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Attorneys for Plaintiff and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

EMILIO ROSAS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

FURNITURE AVE, INC., a California
Corporation; FURNITURE AVE CITY, a
California Corporation; FURNITURE
CITY WEST, a California Corporation;
FARIS ESCHEIK, an individual; FAWZI
SAED, an individual; OMAR RAHMAN,
an individual; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: 30-2022-01284958-CU-OE-CXC
*[Assigned to Hon. Randall J. Sherman, Dept
CX105, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: May 31, 2024
Time: 10:00 a.m.
Dept.: CX105

Complaint filed: October 7, 2022

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would

1 competently testify thereto.

2 **COUNSEL'S EXPERIENCE**

3 2. I have been a member, in good standing, of the State Bar of California since 2001.
4 I am admitted to practice in the United States District Courts for the Central and Southern
5 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
6 courts in California.

7 3. I have handled over 500 employee vs. employer litigation matters during my 23
8 years in practice. Over the last 15 years, my practice has almost entirely consisted of
9 representing employees, the majority of which has included class action and representative
10 action wage and hour matters. In total, I have handled over 250 class action and representative
11 action wage/hour cases, and have been appointed by the court as class counsel and have received
12 final court approval and judgment in close to half of those actions to date, and anticipate
13 receiving final approval in many more of those in the future.

14 4. As part of these settlements and judgments, I have recovered in excess of \$250
15 million in damages for my clients and the class members (who often work as nurses, ambulance
16 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
17 countless other trades). As of the end of last year, my team and I held the record for the largest
18 known PAGA-only case in California's history as of that time - a \$12.5 million-dollar court
19 approved settlement, which followed extensive litigation, summary adjudication and writs to the
20 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior
21 Court).

22 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
23 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior
24 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
25 against Walmart that was tried to the jury in District Court for the Central District, wherein the
26 jury awarded Plaintiffs over \$6 million. Following the successful outcome in trial, both cases
27 were appealed.
28

1 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
2 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17
3 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I
4 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
5 only 5% of lawyers receive.

6 **BRIEF SUMMARY OF THE SETTLEMENT**

7 7. Following a contested but productive mediation, Plaintiff and Defendant
8 (collectively, the “Parties”) entered into a Class Action and PAGA Representative Action
9 Settlement Agreement and Release of Claims, resolving the wage and hour claims of the putative
10 class (the “Settlement Agreement”), which is attached hereto as **Exhibit A** and also attached to
11 the Proposed Order as Exhibit A. The Settlement Agreement seeks to release and discharge
12 Defendants from the claims brought against it in exchange for Defendant’s agreement to pay
13 \$408,000 on a non-reversionary, non-claims made basis (each Class Member will receive his/her
14 share of the Net Settlement Amount without having to submit a claim form or take any action,
15 except for those who opt-out). Plaintiff seeks to represent a class of all current and former
16 nonexempt employees employed by Defendants Furniture Ave, Inc., Furniture Ave City,
17 Furniture City West in California during the Class Period (which is October 7, 2018, through
18 January 8, 2024).

19 8. Under the terms of the Settlement Agreement, Defendants will not oppose Class
20 Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the
21 Settlement Amount, Class Counsel’s litigation expenses not to exceed \$20,000, settlement
22 administrator costs of \$11,000, PAGA Penalties of \$40,000 of which 75% will be paid to the
23 LWDA and the remaining 25% will be paid to the Aggrieved Employees, and a service award
24 not to exceed \$7,500 to Plaintiff. After all Court-approved deductions, it is estimated that
25 \$183,500.00 (the “Net Settlement Amount” or “NSA”) will be available to pay the Class
26 Members, as follows:

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<i>Settlement Amount</i>	\$ 408,000.00
Attorneys' Fees (1/3)	\$ 136,000.00
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 11,000.00
PAGA Penalties	\$ 40,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 183,500.00

9. Payment to Class Members will be calculated on a pro-rata basis according to the number of Weeks Worked, with each workweek having a value of approximately \$19.89 (NSA / 9,228 estimated Work Weeks). This results in an estimated high payment of \$5,469.75 (someone that worked the full Class Period), a low payment of \$19.89 (someone that only worked one Workweek), and an average payment of \$674.63 (NSA / 272 Class Members). In addition, the Aggrieved Employees will receive a share of the \$10,000 PAGA Penalties (25% of \$40,000), calculated based on Weeks Worked during the PAGA Period.

10. Each Class Member will receive the Notice Packet (consisting of the Class Notice, Objection Form and Exclusion Form), explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Weeks Worked he/she is credited with working during the Class Period, along with Request for Exclusion and Objection Forms as required by the Court (the "Notice Packet" is attached hereto as **Exhibit B**).

PROCEDURAL BACKGROUND

11. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case. Because of the risks involved in litigating the case and the contested legal and factual issues, I believe this settlement to be fair, reasonable, and adequate.

12. After being retained by Plaintiff, we submitted a letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), which is attached hereto as **Exhibit C**, and simultaneously

1 sent a letter to Defendant requesting the production of his personnel and timekeeping records to
2 further evaluate the wage and hour claims. The LWDA ultimately declined to assert jurisdiction
3 over the PAGA, thereby giving Plaintiff the right to bring PAGA claims.

4 13. On October 7, 2022, Plaintiff filed a putative class action in the Orange County
5 Superior Court and later amended the complaint to include representative PAGA claims. The
6 operative First Amended Complaint alleges Class Claims and PAGA Claims for: (1) failure to
7 pay proper minimum wages, (2) failure to pay proper overtime wages, (3) failure to provide
8 compliant meal periods, (4) failure to provide compliant rest breaks, (5) failure to timely pay all
9 wages due and owing upon separation of employment, (6) failure to provide accurate itemized
10 wage statements, (7) unfair and unlawful competition, and (8) related PAGA claims.

11 14. Defendants retained counsel and immediately began to defend the case. The
12 Parties exchanged extensive written discovery and a Belaire Notice as part of the process of
13 obtaining class contact information. However, prior to engaging in a contested class certification
14 process, the Parties agreed to attend private mediation.

15 15. In preparation for the mediation, the Parties informally exchanged documents and
16 information that allowed both sides to calculate the potential damages and evaluate potential risk,
17 including policies and procedures pertaining to each claim alleged, sample wage statements, and
18 statistics relating to the number of current and former employees, number of shifts, pay periods
19 worked, hourly rates, and other things. Notably, Defendant provided several excel files
20 containing data containing detailed payroll and timekeeping data for the putative Class Members.
21 This information enabled both parties to take a deep dive into the claims. Additionally, during
22 this process, Plaintiff and his counsel analyzed, researched, and investigated the potential issues,
23 including matters related to the calculation of damages, trial, and appellate issues and risks.

24 16. On February 21, 2023, the Parties participated in mediation before the Hon.
25 Jonathan Cannon (Ret.), who previously served in Department CX102 for many years in this
26 Court's complex department handling these types of cases, and now works as a full time
27 mediator. At the conclusion of mediation, which involved extensive arms-length negotiations,
28 the Parties reached a settlement. The Parties then engaged in discussions on the specific terms of

1 the long-form Settlement Agreement, which was executed by all Parties. The Parties now seek
2 the Court's preliminary approval of the Settlement.

3 **THE WAGE AND HOUR CLAIMS, CLASS COUNSEL'S INVESTIGATION, AND**
4 **EVALUATION OF THE SETTLEMENT**

5 17. The putative Class in this case consists of approximately 272 similarly situated
6 non-exempt employees who worked for Defendants in California during the Class Period, and
7 Plaintiff alleged numerous wage and hour violations on behalf of the Class Members. However,
8 Defendants vigorously contested and denied each of Plaintiff's material allegations on the merits
9 and as to the propriety of a class action or PAGA representative action, as discussed herein.

10 18. In preparation for mediation, Misty Lauby, an attorney within my office, and I
11 formulated a damages model and risk analysis based upon detailed data obtained through
12 informal discovery and information exchanges. The summary of the claims below is based on
13 calculations by Ms. Lauby, and the risks that we potentially faced, giving significant credit to the
14 defenses that Defendants raised or would likely raise in further proceedings. Following the
15 informal exchange and other information provided by Defendants, Ms. Lauby estimated the
16 following data points through the date of mediation: (1) 272 Class Members, (2) 203 *former*
17 Class Members for purposes of Labor Code § 203, (3) 9,228 workweeks, (4) 46,140 shifts; and
18 (5) approximately 1,989 wage statements during the PAGA Period. From these metrics, and
19 when factoring in claim certification probabilities and liability probabilities, we formulated
20 detailed damages models to value the claims in preparation for mediation and to reach a realistic
21 and reasonable resolution.

22 19. Here, there were several claims alleged by Plaintiff, including: (1) unpaid wage
23 claims under various theories, including: (a) illegally shaving hours of work by Class Members
24 by altering time clock records; and (b) auto-deducting meal periods that were not taken by Class
25 Members, (2) meal and rest break violations, and (3) derivative claims for waiting time and wage
26 statement penalties due to the other alleged violations.

27 20. As to the unpaid wage claims, Plaintiff alleged two main theories of liability.
28 First, Plaintiff alleged that Furniture Ave, that early in the Class Period, Defendants had a system

1 where employees would punch a timecard but then Defendants' payroll department would enter
2 time into ADP that did not match the punch card records. Later, Defendants switch to a system
3 where employees entered time directly into ADP but then the payroll department edited time to
4 reduce the number of hours worked by employees resulting in Class Members being paid for
5 fewer hours than they worked. Second, Plaintiff claimed that he and the Class Members and the
6 Class Members were required to perform off-the-clock work due to Defendants' policy and
7 practice of auto-deducting meal periods whether or not they were taken by Plaintiff and the Class
8 Members resulting in unpaid off-the-clock work. In total, Plaintiff's counsel estimated the
9 maximum value of these unpaid wages to be \$830,520. However, Furniture Ave vehemently
10 opposed these unpaid wage claims on the merits and as to the propriety of class certification. For
11 example, Defendants argued that there was no policy or practice of shaving time from Class
12 Members timekeeping and payroll records or auto-deducting meal periods, and that this would
13 defeat Plaintiff's claims on the merits. Additionally, as to the "off-the-clock" claims, Defendants
14 argued that it would be unmanageable and require person-by-person individualized assessments
15 to determine if this applied to each Class Member and, if so, how frequently it occurred and for
16 how long. Due to the defenses and arguments raised, Plaintiff assigned a 40% risk for each
17 respective unpaid wage claim at the class certification stage and an additional 10% risk on the
18 merits. In sum, Plaintiff's counsel calculated the risk-adjusted value of the unpaid wage claims as
19 \$448,481.

