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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 VIOLA HUBBS, BRANDON
12 COLEMAN, TAMIKA WILLIAMS,
13 individually, and on behalf of other
members of the general public
similarly situated,

14 Plaintiffs,

15 vs.

16 BIG LOTS STORES, INC., an Ohio
17 corporation; PNS STORES, INC., an
Ohio corporation; and DOES 1
through 10, inclusive,

18 Defendants.
19

20 ROXANNE SLUSHER, on behalf of
21 herself, all others similarly situated,
and the general public,

22 Plaintiff,

23 vs.

24 BIG LOTS STORES, INC., an Ohio
25 corporation; BIG LOTS F&S, INC.,
an Ohio corporation; and DOES 1
through 50, inclusive,

26 Defendants.
27
28

Case No.: 2:15-cv-01601 JAK (ASx)

CLASS ACTION & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698
ET SEQ.

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND
RELEASE**

United States District Court for the
Northern District of California, Case No.
17-cv-06030-RS

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28 Attorneys for Defendants Big Lots Stores, Inc., PNS Stores, Inc. and Big Lots F&S, Inc.

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND**
2 **RELEASE**

3 This Joint Stipulation of Class Action Settlement and Release (“Settlement”
4 or “Settlement Agreement”) is made and entered into by and between Plaintiffs
5 Viola Hubbs, Brandon Coleman, Tamika Williams, and Roxanne Slusher
6 (“Plaintiffs” or “Class Representatives”), as individuals and on behalf of all others
7 similarly situated, and Defendants Big Lots Stores, Inc., PNS Stores, Inc., and Big
8 Lots F&S, Inc. (“Big Lots” or “Defendants”) (together the “Parties”).

9 **DEFINITIONS**

10 The following definitions are applicable to this Settlement Agreement.
11 Definitions contained elsewhere in this Settlement Agreement will also be effective:

12 1. “Action(s)” means the actions entitled *Hubbs, et al. v. Big Lots Stores,*
13 *Inc., et al.*, United States District Court for the Central District of California, Case
14 No. 2:15-cv-01601 JAK (ASx) (the “*Hubbs Action*”) and *Slusher v. Big Lots Stores,*
15 *Inc., et al.*, United States District Court for the Northern District of California, Case
16 No. 4:17-cv-06030 RS (the “*Slusher Action*”).

17 2. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the
18 Parties and approved by the Court for Plaintiffs’ Counsel’s litigation and resolution
19 of the Actions, and all costs incurred and to be incurred by Plaintiffs’ Counsel in the
20 Actions, including but not limited to expert fees and expenses, investigation
21 expenses, postage, telephone, and photocopying charges, costs associated with
22 documenting the Settlement, providing any notices required as part of the Settlement
23 or Court order, securing the Court’s approval of the Settlement, administering the
24 Settlement, obtaining entry of the Judgment terminating the Action, and expenses
25 for any experts. Attorneys’ Fees and Costs shall be paid to Plaintiffs’ Counsel as
26 defined below. The Parties have agreed, and Defendants will not oppose an
27 application to the Court for Attorneys’ Fees in the amount of Two Million Three
28 Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-

1 Three Cents (\$2,333,333.33) and Costs not to exceed Five Hundred Thousand
2 Dollars (\$500,000).

3 3. "Class Counsel" or "Plaintiffs' Counsel" means the Law Offices of
4 Mark Yablonovich, Nichols Kaster PLLP, Capstone Law APC, and Setareh Law
5 Group.

6 4. "Class List" or "Class List and Data" means a complete list of all Class
7 Members that Defendants will provide to the Settlement Administrator in an
8 electronic database within twenty-one (21) calendar days after Preliminary Approval
9 of this Settlement. The Class List shall contain the full names, last known contact
10 information (home or mailing address), and Social Security Numbers of the Class
11 Members, and the number of Pay Periods and Closing Shifts each Class Member
12 worked during the Class Period.

13 5. "Class Member(s)" or "Settlement Class" means all persons employed
14 by Defendants in California as non-exempt employees who worked at any of
15 Defendants' California retail stores at any time during the Class Period. All Closing
16 Shift Class Members are Class Members and are members of the Settlement Class.

17 6. "Class Period" means the period from February 7, 2010 to February 3,
18 2020.

19 7. "Class Representative Enhancement Payment(s)" means the amount to
20 be paid to Plaintiffs in recognition of their efforts and work in prosecuting the
21 Actions on behalf of Class Members, and for their respective general release of
22 claims. The Class Representative Enhancement Payments are separate and apart
23 from any money Plaintiffs are entitled to as Class Members. Defendants will not
24 oppose Plaintiffs' application to the Court for Class Representative Enhancement
25 Payments of up to Fifteen Thousand Dollars (\$15,000) each to Viola Hubbs,
26 Brandon Coleman and Tamika Williams and up to Ten Thousand Dollars (\$10,000)
27 to Roxanne Slusher.

28 8. "Class Settlement Amount" means the maximum settlement amount of

1 Seven Million Dollars (\$7,000,000), to be paid by Defendants in full satisfaction of
2 all Released Claims arising from the Actions, which includes all Individual
3 Settlement Payments, Attorneys' Fees and Costs, Class Representative
4 Enhancement Payments, the Labor and Workforce Development Agency Payment,
5 the employer portion and employee portion of payroll taxes, and Settlement
6 Administration Costs. This Class Settlement Amount has been agreed to by the
7 Parties and their counsel based on the aggregation of the agreed-upon settlement
8 value of individual claims. In no event will Defendants be liable for more than the
9 Class Settlement Amount.

10 9. "Closing Shift" means all closing shifts (as that term is understood in
11 the retail store context) worked by Class Members during the Closing Shift Class
12 Period where Defendants' recordkeeping systems reflect a gap of 12 minutes or less
13 between the Class Member's end of shift clock-out time and the time the store's
14 alarm was set.

15 10. "Closing Shift Class Members" means all persons employed by
16 Defendants in California as non-exempt employees who worked at least one Closing
17 Shift at any of Defendants' California retail stores at any time during the Closing
18 Shift Class Period.

19 11. "Closing Shift Class Period" means the period from February 7, 2010
20 to May 23, 2017.

21 12. "Closing Shift Pay Periods" means all pay periods worked by Closing
22 Shift Class Members during which a Closing Shift Class Member worked at least
23 one Closing Shift.

24 13. "Complaint" means the operative Third Amended Complaint filed
25 against Defendants in the *Hubbs* Action, which was commenced on February 7,
26 2014, by Viola Hubbs and subsequently amended to add Tamika Williams and
27 Brandon Coleman. The Complaint alleges claims for violations of California Labor
28 Code: (1) sections 510 and 1198 (unpaid overtime); (2) sections 1194, 1197, and

1 1197.1 (unpaid minimum wages); (3) sections 226.7, and 512(a) (meal period
2 violations); (4) section 226.7 (rest period violations); (5) section 226(a) (non-
3 compliant wage statements); (6) sections 201-202 (wages not timely paid on
4 termination); (7) section 204 (wages not timely paid during employment); (8)
5 section 1197 and California Code of Regulations Title 8, Section 11070,
6 subdivisions 4(C) and 14 (split shift violations and failure to provide suitable
7 seating); (9) sections 2698, et seq. (“PAGA”) and (10) California Business &
8 Professions Code sections 17200, et seq. “Complaint” also means and includes the
9 operative complaint filed in the *Slusher* Action.

