defendants do not waive, and instead expressly reserve their rights to challenge the propriety of the class certification for any purpose if this Settlement had not been entered into by the Parties should the Court not approve the Settlement or should counsel for either Party exercises their rights to terminate the Settlement as permitted by this Agreement. Should for whatever reason the Settlement not become effective, the fact that the Parties were willing to stipulate to certification of the Class Action as part of the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of whether the Class Action, or any claim or class, should be certified in a non-settlement context in this Class Action or in any other Action. Defendants expressly reserve their right to oppose class certification in this or any other action should this Settlement not become effective. The Parties are not certifying any PAGA Claims. In support of this Agreement, Plaintiff shall request that the Court certify for settlement purposes the Class as to all non-PAGA claims that have been asserted, which Defendants shall not oppose or object to.

4.12.1. **Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree that Plaintiff Danielle Ferriera shall be appointed as representative for the Class Action.

4.12.2. **Appointment of Class Counsel**. Solely for the purposes of this Settlement, the Parties stipulate and agree that Kashif Haque, Samuel Wong, Jessica L. Campbell of Aegis Law Firm, PC shall be appointed as Class Counsel.

4.13. **No Additional Contribution by Defendants**. Defendants' monetary obligation under this Settlement is limited to the Gross Settlement Amount and Employer Taxes. Defendants shall not be obligated to make any payments contemplated by this Settlement until the conditions set forth in this Settlement occur. Defendants shall not be required to pay more than the Gross Settlement Amount and Employer Taxes to obtain the relief (including, but not limited to, enforcement of the Settlement, releases of all claims, and issuance of the Final Approval Order) provided in this Settlement or to fully and finally settle and resolve the Released Claims or the Plaintiff's Released Claims. Notwithstanding the above, in the event that this Settlement is voided or nullified, in whole or in part, however that may occur, or the settlement of the Action are barred by operation of law, or invalidated, or ordered not to be carried out by a Court of competent jurisdiction, Defendants shall cease to have any obligation to pay any portion of the GSA to anyone under the terms of this Settlement.

4.14. **Non-Materiality of Attorneys' Fees, Costs and Service Award.** Any reduction in amount by the Court of the application for Attorneys' Fees and Costs, Service Award, and/or Settlement Administration Costs will in no way affect the validity of the remainder of this Agreement or give rise to a right to abrogate this Settlement.

5. **SETTLEMENT ADMINISTRATION, DUTIES AND OBLIGATIONS**

5.1. **Settlement Administrator's Duties**. The Settlement Administrator shall coordinate and undertake all duties related to the administration of the Settlement.

5.1.1 The duties of the Settlement Administrator shall include, but are not limited to: (i) compile and send the Class Notice to Class Members and PAGA Releasees via U.S. Mail; (ii) confirm the accuracy of the mailing addresses of Class Members and PAGA Releasees through the United States Post Office's National Change of Address database before mailing; (iii) perform one skip trace on any mailed Class Notice returned as undeliverable; (iv) re-mail Class Notice one time only by First Class Mail if the Class Notice was returned undeliverable and a new address is located or upon a Class Member's or PAGA Releasees request; (v) send deficiency letters as needed; (vi) complete the allocation duties described below; (vii) process Workweek at Issue Disputes, Requests for Exclusion, and Objections; (viii) calculate and distribute all payments due under the Settlement; (ix) undertake tax reporting, withholding, remittances, and calculation of Employer Taxes; (x) create and operate a toll-free call center to handle inquiries from Class Members; (xi) if needed, handle the calculation of Workweeks at Issue based on time and pay data provided by Defendants; and (xii) establish the QSF. The Settlement Administrator shall also provide a declaration under penalty of perjury ("Administrator's Declaration") which summarizes its findings and the results of the notice process, including and not limited to, stating: the number of individuals and Workweeks at Issue reflected in the data provided by Defendants; the number of mailings; the number of Workweeks Disputes, Objections, and Requests for Exclusion received; and other information as is required to obtain Final Approval of the Settlement.

5.1.2. Class Counsel and Defendants' Counsel may review and approve any documents contemplated by the Settlement before they are mailed or sent. The Settlement Administrator may mail no documents without first receiving written approval to do so from Class Counsel and Defendants' Counsel. The Settlement Administrator must have in place an effective information and data security protocols and/or program capable of protecting the personal information of the Class Members and PAGA Releasees. In addition, the Settlement Administrator must maintain reasonable physical, administrative, and technical controls to protect such information. Class Counsel and Defense Counsel may object to the selection of a Settlement Administrator that cannot reasonably maintain the security of Class Members and PAGA Releasees' contact information. All of the information produced to the Settlement Administrator will be subject to the Parties' Stipulated Protective Order.

5.1.3. Based on the information in the Class List, any pay and time data forwarded by Defendants (if needed), and the formula set forth in this Agreement, the Settlement Administrator shall promptly calculate the share of PAGA Payment to every PAGA Releasee and an estimated Individual Settlement Payment for every Class Member, to be included in the individualized Class Notice to be sent to that Class Member, and shall prepare and mail a spreadsheet setting forth those calculations to Defense Counsel no fewer than seven (7) calendar days before mailing of the Class Notice to the Class Members and PAGA Releasees. The Class Notice will inform each Class Member of his/her right to do nothing and receive an Individual Settlement Payment, dispute the number of Workweeks at Issue, submit a Request for Exclusion, or to object to Settlement as described herein.

5.1.4. Every seven (7) calendar days after mailing of the Class Notice, the Settlement Administrator shall provide regular, periodic updates to the Parties regarding the administration process. The report will list the number of Class Notices sent by U.S. Mail in the initial mailing; the number of Class Notices sent by U.S. Mail that were returned as undeliverable with forwarding address; the number of Class Notices sent by U.S. Mail that were returned as undeliverable without forwarding address; the number of Class Notices sent by U.S. Mail for which an updated mailing address was located via skip tracing; the number of Class Notices sent by U.S. Mail that were remailed; a list by name of all Class Members who timely and validly opted out by submitting a Request for Exclusion; a list by name of all Settlement Class Members who timely objected by submitting an Objection; a list of all Settlement Class Members who timely submitted a dispute of Workweeks at Issue; the number of Requests for Exclusion, Objections, and disputes of Workweeks at Issue received in the past seven days, and in total; and other relevant information as may be necessary.

5.2. **Production of Class List to the Settlement Administrator:** Subject to a Stipulated Protective Order entered into between the Parties, within thirty (30) calendar days following the date on which the Court enters the Preliminary Approval Order or approves the Class Notice, Defendants shall provide the following information to the Settlement Administrator for all Class Members and PAGA Releasees: (a) full names, last known mailing addresses, social security number, and last known telephone numbers (if known); (b) the start date and end of employment date for each Class Member that worked as a non-exempt or hourly-paid employee for Defendants during the applicable Settlement Period; (c) the number of Workweeks at Issue in the Settlement Period; (d) the total number of PAGA Pay Periods worked by each PAGA Releasee; and (e) any additional agreed-upon information necessary to perform payout calculations or identify Class Members or PAGA Releasees as provided in this Agreement ("Class List"). If timing is an issue, Defendants reserve the right to provide the Settlement Administrator the pay and time data for each Class Member, or the start and end date for each Class Member and permit the Settlement Administrator to calculate the number of Workweeks at Issue for each Class Member or the total PAGA Pay Periods for each PAGA Releasee pursuant to the instructions provided above. The information provided to the Settlement Administrator shall be marked and considered "Confidential," shall not be disclosed to anyone other than Defendants' Counsel and the Settlement Administrator. The Settlement Administrator will keep the list confidential, use it only for the purposes described herein, and return it to Defendants and/or destroy it upon completion of the settlement administration process.