20 21. Plaintiff also alleged meal and rest break claims against Defendant. Given the
21 total number of shifts at issue (an estimate of 46,140), and when incorporating claimed meal
22 period violation rates from produced records and other evidence, Plaintiff's counsel estimated a
23 50% violation rate for meal breaks and assumed a 25% violation rate for rest breaks based on
24 Defendants' arguably compliant written policies, leading to 23,070 alleged meal violations and
25 11,535 alleged rest break violations. This established a maximum potential value for these
26 claims of \$622,890 (34,605 violations multiplied by the average hourly rate of \$18 as the
27 applicable premium rate under § 226.7).
28

1 22. However, Furniture Ave raised numerous arguments in response to these claims,
2 including that it maintained fully compliant written policies and specifically authorized the Class
3 Members to take meal and rest breaks, and Defendants also contend that employees waived
4 certain meal periods when submitting. Therefore, Defendants asserted that a fact-finder would
5 have to determine for each Class Member whether a break was missed and why, and why a break
6 was noncompliant or nonexistent, because if it was by the employee's choice, no liability
7 attaches to Defendants. These defenses are factored into Plaintiff's analysis in two ways. First,
8 these issues raise questions regarding whether the meal and rest break claims could be certified,
9 and Plaintiff placed a 30% risk at the class certification stage for meal periods and a 50% risk for
10 rest breaks. Second, these defenses also go toward the merits given the evidentiary question of
11 proving the number of meal and rest violations. As such, Plaintiff placed a 30% risk on the
12 merits for meal breaks, and an additional 50% risk on the merits for rest breaks, setting the risk-
13 adjusted value for the combined meal and rest break claims at \$307,292.

14 23. Plaintiff also alleged claims for waiting time penalties and wage statement
15 violations. But these claims were entirely derivative of the claims above, meaning that they only
16 had merit if the claims for unpaid wages or meal/rest breaks were successful. The maximum
17 values for these claims were as follows: (1) \$876, 960 for waiting time penalties [203 former
18 employees x \$18 per hour x 8 hours per day x 30 days], and (2) \$185,300 for wage statement
19 violations [1,989 wage statements for Class Members who worked during the applicable time
20 period at the \$50/\$100 formula of § 226(e)].

21 24. But Furniture Ave raised a variety of defenses to these derivative claims that
22 impacted the valuation. Namely, Defendant argued that the wage statements did not violate
23 Labor Code § 226 and, even if there were violations, given its factual and legal defenses,
24 Plaintiff would be unable to prove the required "knowing and intentional" and "injury" elements.
25 See *Naranjo v. Spectrum Sec. Servs., Inc.*, 88 Cal. App. 5th 937, 945-51 (2023), *review filed*
26 (Apr. 7, 2023) (holding that a good faith factual or legal defense precludes the imposition of
27 penalties under both Section 226 and Section 203). Based on these facts and defenses, Plaintiff
28 placed a 30% risk at class certification and estimated another 50% risk the merits, leading to a

1 risk-adjusted value of \$64,855 for the wage statement claims.

2 25. Then, as to the waiting time penalty claim, Plaintiff's valuation had to account for
3 the fact that this claim was derivative of the unpaid wage and meal/rest break claims and, if those
4 claims failed at certification or on the merits, there would be no waiting time penalties owed, so
5 the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage
6 and/or meal/rest claims succeeded at certification and on the merits, Plaintiff would have to
7 prove that the violations (if any existed) were "willful" under the meaning of Labor Code § 203.
8 And, here, Defendants argued there was no "willful" violation since they had compliant written
9 policies and good faith factual and legal defenses to the wage claims. As a result of this analysis,
10 Plaintiff's counsel applied a 30% risk at class certification and a 50% risk on the merits, leading
11 to a risk-adjusted value of \$306,936.

12 26. In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff
13 estimates the risk-adjusted class recovery as follows:

14	• Unpaid Wage Claims	\$	448,481
15	• Meal and Rest Break Claims	\$	255,385
16	• Wage Statement Claims	\$	64,855
17	• Waiting Time Penalty Claims	\$	306,936
18	• PAGA Claim	\$	<u>40,000</u>
19	• Total Risk Adjusted Penalties and Damages	\$	1,115,657

20 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

21 27. The settlement was the product of extensive arm's length negotiations, facilitated
22 by an experienced mediator. Though cordial and professional, the settlement negotiations were
23 adversarial and non-collusive in nature. The settlement reached is the product of substantial
24 effort by the parties and their counsel. Although we believed that there was a possibility of
25 certifying the claims, we recognized the potential risk, expense, and complexity posed by
26 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
27 on the damages awarded, and/or on an appeal that can take several more years to litigate.

1 28. The settlement will result in a fair payment to each class member based on the
2 number of Weeks Worked during the Class Period. As set forth hereinabove, we have diligently
3 investigated the claims and defenses on behalf of the Class Members and worked to achieve a
4 resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys'
5 fees and costs. After evaluating the significant risks attendant with further litigation described
6 above and weighing them against the benefits of a known compromise and settlement as set forth
7 in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best
8 interest of Plaintiff and the Class, and is a fair and reasonable resolution of the claims alleged.

9 29. My office brought to bear a great deal of experience in negotiating the settlement
10 of this case. As detailed herein, we engaged in the necessary discovery and investigation, making
11 it possible to exercise informed judgment throughout the settlement process, including
12 significant document review (e.g. documents pertaining to Defendants' policies and procedures,
13 personnel documents, among others), and conducted an extensive analysis of the detailed class-
14 wide data provided by Defendants.

15 30. Based on my experience in other cases, including wage and hour matters, I
16 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
17 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
18 settlement at this time is in the best interests of the class. The settlement provides each class
19 member with compensation for the alleged violations when viewed in relation to the costs and
20 risks inherent in obtaining class certification and proceeding to trial.

21 31. My office, as well as Defendants' counsel, fully endorse the terms and conditions
22 of the settlement as set forth in the abovementioned Settlement Agreement.

23 32. Of course, the settlement amount represents a compromise figure, taking into
24 account the various risks surrounding class certification and the merits of Defendants' asserted
25 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
26 members, with no reversion to Defendants.

27 ///

28 ///

1 **PLAINTIFF’S REQUESTED ENHANCEMENT PAYMENT**

2 33. Plaintiff seeks an enhancement payment (Service Award) of \$7,500 for his service
3 to the class, which I believe is fair and warranted. Mr. Rosas came forward in an effort to
4 effectuate a policy and practice change that benefitted all other Class Members, and to recover
5 unpaid wages. He assumed significant risk in bringing this litigation—namely, had he lost, he
6 could have been ordered to pay Defendant’s costs.

7 34. Plaintiff provided invaluable assistance to my office and the Class in this case,
8 including providing factual background for the Class Complaint; reviewing the litigation
9 documents; providing information and documents about Defendants’ policies and practices;
10 participating in phone calls to discuss litigation and settlement strategy; and reviewing the
11 settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal
12 benefit. At final approval, Plaintiff will submit a comprehensive declaration setting forth all of
13 the reasons why he believes that the service award should be approved.

14 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
15 **REQUESTED FEES AND COSTS**

16 35. As set forth above, I have handled over 250 class and representative actions, have
17 been appointed as class counsel and have successfully resolved over half of those cases, and
18 many others remain pending and will successfully resolve in the future.

19 36. When this case was taken on a contingency fee basis, with my firm agreeing to
20 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
21 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
22 and mediation costs. There was never a guarantee that we would recoup those expenditures.

23 37. It is my experience that attorney fee awards of one-third of a common fund
24 settlement is the standard in California. In this case, Plaintiff’s counsel agreed to seek one-third
25 of the Settlement Amount for attorneys’ fees. Defendants do not oppose this fee request. The fee
26 is further warranted because it is within the range of reasonableness typically awarded in class
27 actions. The litigation costs are reasonably capped at \$20,000 and will be based on the actual
28 amount of costs incurred at the time of final approval.

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UNCASHED CHECKS TO THE STATE CONTROLLER

39. Pursuant to the terms of the Settlement Agreement, if there are any uncashed checks by the check cashing deadline, the Administrator shall issue unclaimed funds the California State Controller's Office in the name of the Participating Class Member and Aggrieved Employee.

THERE ARE NO CONCURRENT PENDING CASES

40. After making reasonable inquiry, including speaking with other attorneys at my office, I am not aware of any other class, representative, or collective actions against Defendant that assert claims similar to the claims alleged in this action.

40. After making reasonable inquiry, including speaking with other attorneys at my office, I am not aware of any other class, representative, or collective actions against Defendant that assert claims similar to the claims alleged in this action.

SUBMISSION TO THE LWDA

41. Plaintiff has concurrently submitted the entire motion, including my declaration, the settlement agreement, notice packet and exhibits to the LWDA in accordance with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit E** (noting that the confirmation email from the LWDA does not provide an itemized list of all documents submitted).

41. Plaintiff has concurrently submitted the entire motion, including my declaration, the settlement agreement, notice packet and exhibits to the LWDA in accordance with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit E** (noting that the confirmation email from the LWDA does not provide an itemized list of all documents submitted).

42. A true and correct copy of the Settlement Agreement is attached as **Exhibit A**.

43. The proposed Notice Packet is attached as **Exhibit B**.

44. A true and correct copy of the notice letter we submitted to the LWDA is attached as **Exhibit C**.

45. Phoenix's proposal to administer the Settlement is attached hereto as **Exhibit D**.

46. The LWDA's confirmation of receipt of this Motion and Declarations is attached hereto as **Exhibit E**.

47. For the foregoing reasons, it is respectfully requested that the Court grant preliminary approval of the settlement as being fair, reasonable, and in the best interests of the class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement payment to the Class Representative.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 7, 2024, at Riverside, California.

By: Brian J. Mankin, Esq.

EXHIBIT “A”

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

EMILIO ROSAS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

FURNITURE AVE, INC., a California
Corporation; FURNITURE AVE CITY, a
California Corporation; FURNITURE CITY
WEST, a California Corporation; FARIS
ESCHEIK, an individual; FAWZI SAED, an
individual; OMAR RAHMAN, an individual;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: 30-2022-01284958-CU-OE-CXC
*[Assigned to Hon. Randall J. Sherman, Dept
CX105, for all purposes]*

**CLASS ACTION AND PAGA
REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

1 This Class Action and PAGA Representative Action Settlement Agreement and Release
2 of Claims is entered into by and between Plaintiff Emilio Rosas, individually and on behalf of
3 the proposed Class, and on behalf of the State of California, and Defendants Furniture Ave, Inc.,
4 Furniture Ave City, Furniture City West, Faris Escheik, Fawzi Saed, and Omar Rahman, and is
5 approved as to form by their respective counsel of record, subject to the terms and conditions
6 hereof and the Court's approval.

7 **A. Definitions**

8 1. "Action" or "Lawsuit" means and refers to the case entitled *Rosas v. Furniture*
9 *Ave Inc.*, Orange County Superior Court, Case No. 30-2022-01284958-CU-OE-CXC.

10 2. "Administrator" means and refers to Phoenix Settlement Administrators, the
11 third-party class action settlement administrator agreed to by the Parties, that will provide the
12 Notice to the Class Members and distribute the settlement amounts as described in this
13 Agreement.

14 3. "Administration Costs" means the costs payable from the Settlement Amount to
15 the Administrator for administering this Settlement, including, but not limited to, printing, and
16 mailing the Notice, calculating Settlement payments, tracking documents for this Settlement, tax
17 reporting, and calculation and payment to applicable tax authorities of the employee and
18 employer share of payroll taxes, unclaimed property due diligence, reporting and remittance
19 obligations, distributing the Settlement Amount, and providing necessary reports and
20 declarations, as requested by the Parties. The Administration Costs shall be paid from the
21 Settlement Amount, including, if necessary, any costs approved by the Court in excess of the
22 amount represented by the Administrator as being the maximum costs necessary to administer
23 the Settlement.