10 14. “Court” means the United States District Court for the Central District
11 of California.

12 15. “Defendants” means Defendants Big Lots Stores, Inc., PNS Stores, Inc.
13 and Big Lots F&S, Inc.

14 16. “Defendants’ Counsel” means Vorys, Sater, Seymour & Pease LLP and
15 Haight Brown & Bonesteel LLP.

16 17. “Effective Date” means the later of: (a) if no appeal of the order
17 granting Final Approval of the Joint Stipulation of Class Action Settlement and
18 Release is filed, the day after the deadline for filing any such appeal; or (b) if any
19 timely appeals are filed, the day after the final resolution of the appeal (including
20 any requests for rehearing and or petitions for writ of certiorari) and/or the
21 expiration of any time period for any further appeal or judicial review, resulting in
22 the final judicial approval of the Settlement.

23 18. “Final Approval” means the date on which the Court enters an order
24 granting final approval of the Settlement Agreement in a form materially similar to
25 that attached as Exhibit C.

26 19. “Individual Settlement Payment” means each Class Member’s share of
27 the Net Settlement Amount, to be distributed to the Class Members who do not
28 submit a Request for Exclusion.

1 20. “Labor and Workforce Development Agency Payment” or “LWDA
2 Payment” means the amount that the Parties have agreed to pay to the California
3 Labor and Workforce Development Agency (“LWDA”) in connection with the
4 Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*,
5 “PAGA”). The Parties have agreed that One Hundred Fifty Thousand Dollars
6 (\$150,000) of the Class Settlement Amount will be allocated to the resolution of
7 Class Members’ claims arising under PAGA. Pursuant to PAGA, seventy-five
8 percent (75%), or One Hundred Twelve Thousand Five Hundred Dollars
9 (\$112,500), of the LWDA Payment will be paid to the LWDA, and the remaining
10 twenty-five percent (25%), or Thirty-Seven Thousand Five Hundred Dollars
11 (\$37,500), will be distributed to the Participating Class Members.

12 21. “Net Settlement Amount” means the portion of the Class Settlement
13 Amount remaining after deduction of the approved Class Representative
14 Enhancement Payments, Settlement Administration Costs, the LWDA portion of the
15 Labor and Workforce Development Agency Payment, the Employer portion of
16 payroll taxes, and Plaintiffs’ Attorneys’ Fees and Costs. The entire Net Settlement
17 Amount will be distributed to Participating Class Members.

18 22. “Notice of Objection” means a Class Member’s valid and timely
19 written objection to the Settlement Agreement. For the Notice of Objection to be
20 valid, it must include: (a) the objector’s full name, signature, address, and telephone
21 number; (b) a written statement of all grounds for the objection accompanied by any
22 legal support for such objection; and (c) copies of any papers, briefs, or other
23 documents upon which the objection is based. Any Class Member who does not
24 submit a timely written objection to the Settlement, or who fails to otherwise
25 comply with the specific and technical requirements of this Paragraph 22, shall be
26 foreclosed from objecting to the Settlement and/or seeking any adjudication or
27 review of the Settlement, by appeal or otherwise.

28 23. “Notice Packet” means the Notice of Class Action Settlement,

1 substantially in the form attached as Exhibit A.

2 24. “Parties” means Plaintiffs and Defendants collectively.

3 25. “Participating Class Members” means all Class Members who do not
4 submit valid and timely Requests for Exclusion.

5 26. “Pay Periods” means the weekly pay periods worked by Class
6 Members during the Class Period.

7 27. “Preliminary Approval” means the date on which the Court enters an
8 order granting preliminary approval of the Settlement Agreement in a form
9 materially similar to that attached as Exhibit B.

10 28. “Released Claims” means any and all claims, charges, rights,
11 complaints, liens, demands, causes of action, obligations, damages and liabilities
12 that each Class Member had, now has, or may hereafter claim to have against the
13 Released Parties arising prior to February 3, 2020, and that were asserted in the
14 Actions and that relate to those claims that were asserted in the Actions, or that
15 could have been asserted in the Actions based on the same facts and circumstances
16 alleged in the Complaint (collectively, “the Released Claims”). The Released
17 Claims specifically include, but are not limited to, claims for: (a) Unpaid Overtime
18 (violation of Labor Code sections 510 and 1198); (b) Unpaid Minimum Wages
19 (violation of Labor Code sections 223, 510, 1194, 1194.2, 1197 and 1197.1); (c)
20 Meal Period Violations (violation of Labor Code sections 204, 223, 226.7, 512(a),
21 and 1198); (d) Rest Period Violations (violation of Labor Code section 204, 223,
22 226.7 and 1198); (e) Non-Compliant Wage Statements (violation of Labor Code
23 sections 226(a) and 1174(d)); (f) Wages Not Timely Paid on Termination (violation
24 of Labor Code sections 201, 202, 203); (g) Wages Not Timely Paid During
25 Employment (violation of Labor Code section 204); (h) Split Shift Violations and
26 Failure to Provide Suitable Seating (violation of Labor Code sections 1197, 1198
27 and California Code of Regulations Title 8, Section 11070, subdivisions 4(C) and
28 14); (i) all the above claims asserted through PAGA; (j) incorporated or related

1 claims asserted through California Business and Professions Code section 17200, et
2 seq.; and (k) all other potential civil and statutory penalties based on or arising from
3 the Released Claims, including but not limited to statutory, constitutional,
4 contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys’
5 fees, litigation costs, restitution, and equitable relief.

6 29. “Released Parties” includes Defendants and any of their former and
7 current subsidiaries, divisions, officers, directors, members, partners, owners,
8 shareholders, employees, former employees, agents, advisors, assigns, servants,
9 attorneys, trustees, assigns, affiliates, independent contractors, volunteers,
10 predecessors, successors, representatives, heirs, executors, administrators, parent
11 companies and organizations, insurers, any predecessors or successors or assigns of
12 any of the foregoing, and any and all other individuals and/or entities in which
13 Defendants may have an interest.

14 30. “Request for Exclusion” means a timely letter submitted by a Class
15 Member indicating a request to be excluded from the Settlement. The Request for
16 Exclusion shall: (a) be signed by the Class Member requesting exclusion; (b)
17 contain the name, address, telephone number and the last four digits of the Social
18 Security Number of the Class Member requesting exclusion; (c) clearly state that the
19 Class Member does not wish to be included in the settlement; (d) be returned by
20 mail to the Settlement Administrator at the specified address; and (e) be postmarked
21 on or before the Response Deadline. The date of the postmark on the return mailing
22 envelope will be the exclusive means by which to determine whether a Request for
23 Exclusion has been timely submitted. A Class Member who does not request
24 exclusion from the Settlement shall be deemed a Participating Class Member and
25 shall be bound by all terms of the Settlement Agreement if the Settlement is granted
26 final approval by the Court.