5.3. **Class Notice to Class Members and PAGA Releasees**. The Class Notice will be a pre-printed notice, in substantially the form attached hereto as **Exhibit A** and as approved by the Court. The Class Notice shall notify Class Members of their option to participate in the Settlement, dispute the Workweeks at Issue credited to them, submit a Request for Exclusion, or submit an Objection, and shall provide the deadline to exercise these options. The Class Notice shall also state the number of Workweeks at Issue credited to each Class Member as a Settlement Class Member; and his or her estimated gross Individual Settlement Payment based thereon. The Parties agree that for settlement purposes only, because the Class Members are so numerous, it is impossible or impracticable to have each Class Member execute this Agreement . Accordingly, the Class Notice will advise all Class Members of the binding nature of the release of claims and any such notice shall have the same force and effect as if the Agreement were executed by each Class Member. The Parties intend that reasonable means be used to maximize the probability that all Class Members shall receive the Class Notice.

5.3.1. **Timing**. Within fifteen (15) calendar days after receiving the Class List, the Settlement Administrator shall disseminate the Class Notice to all the Class Members and PAGA Releasees by U.S. Mail at the addresses identified through the process described above. Prior to the mailing of the Class Notice, the Settlement Administrator shall access the National Change of Address ("NCOA") Database for more recent mailing addresses for each Class Member and update the addresses on file in the Class List accordingly. As to any Class Notices that are returned as undeliverable, or where the NCOA Database indicates that the last known address of any Class Member is invalid or otherwise undeliverable, the Settlement Administrator will perform a skip trace procedure and re-mail all returned, undelivered mail within five (5) business days of the date on which the Settlement Administrator is informed that a Class Notice is undeliverable, or an address is otherwise invalid. Other than the obligations set forth in this Settlement Agreement, the Parties will have no additional obligation to identify or locate any Class Member. The Parties will not be responsible for nor have any liability in connection with the provision of Class Member data to the Settlement Administrator, outside of the obligations set forth in the Settlement Agreement. The Settlement Administrator and all those working through, in concert with, or on behalf of the Settlement Administrator, shall be obligated to take all reasonable steps to maintain the confidentiality of Class Member information and to carry out the other duties enumerated in the Settlement Agreement, including calculating each Class Member's potential share of the Settlement. The Settlement Administrator shall provide Defendants' counsel and Class Counsel with weekly summary reports, as specified in Paragraph 5.1.4. The Settlement Administrator shall maintain records of its work, which will be available for inspection upon request by Defendants' counsel.

5.4. **Resolution of Disputes.** In the event of a dispute regarding the validity of a Class Member, or their number of Workweeks at Issue, the Parties will meet and confer in an effort to reach a resolution. Absent evidence rebutting Defendants' records, Defendants' records will be presumed determinative. The Parties' decision will resolve the challenge and will constitute a final and binding determination without hearing or right of appeal. All disputes relating to Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which shall have continued jurisdiction over the Settlement until all obligations contemplated have been fully carried out.

5.5. **Calculation of Employer Taxes.** Within seven (7) calendar days after the Effective Date, Settlement Administrator shall calculate all Employer Taxes and advise Defendants of the total amount that is due for Employer Taxes separate and apart from the Gross Settlement Amount. The Settlement Administrator will issue appropriate tax forms to each Settlement Class Member and PAGA Releasee consistent with the foregoing breakdown.

5.6. **Calculation of Employee's Taxes and Required Withholdings:** The Settlement Administrator shall calculate, withhold from each Individual Settlement Payment and the Service Award, and remit to applicable governmental agencies sufficient amounts as may be owed by the Settlement Class Members and Plaintiff for applicable employee taxes. The Settlement Administrator will issue appropriate tax forms to each Settlement Class Member, Plaintiff, and PAGA Releasee consistent with the foregoing breakdown. All Individual Settlement Payments paid to Settlement Class Members, and Plaintiff shall be paid in a net amount after applicable state and federal withholdings, including payroll taxes, have been deducted.

6. **CLASS MEMBERS' OPTIONS IN RESPONSE TO THE CLASS NOTICE**

6.1. **Request Exclusion from the Class Settlement.** Any Class Member who wishes to be excluded from the Settlement may seek exclusion under this Paragraph. However, no PAGA Releasee can seek exclusion from the PAGA portion of the settlement. In order to opt out and not participate in the Settlement, a Class Member must submit a written Request for Exclusion containing: (1) the Class Member's full name, mailing address, and signature; (2) the case name and/or case number of the action (i.e., *Ferriera v. Anderson Merchandisers, LLC, et al.* Case No. S-CV-0049211); and (3) an unambiguous statement indicating that the Class Member seeks to exclude himself or herself from the Settlement. The Request for Exclusion must be completed by the Class Member seeking exclusion from the Settlement or his/her legal representative. The Request for Exclusion must be submitted to the Settlement Administrator, by U.S. mail, postmarked on or before the Notice Period. Upon receipt of any Request for Exclusion within the Notice Period, the Settlement Administrator shall review the request to verify the information contained therein, and to confirm that the request complies with the requirements of this Settlement. ***The Settlement Administrator shall immediately send all Requests for Exclusion to Defendants' Counsel and Class Counsel.***

6.1.1. **Opting Out of the Class Settlement**. Any Class Member who properly submits a timely, complete and valid Request for Exclusion using this procedure specified above will not be entitled to an Individual Settlement Payment and will not be bound by the Settlement or have any right or standing to submit any Objection, appeal or comment of the Agreement or proposed settlement, except that a Class Member that is also a PAGA Releasee will be bound by the release of PAGA Claims set forth in this Agreement and will be issued the PAGA Releasee's share of the PAGA Payment, and therefore any right to receive or pursue penalties for the Released PAGA Claims pursuant to Labor Code

§2699, *et seq.* whether on an individual or representative basis shall be extinguished upon Final Approval of this Settlement.

6.1.2. **Not Opting Out of the Class Settlement.** A Class Member who does not submit a timely and valid Request for Exclusion in the manner and by the deadline specified above shall be deemed to have waived his or her right to be excluded from the Settlement, and shall be bound by all the terms and conditions of this Settlement, including all orders issued pursuant thereto, and shall also be bound by the Court's Order enjoining all Settlement Class Members from pursuing, or seeking to reopen, any of the Released Claims against the Released Parties.

6.1.3. **Until Submission of Request for Exclusion.** Any Class Member who fails to submit a timely, complete and valid Request for Exclusion shall be barred from opting out of the proposed settlement or Settlement Agreement. The Settlement Administrator shall not review nor consider any Request for Exclusion postmarked after the end of the Notice Period. It shall be conclusively presumed that, if any Request for Exclusion is not postmarked on or before the end of the Notice Period, or is not received by the Settlement Administrator, the Class Member did not make the request in a timely or valid manner. Under no circumstances shall the Settlement Administrator have the authority to extend the deadline for Class Members to submit a Request for Exclusion.