24 4. "Aggrieved Employee(s)" means all current and former nonexempt employees
25 employed by Defendants Furniture Ave, Inc., Furniture Ave City, Furniture City West in
26 California during the PAGA Period.

27 5. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
28 Action and PAGA Representative Action Settlement Agreement and Release of Claims.

6. “Class” or “Settlement Class” is the proposed settlement class defined as all current and former nonexempt employees employed by Defendants Furniture Ave, Inc., Furniture Ave City, Furniture City West in California during the Class Period.

7. “Class Member(s)” refers to individual members of the Class.

8. “Class Counsel” refers to Brian Mankin and Misty Lauby of Lauby, Mankin & Lauby LLP.

9. “Class Data” means a complete list that Defendants will diligently and in good faith compile from their records and provide to the Administrator on one spreadsheet which shall include, to the extent available from Defendants’ records, for each Class Member, the individual’s full name; last known mailing address; Social Security Number; total Workweeks during the PAGA Period; and total Workweeks during the Class Period.

10. “Class Period” is deemed to be any time during the period of October 7, 2018, through January 8, 2024.

11. “Class Representative” or “Plaintiff” means and refers to Plaintiff Emilio Rosas.

12. “Complaint” refers to the operative class and PAGA representative action complaint filed in the Orange County Superior Court on October 7, 2022.

13. “Court” means the California Superior Court, County of Orange.

14. “Defendants” means and refers to Defendants Furniture Ave, Inc., Furniture Ave City, Furniture City West, Faris Escheik, Fawzi Saed, and Omar Rahman.

15. “Defendants’ Counsel” or “Defense Counsel” means and refers to Much Shelist, P.C.

16. “Effective Date” means the following: (i) if no Class Member timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil Procedure § 663, then the date the Court enters an order granting Final Approval of the Settlement; (ii) if a Class Member intervenes or files a motion to vacate the Judgment, then sixty-one (61) calendar days following the date the Court enters an order granting Final Approval, assuming no appeal is filed; or (iii) if a Class Member timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil Procedure § 663 or initiates another collateral attack, and if a

1 timely appeal is filed, then the date of final resolution of that appeal or other collateral attack
2 (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial
3 approval of the Settlement.

4 17. “Escalator Clause:” Defendants represent that there will be approximately 272
5 Class Members who collectively worked approximately 9,228 Work Weeks in California during
6 the Class Period. As such, the Parties agree that, should the total number of Work Weeks exceed
7 10,151 (which is 10% more than Defendants’ representation), then the Gross Settlement Amount
8 shall increase by \$44.21 (GSA divided by 9,228) for each additional Workweek above 10,151.

9 18. “Final Approval” refers to the order of the Court granting final approval of this
10 Settlement and entering a judgment approving this Agreement on substantially the terms
11 provided herein or as may be modified by subsequent agreement of the Parties. Plaintiff shall
12 prepare the motion for final approval, and Defendants will not object to Plaintiff’s motion
13 provided it is consistent with the terms herein. Defendants’ counsel will be provided with a
14 reasonable opportunity of no less than five (5) court days to review and comment upon the draft
15 motion before it is filed, and Class Counsel agrees to reasonably consider the comments from
16 counsel for Defendants. If Defendants believe the motion papers are inconsistent with the terms
17 of this Agreement and Defendants, after raising such concern with Plaintiff during the five (5)
18 day period, believe their concern remains unaddressed, Defendants may bring such concerns to
19 the attention of the Court concurrent with the filing of the motion.

20 19. “Individual Class Payment” refers to each Participating Class Member’s share of
21 the Net Settlement Amount, as further discussed in Paragraph 45(c) below.

22 20. “Individual PAGA Payment” refers to the pro rata share of an Aggrieved
23 Employee’s payment from the 25% of PAGA Penalties, as further discussed in Paragraph 45(h)
24 below.

25 21. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 45(b)
26 below.

27 22. “Notice Packet” means the Class Notice (which is a notice of proposed class and
28 representative action settlement that will be sent to the Class Members and which will advise

each Class Member of the settlement, including how his or her Individual Class Payment and if applicable Individual PAGA Payment will be calculated, Class Member rights and deadlines to be excluded from the Class and will further advise of the setting of a Final Approval Hearing), the Request for Exclusion Form and Objection Form.

23. “PAGA Penalties” means the amount that the Parties have agreed to pay allocated to PAGA civil penalties, 75% of which will be paid to the Labor and Workforce Development Agency (“LWDA”), and 25% of which will be allocated for Individual PAGA Payments, as required by the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”).

24. “PAGA Period” is deemed to be any time during the period of October 7, 2021, through January 8, 2024.

25. “Participating Class Member” means any and all Class Members who do not opt-out by submitting a valid Request for Exclusion. Only Participating Class Members will receive an Individual Class Payment.

26. “Parties” or “Settling Parties” mean Plaintiff and Defendants, collectively.

27. “Preliminary Approval Date” means the date the Court approves the Settlement and enters the Preliminary Approval Order.

28. “Preliminary Approval Order” means the judicial Order to be jointly prepared by the Parties and entered by the Court, upon the motion of the Plaintiff, preliminarily approving this Settlement and providing for the issuance of the Notice to the Class, an opportunity to opt out of the Settlement, an opportunity to submit timely objections to the Settlement, and setting a final approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs. Provided that the motion is consistent with the terms herein, Defendants will not object to Plaintiff’s motion for preliminary approval. Defense Counsel will be provided with no less than 5 days to review and comment upon the draft motion before it is filed, and Class Counsel agrees to reasonably consider the comments from Defense Counsel. If Defendants believe the motion papers are inconsistent with the terms of this Agreement and Defendants, after raising such concern with Plaintiff during the five (5) day period, believe their concern

1 remains unaddressed, Defendants may bring such concerns to the attention of the Court
2 concurrent with the filing of the motion.

3 29. “QSF” means the Qualified Settlement Fund set up by the Administrator which
4 the Parties agree will at all times be treated as a “qualified settlement fund” within the meaning
5 of Treas. Reg. §1.468B-1, *et seq.* The Parties agree the Administrator shall, in establishing the
6 account, make any such elections as necessary or advisable to carry out the “relation back
7 election” (as defined in Treas. Reg. §1.468B-1(j)(2)(i)) back to the earliest permitted date. Such
8 elections shall be made in compliance with the procedures and requirements contained in such
9 regulations. The Parties further agree and acknowledge that, for purposes of Section 468B of the
10 Internal Revenue Code of 1986, as amended (the “Code”) and the Treasury Regulations
11 promulgated thereunder, only the Defendants shall be treated as a “transferor” (within the
12 meaning of such term under Treasury Regulations §1.468B-1(d)(1)) with respect to the QSF.

13 30. “Released Class Claims” by the Participating Class Members upon Final
14 Approval of the Settlement means any and all claims and/or causes of action that were or could
15 have been pled based on the facts alleged in the Complaint, including but not limited to, any
16 claim for: (a) failure to pay minimum wages, (b) failure to pay overtime wages; (c) failure to
17 provide meal periods, (d) failure to provide for rest breaks, (e) failure to failure to timely pay
18 final wages, (f) failure to provide accurate itemized wage statements, (g) unfair and unlawful
19 competition, and (h) all other claims for statutory penalties based on the facts or claims alleged
20 in the operative complaint. The time period governing the Released Class Claims shall be the
21 Class Period.

22 31. “Released PAGA Claims” means any and all PAGA claims and/or causes of
23 action that were or reasonably could have been pled based on the alleged facts and violations set
24 forth in the Complaint and the LWDA Notice Letter, including all PAGA claims seeking civil
25 penalties that premised upon (a) failure to pay minimum wages, (b) failure to pay overtime
26 wages; (c) failure to provide meal periods, (d) failure to provide for rest breaks, (e) failure to
27 failure to timely pay final wages, (f) failure to provide accurate itemized wage statements, and
28 (g) all other claims for civil penalties recoverable under the Private Attorneys General Act,

1 Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the operative Complaint and
2 LWDA Notice Letter. The time period governing the Released PAGA Claims shall be the
3 PAGA Period.

4 32. “Released Parties” means Defendants and its/his/their parents, subsidiaries,
5 directors, owners, shareholders, officers, agents, attorneys, servants, joint employers and
6 employees, past and present, and each of them and anyone acting in concert with foregoing.

7 33. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 66(a)
8 below.

9 34. “Response Deadline” is 45 calendar days from the date the Notice is mailed to the
10 Class Members.

11 35. “Service Payment” or “Service Award” means the amount approved by the Court
12 to be paid to Class Representative Emilio Rosas in addition to his Individual Class Payment as a
13 Participating Class Member and Individual PAGA Payment as an Aggrieved Employee.

14 36. “Settlement Amount” means the total maximum amount that Defendants will be
15 required to pay under this Agreement, which is \$408,000, unless increased pursuant to the
16 Escalator Clause, except for Defendants’ obligation to fund its share of payroll taxes on the
17 portion of Individual Class Payments that are allocated to wages, as further discussed in
18 Paragraph 45(c) below.

19 37. “Workweeks” or “Weeks Worked” means any and all workweeks during the
20 Class Period, or if applicable PAGA period, during which the Class Member and/or Aggrieved
21 Employee worked at least one day for Defendants in California. The Parties have for simplicity
22 agreed to use workweeks for the purpose of calculating both Individual Class Payments and
23 Individual PAGA Payments.

24 **B. General Terms**

25 38. On October 7, 2022, Plaintiff filed a putative class action in the Orange County
26 Superior Court. That same day, Plaintiff sent a letter to the LWDA notifying it and Defendants
27 that Plaintiff intended to pursue claims against Defendants under PAGA for violation of
28 California Labor Code sections 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256,

1 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 (“LWDA Notice”). The
2 LWDA declined to assert jurisdiction over the PAGA Claims, so on January 10, 2023, Plaintiff
3 filed the operative first amended complaint (the “Complaint”), adding PAGA Claims. The
4 operative Complaint alleges Class Claims and PAGA Claims for: (1) failure to pay proper
5 minimum wages, (2) failure to pay proper overtime wages, (3) failure to provide compliant meal
6 periods, (4) failure to provide compliant rest breaks, (5) failure to timely pay all wages due and
7 owing upon separation of employment, (6) failure to provide accurate itemized wage statements,
8 (7) unfair and unlawful competition, and (8) claims for PAGA penalties related to the claims
9 alleged herein.

10 39. Defendants deny any and all liability or wrongdoing of any kind associated with
11 the claims asserted in the Action, dispute the damages and penalties claimed by Plaintiff, and
12 further contend that, for any purpose other than settlement, Plaintiff’s claims are not appropriate
13 for class or representative treatment.

14 40. The Class Representative believes he can proceed with the representative and
15 class claims, that the Action is meritorious, and that class certification is appropriate.

16 41. The Parties have conducted a thorough investigation into the facts of the Action.
17 This includes conducting an extensive exchange of formal written discovery and informal
18 discovery, including a significant portion of payroll and timekeeping records for Class Members,
19 relevant policy documents, class size and workweek information, and information regarding
20 hourly rates. Class Counsel is both knowledgeable about and has done extensive research with
21 respect to the applicable law and potential defenses to the claims of the Class. Class Counsel has
22 diligently pursued an investigation of the Class Members’ claims against Defendants. Based on
23 the foregoing data and on their own independent investigation and evaluation, Class Counsel is
24 of the opinion that the settlement with Defendants for the consideration and on the terms set forth
25 in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the
26 Class Members in light of all known facts and circumstances, including the risk of significant
27 delay and uncertainty associated with litigation, various defenses asserted by Defendants, and
28 numerous potential appellate issues.