27 31. “Response Deadline” means the deadline by which Class Members
28 shall postmark to the Settlement Administrator valid Requests for Exclusion, or

1 postmark Notices of Objection to the Settlement Administrator. The Response
2 Deadline shall be thirty (30) calendar days from the initial mailing of the Notice
3 Packet by the Settlement Administrator, unless the thirtieth (30th) calendar day falls
4 on a Sunday or Federal holiday, in which case the Response Deadline shall be
5 extended to the next day on which the U.S. Postal Service is open. The Response
6 Deadline may be extended by express agreement between Class Counsel and
7 Defendants. Except as expressly set forth herein, the Settlement Administrator shall
8 not have the authority to unilaterally extend the deadline for Class Members to
9 submit a Request for Exclusion, or objection to the settlement.

10 32. "Settlement Administrator" means the third-party class action
11 settlement administrator chosen by Class Counsel and approved by the Court for the
12 purposes of administering this Settlement. The Settlement Administrator's duties
13 shall include, but are not limited to, reporting payment of the Individual Settlement
14 Payments to all required taxing and other authorities, unclaimed property due
15 diligence, reporting and remittance obligations, taking appropriate withholding from
16 the Individual Settlement Payments, paying all employer payroll taxes, and issuing
17 IRS Forms W-2 and 1099. It is also understood and agreed that the Settlement
18 Administrator will establish a Qualified Settlement Fund, or QSF, pursuant to
19 Section 468B(g) of the Internal Revenue Code for the purpose of administering the
20 Settlement.

21 33. "Settlement Administration Costs" means the costs payable from the
22 Class Settlement Amount to the Settlement Administrator for administering this
23 Settlement, including, but not limited to, printing, distributing, and tracking
24 documents for this Settlement, calculating estimated amounts per Class Member, tax
25 reporting, distributing the Class Settlement Amount, and providing necessary
26 reports and declarations, unclaimed property due diligence, reporting and remittance
27 obligations, and other duties and responsibilities set forth herein in order to process
28 this Settlement, and as requested by the Parties. All of the costs, fees and expenses

1 incurred by the Settlement Administrator in performing these functions shall be paid
2 and deductible from the Class Settlement Amount. The Settlement Administration
3 Costs are not to exceed One Hundred Fifty Thousand Dollars (\$150,000).

4 **TERMS OF AGREEMENT**

5 Plaintiffs, on behalf of themselves and the Settlement Class, and Defendants,
6 agree as follows:

7 **34. Transfer of *Slusher* Action:** Upon execution of this Agreement, the
8 Parties shall file a stipulation and proposed order in the *Slusher* Action, which will
9 request that the Court transfer the *Slusher* Action to the Central District of
10 California to be consolidated with the *Hubbs* Action. Within seven days of entry of
11 the Judgment pursuant to this Settlement Agreement, Counsel for Plaintiff Slusher
12 shall cause an order of dismissal with prejudice to be filed in the *Slusher* Action.

13 **35. Monetary Terms of Settlement:**

14 **a. Maximum Settlement Amount:** The Class Settlement Amount
15 is Seven Million Dollars (\$7,000,000) subject to the terms and conditions herein.
16 The Class Settlement Amount includes all: (i) payments to Class Members; (ii)
17 Attorneys' Fees and Costs; (iii) Settlement Administration Costs; (iv) the Labor and
18 Workforce Development Agency Payment; (v) Class Representative Enhancement
19 Payments; and (vi) the employer portion and employee portion of payroll taxes
20 required by law. Under no circumstances shall Defendants be obligated to pay more
21 than the Class Settlement Amount. Each Participating Class Member shall be
22 responsible for paying any taxes due on their portion of the Class Settlement
23 Amount.

24 **b. Individual Settlement Payment Calculations:** The Settlement
25 Administrator will calculate the Individual Settlement Payments to be paid to
26 Closing Shift Class Members and Class Members from the Net Settlement Amount
27 in accordance with the terms and provisions of this Settlement Agreement.
28 Payments from the Net Settlement Amount will be allocated to Closing Shift Class

1 Members and Class Members as follows: Forty-Five Percent (45%) of the Net
2 Settlement Amount will be allocated to the settlement of the certified off-the-clock
3 claim and all claims for derivative penalties under the Labor Code to Closing Shift
4 Class Members (“Closing Shift Fund”); and (2) Fifty-Five Percent (55%) of the Net
5 Settlement Amount will be allocated to the settlement of all other claims alleged in
6 the Action and derivative penalties under the Labor Code to Class Members
7 (“General Class Fund”). Each Class Member’s respective shares of the Closing Shift
8 Fund and General Class Fund will be allocated on a pro-rata basis according to the
9 number of pay periods worked by each qualifying Class Member during the Closing
10 Shift Class Period and Class Period. Specific calculations will be as follows:

11 i. **Closing Shift Fund:** Defendants will calculate the total
12 number of Closing Shift Pay Periods worked by all Closing Shift Class Members
13 during the Closing Shift Class Period. All Closing Shift Class Members will be
14 deemed to have worked during at least One Closing Shift Pay Period. To determine
15 each Closing Shift Class Member’s share of the Closing Shift Fund, the Settlement
16 Administrator will use the following formula: Share of Closing Shift Fund =
17 Closing Shift Pay Periods Worked by Individual Closing Shift Class Member ÷
18 Closing Shift Pay Periods Worked by All Closing Shift Class Members × Closing
19 Shift Fund. The entire Closing Shift Fund will be disbursed to all Closing Shift
20 Class Members who do not submit timely and valid Requests for Exclusion. If there
21 are any valid and timely Requests for Exclusion, the Settlement Administrator shall
22 proportionately increase the payment for each participating Closing Shift Class
23 Member, so that the amount actually distributed equals 100% of the Closing Shift
24 Fund.

25 ii. **General Class Fund:** Defendants will calculate the total
26 number of Pay Periods worked by all Class Members during the Class Period. All
27 Class Members will be deemed to have worked during at least one Pay Period. To
28 determine each Class Member’s share of the General Class Fund, the Settlement

1 Administrator will use the following formula: $\text{Share of General Class Fund} = \frac{\text{Pay Periods Worked by Individual Class Member}}{\text{Pay Periods Worked by All Class Members}} \times \text{General Class Fund}$. The entire General Class Fund will be disbursed to
2
3 all Class Members who do not submit timely and valid Requests for Exclusion. If
4 there are any valid and timely Requests for Exclusion, the Settlement Administrator
5 shall proportionately increase the payment for each participating Class Member so
6 that the amount actually distributed equals 100% of the General Class Fund.
7

8 **c. Distribution of Settlement Amounts:**

9 **i. Type of Settlement:** This Settlement is non-reversionary.
10 Defendants maintain no reversionary right to any portion of the Class Settlement
11 Amount. This Settlement does not require Class Members to submit a claim form to
12 participate in the Settlement.

13 **ii. Funding of Class Settlement Amount:** Defendants shall
14 make a one-time deposit of the Class Settlement Amount of Seven Million U.S.
15 Dollars (\$7,000,000) into a Qualified Settlement Account (to be established by the
16 Settlement Administrator) within ten (10) calendar days of the Effective Date. Once
17 Defendants have complied with their obligations set forth in this paragraph, they
18 shall be deemed to have discharged their obligation to fund the Class Settlement
19 Amount, and shall be entitled to all the protections afforded to them under the
20 Settlement Agreement, and shall have no further obligations under the Settlement
21 Agreement, except for the general obligation to cooperate in good faith to effectuate
22 the terms of the Settlement Agreement.