6.1.4. **Weekly Updates**. The Settlement Administrator's weekly update shall provide the number of Request for Exclusions it receives that week as well as the total number of Request for Exclusions received to date.

6.2. **Objection to the Class Settlement**. A Class Member who does not submit a timely and valid Request for Exclusion will have the right to submit a written Objection during the Notice Period. The written Objection must contain: (1) the objector's full name and mailing address, and signature; (2) the case name and/or case number of the action (i.e., *Ferriera v. Anderson Merchandisers, LLC, et al.* Case No. S-CV-0049211) (3) a statement indicating that the Settlement Class Member objects to the Settlement; (4) the specific ground(s) for the objection(s); (5) a statement indicating whether or not they are represented by counsel (if so, the statement shall state the name and contact information of said counsel); and (6) a statement indicating whether or not the Objector will appear at the Final Approval Hearing. The Settlement Administrator shall immediately send all objections to Defendants' Counsel and Class Counsel.

6.2.1. The written Objection must be submitted to the Settlement Administrator, by U.S. Mail, postmarked on or before the Response Deadline. The Settlement Administrator shall then promptly forward any Objections that it receives to Class Counsel and Defense Counsel. A Settlement Class Member may still appear and object to the Settlement at the Final Approval Hearing even if he or she does not submit a written objection. A Settlement Class Member who does not object to the Settlement by either tendering an objection at the Final Approval Hearing or submitting a written Objection in the manner and by the deadline specified above shall be deemed to have waived all objections and shall be foreclosed from making any objections to the Settlement, whether by appeal or otherwise. Settlement Class Members who fail to timely submit an Objection in this manner shall be foreclosed from making any objection to this Settlement Agreement *after* the Notice Period. If the Court permits, a Settlement Class Member may appear at the Final Approval Hearing and orally present their Objection. Only Settlement Class Members may object to the Settlement. PAGA Releasees will not have the opportunity to opt out or object to the PAGA Payment and/or release of PAGA Claims although the PAGA Payment will be subject to Court approval.

6.2.2. Counsel for the Parties shall file any responses to any Objections at the time the Motion for Final Approval is filed. Class Members may, prior to the Final Approval Hearing, withdraw their Objections in a writing to the Settlement Administrator, which may then be filed with the Court.

6.2.3. All Parties and their counsel will not seek to solicit or otherwise encourage any Class Member to submit an Objection, nor encourage any Class Member to appeal from the final judgment.

6.2.4. If a Class Member submits both a Request for Exclusion and a written Objection, the Request for Exclusion shall be void and the Class Member shall be deemed part of the Settlement Class and bound by the Judgment upon approval by the Court.

6.3. **Workweek Disputes**. A Settlement Class Member must submit a written dispute to the Settlement Administrator in order to dispute the number of Workweeks at Issue credited to him or her ("Workweek Dispute") which must: (1) contain the Settlement Class Member's full name, mailing address, and signature; (2) contain the case name and case number of the action (i.e., *Ferriera v. Anderson Merchandisers, LLC, et al.* Case No. S-CV-0049211); (3) contain an unambiguous statement indicating that the Settlement Class Member disputes the Workweeks at

Issue credited to him or her and indicating what number of Workweeks he or she contends is correct or incorrect; and (5) attach documentation and information supporting his or her contention about the correct number of Workweeks that should be credited to him or her. Absent evidence rebutting Defendants' records, Defendants' records will be presumed determinative. The Workweek Dispute must be submitted to the Settlement Administrator, by U.S. mail, postmarked on or before the Notice Period. The Settlement Administrator shall refer all disputes to Class Counsel and Defense Counsel and shall also examine the records and verify the calculation or provide a corrected calculation to counsel for the Parties where possible. The Parties will meet and confer in an effort to reach a resolution. The Parties' determination of disputes will be a final and binding determination without hearing or right of appeal. In the event that the Parties are unable to resolve the dispute, they shall present it to the Court for resolution.

6.3.1. If a Class Member timely disputes the number of Workweeks at Issue listed on his or her Class Notice, the dispute will be submitted to the Settlement Administrator, who will examine the records and either verify the calculation or provide a corrected calculation. Disputes must be in a writing that is submitted to the Settlement Administrator, postmarked on or before the Notice Period. The Weeks at Issue dispute must be submitted to the Settlement Administrator, by U.S. Mail, postmarked on or before the final date of the Notice Period.

6.3.2. In the event that any person self-identifies as a Class Member that was not included on the Class List, he or she must submit evidence supporting this contention to the Settlement Administrator or Class Counsel. The Parties shall resolve the claim pursuant to the procedures and standards set forth in Paragraph 6.3, as applicable.

6.3.3. All disputes relating to the Parties' or Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which shall have continuing jurisdiction over the Settlement Agreement until all obligations contemplated have been fully carried out.

6.4. **No Retaliation.** Defendants shall not retaliate against any Class Member for participating in or opting out of the Settlement. All Parties and their counsel will not seek to solicit or otherwise encourage any Class Member to submit a Request for Exclusion.

7. **FUNDING AND DISTRIBUTION OF THE SETTLEMENT**

7.1. **Funding of Settlement**. Within **seventeen (17) business days** after the Effective Date, Defendants shall pay the settlement sum of $175,00.00 and the amount that the Settlement

Administrator advises is due for Employer Taxes, by transferring these amounts to the QSF account established by the Settlement Administrator for administration of the Settlement. The successful delivery of the Gross Settlement Amount to the Settlement Administrator plus its share of Employer's Taxes shall be deemed to have satisfied all the terms and conditions under this Settlement, shall be entitled to all protections afforded to Defendants, shall constitute full and complete discharge of the entire obligation of Defendants, and will trigger the release of the Released Class Claims, Released PAGA Claims, and Plaintiff's Released Claims under this Agreement. Additionally, no Released Parties shall have any further obligation or liability to the PAGA Releases or Settlement Class Members under this Agreement.

7.2. **Distribution of the Settlement Funds**. The Settlement Administrator shall distribute the Individual Settlement Payments and PAGA Payments to Settlement Class Members and PAGA Releasees, the Service Award to Plaintiff, Settlement Administration Costs to the Settlement Administrator, and Attorneys' Fees and Costs to Class Counsel, within **fifteen (15) calendar days** of receipt of settlement funds from Defendants.

7.3. **No Claims Resulting from Payments.** No person shall have any claim of any kind whatsoever against the Plaintiff, Defendants, Released Parties, the Settlement Administrator, Defense Counsel, and/or Class Counsel, or any other agent designated by the Plaintiff or Defendants based upon distribution of the Individual Settlement Payments and the PAGA Payments (including, without limitation, the Attorneys' Fees and Costs, Service Award, etc.) made substantially in accordance with this Settlement or further orders of the Court. The Settlement Administrator shall be deemed to have timely distributed all such payments to the Settlement Class Members if it places in the mail Individual Settlement Payments for all Settlement Class Members and the PAGA Payments to the PAGA Releasees and the State of California LWDA by the applicable deadlines set forth in this Settlement or by the deadlines set by the Court. Similarly, neither Plaintiff nor Defendants shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

7.4. **PAGA Check.** Payment to the PAGA Releasees of their portion of the PAGA Payment shall be paid to each of them by way of a check ("PAGA Check"), which may be combined with the Class Settlement payment. The PAGA Check represents the portion of the civil penalties awarded directly under PAGA and may be included in conjunction with the Class

Settlement payment, or separately. The Settlement Administrator will assess how best to distribute the PAGA Check.