1 42. On December 8, 2023, Plaintiff and Defendants participated in a full-day
2 mediation with Judge Jonathan Cannon (Ret.), a former judge on the Orange County Complex
3 Panel who now serves as a well-respected mediator in many areas, including class action wage-
4 and-hour cases. At the conclusion of mediation, Judge Cannon issued a mediator's proposal
5 which was accepted by the Parties.

6 43. This Settlement is a compromise of disputed claims. The Parties agree that neither
7 the Parties' Settlement, this Agreement, nor the acts to be performed or judgment to be entered
8 pursuant to the terms of the Settlement and Agreement, shall be construed as an admission by
9 Defendants of any wrongdoing or violation of any statute or law or liability on the claims or
10 allegations in the Action.

11 44. Stipulation for Class Certification. For settlement purposes only, Defendants will
12 stipulate that the Class Members described herein may be conditionally certified as a Class. This
13 stipulation to certification is in no way an admission that class action certification is proper and
14 shall not be admissible in this or in any other action except for the sole purposes of enforcing this
15 Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties'
16 stipulation to class certification as part of the Settlement shall become null and void ab initio and
17 shall have no bearing on, and shall not be admissible in connection with, the issue of whether
18 certification would be appropriate in a non-settlement context. Defendants expressly reserve
19 their rights and declare that they would continue to oppose class certification and the substantive
20 merits of the case should the Court fail to issue Final Approval. Plaintiff expressly reserves his
21 rights and declares that he will continue to pursue class certification and a trial should the Court
22 fail to issue Final Approval.

23 **C. Terms of Settlement**

24 45. The financial terms of the Settlement are as follows:

25 (a) Settlement Amount: The Parties agree to settle this Action for the
26 Settlement Amount, unless increased pursuant to the Escalator Clause and Defendants'
27 obligation to separately pay its share of payroll taxes on the wage portion of the Individual Class
28 Payments, which is the maximum amount that will be paid by Defendants and includes

Individual Class Payments, Class Counsel's Attorneys' Fees and Costs Award, the Service Payment to the Class Representative, Administration Costs, and PAGA Penalties.

(b) Net Settlement Amount: The "Net Settlement Amount" is defined as the Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payment to the Class Representative as awarded by the Court, the Administration Costs, and PAGA Penalties. If the Court reduces the Attorneys' Fees and Costs Award, Service Award, or Administrator Costs, or either increases or decreases the amount allocated to the PAGA Penalties, the difference shall be placed in the Net Settlement Amount and allocated to the Class.

(c) The Individual Class Payment for each Participating Class Member will be calculated by the Administrator using the Class Data provided by Defendants as follows. Compensable workweeks will be all Weeks Worked by Participating Class Members during the Class Period. The dollars per compensable workweek will be calculated by dividing the total Weeks Worked by Participating Class Members into the Net Settlement Amount to determine a per workweek value ("Workweek Value"). The Workweek Value will be multiplied by the number of Weeks Worked by a Participating Class Member during the Class Period to determine the Individual Class Payment for a Participating Class Member.

(d) Allocation of Individual Class Payments: The Individual Class Payments to Participating Class Members will be allocated as follows: one-third will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and two-thirds will be allocated for interest and statutory penalties pursuant to, applicable California Labor Code sections from which no taxes will be withheld. If required based on the settlement amounts, the Administrator will issue to each Participating Class Member and/or Aggrieved Employee an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

(e) Service Payment to Class Representative: The amount, if any, awarded to the Class Representative as a Service Payment will be set by the Court in its discretion, not to exceed \$7,500, in recognition of the service that Plaintiff performed on behalf of the Class and in return for executing a general release with Defendants as to Class Representative's Released

1 Claims as defined below. Defendants agree not to oppose this request. The Service Payment to
2 Plaintiff will be paid out of the Settlement Amount. The Class Representative will be issued an
3 IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally responsible
4 to pay all applicable taxes on this payment. The Parties agree that any amount awarded as the
5 Service Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel
6 to void this Settlement Agreement. Should the Court approve a lesser amount for the Service
7 Payment, the difference shall be added to the Net Settlement Amount to be distributed to the
8 Participating Class Members.

9 (f) Attorneys' Fees and Costs Award: Defendants agree to not oppose a
10 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
11 Settlement Amount, plus reasonable litigation costs not to exceed \$20,000 ("Attorney's Fees and
12 Cost Award"). Defendants agree not to oppose any contention by Class Counsel that attorneys'
13 fees should be based on the common fund theory. The Attorney's Fee and Cost Award shall be
14 paid from the Settlement Amount, and, except for this award, Defendants shall have no further
15 obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court
16 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to
17 the Net Settlement Amount to be distributed to the Participating Class Members. Any Court
18 order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
19 Settlement Agreement or otherwise void the Settlement. The Administrator shall issue to Class
20 Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the
21 Court.

22 (g) Administration Costs: The fees and other charges of the Administrator
23 will be paid from the Settlement Amount, not to exceed \$11,000, unless an increase is justified
24 by the Administrator and is agreed to by the Parties and approved by the Court.

25 (h) PAGA Penalties: The Parties agree that \$40,000 is allocated to PAGA
26 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
27 amount, \$30,000 (75%) shall be paid to the LWDA as its share of civil penalties under PAGA,
28 and \$10,000 (25%) will be the total amount allocated to Individual PAGA Payments to the

1 Aggrieved Employees, which for simplicity shall be calculated and allocated pro-rata on a
2 workweek basis. The Individual PAGA Payments will be treated entirely as civil penalties and
3 shall be reported to the extent required on an IRS Form 1099. Class Counsel shall give proper
4 notice to the LWDA of the Settlement by submitting a copy of this Settlement Agreement to the
5 LWDA at the same time as they submit this Settlement Agreement to the Court for Preliminary
6 Approval, as required by California Labor Code § 2699(1)(2). Within ten (10) days following the
7 Final Approval Order, Class Counsel shall submit a copy of the Final Approval Order and
8 Judgment entered by the Court to the LWDA, as required by California Labor Code § 2699(1)(3).

9 (i) Tax Liability: Class Counsel, Defendants, and Defense Counsel make no
10 representations as to the tax treatment or legal effect of settlement amounts called for hereunder,
11 and Plaintiff and the Class Members are not relying on any statement or representation by Class
12 Counsel or Defendants in this regard. Plaintiff, Participating Class Members, and Aggrieved
13 Employees understand and agree that they will be solely responsible for the payment of any
14 taxes and penalties assessed on their respective Individual Class Payments and Individual PAGA
15 Payments, described herein. The portion of Individual Class Payments deemed payment for
16 settlement of claims for wages and expenses shall be reported on Form W-2 with respect to the
17 year of payment as wage income to the Class Member by the Administrator on behalf of the
18 QSF. The Administrator shall issue I.R.S. Form 1099 if required for the remaining portion of the
19 Individual Class Payment and for any Individual PAGA Payment. If the Code, the regulations
20 promulgated thereunder, or other applicable tax law, is changed after the date of this Agreement,
21 the processes set forth in this Section may be modified in a manner to bring Defendants into
22 compliance with any such changes. Plaintiff, Participating Class Members, and Aggrieved
23 Employees understand and agree that they will be solely responsible for the payment of any
24 taxes and penalties assessed on their respective payments described herein.

25 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
26 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
27 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
28 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO

1 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
2 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
3 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
4 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
5 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
6 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
7 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
8 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
9 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
10 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
11 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
12 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
13 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
14 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
15 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
16 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
17 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
18 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
19 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
20 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

21 (k) "Non-Reversionary" Settlement. This is a "non-reversionary" settlement.
22 Under no circumstances will any portion of the Settlement Amount revert to Defendants.
23 Participating Class Members and Aggrieved Employees will not have to make a claim in order to
24 receive an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of
25 Individual Class Payments or Individual PAGA Payments will be made directly to each
26 Participating Class Member and Aggrieved Employee. The Administrator shall be responsible
27 for accurately and timely reporting and remittance obligations with respect to unclaimed funds as
28 a result of a Participating Class Member and/or Aggrieved Employee not cashing any checks

delivered pursuant to the Settlement by the check cashing deadline, as set forth herein.

(l) Class Counsel and Plaintiff believe that the Settlement is fair and reasonable and will so represent same to the Court.

D. Release by the Participating Class Members

46. Upon the Effective Date occurring and Defendants fully funding the Settlement Amount, Plaintiff and the Participating Class Members will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Period.

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

E. Release of PAGA Claims

48. Upon the Effective Date occurring, and after the Court's Judgment is final and Defendants have fully funding the Settlement Amount, Plaintiff on behalf of himself, the LWDA and the Aggrieved Employees will be deemed to have released and discharged the Released Parties from the Released PAGA Claims for the PAGA Period.

49. Regardless of whether a Class Member and/or Aggrieved Employee submits a valid Request for Exclusion, neither Plaintiff nor any Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from the Released PAGA Claims.

50. It is the intent of the Parties that the Final Approval judgment shall have full equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

F. Release by Plaintiff and Class Representative

51. Class Representative does hereby, for himself and his spouses, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and assigns forever and completely release and discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the beginning of time through the execution of this Stipulation, whether known or

1 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
2 upon, or relating to Class Representative's employment with Defendants or the termination of
3 such employment (the "Class Representative's Released Claims").

4 52. Without limiting the generality of the foregoing, this general release by Plaintiff
5 includes all federal, state and local statutory claims, federal and state common law claims
6 (including but not limited to those for contract, tort and equity), including without limitation the
7 Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil
8 Rights Act of 1964 (as amended), 42 USC sec. 1981, 42 USC sec. 1983, the Fair Labor
9 Standards Act, the Employment Retirement Security Income Act of 1974, the California
10 Constitution, the California Fair Employment and Housing Act, the California Unfair
11 Competition Act (California Business and Professions Code section 17200 et seq.), and the
12 California Labor Code.

13 53. Plaintiff agrees that there is a risk that any injury that he may have suffered by
14 reason of the Released Parties' relationship with him might not now be known, and there is a
15 further risk that said injuries, whether known or unknown at the date of this Settlement
16 Agreement, might possibly become progressively worse, and that as a result thereof further
17 damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and
18 discharge the Released Parties, and understands that by the execution of this Settlement
19 Agreement no further claims for any such injuries that existed at the time of the execution of this
20 Settlement Agreement may ever be asserted by Plaintiff with respect to claims arising in the time
21 period from the beginning of time to the execution of this Settlement Agreement.

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

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
27 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
28 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

1 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
2 OR RELEASED PARTY.

3 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
4 full and complete release and discharge of all parties, Class Representative expressly
5 acknowledges that this Settlement Agreement is intended to include in its effect, without
6 limitation, all claims against the Released Parties, known or unknown, suspected or unsuspected,
7 which exist or may exist on behalf of or against the other at the time of execution of this
8 Settlement Agreement, including, but not limited to, any and all claims relating to or arising from
9 Plaintiff's employment. The only claims not covered by this release are claims that cannot be
10 released by private or court approved agreement under applicable law.