23 **iii. Tax Allocation:** Payments to Participating Class Members
24 shall be allocated ten percent (10%) wages and ninety percent (90%) non-wages
25 (interest and statutory penalties) and shall be divided and reported as W-2 Income
26 and Form 1099 payments, respectively.

27 **iv. Taxation of Individual Settlement Amounts:** The
28 Settlement Administrator shall be responsible for paying the employer's and

1 employees' share of federal, state, and local payroll and income taxes. The portion
2 of each Individual Settlement Amount allocated as wages shall be subject to payroll
3 withholding. Appropriate withholding of the employee's share of income taxes shall
4 be deducted from each Individual Settlement Amount.

5 v. **Cashing of Checks:** Participating Class Members shall
6 have 180 days from the date of mailing of their settlement check to cash their
7 settlement check. In the event that there are any funds attributable to any
8 Participating Class Member (e.g., uncashed settlement checks or undeliverable
9 checks) that are not deposited or cashed within the 180-day period, said funds shall
10 be tendered equally to Legal Aid at Work and Bet Tzedek, cy pres recipients.

11 vi. Any failure of a Participating Class Member to negotiate a
12 check shall not affect the enforceability of the release of claims as stated herein.

13 vii. No person shall have any claim against Defendants (or
14 their designees), Defendants' Counsel, Plaintiffs' Counsel, Plaintiffs, or the
15 Settlement Administrator based on mailings, distributions, payments, or reports
16 made in accordance with or pursuant to this Settlement Agreement.

17 viii. Without prejudice to any other remedies, the Settlement
18 Administrator shall agree to be responsible for any breach of its obligations
19 (whether committed by the Settlement Administrator or its agents) and to indemnify
20 and hold the Parties and their counsel harmless from and against all liabilities,
21 claims, causes of action, costs and expenses (including legal fees and expenses)
22 arising out of any breach committed by the Settlement Administrator or its agents
23 (including but not limited to any breach relating to accurate and timely reporting and
24 remittance obligations with respect to unclaimed funds).

25 ix. **No Credit Toward Benefit Plans:** The Individual
26 Settlement Payments made to Participating Class Members under this Settlement, as
27 well as any other payments made pursuant to this Settlement, shall not be utilized to
28 calculate any additional benefits under any benefit plans to which any Class

1 Members may be eligible, including, but not limited to profit-sharing plans, bonus
2 plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO
3 plans, and any other benefit plan. Rather, it is the Parties' intention that this
4 Settlement Agreement shall not affect any rights, contributions, or amounts to which
5 any Class Members may be entitled under any benefit plans.

6 x. Within ten (10) days after either (1) Final Approval, if the
7 Settlement is approved or (2) entry of order denying the Settlement if the Court does
8 not approve the Settlement, Plaintiffs' Counsel, in their respective cases, will
9 provide a copy of the district court's judgment or order to the LWDA pursuant to
10 Labor Code section 2699(l)(3).

11 **d. Attorneys' Fees and Costs.**

12 i. **Attorneys' Fees:** The Parties agree that Plaintiffs'
13 Counsel may seek, and Defendants will not oppose, up to one-third of the Class
14 Settlement Amount as attorneys' fees, i.e., Two Million Three Hundred Thirty-
15 Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents
16 (\$2,333,333.33). Plaintiffs' Counsel will seek their respective attorneys' fees,
17 including for any work performed by attorneys they engaged to work on the
18 Actions. Defendants' payment of the Attorneys' Fees and Costs in the amount
19 approved by the Court shall constitute full satisfaction of Defendants' obligation to
20 pay any person, attorney, or law firm for attorneys' fees, costs, and expenses
21 incurred on behalf of the Plaintiffs and the Settlement Class, and shall relieve
22 Defendants and the Related Parties from any other claims or liability to any other
23 attorney, law firm, or person for any attorneys' fees, expenses, and costs to which
24 any of them may claim to be entitled on behalf of Plaintiffs and/or the Settlement
25 Class that are in any way related to the Released Claims and/or the Actions. Any
26 Court order awarding less than the amount sought by Plaintiffs' Counsel shall not be
27 grounds to rescind the Settlement Agreement or otherwise void the Settlement.
28 Plaintiffs or Plaintiffs' Counsel may appeal any reduction in the Attorneys' Fees and

1 Costs below the amount they request from the Court. The Settlement Administrator
2 shall issue to Plaintiffs' Counsel an IRS Form 1099 reflecting the amount of
3 attorneys' fees and costs awarded by the Court. Plaintiffs' Counsel shall be solely
4 and legally responsible to pay any and all applicable taxes on the payment made
5 pursuant to this paragraph and agree to indemnify and hold harmless Defendants
6 from any claim or liability for taxes, penalties, or interest for which Plaintiffs'
7 Counsel is responsible as a result of the payment made pursuant to this paragraph.
8 Plaintiffs' Counsel agree that any allocation of fees between or among Plaintiffs'
9 Counsel and any other attorney representing or claiming to represent the Class
10 Members shall be the sole responsibility of Plaintiffs' Counsel.

11 a. Counsel in the *Hubbs* Action shall be entitled to and
12 paid 81.25% of all Attorneys' Fees awarded by the Court ("Hubbs Attorneys'
13 Fees"). The Hubbs Attorneys' Fees shall be divided as follows: (1) 76.50% to the
14 Law Offices of Mark Yablonovich; (2) 13.50% to Capstone Law APC; and (3) 10%
15 to Nichols Kaster PLLP.

16 b. Counsel in the *Slusher* Action shall be entitled to
17 and paid 18.75% of all Attorneys' Fees awarded by the Court ("Slusher Attorneys'
18 Fees").

19 c. Plaintiffs Hubbs, Williams, Coleman and Slusher
20 hereby acknowledge that they have been advised in writing of the above fee sharing
21 agreement, and further acknowledge that they have been advised in writing and
22 understand that the total attorneys' fees charged will not be increased solely by
23 reason of the division of attorneys' fees.

24 ii. **Costs:** The Parties agree that Plaintiffs' Counsel may seek,
25 and Defendants will not oppose, up to Five Hundred Thousand Dollars (\$500,000)
26 as reasonable out-of-pocket costs and expenses.

27 36. **Class Representative Enhancement Payments:** The Parties agree that
28 Defendants will not oppose Plaintiffs' application to the Court for Class

1 Representative Enhancement Payments, in addition to the Plaintiffs' Individual
2 Settlement Payment, in the amount of Fifteen Thousand Dollars (\$15,000) each to
3 Plaintiffs Hubbs, Coleman, and Williams and in the amount of Ten Thousand
4 Dollars (\$10,000) to Plaintiff Slusher, to be paid out of the Class Settlement
5 Amount. The Settlement Administrator shall issue IRS Form 1099 for the Class
6 Representative Enhancement Payments and Plaintiffs shall be solely and legally
7 responsible to pay any and all applicable taxes on the Class Representative
8 Enhancement Payments.

9 **37. Non-Monetary Terms of Settlement**

10 a. The Parties agree and acknowledge that subsequent to the filing
11 of the *Hubbs* Action, Defendants made changes to certain company policies: 1)
12 Defendants implemented a seating policy for the provision of stools throughout their
13 California stores as of March of 2017; and 2) commencing in March of 2019,
14 Defendants add paid time for all closing shift employees and all opening shift
15 employees.