7.5. **Class Settlement Payment**. Any Class Member will become a Settlement Class Member and receive an Individual Settlement Payment unless he or she opts out of the Settlement by timely submitting a valid Request for Exclusion pursuant to the terms of this Agreement.

7.6 **Language on Settlement Check.** Pursuant to *Amaro v. Anaheim Arena Mgmt., LLC,* 69 Cal. App. 5th 521, 528 (2021), the Parties agree that an opt-in process is not needed for Settlement Class Members to release their FLSA claims. As the Court held in *Amaro,* "The FLSA's written consent requirement does not apply to a release in a class settlement of state wage and hour claims." In the event the Court Orders otherwise, the Parties agree that each Individual Settlement Payment check shall contain language in substantially the following form: "I understand that by cashing, depositing, or otherwise negotiating this check I will be deemed to have opted into *DANIELLE FERRIERA, on behalf of herself and others similarly situated v. ANDERSON MERCHANDISERS, LLC, ET AL. et al.,* Case No. S-CV-0049211, for purposes of the federal Fair Labor Standards Act (FLSA) release to the extent required to do so under applicable law for purposes of the court-approved settlement therein." In the event it is ordered by the Court to include such language, Class Counsel will notify the Settlement Administrator.

7.7. **No Credit Toward Benefit Plans**. Except as otherwise required by applicable plan documents, the Individual Settlement Payments, Service Award, and PAGA Payment made to Plaintiff, Settlement Class Members and PAGA Releasees under this Settlement shall not be utilized to calculate any additional benefits under any benefit plans to which any Settlement Class Member may be eligible including, but not limited to: retirement plans, profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation benefit plans, sick leave plans, PTO plans, pension plans, unemployment compensation, any perceived plans related to the Employee Retirement Income Security Act ("ERISA"), and/or any other benefit plan. It is the Parties' intention that this Settlement will not affect any rights, contributions, or amounts to which Settlement Class Members may be entitled under any benefit plans.

8. RELEASED CLAIMS

8.1. Upon Defendants' deposit of the Gross Settlement Amount with the Settlement Administrator, Plaintiff and all other Settlement Class Members, on behalf of themselves, as well as on behalf of all of their agents, heirs, beneficiaries, devisees, legatees, grantees, transferees, executors, administrators, trustees, conservators, guardians, estates, personal representatives, successors-in-interest, and assigns, fully and forever release, acquit, and discharge the Released Parties from all Released Class Claims. Upon Defendants' deposit of the Gross Settlement Amount with the Settlement Administrator, Plaintiff, the State of California and all other PAGA Releasees, on behalf of themselves, as well as on behalf of all of their agents, heirs, beneficiaries, devisees, legatees, grantees, transferees, executors, administrators, trustees, conservators, guardians, estates, personal representatives, successors-in-interest, and assigns, fully and forever release, acquit, and discharge the Released Parties from all Released PAGA Claims

8.2. **Release of Settlement Class Members' Claims**. After Defendants fund the GSA, each Settlement Class Member will be deemed to have released, waived, and discharged the Released Parties from his or her Released Claims as defined in the Settlement. Each Settlement Class Member further covenants and agrees that, since each Settlement Class Member is settling disputed claims, a Settlement Class Member will not accept, recover, or receive any overtime compensation, back pay, liquidated damages, exemplary damages, punitive damages, penalties, interest, attorneys' fees and costs, other damages, or any other form of relief based on any Released Claims settled in the Action, or in connection with any other individual, class, collective, representative, administrative, or arbitral proceeding pursued by any individual, class, or federal, state or local governmental agency against the Released Parties for Released Claims during the Settlement Period. Settlement Class Members further acknowledge and agree that they are enjoined from pursuing any Released Claims settled as part of this Settlement and will not file, cause to be filed, or affirmatively join or opt in, as a collective member, beneficiary or other participant in any action that pursues any claim released under the Released Claims and will not seek to obtain recovery based on the facts giving rise to the claims pled of which could have pled in the Action. If involuntarily joined in any Action against Released Parties regarding claims released under the Released Claims, Settlement Class Members agree to waive their rights to any recovery that may result from such action or proceedings, and not to pursue claims on their own behalf.

8.2.1. **Settlement Class Release:** Each Settlement Class Member who been issued a settlement check for their Individual Settlement Payment shall hereby knowingly, voluntarily and completely release the Released Parties, as defined in this Settlement, from/for all the Released Claims they have against the Released Parties during the Settlement Period and/or PAGA Settlement Period. Settlement Class members are bound by the Settlement regardless of whether they cash their Individual Settlement Payment.

8.2.2. **Plaintiff's General Release**: For the purpose of implementing a full and complete release and discharge, the Plaintiff expressly acknowledges that the release given in this Agreement is intended as a general release of all claims, including, but not limited to, those that she did not know or suspect at the time of execution hereof, regardless of whether the knowledge of such claims, or the facts upon which they might be based, would materially have affected the settlement of the Action. Plaintiff expressly acknowledges that the consideration given under this Settlement is also for the release of those claims and contemplates the extinguishment of any such claims against the Released Parties. Plaintiff shall knowingly, voluntarily and completely release the Released Parties as defined in this Settlement from/for all the Plaintiff's Released Claims. Other than the Complaint, First Amended Complaint, and the LWDA Letter, Plaintiff represents she has no other action, administrative complaint, or charge against the Released Parties in any local, state or federal court or administrative agency. Plaintiff further acknowledges that all claims raised in the Complaint, First Amended Complaint, Operative Complaint and the LWDA Letter shall be fully and finally extinguished by virtue of this Settlement and the Court's Final Approval Order. Plaintiff further represents that she will not bring any action in the future in which she seeks to recover any damages from Defendants or the Released Parties relating to or arising from Plaintiff's employment with Defendant Anderson, other than an action to enforce her rights under this Settlement. Plaintiff is bound by the Settlement regardless of whether she cashes her settlement check.

8.2.3. **Release of PAGA Claims**. Upon the Court's approval of the PAGA Payment and this release of PAGA Claims, Plaintiff and the PAGA Releasees and all persons purporting to act on the PAGA Releasees' behalf or purporting to assert a claim under or through them, hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all PAGA Claims premised in whole or in part on any of the claims set forth in the Operative Complaint and LWDA Letter that arose at any time during the PAGA Settlement Period. The PAGA Releasees will be issued a check for their share of the PAGA Payment and will not have the opportunity to opt out of, or object to, the PAGA Payment and release of the PAGA Claims set forth in this Paragraph. The PAGA Releasees are bound by the release of the PAGA Claims regardless of whether they cash their PAGA Payment Check.

8.2.4. **Release of Claims by Class Counsel**. Upon receipt of the Attorneys' Fees and Costs, as ordered by the Court on Final Approval of the Class Settlement, Class Counsel shall fully and finally release Defendants and the Released Parties from any and all claims for attorneys' fees and expenses arising from the Action, and for attorneys' fees and expenses for any claims released by the Settlement Class Members related to the Action, whether known and unknown, whether under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, except as to enforcement of this Settlement Agreement.