11 **G. Interim Stay of Proceedings**

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

15 **H. Notice Process**

16 56. Appointment of Administrator. The Parties have agreed to the appointment of the
17 Administrator to perform the duties of a settlement administrator, including mailing the Notice,
18 exercising its judgment to determine the current mailing address for each Class Member,
19 including performing a skip-trace to identify any updated addresses, independently reviewing
20 and verifying documentation associated with any opt-out requests, resolving any disputes
21 regarding the calculation or application of the formula for determining the Individual Class
22 Payments and Individual PAGA Payments, issuing and mailing the settlement checks to
23 Participating Class Members and Aggrieved Employees, issuing all necessary tax forms, and
24 performing such other tasks as set forth herein or as the Parties mutually agree or that the Court
25 orders.

26 57. Additional Duties of the Administrator. The Administrator shall upload and
27 maintain on its website the following non-inclusive list of documents: the Settlement Agreement,
28 the Notice Packet, the Motion for Preliminary Approval, the Order granting Preliminary
Approval, the Motion for Final Approval, and the Order granting Final Approval. These

documents shall be accessible by the Class via URL link that will be provided in the Notice.

58. Disputes Regarding Administration. Any disputes not resolved by the Parties and the Settlement Administrator concerning the administration of the Settlement will be resolved by the Court under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to attempt to resolve the dispute without involving the Court.

59. Class Data. Within twenty (20) days after entry of the Preliminary Approval Order, Defendants shall provide the Class Data to the Administrator. The Administrator will inform the Parties within five (5) days of receipt of the Class Data if the Escalator Clause has been triggered and, if so, if the Administrator will seek an adjustment of the Administration Costs. The Administrator also will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Administrator will remain confidential, will be used solely for purposes of administration of the Settlement, and will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendants' express written consent, or by order of the Court. Although Class Counsel will not be provided with the Class Data, nothing herein shall prevent Class Counsel from responding to inquiries or requests from Class Members regarding the Action and Settlement.

60. Total Workweeks. At least 5 days prior to mailing the Notice, the Administrator shall provide a spreadsheet to Class Counsel and Defense Counsel containing a preliminary calculation of all payments to be paid from the Settlement Amount, including the estimated Individual Class Payments to each Class Member and Individual PAGA Payments to each Aggrieved Employee (a person's name shall be redacted and a control number used in place of the name). In the event that the total Workweeks worked by all Class Members through January 8, 2024 triggers the Escalator Clause, the Administrator shall notify the Parties.

61. Notice. The Notice, as approved by the Court, shall be sent by the Administrator to the Class Members, by first class mail, in English and Spanish, within ten (10) calendar days following the Administrator's receipt of the Class Data. The Administrator shall use reasonable

1 skip trace methods to obtain forwarding addresses of Class Members if any envelopes are
2 returned.

3 62. Returned Notices. The Administrator will take steps to ensure that the Notice is
4 received by all Class Members, including utilization of the National Change of Address Database
5 maintained by the United States Postal Service to review the accuracy of and, if possible, update
6 a mailing address. Notices will be re-mailed to any Class Member for whom an updated address
7 is located within ten (10) calendar days following both the Administrator learning of the failed
8 mailing and its receipt of the updated address. The Notice shall be identical to the original
9 Notice, except that it shall notify the Class Member that the exclusion (opt-out) request or
10 objection must be returned by no later than 15 (fifteen) days from the original Response
11 Deadline.

12 63. Presumption Regarding Receipt of Notice Packet. It will be conclusively
13 presumed that if an envelope has not been returned undeliverable to Administrator by the
14 Response Deadline that the Class Member received the Notice Packet.

15 64. Disputes Regarding Class Data. Class Members are deemed to participate in the
16 Settlement unless they opt-out. Regardless of whether any Class Members opt out of the Class
17 Settlement, they will still be bound by the PAGA Release if they are an Aggrieved Employee.
18 The Notice will inform Class Members of the number of Workweeks he/she worked during the
19 Class Period and the PAGA Period. Class Members may dispute their Weeks Worked if they
20 feel they should be credited with more Weeks Worked in the Class Period and/or PAGA Period
21 in California than Defendants' records show by timely submitting evidence to the Administrator.
22 Defendants' records will be presumed determinative absent reliable evidence to rebut
23 Defendants' records, but the Administrator will evaluate the evidence submitted by the Class
24 Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to
25 meet and confer in good faith about the evidence to determine the Class Member's actual
26 number of Workweeks and estimated Individual Class Payment and Individual PAGA Payment.
27 The Administrator shall attach all Disputes to its Declaration of Due Diligence along with any
28 evidence submitted, and include an initial recommendation in its declaration as to the number of

1 Workweeks to be credited for any disputing Class Members. However, the Court shall have the
2 right to review any decision and make a final decision, which will be binding upon the Class
3 Members and the Parties. Class Members and Aggrieved Employees will have until the
4 Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court.

5 65. Declaration of Due Diligence. The Administrator shall provide counsel for the
6 Parties a declaration of due diligence and proof of mailing with regard to the mailing of the
7 Notice 7 days after the initial Response Deadline.

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

13 (a) Requests for Exclusion from Class. Any Class Member, other than
14 Plaintiff, may request to be excluded from the Class by submitting a Request for Exclusion,
15 using the Form provided within the Notice Packet. The Request for Exclusion Form must be
16 mailed to the Administrator and postmarked on or before the Response Deadline in order to be
17 timely, unless the Parties otherwise agree in writing. Any such Request must be made in
18 accordance with the terms set forth in the Notice Packet. The Administrator shall attach each
19 Request for Exclusion to its declaration of due diligence and file with the Court prior to the Final
20 Approval Hearing. Any Class Member who timely requests exclusion in compliance with these
21 requirements: (i) will not have any rights under this Agreement as to the Class Action
22 Settlement, including the right to object to or otherwise challenge the Settlement; (ii) will not be
23 entitled to receive any Individual Class Payment under this Agreement; and (iii) will not be
24 bound by the Class Action Settlement including the Released Class Claims. Any Class Member
25 who is an Aggrieved Employee who requests timely exclusion will still be bound by the PAGA
26 Settlement and Judgment including the Released PAGA Claims to the fullest extent permitted by
27 law and will receive an Individual PAGA Payment. The Parties and their counsel shall not
28 encourage or solicit Class members to submit requests for exclusion or objections, directly or

1 indirectly, through any means.

2 (b) Binding Effect on Participating Class Members. All Participating Class
3 Members will: (i) be bound by the terms and conditions of this Agreement, the Final Approval
4 judgment, and the releases set forth herein; and (ii) unless they object as set forth herein, will be
5 deemed to have waived all objections and oppositions to the fairness, reasonableness, and
6 adequacy of the Settlement.

7 (c) Objections to Settlement. Any Class Member, other than Plaintiff, who
8 does not submit a valid and timely Request for Exclusion may object to the terms of this
9 Agreement by completing an Objection Form provided within the Notice Packet. To object, the
10 Class Member must mail the Objection to the Administrator, postmarked by the Response
11 Deadline in order to be timely, unless the Parties otherwise agree in writing. Alternatively, the
12 Class Member may elect to make an oral objection at the Final Approval hearing; objecting
13 Class Members are not required to file a notice of intent to appear in advance. The Court will
14 consider all oral objections made in person or through counsel at the Final Approval Hearing
15 regardless of whether a written objection has been submitted. Additionally, any objection must
16 be made in accordance with the terms set forth in the Notice Packet. . The Administrator shall
17 provide any written objections to Class Counsel and Defense Counsel within three (3) days of
18 receipt, and the Administrator shall attach the same to its declaration of due diligence and file
19 with the Court prior to the Final Approval Hearing. Any Participating Class Member who files
20 an objection remains eligible to receive an Individual Class Payment. Plaintiff and Defendants
21 shall not be responsible for any fees, costs, or expenses incurred by any Class Member and/or his
22 or her counsel related to any objections to the Settlement. Submitting an objection does not
23 preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by
24 becoming a party of record by timely and properly intervening or filing a motion to vacate the
25 judgment under Code of Civil Procedure § 663.

26 (d) Failure to Object. Any Class Member who does not timely and properly
27 become a party of record by intervening or filing a motion to vacate the judgment waives any
28 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding

1 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
2 under California Code of Civil Procedure section 473, and extraordinary writs.

3 (e) Responses to Objections. Counsel for the Parties may jointly or separately
4 file a response to any objections submitted by any Class Members at least five (5) court days
5 before the date of the Final Approval Hearing.

6 (f) Class Members will have until the Response Deadline to object or submit
7 a Request for Exclusion to the Administrator by U.S. Mail. The Administrator shall disclose
8 jointly to Class Counsel and Defense Counsel on a weekly basis all objections or Requests for
9 Exclusion that were submitted.

10 67. Funding of the Settlement Amount. Defendants shall deposit the Settlement
11 Amount, plus Defendants' share of payroll taxes owed on Individual Class Payments, with the
12 Administrator as follows:

13 (a) By the later of August 8, 2024, or 10 days after the Effective Date, Defendants
14 shall fund one-third (33.334%) of the Settlement Amount, which shall be
15 distributed in a manner that compensates Plaintiff, the Participating Class
16 Members, the Aggrieved Employees, the LWDA, Class Counsel [for fees and
17 costs], and the Settlement Administrator for one-third of the Court-awarded
18 amounts;

19 (b) By the later of April 8, 2025 or 10 days after the Effective Date, Defendants shall
20 fund one-third (33.333%) of the Settlement Amount, which shall be distributed in
21 a manner that compensates Plaintiff, the Participating Class Members, the
22 Aggrieved Employees, the LWDA, Class Counsel [for fees and costs], and the
23 Settlement Administrator for one-third of the Court-awarded amounts; and

24
25 (c) By December 8, 2025, Defendants shall fund the final one-third (33.333%) of the
26 Settlement Amount, which shall be distributed in a manner that compensates
27 Plaintiff, the Participating Class Members, the Aggrieved Employees, the LWDA,
28 Class Counsel [for fees and costs], and the Settlement Administrator for one-third

1 of the Court-awarded amounts.

2 (d) In the event that Defendants fail to timely make any payment outlined above
3 within 5 calendar days of the due date, Class Counsel shall send a “Notice of
4 default” to Defense Counsel. Defendants will then have seven (7) calendar days
5 after issuance of the notice of default to cure and bring all payments up to the
6 current required amount due. If Defendants fail to timely cure the late payment,
7 all remaining balances shall immediately become due and payable.

8 68. Distribution of Funds. No later than ten (10) calendar days after the deposit of
9 each payment by Defendants, the Administrator shall mail the Individual Class Payments to the
10 Participating Class Members, the Individual PAGA Payments to the Aggrieved Employees, the
11 payment to Class Counsel for the Attorneys’ Fees and Costs Award, any Service Payment to the
12 Class Representative, the payment to the LWDA for PAGA Penalties, and will pay itself the
13 Administration Costs from the Settlement Amount in accordance with the percentages set forth
14 herein.