16 **38. Settlement Administration Process**

17 a. **Appointment of Settlement Administrator:** The Parties agree,
18 subject to Court approval, that Plaintiffs will select a Settlement Administrator. The
19 costs of settlement administration shall be paid out of the Class Settlement Amount
20 prior to distribution to the Class Members.

21 i. **Delivery of Class List and Data:** Within twenty-one (21)
22 calendar days of Preliminary Approval of Settlement by the Court, Defendants shall
23 deliver to the Settlement Administrator an electronic database containing the full
24 names, last known home or mailing address, Social Security Number of the Class
25 Members, as well as the total number of Pay Periods and Closing Shifts Pay Periods
26 that each Class Member/Closing Shift Class Member worked for Defendants in
27 California during the Class Period and Closing Shift Class Period respectively.

28 ii. The Parties agree to provide any other reasonable

1 information requested by the Settlement Administrator needed to effectively
2 administer the settlement. The information provided to the Settlement Administrator
3 shall remain confidential and shall not be disclosed to anyone other than
4 Defendants' counsel, Class Counsel, and the Settlement Administrator, and shall be
5 used solely to administer the Settlement. Additionally, the Settlement Administrator
6 shall provide Class Counsel the contact information for anyone the Settlement
7 Administrator is unable to locate. The Parties agree to cooperate in the
8 administration of the Settlement and to make all reasonable efforts to control and
9 minimize the costs and expenses incurred in administration of the Settlement.

10 **b. Notice Packet:** Within twenty-one (21) calendar days after
11 receiving the Class List and Data from Defendants, the Settlement Administrator
12 shall prepare a Notice Packet, subject to Class Counsel's and Defendants' Counsel's
13 approval, for each Class Member. Each Notice Packet shall provide: (i) information
14 regarding the nature of the Action; (ii) a summary of the Settlement's principal
15 terms; (iii) the Settlement Class definition(s); (iv) the total number of Pay Periods
16 and Closing Shifts Pay Periods each respective Class Member worked for
17 Defendants during the Class Period and Closing Shift Class Period respectively; (v)
18 each Class Member's estimated Individual Settlement Payment and the formula for
19 calculating Individual Settlement Payments; (vi) the dates which comprise the Class
20 Period and Closing Shift Class Period; (vii) instructions on how to submit Requests
21 for Exclusion or Notices of Objection; (viii) the deadlines by which the Class
22 Member must postmark Request for Exclusion, or postmark Notice of Objection to
23 the Settlement; and (ix) the claims to be released.

24 **c. Delivery of the Notice Packet:** The Settlement Administrator
25 shall deliver the Notice Packet by First Class U.S. Mail to each Class Member
26 within fourteen (14) calendar days of preparing the Notice Packet. Before doing so,
27 the Settlement Administrator shall perform all searches reasonably necessary to
28 assure itself that the address provided for each Class Member is that individual's

1 current address. Any Notices returned undeliverable shall be traced to obtain a new
2 address and be re-mailed by First Class Mail. Class Members shall have until the
3 Response Deadline to submit their opt out, which shall be postmarked by on or
4 before, the 30th day from the date of mailing of the Notice (the Response Deadline).
5 To the extent any mailed Notice is returned as undeliverable, such person shall be
6 permitted at least thirty (30) days from any re-mailing of the Notice to submit their
7 opt out ("Re-mailing Response Deadline"), but in no event later than fifteen (15)
8 days after the close of the Response Deadline.

9 **d. Issuance of Payments:** The Labor and Workforce Development
10 Agency Payment, Individual Settlement Payments, the Class Representative
11 Enhancement Payments, and Attorneys' Fees and Costs shall be paid within
12 fourteen (14) calendar days after the Effective Date.

13 **e. Tax Forms:** The Settlement Administrator shall be responsible
14 for issuing to Plaintiffs, Participating Class Members, and Plaintiffs' Counsel any
15 W-2, 1099, or other tax forms as may be required by law for all amounts paid
16 pursuant to this Settlement. The Settlement Administrator shall also be responsible
17 for forwarding all payroll taxes and penalties to the appropriate government
18 authorities.

19 **39. Request for Exclusion Procedures:** Any Class Member wishing to
20 opt-out from the Settlement Agreement shall sign and postmark a written Request
21 for Exclusion to the Settlement Administrator within the Response Deadline. The
22 date of the postmark on the return mailing envelope shall be the exclusive means to
23 determine whether a Request for Exclusion has been timely submitted. All Requests
24 for Exclusion shall be mailed to the Settlement Administrator, who shall certify
25 jointly to Plaintiffs' Counsel and Defendants' Counsel the Requests for Exclusion
26 that were timely submitted.

27 **40. Defective Submissions:** If a Class Member's Request for Exclusion is
28 defective as to the requirements listed herein, that Class Member shall be given an

1 opportunity to cure the defect(s). The Settlement Administrator shall mail the Class
2 Member a cure letter within three (3) business days of receiving the defective
3 submission to advise the Class Member that their submission is defective and that
4 the defect must be cured to render the Request for Exclusion valid. The Class
5 Member shall have until the later of (a) the Response Deadline, or (b) fifteen (15)
6 calendar days from the date of the cure letter, whichever date is later, to postmark a
7 valid Request for Exclusion. If a Class Member fails to correct the identified
8 deficiencies after receiving a cure letter, then the Settlement Administrator shall
9 have no further obligation to give notice of a need to cure. If the revised Request for
10 Exclusion is not postmarked within that period, it shall be deemed untimely.

11 **41. Binding Effect On Class Members Who Do Not Opt Out:** Except
12 for those Class Members who exclude themselves in compliance with the
13 procedures set forth above, all Class Members will as of the Effective Date: (1) be
14 bound by the terms and conditions of this Settlement Agreement, the Judgment, and
15 the releases set forth herein; and (2) except as otherwise provided herein, will be
16 deemed to have waive all objections and oppositions to the fairness, reasonableness,
17 and adequacy of the Settlement.

18 **42. Objection Procedures:** In order to object to the Settlement Agreement,
19 a Class Member shall postmark a valid Notice of Objection to the Settlement
20 Administrator on or before the Response Deadline. The Notice of Objection shall be
21 signed by the Class Member and contain all information required by this Settlement
22 Agreement. The postmark date shall be deemed the exclusive means for determining
23 that the Notice of Objection is timely. Class Members who fail to object in the
24 specific and technical manner specified above will be deemed to have waived all
25 objections to the Settlement and will be foreclosed from making any objections and
26 seeking any adjudication or review, whether by appeal or otherwise, to the
27 Settlement Agreement. Class Members who postmark timely Notices of Objection
28 shall have a right to appear at the Final Approval Hearing, at their own expense, in

1 order to have their objections heard by the Court. The Parties are under no
2 circumstance responsible for attorneys' fees or costs of any person objecting or
3 appearing at the Final Approval Hearing. At no time will any of the Parties or their
4 counsel seek to solicit or otherwise encourage Class Members to submit written
5 objections to the Settlement Agreement or appeal from the Order and Judgment.
6 Plaintiffs' Counsel will not represent any Class Members with respect to any such
7 objections to this Settlement.