8.3. **1542 Waiver and Additional Release**. In addition to the above, as of the Effective Date, Plaintiff hereby waives and releases any and all provisions, rights, or benefits conferred by section 1542 of the California Civil Code, or by any other similar, comparable or equivalent laws of any other state, territory, or province of the United States or other jurisdiction, or principle of common law, that are similar, comparable or equivalent to §1542 of the California Civil Code to the fullest extent that they may lawfully waive such rights or benefits with respect to the Released Claims. Section 1542 of the California Civil Code provides as follows:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT 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 THE DEBTOR OR RELEASED PARTY.**

Plaintiff expressly acknowledges and shall be deemed by operation of the Final Approval Order to have acknowledged, that the foregoing waiver was separately bargained for and is a material element of the Settlement and that she has been advised by her attorney(s) of the contents and effect of Section 1542. Plaintiff may hereafter discover facts other than or different from those which she knows to be true with respect to the Released Claims, but Plaintiff hereby expressly fully, finally, and forever settles and releases any known or unknown, suspected, or unsuspected, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, without regard to subsequent discovery or existence of such different or additional facts. The 1542 Waiver does not apply to Class Members,

8.4. **No Additional Attorneys' Fees or Costs.** The Parties agree to bear its/their own attorneys' fees and costs related to the Action except as specifically provided above with respect to the Attorneys' Fees and Costs, and as specifically provided in this Settlement Agreement.

8.5. **Labor Code Sections That Do Not Apply to Releases.** The Parties agree that this is a settlement of disputed claims not involving undisputed wages and that Labor Code Section 206.5 is therefore inapplicable. The Parties further agree that California Labor Code sections 206.5 and 2804 do not invalidate any provision of this Agreement, because among other things, the claims, Plaintiff's Released Claims, Released Class Claims, and Released PAGA Claims are disputed and contested, and the Settlement was bargained for at arms' length and approved by the Court.

8.6. **Binding Effect of Agreement on Settlement Class Members.** Upon Defendant's funding of the Gross Settlement Amount, all Settlement Class Members shall be bound by this Agreement, whether they cash their settlement check or not, and the Released Claims shall be released as against the Released Parties to the greatest extent permitted by law. In addition, unless a Class Member effectively submits a Request for Exclusion to opt out of the Settlement, he or she shall be bound by the Court's Order enjoining all Settlement Class Members from pursuing or seeking to reopen Released Claims against the Released Parties to the greatest extent permitted by law. Upon Defendant's funding of the Gross Settlement Amount, all PAGA Releasees shall be bound by the release of the PAGA Claims and the PAGA Claims shall be released as against all the Released Parties to the greatest extent permitted by law.

9. **<u>DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL</u>**

9.1. **Cooperation Clause**. The Parties agree to cooperate fully, completely, and promptly with each other to accomplish the terms of the Agreement, including, but not limited to, execution of documents and taking such actions as may be reasonably necessary to implement the terms of the Agreement. The Parties agree to engage in good faith and reasonable efforts, including all efforts contemplated by this Agreement and any other reasonable efforts that may become necessary by order of the Court, or otherwise, to acquire a Final Approval Order and to enforce this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel and Plaintiff will, with the assistance and cooperation of Defendants and Defendants' counsel, take all necessary steps to secure the Court's Final Approval of the Settlement, which may include promptly filing stipulations, declarations, or requests that the Court deems necessary, and making such appearances as the Court may deem necessary to secure the total and complete approval of this Settlement and the terms set forth herein.

9.2. **Confidentiality and Non-Disparagement.** Except as requested by the Court, the Parties and attorneys will keep the Settlement confidential through the filing of Plaintiff's Motion for Preliminary Approval. Thereafter, the Parties will agree to make no comments to the media or otherwise publicize the terms of the Settlement, including no reference to the case, the Defendants, or any description regarding the Defendants' business, except Class Counsel may reference publicly-available information about the case in their declarations describing their qualifications as counsel filed in other cases. This provision shall not restrict Class Counsel from responding to inquiries posed by Class Members. To that end, prior to filing of the Motion for Preliminary Approval, Class Counsel shall not discuss the terms of the Agreement or the negotiations leading to Settlement with any person other than the Plaintiff, except that Class Counsel may discuss the general terms of the Settlement with the Class Members. Additionally, the Parties agree that prior to the filing of a Motion for Preliminary Approval of this Settlement, the only permitted disclosures of this Agreement are those mutually agreed to by the Parties and as requested by the Court. This provision shall not preclude Defendants from making any necessary corporate disclosures.

9.2.1. Plaintiff agrees that she shall not promote, or publicize the filing of the Action, the Parties' Settlement, this Agreement and its terms, or the negotiations leading to this Agreement with anyone other than the Court. Notwithstanding the foregoing, Plaintiff may disclose the terms of this Agreement to her spouse, and to those persons to whom disclosure is necessary for the preparation of tax returns and other financial reports. Plaintiff agrees that she may disclose the terms of the Settlement to her spouse, but only so long as she first obtains her spouse's express agreement to maintain that information in confidence. This Paragraph shall not limit Plaintiff's ability to disclose the Action, this Settlement Agreement, and its terms, to the extent ordered by a court of competent jurisdiction or otherwise required by law.

9.2.2. The Parties and their counsel agree that they will not issue any press releases, engage in any communications, or take any other action that would directly or indirectly provide the press or media or any litigation reporting service with information about the Action, this Agreement, or the Parties' Settlement or would otherwise enable or allow the press or other media or any litigation reporting service to learn or obtain such information. Plaintiff and Class Counsel also agree not to post any information concerning this Settlement on the internet or social media, including Facebook, Twitter, Instagram and Snapchat. The Parties and their counsel further agree that they will not post any information regarding this Agreement or the Settlement on their internet websites or take any such action that would cause or allow such information to be posted on any other internet website or on the web, except Class Counsel may reference publicly-available information about the case in their declarations describing their qualifications as counsel filed in other cases, even if such references result in a third party website permitting access to such declarations.

9.2.3. Notwithstanding the foregoing, Defendants and its counsel shall not be precluded from making any disclosures required by law or in connection with an SEC filing, under generally accepted accounting principles, or in Defendants' judgment are required under the ordinary course of business, and Defendants shall also have the right to respond in reasonably general terms to inquiries from the media and investment-related entities.

9.3. **Communication by Counsel.** The Parties and their counsel agree that they shall not seek to solicit or otherwise encourage Class Members to submit a Request for Exclusion or an objection to the Settlement or to appeal from the Preliminary Approval Order and Order Approving PAGA Settlement, Final Approval Order, or Final Judgment. Nothing shall prevent Class Counsel from responding to inquiries from Class Members and PAGA Releasees. For its part, Defendants agree that they shall not discourage Class Members from participating in the Settlement and shall refer any questions to the Settlement Administrator.

9.4. **Preparation of Approval Documents.** Class Counsel shall draft and file a motion seeking preliminary approval of the Settlement ("Motion for Preliminary Approval"), and if the Settlement is granted preliminary approval, a motion seeking final approval of the Settlement ("Motion for Final Approval"). Class Counsel may bring a separate motion for approval of Class Counsel's Attorneys' Fees and Costs and for approval of the Service Award , or they may request such approval as part of the Motion for Final Approval, at Class Counsel's option. Prior to filing the Motion for Preliminary Approval and Motion for Final Approval, respectively, Class Counsel will provide Defense Counsel with drafts for review and approval. Parties agree to meet and confer if additional time is needed to complete drafting of approval documents and will provide each other a reasonable amount of time to complete the drafting of said documents. Class Counsel need not provide Defense Counsel with drafts of the separate motion for approval of Class Counsel's Attorneys' Fees and Costs and for approval of the Service Award. The Parties will make good faith efforts to jointly agree on the contents and form of the contemplated proposed orders, which will be submitted to the Court in conjunction with the aforementioned motions. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, including responding to challenges by any third parties, and shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement described in this Settlement.