15 69. Deadline for Cashing/Depositing Settlement Checks. Participating Class
16 Members and Aggrieved Employees shall have 180 calendar days after mailing by the
17 Administrator to cash their settlement checks. The release will be binding upon all Participating
18 Class Members who do not cash their checks within the 180-day period. In the event that any
19 settlement check is returned to the Administrator within 180 days of mailing, the Administrator
20 will, within five (5) business days of receipt of the returned settlement check, perform a skip
21 trace to locate the individual, and notify Defense Counsel and Class Counsel of the results. If a
22 new address is located by these means, the Administrator will have ten (10) business days to re-
23 issue the check. Neither Defendants, Defense Counsel, Class Counsel, Plaintiff, nor the
24 Administrator will have any liability for lost or stolen settlement checks, forged signatures on
25 settlement checks, or unauthorized negotiation of settlement checks. Without limiting the
26 foregoing, in the event a Participating Class Member and/or Aggrieved Employee notifies the
27 Administrator that he or she believes that a settlement check has been lost or stolen, the
28 Administrator shall immediately stop payment on such check. If the check in question has not

1 been negotiated prior to the stop payment order, the Administrator will issue a replacement
2 check.

3 (a) For any check is not cashed within the 180-day period after the first and/or
4 second payment is mailed, the Administrator will hold these funds in its account, and the
5 Participating Class Member and/or Aggrieved Employee may contact the Administrator to
6 request that the first and/or second payments be reissued at any time until 180 days after the third
7 and final check is mailed.

8 (b) For any and all checks that are not cashed within 180 days of the third and
9 final payment, the checks will be void and a stop-payment will be issued, and the Administrator
10 shall issue the unclaimed funds to the California State Controller's Office in the name of the
11 Participating Class Member and Aggrieved Employee.

12 **I. Duties of the Parties Prior to the Court's Approval**

13 70. Promptly after execution of this Agreement, Plaintiff will move the Court for
14 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order jointly
15 prepared by the Parties accomplishing the following:

- 16 (a) Approving as to form and content the proposed Notice;
17 (b) Directing the mailing of the Notice by first class mail to the Class
18 Members;
19 (c) Preliminarily approving this Settlement;
20 (d) Preliminarily certifying the class for purposes of this Settlement only;
21 (e) Advising the LWDA of the proposed Settlement; and
22 (f) Scheduling the Final Approval Hearing on the issue of whether this
23 Settlement should be finally approved as fair, reasonable and adequate.

24 **J. Duties of the Parties Following Court's Final Approval**

25 71. In connection with the Final Approval Hearing provided for in this Agreement,
26 Class Counsel shall submit a proposed Final Approval Order jointly prepared by the Parties:

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

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

(c) Entering judgment pursuant to the Settlement.

K. Voiding the Agreement

72. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Agreement which effects a fundamental change of the Settlement, the entire Agreement shall be rendered voidable and the Parties will be restored to their respective positions as if they had not entered into the Agreement.

73. If the Settlement is voided or fails for any reason, Plaintiff and Defendants will have no further obligations under the Settlement, including any obligation by Defendants to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement. The Parties further agree that this Agreement will not be admissible in this or any other proceeding as evidence that either (i) a class action should be certified or not decertified, or that this matter may proceed as a representative action; or (ii) Defendants are liable to Plaintiff or any Class Member other than according to the Settlement's terms. In the event that the Settlement is not approved or otherwise voided, the Parties expressly reserve all rights.

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

L. Other Terms

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

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

77. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms

1 of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
2 contemplated by this Agreement and any other efforts that may become necessary by order of the
3 Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as
4 practicable after execution of this Agreement, Class Counsel shall, with the assistance and
5 cooperation of Defendants and Defense Counsel, take all necessary steps to secure the Court's
6 preliminary and final approval of the settlement, and the final entry of judgment.

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

11 79. No Admission. Defendants deny any and all liability to Plaintiff and/or any Class
12 Member and/or Aggrieved Employee in this Action, as to any and all causes of action that were
13 asserted or that might have been asserted in this Action. Nonetheless, Defendants wish to settle
14 and compromise the matters at issue in the Complaint to avoid further substantial expense and
15 the inconvenience and distraction of protracted and burdensome litigation. Defendants have
16 taken into account the uncertainty and risks inherent in litigation, and without conceding the
17 validity of any claims or any infirmity in the defenses that it has asserted or could assert in the
18 Action, has determined that it is desirable and beneficial that Plaintiff's claims be settled in the
19 manner and upon the terms and conditions set forth in this Agreement.

20 80. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
21 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
22 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
23 Defendants or any of the other Released Parties. Each of the Parties hereto has entered into this
24 Agreement with the intention of avoiding further disputes and litigation with the attendant
25 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
26 related documents such as the notices, and motions for preliminary and final approval, shall,
27 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
28 inadmissible in evidence in any proceeding, except that the Settlement may be filed and used in

1 this litigation or any related litigation as necessary to approve, interpret, or enforce this
2 Settlement, or in any subsequent action against or by Defendants to support a stay of such
3 subsequent action, or to establish a defense of res judicata, collateral estoppel, release, good faith
4 settlement, judgment bar, or reduction, or any other theory of claim preclusion or issue
5 preclusion or similar defense or counterclaim. The stipulation for class certification as part of
6 this Agreement is for settlement purposes only and if, for any reason the settlement is not
7 approved, the stipulation will be of no force or effect.

8 81. No Publicity. The Parties will not publicize the Settlement or disclose it to third
9 parties prior to the Court granting Preliminary Approval, except as required or necessary to
10 effectuate its terms and comply with law. After Preliminary Approval and the Final Approval
11 Date, Class Counsel and Class Representative agree that they will not discuss the Settlement
12 with the media, any settlement and verdict reporting service, any social media postings or other
13 Internet postings. Nothing herein shall be construed to prevent Class Counsel from the public
14 filing of motions or other case materials in the Action related to seeking and obtaining Court
15 approval of this Settlement and the related awards of attorneys' fees and costs, or to
16 communications with Class Members or their representatives about this Settlement, including
17 through the posting of Court-filed documents on Class Counsel's websites for access solely by
18 the Class Members, or to prevent the Parties or their representatives from communicating with
19 financial or legal advisors regarding the Settlement. In response to any media inquiry, Class
20 Counsel may state only that the Action has been settled on terms mutually agreeable to the
21 Parties.

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

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

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

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

11 85. Jurisdiction of the Court. Consistent with California Code of Civil Procedure
12 section 664.6 and California Rules of Court, Rule 3.769(h), the Court shall retain jurisdiction
13 over the Parties with respect to the interpretation, implementation, and enforcement of the
14 Agreement.

15 86. Choice of Law. This Settlement Agreement shall be governed by and construed,
16 enforced and administered in accordance with the laws of the State of California, without regard
17 to its conflicts-of-law rules.

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

23 88. Binding On Assigns. This Agreement shall be binding upon and inure to the
24 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
25 successors and assigns.

26 89. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
27 because the members of the Class are numerous, it is impossible or impractical to have each
28 Class Member execute this Agreement. The Notice will advise all Class Members of the binding

1 nature of the release provided herein and such shall have the same force and effect as if this
2 Agreement were executed by each Class Member.

3 90. Counterparts. This Agreement may be executed in counterparts, and when each
4 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
5 original, and, when taken together with other signed counterparts, shall constitute one fully
6 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
7 signatures shall have the same force and effect as an original.

8 Dated: Feb 2, 2024, 2024

PLAINTIFF AND CLASS REPRESENTATIVE:

Emilio Rosas

Emilio Rosas (Feb 2, 2024 18:16 PST)

Emilio Rosas

11 Dated: _____, 2024

DEFENDANT FURNITURE AVE, INC.

14 By: _____ (name)

15 _____ (title)

17 Dated: _____, 2024

DEFENDANT FURNITURE AVE CITY

19 By: _____ (name)

21 _____ (title)

23 Dated: _____, 2024

DEFENDANT FURNITURE CITY WEST

25 By: _____ (name)

27 _____ (title)

1 nature of the release provided herein and such shall have the same force and effect as if this
2 Agreement were executed by each Class Member.

3 90. Counterparts. This Agreement may be executed in counterparts, and when each
4 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
5 original, and, when taken together with other signed counterparts, shall constitute one fully
6 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
7 signatures shall have the same force and effect as an original.

8
9 Dated: _____, 2024

PLAINTIFF AND CLASS REPRESENTATIVE:

10 _____
Emilio Rosas

11
12 Dated: 1/29, 2024

DEFENDANT FURNITURE AVE, INC.

Omar Rahman

14 By: Omar Rahman (name)

15 VICE PRESIDENT (title)

16
17 Dated: 1/29, 2024

DEFENDANT FURNITURE AVE CITY

Fawzat Saed

19 By: Fawzat Saed (name)

20 Cheif Executive Officer (title)

21
22
23 Dated: 1/29, 2024

DEFENDANT FURNITURE CITY WEST

Omar Rahman

25 By: Omar Rahman (name)

26 President (title)

1 Dated: 1/29, 2024

DEFENDANT FARIS ESCHIEK:

Faris Eschick

Faris Eschick

4 Dated: 1/29, 2024

DEFENDANT FAWZI SAED:

Fawzi Saed

Fawzi Saed

8 Dated: 1/29, 2024

DEFENDANT OMAR RAHMAN:

Omar Rahman

Omar Rahman

12 **APPROVED AS TO FORM:**

13 Dated: February 5, 2024

CLASS COUNSEL

LAUBY, MANKIN & LAUBY LLP

Brian J. Mankin

Brian J. Mankin

Attorneys for Plaintiff

17 Dated: January 31, 2024

DEFENSE COUNSEL

MUCH SHELIST, P.C.

Isaac R. Zfaty

Isaac R. Zfaty

Jonathan D. Yank

Attorneys for Defendants

EXHIBIT “B”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Rosas v. Furniture Ave., Inc., et al.

(Orange County Superior Court, Case No. 30-2022-01284958-CU-OE-CXC)

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT.
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

A California court authorized this notice. This is not a solicitation from a lawyer.

A class and representative action settlement has been reached by the parties to a lawsuit involving wage and hour claims. The settlement covers all current and former nonexempt employees employed by Defendants Furniture Ave, Inc., Furniture Ave City, Furniture City West in California (the “Class”) at any time from October 7, 2018 through January 8, 2024 (the “Class Period”). The settlement resolves a class and representative action lawsuit filed in Orange County Superior Court, entitled *Rosas v. Furniture Ave Inc.* (“the Action”). Plaintiff alleges that Defendant failed to: pay all wages due, including minimum and overtime wages; provide compliant meal and rest periods or premium compensation in lieu thereof; timely and properly pay final wages upon separation of employment; and issue accurate and complete wage statements. Plaintiff also brings a claim for civil penalties under California’s Labor Code Private Attorneys General Act (“PAGA”).

Defendants Furniture Ave, Inc., Furniture Ave City, Furniture City West, and its owners Faris Escheik, Fawzi Saed, and Omar Rahman (collectively referred to as “Furniture Ave” or “Defendants”) deny liability for all claims and contend that its policies and practices comply with the law. The Settlement avoids costs and risks of continuing the Action; pays money to employees; and releases Defendants from liability from the claims that were or could have been asserted in the Action.