8 **43. Certification Reports Regarding Individual Settlement Payment**

9 **Calculations:** The Settlement Administrator shall provide Defendants' Counsel and
10 Plaintiffs' Counsel a weekly report which certifies: (a) the number of Class
11 Members who have submitted valid Requests for Exclusion; (b) the Net Settlement
12 Amount attributed to Class Members who have submitted valid Requests for
13 Exclusion; (c) whether any Class Member has submitted a Notice of Objection; and
14 (d) whether any Class Member has submitted a challenge to any information
15 contained in their Notice Packet. Additionally, the Settlement Administrator shall
16 promptly provide to counsel for both Parties copies of Notices of Objections and
17 any updated reports regarding the administration of the Settlement Agreement as
18 needed or requested.

19 **44. Tax Liability:** Plaintiffs' Counsel and Defendants make no
20 representations as to the tax treatment or legal effect of Individual Settlement
21 Payments called for hereunder, and Plaintiffs and the Class Members are not relying
22 on any statement or representation by Plaintiffs' Counsel or Defendants in this
23 regard. Plaintiffs and Class Members understand and agree that they will be solely
24 responsible for the payment of any taxes and penalties assessed on their respective
25 Individual Settlement Payments.

26 **45. Circular 230 Disclaimer:** EACH PARTY TO THIS AGREEMENT
27 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
28 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE

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

23 **46. No Prior Assignments:** The Parties and their counsel represent,
24 covenant, and warrant that they have not directly or indirectly assigned, transferred,
25 encumbered, or purported to assign, transfer, or encumber to any person or entity
26 any portion of any liability, claim, demand, action, cause of action or right herein
27 released and discharged.

28 **47. Release by Class Members Who Do Not Opt Out:** Upon the

1 Effective Date, all Class Members who do not timely opt out hereby jointly and
2 severally fully and finally release the Released Parties, to the fullest extent permitted
3 by law, of and from any and all Released Claims. Each Class Member will be
4 deemed to have made the foregoing release as if by manually signing it. In light of
5 the method of notice set forth by this Settlement Agreement, and subject to final
6 Court approval, all Class Members who do not opt out shall be bound by the
7 Settlement, and shall release the Released Parties from the Released Claims, even if
8 they never received mailed notice of the Action or this Settlement.

9 48. Plaintiffs, on behalf of themselves and the Class Members,
10 acknowledge and agree that the claims for unpaid wages in the Action, and untimely
11 payment of wages in the Action, are disputed, and that California Labor Code
12 Section 206.5 is not applicable to the Parties hereto. Section 206.5 provides in
13 pertinent part as follows:

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

18 49. **General Release of Claims by Plaintiffs Only:** Upon the Effective
19 Date, and as a condition of receiving any portion of their Class Representative
20 Enhancement Payments, Plaintiffs will fully release and forever discharge the
21 Released Parties, to the fullest extent permitted by law, of and from any and all
22 Released Claims, and also generally release and discharge the Released Parties from
23 any and all claims, demands, obligations, causes of action, rights, or liabilities of
24 any kind which have been or could have been asserted against the Released Parties
25 arising out of or relating to Plaintiffs' employment relationship with Defendants;
26 claims for wrongful discharge; claims for unpaid or improperly paid wages,
27 including overtime and minimum wage compensation, meal period and rest break
28 premiums; penalties, including, but not limited to recordkeeping penalties, wage

1 statement penalties, minimum-wage penalties, and waiting-time penalties; and
2 interest, attorneys' fees, and costs related thereto. Plaintiffs' Released Claims
3 include all such claims arising under the California Labor Code; the wage orders of
4 the California Industrial Welfare Commission; California Business and Professions
5 Code section 17200 *et seq.*; the Private Attorneys General Act ("PAGA"); the
6 California common law of contract; the Fair Labor Standards Act, 29 U.S.C. § 201
7 *et seq.*; federal common law; and the Employee Retirement Income Security Act, 29
8 U.S.C. § 1001 *et seq.* Plaintiffs' Released Claims also include all claims for lost
9 wages and benefits, emotional distress, punitive damages, and attorneys' fees and
10 costs arising under federal, state, or local laws for discrimination, harassment, and
11 wrongful termination, including, but not limited to, 42 U.S.C. § 1981, Title VII of
12 the Civil Rights Act of 1964, the Americans with Disabilities Act, and the California
13 Fair Employment and Housing Act. This release excludes the release of claims not
14 permitted by law. Specifically, Plaintiffs waive all rights and benefits afforded by
15 California Civil Code Section 1542, which provides:

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

22 **50. Settlement Documentation and Approval:** The Settlement
23 Agreement is contingent upon judicial approval. If the Court does not approve this
24 Settlement or fails to approve any material condition of this Settlement which
25 effects a fundamental change of the Settlement, the entire Settlement shall be null
26 and void and shall not be admissible in any other proceeding or action.

27 **51. Voiding the Agreement:** If 5% or more of the Class Members timely
28 submit a Request for Exclusion, Defendants shall have the sole and exclusive option

1 of terminating this Agreement and therein being relieved of any obligation to pay
2 the Settlement Amount or any other obligations from the Settlement by giving
3 notice to Plaintiffs' Counsel and the Settlement Administrator within 10 days of the
4 Response Deadline. If Defendants exercise this option, then Defendants shall be
5 responsible for all Settlement Administration Costs incurred to the date of
6 termination of the Agreement, and the Parties shall return to the status quo as if the
7 Parties had not entered into this Settlement Agreement. In addition, in such event,
8 the Settlement Agreement and all negotiations, court orders, and proceedings
9 relating thereto shall be without prejudice to the rights of any and all Parties, and all
10 evidence relating to the Settlement Agreement and all negotiations shall not be
11 admissible or discoverable in the Action or otherwise.

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

17 53. **Cap on Number of Class Members Eligible to Participate in the**
18 **Settlement:** The Class Settlement Amount was calculated with, and is premised on,
19 the understanding that there are approximately Thirty-Two Thousand Five Hundred
20 Thirty-Two (32,532) Class Members eligible to participate in the Settlement.
21 Although the Parties recognize that the number of Class Members will continue to
22 increase until February 3, 2020, in no event will the number of Class Members
23 eligible to participate in the Settlement exceed Thirty-Four Thousand Nine Hundred
24 Seventy-two (34,972), in order of date of hire ("Class Size Cap"). All individuals
25 excluded from the Settlement Class as a result of the Class Size Cap will not release
26 the Released Claims.

27 54. **Preliminary Approval Motion and Hearing:** Plaintiffs will request
28 Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary

1 Approval Order for: (a) conditional certification of the Settlement Class for
2 settlement purposes only; (b) preliminary approval of this proposed Settlement
3 Agreement; and (c) setting a date for a Final Approval/Settlement Fairness Hearing.
4 The Preliminary Approval Order will provide for the Notice Packet to be sent to all
5 Class Members as specified herein. In conjunction with the Preliminary Approval
6 hearing, Plaintiffs shall submit this Settlement Agreement, which sets forth the
7 terms of this Settlement, and shall include the proposed Notice of Class Action
8 Settlement document, attached as Exhibit A. Plaintiffs' Counsel shall be responsible
9 for drafting all documents necessary to obtain preliminary approval. Plaintiffs'
10 Counsel shall provide to the LWDA a copy of the proposed Settlement (in each of
11 the two actions) at the same time that it is submitted to the Court pursuant to Labor
12 Code section 2699(1)(2).