9.4.1. **Declaration from Settlement Administrator**: Class Counsel shall provide to the Court, at or before the Final Approval Hearing, the Administrator's Declaration.

9.5. **Resolution of Disputes Related to Drafting**: In the event of a dispute between Class Counsel and Defense Counsel regarding the content or form of the above-mentioned motions, the contemplated proposed orders, and/or any drafting issues related to this Settlement, the Parties will meet and confer in good faith to resolve the issue. In the event the issue can't be resolved through good faith meet and confer efforts.

10. **MOTION FOR PRELIMINARY APPROVAL**

10.1. As soon as reasonably possible after the execution of this Agreement, Class Counsel shall submit this fully executed Settlement to the Court and shall file a Motion for Preliminary Approval, requesting a Preliminary Approval Order that contains the following provisions:

10.1.1 Preliminarily approving the Settlement in its entirety, including the PAGA Payment and the release of the PAGA Claims set forth in this Agreement, and finding its terms as fair, reasonable and adequate to the members of the Class and the PAGA Releasees;

10.1.2. Preliminarily approving and certifying the Class for settlement purposes only;

10.1.3. Permanently enjoining all Class Members from pursuing or seeking to reopen the Released Claims against Defendants and the Released Parties, and enjoining all PAGA Releasees from pursuing or seeking to reopen the PAGA Claims against Defendants and the Released Parties;

10.1.4. Scheduling a Final Approval Hearing for consideration of final approval of this Settlement Agreement;

10.1.5. Preliminarily approving Plaintiff and Class Counsel to represent the Settlement Class for settlement purpose only;

10.1.6. Preliminarily approving the allocation and distribution plan of the GSA as stated in this Settlement Agreement;

10.1.7. Approving the form of the proposed Class Notice, and finding that the proposed method of disseminating the Class Notice meets the requirements of due process and is the best notice practicable under the circumstances;

10.1.8. Directing the delivery of the Class Notice to Class Members;

10.1.9. Establishing the procedures and the deadline by which Settlement Class Members may assert objections to the Settlement, seek exclusion from the Settlement, and/or dispute their Workweeks at Issue; and

10.1.10 Appointing and approving the Settlement Administrator as chosen by the Parties and approved by the Court, to administer the claims and settlement payment procedures required by this Settlement Agreement.

10.2. Counsel for Defendants will be given an opportunity to review and comment on the Motion for Preliminary Approval of the Settlement and all supporting papers prior to being filed with the Court, and such comments will be implemented to the extent reasonable. Plaintiff will provide a draft copy to Defendants for review no later than eleven (11) calendar days before the filing date.

11. **MOTION FOR FINAL APPROVAL ORDER AND FINAL JUDGMENT**

11.1. **Motion for Final Approval**: If the Settlement is preliminarily approved by the Court, the Parties shall thereafter request that the Court enter a Final Approval Order, which grants final approval of the Settlement and enters judgment thereon, and includes the following provisions:

11.1.1. Finally approving the Settlement and determining the terms thereof to be fair, reasonable, just, adequate, and in the best interests of the Settlement Class Members;

11.1.2. Confirming certification of the Class for settlement purposes only;

11.1.3. Directing the Parties to implement and carry out the terms and provisions of the Settlement;

11.1.4. Finding that the dissemination of the Class Notice in the form and manner ordered by the Court was accomplished as directed, and met the requirements of due process;

11.1.5. Finally approving Class Counsel's application for an award of Attorneys' Fees and Costs;

11.1.6. Awarding Settlement Administration Costs to the Settlement Administrator;

11.1.7. Awarding the Service Award to the Class Representative;

11.1.8. Resolving and settling all the Released Claims by the Class Representative and all Settlement Class Members, as herein above provided, with the release precluding them from instituting, commencing, or continuing to pursue, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of himself or herself, or in any other capacity of any kind whatsoever, any action in this Court, any other state court, or any arbitration or mediation proceeding or any other similar proceeding, against any of the Released Parties, that asserts any Released Claims;

11.1.9. Releasing, discharging, and fully extinguishing the Released Parties from any and all liability with respect to the Released Class Claims and Released PAGA Claims as hereinabove provided;

11.1.10. Entering a final judgment that permanently enjoins and bars all Settlement Class Members from reopening or prosecuting any and all of the Released Class Claims and Released PAGA Claims and the Plaintiff's Released Claims against any of the Released Parties, on satisfaction of all payments and obligations hereunder; and

11.1.11. Preserving continuing and exclusive jurisdiction over all matters related to the administration and consummation of the terms of this Settlement and enforcement of the Final Approval Order.

11.2. Counsel for Defendants will be given an opportunity to comment on the Motion for Final Approval of the Settlement and supporting papers prior to being filed with the Court, and such comments will be implemented to the extent reasonable. Class Counsel will provide a draft copy to Defendants for review no later than eleven (11) calendar days before the filing date.

11.3. **Entry of Final Judgment**: With the Motion for Final Approval, Plaintiff (or Plaintiff jointly with Defendants) will request that the Court enter the Final Approval Order (which includes a final judgment) as agreed to by the Parties.

12. **VOIDING THE SETTLEMENT AGREEMENT**

12.1. **Right of Revocation.** Defendants shall retain the right, in the exercise of its sole discretion, to nullify the Settlement if Class Members representing more than an aggregate total of 5% of the Class Members opt out of the Settlement. Defendants must provide written notice to Class Counsel of its withdrawal within ten (10) business days after the later of the Notice Period and the Settlement Administrator's providing Defendants with the final number of Class Members that have excluded themselves or otherwise opted out of the Settlement. Such rescission shall have the same effect as a termination of this Settlement Agreement for failure to satisfy a condition of settlement, and the Agreement shall become null and void and have no further force or effect, and the Class certified pursuant to this Settlement Agreement will be decertified for all purposes. The Settlement Administrator shall report to the Parties' respective counsel after the mailing of the Class Notice regarding the percentage of Class Members who have opted out, as set forth above. All signatories and their counsel agree not to encourage opt-outs or Requests for Exclusions. Class Counsel and Defendants specifically agree not to solicit opt-outs, directly or indirectly, through any means. If Defendants exercise their right to terminate, the Settlement will be void ab initio and of no force or effect, and will not be admissible in any judicial, administrative, or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural. In addition, none of the Parties to this Settlement will be deemed to have waived or assigned any claims, objections, defenses, or arguments in this action, including with respect to the issue of class certification. If Defendants choose to terminate the Settlement Agreement under this provision, the Parties may re-negotiate settlement terms. If Defendants choose to terminate the Settlement Agreement under this provision, it must pay the Settlement Administration costs incurred.