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments to Aggrieved Employees and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendants’ records, and the Parties’ current assumptions, the Workweeks you are credited with working during the Class Period and PAGA Period according to Defendants’ records are shown in the chart below. The amount you may receive will depend on several factors. (If no weeks worked are stated for the PAGA Period, then according to Defendants’ records, you are not eligible for an Individual PAGA Payment under the Settlement because you did not work during the PAGA Period.)

[CLASS MEMBER NAME]

[ID/CONTROL NUMBER]

Two Parts	Weeks Worked During: Class Period (Class Member) and PAGA Period (If Applicable)	Your Estimated Share
Class Member	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

If you believe that you worked different weeks during either period than Defendants’ records show in the chart above, you can submit a dispute by **DATE**, 2024 (“**Response Deadline**”). See **Section 4** of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff as a Service Award and to Plaintiff’s attorneys (“Class Counsel”) for their requested fees and costs. If the Settlement is approved the Court will enter an order and judgment that requires Defendants to make payments under the Settlement and bars Class

Members and Aggrieved Employees from asserting certain claims against Defendant as described in Question 3 below.

Based on Defendants' records showing that you worked for Defendants during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT IF THE SETTLEMENT IS APPROVED	To receive a cash payment from the Settlement, no further action is required on your part. If you do nothing and the Court approves the Settlement, you will be mailed a settlement payment and you will release certain claims. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 .
EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT	If you do <u>not</u> wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims, but not the PAGA settlement. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2024 (see Section 6 for more details on how to opt-out). If you opt-out, you cannot object to the Class Settlement and you will receive no money from the class settlement but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations. If you are a Aggrieved Employee you will be paid a share of the PAGA Payment and will be bound by the PAGA Release, as detailed below
OBJECT TO THE SETTLEMENT	If you object to the settlement of the Class Claims, you may submit an Objection stating why you object to the settlement by [REDACTED], 2024, or orally object at the Final Approval Hearing (see Section 7 for details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit a written dispute to the Administrator (see Section 4 for more details on how to dispute your credited Weeks Worked). Defendants' records will be presumed correct, but you may provide evidence to the Administrator showing how many Work Weeks you believe you should be credited, and the Court will render a final decision.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT'S NOT EXPECTED OR REQUIRED	
DATE: [REDACTED], 2024 TIME: [REDACTED]	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can object to the Settlement prior to or at the Final Approval Hearing. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff and Class Representative, Emilio Rosas, is a former employee of Furniture Ave. On October 7, 2022, Plaintiff filed the class and representative Action against Defendants, which alleges the following violations of the California Labor Code: (1) failure to pay proper minimum wages, (2) failure to pay proper overtime wages, (3) failure to provide compliant meal periods, (4) failure to provide compliant rest breaks, (5) failure to timely pay all wages due and owing upon separation of employment, (6) failure to provide accurate itemized wage statements, and (7) unfair and unlawful competition. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action (“Class Counsel”). See Section 9 below for their contact information.

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

In preliminarily approving the Settlement, the Court did not make any determination in favor of Plaintiff or Defendants. There has been no decision on the merits or trial. Instead, both sides conducted investigations and analysis of the facts and applicable law, and hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations and it strongly dispute Plaintiff’s claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendants Will Pay \$408,000 as the Settlement Amount. Defendants have agreed upon final approval of the Settlement to deposit the Settlement Amount into an account controlled by the Administrator of the Settlement. The Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorneys’ fees and expenses, the Administrator’s Costs, and PAGA Penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will fund the Settlement on a payment plan that will be issued in 2024 and 2025. The Judgment will be final on the date the Court enters Judgment, or a later date if any Participating Class Member objects to the proposed Settlement or the Judgment is appealed.

2. Court Approved Payments from the Settlement Amount. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following payments from the Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- A. Up to one-third of the Settlement Amount to Class Counsel for attorneys’ fees (\$136,000) and up to \$20,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- B. Up to \$7,500 to the Class Representative as a Service Payment for filing the Action, working with Class Counsel and representing the Class. The Class Representative’s Service Payment will be the only monies Plaintiff will receive other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$11,000 to the Administrator for services administering the Settlement.
- D. Up to \$40,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% to Individual PAGA Payments to all Aggrieved Employees, which will be divided based on their share of Weeks Worked during the PAGA Period.

3. Net Settlement Distributed to Class Members. After subtracting the above payments in amounts approved by the Court, the Administrator will distribute the rest of the remainder (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Weeks Worked during the Class Period.

4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of one-third of each Individual Class Payment to taxable wages (“Wage Portion”) and two-thirds to penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California State Controller’s Unclaimed Property Fund in your name.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you opt-out of the Settlement, not later than the Response Deadline. See Section 6 of this Notice for details on how to Opt-Out.

7. The Proposed Settlement Will be Void If the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendants.

8. Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion and Objections (if any). The Administrator will also decide any Disputes over weeks worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.

9. Participating Class Members’ Release. After the Judgment is final and Defendant has fully funded the Settlement Amount and an additional amount to pay employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages, expenses or penalties based on the facts alleged in the Action for the duration of the Class Period and PAGA Period, which are resolved by this Settlement.

Upon the Settlement becoming final and Defendants funding the Settlement Amount, the Participating Class Members will released the Released Parties of the Released Class Claims, which is defined as follows: any and all claims and/or causes of action that were or could have been pled based on the facts alleged in the Complaint, including but not limited to, any claim for: (a) failure to pay minimum wages, (b) failure to pay overtime wages; (c) failure to provide meal periods, (d) failure to provide for rest breaks, (e) failure to failure to timely pay final wages, (f) failure to provide accurate itemized wage statements, (g) unfair and unlawful competition, and (h) all other claims for statutory penalties based on the facts or claims alleged in the operative complaint. The time period governing the Released Class Claims shall be the Class Period.

As used herein, “Released Parties” means Defendants and its parents, subsidiaries, directors, owners, shareholders, officers, agents, attorneys, servants, joint employers and employees, past and present, and each of them and anyone acting in concert with foregoing.

10. Release of Released PAGA Claims. Regardless of whether you exclude yourself from the Class Settlement, after the Court’s judgment is final, and Defendants has paid the Settlement Amount, Plaintiff on behalf of himself, the State of California and the Aggrieved Employees shall release the Released Parties from any and all PAGA claims and/or causes

of action that were or could have been pled based on the alleged facts and violations set forth in the Complaint and/or the LWDA Notice, including all PAGA claims seeking civil penalties that premised upon (a) failure to pay minimum wages, (b) failure to pay overtime wages; (c) failure to provide meal periods, (d) failure to provide for rest breaks, (e) failure to failure to timely pay final wages, (f) failure to provide accurate itemized wage statements, and (g) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the operative complaint. The time period governing the Released PAGA Claims shall be the PAGA Period.

4. HOW IS MY SETTLEMENT PAYMENT CALCULATED?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the number of Weeks Worked by each individual Participating Class Member during the Class Period.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$10,000 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.

3. Disputing Weeks Worked. The number of weeks you worked during the Class Period and PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have until **INSERT DATE HERE** ("Response Deadline") to dispute the number of Workweeks credited to you by submitting evidence to the Administrator.

You need to support your dispute by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of weeks worked based on Defendants' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will attempt to resolve Workweek disputed based on your submission and on input from Class Counsel and Defendants' Counsel, but the Court will have the right to review any initial decision made by the Administrator along with the evidence submitted. You can't appeal or otherwise challenge its final decision.

5. HOW AND WHEN WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. Defendants have agreed to fund the Settlement Amount in three equal installments: 1) Approximately August 8, 2024 (assuming the judgment is final by this date), 2) April 8, 2025, and 3) December 8, 2025. Assuming Defendants timely issue these payments, the Administrator will send, by U.S. mail, three checks to every Participating Class Member (*i.e.*, every Class Member who does not opt-out) and Aggrieved Employee approximately 10 days after receipt of each payment. Each check will be for approximately one-third of your share of the Individual Class Payment and, if applicable, the Individual PAGA Payment.

2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, three checks with each check containing approximately one-third of your Individual PAGA Payment on the dates noted above.

3. Individual Payments will be mailed to Participating Class Members and Aggrieved Employees only if the Court grants final approval of the Settlement and Defendants timely fund the Settlement Amount. The dates above are estimates and how long that will be after the Final Approval Hearing that actually takes will depend on several factors, including whether anyone objects to the Settlement or appeals the Court's approval.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Administrator a "Request for Exclusion" letter/card postmarked no later than , 2024

with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE CLASS IN THE FURNITURE AVENUE LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT FROM THIS LAWSUIT.”

Any person who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under the Class Settlement, including the right to object to, appeal or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment, except as to the release of PAGA claims.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement remain eligible for Individual PAGA Payments.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. **The deadline for sending written objections to the Administrator is [REDACTED], 2024 (the “Response Deadline”).**

If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, and the objection must include your full name, address, telephone number, last four digits of the social security number or date of birth, signature, and dates of employment with Defendants, in addition to the case name and number (*Rosas v. Furniture Ave.*, Case No. 30-2022-01284958-CU-OE-CXC), the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof. Additionally, if you are represented by an attorney, the objection must include the name and address of your attorney. This objection and all supporting information must be sent to the Administrator at the address listed in Section 9, **postmarked** on or before [REDACTED], 2024.

If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. WHEN IS THE FINAL APPROVAL HEARING?

On [REDACTED], 2024, the Court will hold a public hearing in Department CX105 of the Civil Complex Center for the Superior Court for the State of California, County of Orange, 751 W. Santa Ana Blvd., Santa Ana, CA 92701 for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel’s applications for attorneys’ fees and costs, whether to approve the payment to the LWDA, and whether to approve Plaintiff’s request for the Service Award. This hearing may be continued or rescheduled by the Court without further notice to you other than by you checking the Court’s docket. If you do not object to the proposed Settlement you can but do not need to appear at the hearing and do not need to take any other action. Class Counsel will answer any questions the Judge may have.

9. HOW CAN I GET MORE INFORMATION?

If you have questions about this Notice, the process to Opt-Out or Object, or the Settlement, or if you did not receive this Notice in the mail but obtained it and you believe that you are or may be a member of the Class, you should contact the Administrator for more information or to request that a copy of this Notice be sent to you in the mail.

Settlement Administrator
Name
Mailing Address
Telephone Number
Case Website

For your convenience, the Administrator has uploaded key case documents (including the operative complaint, PAGA Notice letter to the LWDA, Settlement Agreement and Amendment thereto, the Class Notice Packet, and Orders granting Preliminary Approval, Final Approval and the Judgment) for this case to the following website: **PLEASE INSERT URL HERE**. The website will be active for at least 180 days. Should you desire any additional information, or if you wish to communicate directly with Class Counsel or Defendants' Counsel, you may contact them at the contact information noted here:

Class Counsel	Defendants' Counsel
Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Misty Lauby, Esq. <i>misty@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444	Isaac R. Zfaty <i>IZfaty@muchlaw.com</i> Jonathan D. Yank <i>JYank@muchlaw.com</i> MUCH SHELIST, P.C. 660 Newport Center Drive, Ste 900 Newport Beach, CA 92660 Tel: 949.767.2200

You may also seek advice from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement and Amendment thereto, containing the complete terms of the proposed Settlement, which is posted on the Administrator's website (above), as well as on file with the Court and attached to the Supplemental **Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement** filed on [REDACTED], 2024 and which is available to be inspected at any time during regular business hours at the Office of the Clerk, Orange County Superior Court, at 700 Civic Center Drive West, Santa Ana, CA 92701, during regular court hours.