13 **55. Class Action Fairness Act:** Defendants shall be responsible for
14 making all required notification to the appropriate federal and state officials
15 pursuant the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1711 *et seq.*,
16 when this Agreement is filed for preliminary approval with the Court.

17 **56. Final Settlement Approval Hearing and Entry of Judgment:** Upon
18 expiration of the deadlines to postmark Requests for Exclusion, or objections to the
19 Settlement Agreement, and with the Court's permission, a Final
20 Approval/Settlement Fairness Hearing shall be conducted to determine the Final
21 Approval of the Settlement Agreement along with the amounts properly payable for:
22 (a) Attorneys' Fees and Costs; (b) Settlement Administration Costs; (c) Class
23 Representative Enhancement Payments; (d) Individual Settlement Payments; and (e)
24 the Labor and Workforce Development Agency Payment. The Final
25 Approval/Settlement Fairness Hearing shall not be held earlier than thirty (30)
26 calendar days after the Response Deadline. Plaintiffs' Counsel shall be responsible
27 for drafting all documents necessary to obtain final approval. Plaintiffs' Counsel
28 shall also be responsible for drafting the Attorneys' Fees and Costs application as

1 well as the Class Representative Enhancement Payments application to be heard at
2 the final approval hearing.

3 **57. Judgment and Continued Jurisdiction:** Upon final approval of the
4 Settlement by the Court or after the Final Approval/Settlement Fairness Hearing, the
5 Parties shall present the Judgment to the Court for its approval. After entry of the
6 Judgment, the Court shall have continuing jurisdiction solely for purposes of
7 addressing: (a) the interpretation and enforcement of the terms of the Settlement; (b)
8 Settlement administration matters; and (c) such post-Judgment matters as may be
9 appropriate under court rules or as set forth in this Settlement. Within ten (10) days
10 of either the entry of judgment or the entry of order denying or granting the
11 Settlement, Plaintiffs' Counsel shall provide a copy of the district court's judgment
12 or order to the LWDA (in each of the two actions) pursuant to Labor Code section
13 2699(1)(3).

14 **58. Exhibits Incorporated by Reference:** The terms of this Settlement
15 include the terms set forth in any attached Exhibits, which are incorporated by this
16 reference as though fully set forth herein. Any Exhibits to this Settlement are an
17 integral part of this Settlement.

18 **59. Entire Agreement:** This Settlement Agreement and any attached
19 Exhibits constitute the entirety of the Parties' Settlement terms. No other prior or
20 contemporaneous written or oral agreements may be deemed binding on the Parties.

21 **60.** Defendants shall not be required to enter into any consent decree, nor
22 shall Defendants be required to agree to any provision for injunctive or prospective
23 relief as part of this Settlement Agreement.

24 **61. Amendment or Modification:** This Settlement Agreement may be
25 amended or modified only by a written instrument signed by counsel for all Parties
26 or their successors-in-interest.

27 **62. Binding on Successors and Assigns:** This Settlement Agreement shall
28 be binding upon, and inure to the benefit of, the successors or assigns of the Parties,

1 as previously defined.

2 **63. No Admission/Denial of Liability:** The Parties enter into this
3 Settlement in order to resolve the dispute that has arisen between them and to avoid
4 the burden, expense and risk of continued litigation. In entering into this Settlement,
5 Defendants do not admit, and specifically deny, that they violated any federal, state,
6 or local law; violated any regulations or guidelines promulgated pursuant to any
7 statute or any other applicable laws, regulations or legal requirements; breached any
8 contract; violated or breached any duty; engaged in any misrepresentation or
9 deception; or engaged in any other unlawful conduct with respect to their
10 employees. Neither this Settlement Agreement, nor any of its terms or provisions,
11 nor any of the negotiations connected with it, will be construed as an admission or
12 concession by Defendants of any such violations or failures to comply with any
13 applicable law. This Settlement Agreement is a settlement document, and it, along
14 with all related documents such as the notices, and motions for preliminary and final
15 approval, shall, pursuant to Federal Rule of Evidence 408 and California Evidence
16 Code section 1152, be inadmissible in evidence in any proceeding of any
17 wrongdoing or omission on the part of Defendants. This Settlement Agreement and
18 its terms and provisions will not be offered or received as evidence in any action or
19 proceeding to establish any liability or admission on the part of Defendants or to
20 establish the existence of any condition constituting a violation of, or a non-
21 compliance with, federal, state, local or other applicable law.

22 **64. Resolution of Disputes:** The Parties agree to refer any disputes related
23 to the drafting of the Settlement Agreement and the other documents above to
24 mediator, David A. Rotman.

25 **65. Public Comments Regarding The Action or the Settlement:**
26 Plaintiffs and Defendants, and their respective counsel, recognize and accept that the
27 Parties to this Agreement desire that the terms of the Agreement, the fact of the
28 Settlement embodied in this Agreement, the disposition of the Action, the Action,

1 and all matters relating to the litigation of the Action, including discovery
2 proceedings therein, and evidence obtained during the course of the Action, shall not
3 be discussed with or presented to the media or press or advertised in any fashion
4 other than as indicated in this Agreement. Nothing in this paragraph will prohibit
5 Class Counsel for referring to the Settlement in adequacy of counsel declarations or
6 related court filings.

7 **66. Integration:** Each Party warrants that no promise or inducement has
8 been offered or made to that Party except as set forth herein. It is understood and
9 agreed by each Party that this Settlement Agreement specifically supersedes any and
10 all prior agreements and understandings, written or oral, express or implied, between
11 Defendants, Plaintiffs' Counsel and/or any Class Member.

12 **67. Governing Law:** This Settlement Agreement is made under the laws of
13 the State of California, without regard to otherwise applicable principles of conflicts
14 of laws, whether of the State of California or any other jurisdiction.

15 **68. Authority to Sign:** The signatories hereto represent and warrant that
16 they each have the authority to sign on behalf of their designated Parties. This
17 Settlement Agreement may be executed in counterparts and each counterpart, when
18 executed, shall have the efficacy of a second original. Docusign, Photographic, or
19 facsimile copies of any such signed counterparts may be used in lieu of the original
20 for any said purpose.

21 **69. Acknowledgment that the Settlement is Fair and Reasonable:** The
22 Parties believe this Settlement Agreement is a fair, adequate, and reasonable
23 settlement of the Actions and have arrived at this Settlement after arm's-length
24 negotiations and in the context of adversarial litigation, taking into account all
25 relevant factors, present and potential. The Parties further acknowledge that they are
26 each represented by competent counsel of their choice and that they have had an
27 opportunity to consult with their counsel regarding the fairness and reasonableness
28 of this Settlement.

1 **70. Invalidity of Any Provision:** Before declaring any provision of this
2 Settlement Agreement invalid, the Court shall first attempt to construe the provision
3 as valid to the fullest extent possible consistent with applicable precedents so as to
4 define all provisions of this Settlement Agreement valid and enforceable.