12.2. **Material Conditions.** A failure of the Court to approve any material condition of this Agreement that affects a fundamental change to the Settlement, excluding the proposed Attorneys' Fees and Costs, the Service Award, and/or Settlement Administration Costs, shall render the entire Settlement void and unenforceable as to all Parties. Any of the Parties may declare the Settlement void and unenforceable, on the basis of a failure of the Court to approve any material condition, by giving written notice to all Parties within fourteen (14) calendar days of learning of that failure. If any of the Parties exercise their option to terminate the Agreement under this Paragraph, the certification of the class provided for herein shall be vacated and the litigation shall proceed without prejudice to any Party's position on the issue of class certification, adequacy of representation, standing, or any other issue. Prior to enforcing this Paragraph, the Parties shall meet in good faith to resolve issues pursuant the Cooperation Clause. Specifically, the Parties must meet and confer in good faith to ensure that the Parties are able to completely satisfy all the material terms and conditions as required by the Agreement, as modified by the Court's failure to approve the material condition(s). In the event the Parties are unable to resolve/remedy their issues through meet and confer efforts, they will seek assistance from Eve Wagner to resolve said issues before voiding or nullifying the Settlement.

13. MISCELLANEOUS PROVISIONS

13.01. **Voluntariness.** This Settlement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

13.02. **No Prior Assignment.** None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Plaintiff, the State of California, Class Counsel, or Defense Counsel without the express written consent of each Party. Plaintiff expressly warrants that she has not transferred to any person or entity any right or cause of action, or claim released by this Settlement.

13.03. **Additional Representation and Warranties.** Class Counsel and Plaintiff jointly and severally represent and warrant to Defendants that there are no attorneys beyond those named as Class Counsel who have claims for fees arising out of the Action or the Settlement contemplated hereby, aside from Class Counsel's obligations, if any, to pay referral fees or other fee splitting arrangements. With respect to themselves, each of the Parties to this Settlement and or their agent or counsel represents, covenants and warrants that (a) they have full power and authority to enter into and consummate all transactions contemplated by this Settlement and have duly authorized the execution, delivery and performance of this Settlement; and (b) the persons executing this Settlement have the full right, power and authority to enter into this Settlement on behalf of the party for whom he/she has executed this Settlement, and the full right, power and authority to execute any and all necessary instruments in connection herewith, and to fully bind such party to the terms and obligations of this Settlement.

13.04. **Service or Written Notice**. Whenever, under this Settlement, a person must provide service or written notice to Defendants, Defendants' Counsel, or Class Counsel, such service or notice shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice to the other Parties in writing. As to Class Counsel: Samuel Wong, Kashif Haque, Jessica Campbell, **Aegis Law Firm, P.C.** at 9811 Irvine Center Dr STE 100, Irvine, CA 92618 (e-mail: swong@aegislawfirm.com, khaque@aegislawfirm.com, jcampbell@aegislawfirm.com). As to Counsel for Defendants: Wesley Stockard, or Hovannes Nalbandyan, **Littler Mendelson, P.C**., 633 W. Fifth Street, 63rd Floor, Los Angeles, CA 90071 (e-mail: wstockard@littler.com, Hnalbandyan@littler.com).

13.05. **Severability**. If any portion of this Settlement is held legally invalid or unenforceable, such event will not render invalid or unenforceable any other portion of this

Settlement, and the remainder of this Settlement will be read as though the invalid or unenforceable portion were omitted; provided, however, that such reading will not materially frustrate the intent of the Parties as evidenced in this Settlement. The Parties to this Settlement agree, covenant, and represent that each and every provision of this Agreement shall be deemed to be contractual, and that they shall not be treated as mere recitals at any time or for any purpose. Therefore, the Parties further agree, covenant, and represent that each and every provision of this Settlement shall be considered severable, except any of the "Released Claims" or "Plaintiff's Released Claims" definitions and/or the release provisions of Paragraph 2.33, 2.36, and 8 of this Settlement. If a court of competent jurisdiction finds any provision, other than the "Released Claims" or "Plaintiff's Released Claims" definitions and/or the release provisions of Paragraphs 2.33, 2.36, and 8 of this Settlement, or part thereof to be invalid or unenforceable for any reason, that provision, or part thereof, shall be severed from the Settlement, and all of the remaining provisions of this Settlement shall remain in full force and effect. If a court of competent jurisdiction finds the release definitions and provisions of this Settlement to be unenforceable or invalid as against a specific Settlement Class Member, then this Settlement shall become voidable as to that specific Settlement Class Member and the payments to be made pursuant to this Settlement to that Settlement Class Member shall be added back to the Net Settlement Amount to be distributed *pro rata* to the remaining Settlement Class Members.

13.06. **Continuing Jurisdiction**. The Court that approves the Agreement shall retain continuing and exclusive jurisdiction over the Parties to this Agreement, and all Settlement Class Members, for the administration and enforcement of this Agreement.

13.07. **Governing Law**. The enforcement of this Agreement shall be governed and interpreted by and under the laws of California, without regard to otherwise applicable principles of conflicts of laws, whether or not any Party is or may hereafter be a citizen or resident of, or may have been employed by Defendants in, another state.

13.08. **Entire Agreement.** This Agreement (including Exhibits hereto) sets forth the entire agreement of the Parties with respect to its subject matter and supersedes any and all other prior agreements, understandings, and all negotiations leading up to the execution of this Settlement Agreement, whether oral or written, including the MOU that was fully executed by the Parties on October 29, 2023, regarding the subjects covered herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Agreement other than those expressly set forth or referred to herein. The Parties acknowledge that no representations, inducements, warranties, promises, or statements relating to the subjects covered herein, oral or otherwise, have been made by any of the Parties that are not embodied or incorporated by reference herein. Except as otherwise set forth in this Agreement, any notice, order, judgment, or other exhibit that requires approval of the Court must be approved without material alteration that substantially changes or increases the cost of compliance with this Agreement in order for this Settlement to become effective.

13.09. **Amendments/Modifications/Extensions of Time**. This Agreement (including Exhibits hereto) constitutes the entire agreement of the Parties concerning the subjects contained herein. This Agreement may not be changed or altered except in writing signed by or on behalf of all Parties and upon approval by the Court, except that the Parties, acting through counsel, may agree upon a reasonable extension of time for deadlines and dates reflected in this Agreement. No waiver, modification or amendment of this Agreement shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent in such written waiver, modification or amendment, subject to any required Court approval. To the extent any non-substantive amendments or modifications are needed to enforce the Agreement, and the Parties' counsel agree that the amendments are non-substantive, this Agreement may be amended or modified only by a written instrument signed by both Defense Counsel and Class Counsel or their successors-in-interest.

13.10. **Waiver of Compliance.** Any failure by any Party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed or operate as a waiver of, or estoppel with respect to, any subsequent or other failure of any of the other provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any of the provisions of this Agreement.

13.11. **Binding Agreement / Successors**. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their affiliates, agents, employees, beneficiaries, heirs, executors, administrators, successors, predecessors and assigns, and upon any corporation, partnership or other entity into or with which any Party hereto may merge, combine, or consolidate.

13.12. **Construction.** The Parties have had a full opportunity to negotiate the terms and condition of this Agreement, have both contributed to the preparation of this Agreement, and have engaged in arms-length negotiations with each other. Accordingly, this Agreement shall not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties. The Parties explicitly recognize and adopt California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), and/or applicable federal law counterpart, which provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence and agree that no such extrinsic oral or written representations or terms shall modify, vary, or contradict the terms of this Agreement.