DO NOT WRITE OR TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT

10. WHAT IF I DON'T GET OR I LOSE MY SETTLEMENT CHECK?

A checks will automatically expire 180 days after a check is mailed. If you do not receive or do not cash any check, you may contact the Administrator to request that the check(s) be reissued so long as more than 180 days from the mailing of the third check has not passed. For any payments that are not cashed within 180 days of the third and final payment, the payment will be void and a stop-payment will be issued on any outstanding checks, and the Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the recipient. Contact the California State Controller's Office for information on how to claim uncashed funds.

11. WHAT IF MY ADDRESS HAS CHANGED?

To ensure that you receive your check, you should immediately notify the Administrator if you have moved or otherwise changed your mailing address.

REQUEST FOR EXCLUSION FORM

Rosas v. Furniture Ave, Inc., Furniture Ave City and Furniture City West
Orange County Superior Court, Case No. 30-2022-01284958-CU-OE-CXC

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU WANT TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT CHECK? (check the box that applies)

☐

YES: STOP HERE -- DO NOT RETURN THIS FORM. NO FURTHER ACTION IS NEEDED TO PARTICIPATE IN THE SETTLEMENT.

☐

NO: SIGN, DATE AND RETURN THIS FORM TO EXCLUDE YOURSELF FROM THE SETTLEMENT.

By signing below, I am excluding myself from the Settlement:

I do NOT want to participate in the settlement in *Rosas v. Furniture Ave, Inc., Furniture Ave City and Furniture City West* (Orange County Superior Court Case No. 30-2022-01284958-CU-OE-CXC). I understand by excluding myself from the settlement that I will not receive any money from the settlement other than an Individual PAGA Payment if I qualify as an Aggrieved Employee (see first page of the Court Approved Notice of Class Action Settlement).

Signed on _____, 2024

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT DEADLINE]:

Settlement Administrator:

Name

Mailing Address

Telephone Number

OBJECTION FORM

Rosas v. Furniture Ave, Inc., Furniture Ave City and Furniture City West
Orange County Superior Court, Case No. 30-2022-01284958-CU-OE-CXC

Please verify and/or complete any missing identifying information:

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU OBJECT TO THE SETTLEMENT? (check the box that applies)

☐

NO: STOP HERE -- DO NOT RETURN THIS FORM

☐

YES: COMPLETE THE REVERSE SIDE AND RETURN THIS FORM

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection. Any objection should describe the nature of and basis for the objection, and any other information that you would like the Court to consider.

I OBJECT to the Settlement in the case of *Rosas v. Furniture Ave, Inc., Furniture Ave City and Furniture City West*, on the following grounds (if additional space is necessary, please include additional sheets of paper):

Signed on _____, 2024

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT OBJECTION DEADLINE]:

Settlement Administrator:

Name
Mailing Address
Telephone Number

EXHIBIT “C”



LAUBY, MANKIN & LAUBY LLP

October 7, 2022

Submitted Via Online Filing to the LWDA

Sent Via U.S. Mail and Certified Mail

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Please See Attached Service List

**Re: PAGA Civil Penalty Claim
Emilio Rosas III v. Furniture Ave., Inc., et al.**

To the Labor and Workforce Development Agency, Furniture Ave., Inc., Furniture Ave City, Furniture City West, Faris Escheik, Omar Rahman, Fawzat Saed:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Emilio Rosas III (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his employer(s), Furniture Ave., Inc., Furniture Ave City, Furniture City West, and/or any affiliated entities, Mr. Faris Escheik, Mr. Omar Rahman, and Mr. Fawzat Saed (the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant has been employed by the Company since December 2019. Claimant alleges that, at all relevant times, he and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Among other violations, the Company routinely altered clock in, clock out, and meal period timekeeping records resulting in unpaid off the clock work.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company’s policies and practices, Claimant was subjected to meal period violations when he was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a meal period after the 5th hour of work, and (4) not provided mandated second or third meal periods on shifts in excess of 10 hours or 15 hours, respectively. Moreover, as explained above, the company had a policy and practice of altering time records to avoid meal period penalties.

Mailing Address

5198 Arlington Avenue, PMB 513, Riverside, CA 92504



Toll Free
888.959.8508

Physical Address

11801 Pierce Street, Suite 200, Riverside, CA 92505

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, Claimant was unable to leave the premises for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Finally, during his employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a). Specifically, Claimant alleges that the Company failed to provide wage statements that listed all applicable rates of pay and total hours worked, among other violations - in direct violation of Labor Code § 226(a).

Furthermore, Claimant alleges that Faris Escheik, Omar Rahman, and Fawzat Saed are now and/or at all relevant times were the owners of Furniture City, Inc. and Furniture Ave City, Furniture City West and were Claimant's and the Aggrieved Employees' actual employer or, in the alternative, were individuals employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times Faris Escheik, Omar Rahman, and Fawzat Saed had the authority, in the interest of Furniture City, Inc. Furniture Ave City, and Furniture City West to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that Furniture City, Inc., Furniture Ave City, Furniture City West, Faris Escheik, Omar Rahman, and Fawzat Saed are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, Furniture City, Inc., Furniture Ave City, Furniture City West, Faris Escheik, Omar Rahman, and Fawzat Saed were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges that Furniture City, Inc., Furniture Ave City, Furniture City West, Faris Escheik, Omar Rahman, and Fawzat Saed were merely the alter-ego of the other in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the other. Claimant further alleges that, at all relevant times, Furniture City, Inc. and Furniture Ave City have been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been shells and instrumentality through which Faris Escheik, Omar Rahman, and Fawzat Saed have conducted personal affairs. Adherence to the fiction of the separate existence of Furniture City, Inc., Furniture Ave City, and Furniture City West would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to Furniture City, Inc., Furniture Ave City, and Furniture City West should be imposed jointly and severally against Faris Escheik, Omar Rahman, and Fawzat Saed.

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Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, Faris Escheik, Omar Rahman, and Fawzat Saed are liable for PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 (“if there is evidence and a finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws (§ 558(a)) or ‘pays or causes to be paid to any employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same)

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company’s failure to accurately record and compensate for all hours worked. This resulted in earned, but unpaid, overtime wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees worked in excess of 8 and/or 12 hours per day, and/or forty hours per week without receiving proper payment of the requisite overtime and/or doubletime wages for all hours worked pursuant to Labor Code §§ 204 and 510 and/or the applicable IWC Wage Order.

Accordingly, Labor Code §§ 210, 558, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

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Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company's policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee's regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states "[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period."

As a result of the Company's failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 202(a) states in pertinent part "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours' previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Labor Code § 203(a) states "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a "waiting time penalty." (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

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**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee's name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including the failure to state total hours worked during the period and the failure to state all applicable hourly rates of pay and number of hours worked at each date. Additionally, the Company's wage statements failed to accurately state gross wages earned, all deductions, net wages earned, and the name and address of the legal entity that is the employer. Accordingly, Claimants are entitled to damages under Labor Code § 226(e), including reasonable attorneys' fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR FAILURE TO MAINTAIN EMPLOYMENT RECORDS

(Labor Code §§ 1174, 1174.5, 1198, and § 7 of the IWC Wage Orders)

Labor Code § 1174(d), and § 7 of the IWC Wage Orders require employers to maintain accurate employment records, including accurate payroll records showing the total number of regular and overtime hours worked each day by employees, including meal periods, and the gross wages earned by the employee, including all applicable pay rates and the corresponding number of hours worked at each pay rate, among other requirements.

Here, the Company failed to maintain accurate employment records as mandated by California law. Therefore, in addition to recovering the amount of attorneys' fees and cost incurred herein, Claimant is entitled to the assessment of civil penalties in accordance with Labor Code §§ 1174(d), 1174.5, 1199, and 2699.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

Mailing Address

5198 Arlington Avenue, PMB 513, Riverside, CA 92504



Toll Free
888.959.8508

Physical Address

11801 Pierce Street, Suite 200, Riverside, CA 92505

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Misty M. Lauby, Esq.

E-mail: misty@lmlfirm.com
www.LMLfirm.com

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Physical Address

11801 Pierce Street, Suite 200, Riverside, CA 92505

SERVICE LIST

Furniture Ave., Inc.
1351 W 17th St
Santa Ana, CA 92706

Furniture Ave City
1351 W 17th St
Santa Ana, CA 92706

Furniture City West
6651 N. Fallbrook Ave
West Hills, California 91307

Faris Escheik
1351 W 17th St
Santa Ana, CA 92706

Omar Rahman
584 C L Fleming Cir.
Corona, CA 92881

Fawzat Saed
1351 W 17th St
Santa Ana, CA 92706

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11801 Pierce Street, Suite 200, Riverside, CA 92505

EXHIBIT “D”



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

January 17, 2024

CASE ASSUMPTIONS

Class Members	325
Opt Out Rate	1%
Opt Outs Received	3
Total Class Claimants	322
Subtotal Admin Only	\$11,531.94

Flat Fee Total \$11,000.00

For 325 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Language Translation, Printing & Mailing Included

Three Installments & Disbursements / Two Tax Years

Case: Rosas v. Furniture, Opt-Out Administration

Phoenix Contact: Michael E. Moore

Contact Number: 949.331.0131

Email: mike@phoenixclassaction.com

Requesting Attorney: Brian J. Mankin

Firm: Lauby, Mankin & Lauby

Contact Number: (951) 320-1444

Email: brian@lmlfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.

Estimate is based on **325** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.00	42		\$84.00
NCOA (USPS)	\$60.00	1		\$60.00
Total				\$644.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Language Translation / Website

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Language Translation	\$1,000.00	1		\$1,000.00
Data Merge & Duplication Scrub	\$0.10	325		\$32.50
Notice Packet & Opt-Out Form	\$1.35	325		\$438.75
Estimated Postage (up to 2 oz.)*	\$0.87	325		\$282.75
Static Website	\$200.00	1		\$200.00
Total				\$2,154.00

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Skip Tracing Undeliverables	\$1.00	49		\$48.75
Remail Notice Packets	\$1.00	46		\$45.75
Estimated Postage	\$0.87	46		\$39.80
Programming Undeliverables	\$50.00	2		\$100.00
			Total	\$344.30

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Database	\$150.00	1		\$150.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	4		\$220.00
Deficiency & Dispute Letters	\$10.00	4		\$40.00
Case Manager	\$85.00	2		\$170.00
			Total	\$780.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	3		\$405.00
Disbursement Review	\$135.00	3		\$405.00
Programming Manager	\$95.00	4		\$380.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	9		\$1,215.00
Mail Class Checks * (x 3)	\$0.90	322		\$869.40
Estimated Postage (x 3)	\$0.64	322		\$618.24
			Total	\$4,027.64

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	3		\$345.00
Remail Checks (Postage Included)	\$2.00	51		\$102.00
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	4		\$340.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	3		\$255.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting *(x 2) (1 State Tax Reporting & Escheating to the State of CA Included)	\$1,800.00	1		\$1,800.00
Check to Cy-Pres	\$150.00	1		Included
Total				\$3,582.00

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$11,531.94



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT “E”