5 **71. Class Action Certification for Settlement Purposes Only:** The
6 Parties agree to stipulate to class action certification of the Class Members only for
7 purposes of the Settlement. If, for any reason, the Settlement is not approved, the
8 stipulation to class certification shall be void *ab initio*. The Parties further agree that
9 certification for purposes of the Settlement is not an admission that class action
10 certification is proper under the standards applied to contested certification motions
11 and that this Settlement Agreement shall not be admissible in this or any other
12 proceeding as evidence that either (a) a class action should be certified, or (b)
13 Defendants are liable to Plaintiffs or any Class Member, other than according to the
14 Settlement's terms.

15 **72. Captions:** The captions and paragraph or section numbers in this
16 Settlement Agreement are inserted for the reader's convenience, and in no way
17 define, limit, construe or describe the scope or intent of the provisions of this
18 Settlement Agreement.

19 **73. Documents:** Plaintiffs and Plaintiffs' Counsel agree that none of the
20 documents provided to them by Defendants shall be used for any purpose other than
21 prosecution of the Action.

22 **74. Waiver:** No waiver of any condition or covenant contained in this
23 Settlement Agreement or failure to exercise a right or remedy by any of the Parties
24 hereto shall be considered to imply or constitute a further waiver by such Party of
25 the same or any other condition, covenant, right or remedy.

26 **75. Enforcement Action:** In the event that one or more of the Parties
27 institutes any legal action or other proceeding against any other Party or Parties to
28 enforce the provisions of this Settlement or to declare rights and/or obligations

under this Settlement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

76. **Mutual Preparation:** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

77. **Cooperation and Execution of Necessary Documents:** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

78. **All Terms Subject to Final Court Approval:** All amounts and procedures described in this Settlement Agreement herein shall be subject to final Court approval.

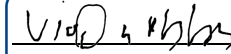
SIGNATURES

READ CAREFULLY BEFORE SIGNING

PLAINTIFFS

Dated: 11/22/2019

DocuSigned by:



Plaintiff Viola Hubbs

Dated: _____

Plaintiff Brandon Coleman

Dated: _____

Plaintiff Tamika Williams

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1 under this Settlement, the successful Party or Parties shall be entitled to recover
2 from the unsuccessful Party or Parties reasonable attorneys' fees and costs,
3 including expert witness fees incurred in connection with any enforcement actions.

4 **76. Mutual Preparation:** The Parties have had a full opportunity to
5 negotiate the terms and conditions of this Settlement Agreement. Accordingly, this
6 Settlement Agreement shall not be construed more strictly against one Party than
7 another merely by virtue of the fact that it may have been prepared by counsel for
8 one of the Parties, it being recognized that, because of the arm's-length negotiations
9 between the Parties, all Parties have contributed to the preparation of this Settlement
10 Agreement.

11 **77. Cooperation and Execution of Necessary Documents:** All Parties
12 will cooperate in good faith and execute all documents to the extent reasonably
13 necessary to effectuate the terms of this Settlement Agreement.

14 **78. All Terms Subject to Final Court Approval:** All amounts and
15 procedures described in this Settlement Agreement herein shall be subject to final
16 Court approval.

17 SIGNATURES

18 READ CAREFULLY BEFORE SIGNING

19 PLAINTIFFS

20
21 Dated: _____

22 Plaintiff Viola Hubbs

23 Dated: 11-23-19

Brandon Coleman

24 Plaintiff Brandon Coleman

25 Dated: _____

26 Plaintiff Tamika Williams

27
28 //

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SIGNATURES

READ CAREFULLY BEFORE SIGNING

PLAINTIFFS

Dated: _____

Plaintiff Viola Hubbs

Dated: _____

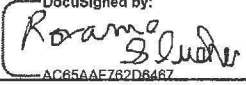
Plaintiff Brandon Coleman

Dated: 11.23.19


Plaintiff Tamika Williams

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Dated: 11/25/2019

DocuSigned by:

AC65AAEF762D6467
Plaintiff Roxanne Slusher

**DEFENDANT BIG LOTS STORES,
INC.**

Dated:

Please Print Name and Title of Authorized
Signatory

DEFENDANT PNS STORES, INC.

Dated:

Please Print Name and Title of Authorized
Signatory

DEFENDANT BIG LOTS F&S, INC.

Dated:

Please Print Name and Title of Authorized
Signatory

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Dated: _____

Plaintiff Roxanne Slusher

DEFENDANT BIG LOTS STORES, INC.

Dated: 11/27/19



Ronald A. Robins, Jr., EVP & GC

Please Print Name and Title of Authorized Signatory

DEFENDANT PNS STORES, INC.

Dated: 11/27/19



Ronald A. Robins, Jr., EVP & GC

Please Print Name and Title of Authorized Signatory

DEFENDANT BIG LOTS F&S, INC.

Dated: 11/27/19



Ronald A. Robins, Jr., EVP & GC

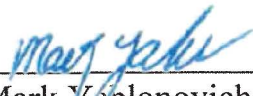
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APPROVED AS TO FORM

LAW OFFICES OF MARK
YABLONOVICH

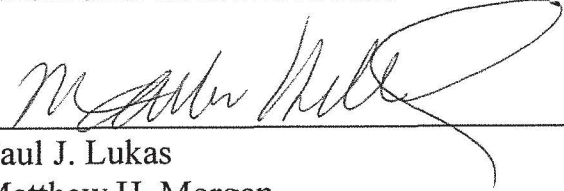
Dated: 11/25/2019


Mark Yablonovich

Attorneys for Plaintiffs Viola Hubbs,
Brandon Coleman, Tamika Williams and
the Class

NICHOLS KASTER PLLP

Dated: 11/25/19


Paul J. Lukas

Matthew H. Morgan

Matthew C. Helland

Attorneys for Plaintiffs Viola Hubbs,
Brandon Coleman, and Tamika Williams

CAPSTONE LAW APC

Dated: _____

Raul Perez

Former Attorneys for Plaintiff Viola Hubbs

SETAREH LAW GROUP

Dated: _____

Shaun Setareh

Attorneys for Plaintiff Roxanne Slusher

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APPROVED AS TO FORM

**LAW OFFICES OF MARK
YABLONOVICH**

Dated: _____

Mark Yablonovich
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NICHOLS KASTER PLLP

Dated: _____

Paul J. Lukas
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Brandon Coleman, and Tamika Williams

CAPSTONE LAW APC

Dated: November 22, 2019



Raul Perez
Former Attorneys for Plaintiff Viola Hubbs

SETAREH LAW GROUP

Dated: _____

Shaun Setareh
Attorneys for Plaintiff Roxanne Slusher

APPROVED AS TO FORM

**LAW OFFICES OF MARK
YABLONOVICH**

Dated: _____

Mark Yablonovich
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NICHOLS KASTER PLLP

Dated: _____

Paul J. Lukas
Matthew H. Morgan
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Attorneys for Plaintiffs Viola Hubbs,
Brandon Coleman, and Tamika Williams

CAPSTONE LAW APC

Dated: _____

Raul Perez
Former Attorneys for Plaintiff Viola Hubbs

SETAREH LAW GROUP

Dated: 11/27/19 _____


Shaun Setareh
Attorneys for Plaintiff Roxanne Slusher

**VORYS, SATER, SEYMOUR AND
PEASE, LLP**

Dated: December 2, 2019

Mark Knueve

Mark Knueve
Attorney for Defendants
Big Lots Stores, Inc., PNS Stores, Inc. and
Big Lots F&S, Inc.