13.13. **Fair Settlement.** Plaintiff, Defendants, Class Counsel, and Defense Counsel believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms' length negotiation, taking into account all relevant factors, current and potential, and is consistent with public policy, and fully complies with applicable provisions of law.

13.14. **Captions, Headings, and Exhibits**. The captions and section numbers in this Agreement are inserted for the reader's convenience or reference, and in no way define, limit, construe, or describe the scope or intent of the provisions of this Agreement. The captions or headings shall not affect the construction or interpretation of any part of this Agreement. The terms of this Agreement include the terms set forth in the **Exhibit A** attached, which are incorporated by this reference as though fully set forth herein. The Class Notice to this Agreement is an integral part of the Settlement.

13.15. **No Reliance on Representations.** The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, or other third parties with regard to the subject matter or effect of this Agreement or otherwise, other than those specifically stated in this written Agreement, or any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters. Other than the contents of this Agreement, no representations, warranties, or inducements have been made to any Party concerning this Agreement. This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements and understandings, written or oral, between the Parties pertaining to the subject matter hereof, including the MOU that was fully executed by the Parties on October 29, 2023.

13.16. **Destruction and/or Return of Evidence.** Upon demand, but no sooner than the date of six months after distribution of the Gross Settlement Amount to the Settlement

Administrator and within the requirements under the California Rules of Professional Conduct, the Parties and their counsel shall destroy all documents produced during formal or informal discovery, which necessarily include all confidential documents related to the Action, the litigation, and this Settlement.

13.17. **Acknowledgement of Future Legislation**. Each Party recognizes that legislation, could affect the outcome of the Action. The Parties, nevertheless, enter into this Settlement to avoid risk of loss and to avoid uncertainty with the interpretation, nature, and applicability of future legislation, and agree that any further legislation will not affect the terms or conditions of this Settlement.

13.18. **Signatures/Authority to Execute and Sign**. The person or persons signing this Agreement on behalf of Defendants represents and warrants that he/she/they are authorized to sign this Agreement on behalf of Defendants. Plaintiff represents and warrants that she is authorized to sign this Agreement and that she has not assigned any claim covered by this Agreement to a third-party. Plaintiff, by signing this Agreement, is bound by the terms herein and further agrees not to submit any Request for Exclusion from or Notice of Objection to the Settlement. Any such Request for Exclusion or Notice of Objection shall therefore be void and of no force or effect. The Parties further represent and warrant that they are competent to enter into this Agreement and have the full right, power, and authority to enter into and perform the obligations herein.

13.19. **Handwritten Signature/Electronic Signature.** The Parties shall execute and sign this Agreement with a handwritten signature. The Parties are required to acquire a "wet signature" for purposes of executing the Agreement. If Plaintiff is unable to provide a handwritten or "wet signature," then the following conditions apply for any electronic signatures:

i. The electronic signature system and processes Class Counsel used to obtain the Plaintiff's signature must comply with the federal ESIGN Act and any state laws regarding the use or adoption of electronic signatures;

ii. Plaintiff consents, and hereby acknowledges such consent, to using electronic signatures for this purpose (a requirement under both the federal and state laws);

iii. Class Counsel has selected and implemented a method in their electronic signature system to authenticate Plaintiff's identity and to ensure that her submitted electronic signature is in fact the Plaintiff's signature;

iv. Class Counsel has and will maintain records of the system and the process used to present the Agreement to the Plaintiff and obtain and record Plaintiff's signature, and they will maintain and provide such records to Defense counsel and Defendants if needed to allow them to lay the foundation for the admission of the Agreement into evidence;

v. Plaintiff waives any objections to the admission of the Agreement in any later action to enforce the terms of the agreement based on the electronic signature process; and

vi. Plaintiff and Class Counsel agree to indemnify and hold Defendants and Defense Counsel harmless from any loss, cost, damage or expense (including attorneys' fees) resulting from Defendants' inability to enforce the Agreement and the release included herein based on fraudulent signatures of Plaintiff, or any other issues that result from Plaintiff's providing an electronic signature.

13.20. **Execution of Agreement/Counterparts**. This Agreement shall become effective immediately upon its execution subject to subsequent Court approval. The Parties or authorized signatories may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if Class Counsel, Defense Counsel, Plaintiff, and Defendants had signed the same instrument. Any signature made and transmitted by facsimile, or other electronic means, for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and will be binding upon the Party whose counsel transmits the signature page by facsimile, or other electronic means. Each counsel or other person executing this Agreement or any of its exhibits on behalf of any Party warrants and promises that such person has the authority to do so. Any person executing this Agreement or any such related documents on behalf of a corporate signatory warrants and promises for the benefit of all Parties hereto that such person has been duly authorized by such corporation to execute this Agreement and related documents.

13.21. **Signature of all Settlement Class Members Unnecessary to be Binding.** The Parties agree that because the Class Members are so numerous, it is impossible or impractical to have each Settlement Class Member execute this Agreement. More, it is not practical to have each Settlement Class Member sign this Agreement. The Class Notice will advise all Class Members of the binding nature of the release provided herein as to the Settlement Class Members and shall have the same force and effect as if this Agreement were executed by each Settlement Class Member. The only Class Members who will not be bound by the terms of this Agreement are those who submit a timely and valid Request for Exclusion.

13.22. **Action to Enforce Agreement.** In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover her or its attorneys' fees and costs.

13.23. **Representation by Counsel.** The Parties to this Settlement are represented by competent counsel, and they have had an opportunity to consult with counsel and agree that the Agreement reflects their good faith compromise of the claims raised in the Action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the Agreement, and that Defendants may distribute funds to the Settlement Administrator, who in turn will distribute funds to the Settlement Class Members, PAGA Releasees, Class Counsel, and the Plaintiff as provided by this Agreement.

13.24. **Interim Stay of Proceedings**. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by the Court.

13.25. **Avoidance of Undue Publicity.** Except as required to obtain preliminary or final approval in this case, Plaintiff and Class Counsel agree not to publicize the amount or other terms of this Settlement to any person. Nothing herein will restrict Class Counsel from including publicly available information regarding this Settlement in future judicial submissions regarding Class Counsel's qualifications and experience.

IN WITNESS WHEREOF this Settlement Agreement has been duly executed by and on behalf of the Parties, as follows:

APPROVED AND ACCEPTED.

BY: PLAINTIFF DANIELLE FERRIERA

Dated: 9/30/2024

DocuSigned by:

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DANIELLE FERRIERA

[*Signatures Continued Onto Next Page*]

BY: DEFENDANT ANDERSON MERCHANDISERS, LLC
On behalf of Defendants Anderson, REW, and the Released Parties

Dated: 10/17/2024

DocuSigned by:
Sean Simmons
44B6E4D23BB24E7

Signature

Sean Simmons

Print Name

CFO

Title

APPROVED AS TO FORM AND CONTENT:

Dated: September 30, 2024

AEGIS LAW FIRM, PC

Kashif Haque
Samuel Wong
Jessica L. Campbell

Attorneys for Plaintiff, Class Members, and PAGA Releasees

Dated: October 17, 2024

LITTLER MENDELSON, P.C.

Wesley Stockard (*pro hac vice*)
Hovannes G. Nalbandyan

Attorneys for Defendants