

1 **AEGIS LAW FIRM, PC**

2 KASHIF HAQUE, State Bar No. 218672

3 SAMUEL A. WONG, State Bar No. 217104

4 JESSICA L. CAMPBELL, State Bar No. 280626

5 KRISTY R. CONNOLLY, State Bar No. 328477

6 9811 Irvine Center Drive, Suite 100

7 Irvine, California 92618

8 Telephone: (949) 379-6250

9 Facsimile: (949) 379-6251

10 kconnolly@aegislawfirm.com

11 Attorneys for Plaintiffs Rayna Menendez and Jose Duran,
12 individually, and on behalf of all others similarly situated.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN DIEGO**

15 RAYNA MENENDEZ, individually and on
16 behalf of all others similarly situated,

17 Plaintiffs,

18 vs.

19 PETUNIA HOLDINGS, LLC; HUDSON
20 RIVER OPCO, LLC; and DOES 1 through 20,
21 inclusive,

22 Defendants.

Case No. 37-2022-00052139-CU-OE-CTL

Assigned for All Purposes to:
Judge Katherine Bacal
Dept. C-69

**DECLARATION OF KRISTY R. CONNOLLY
IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: August 18, 2024

Time: 1:30 p.m.

Dept: C-69

1 I, Kristy R. Connolly, hereby declare as follows:

2 1. I am an attorney at law licensed to practice before all of the courts of the State of
3 California. I am an associate with Aegis Law Firm, PC (“Aegis”), counsel for Plaintiffs in this matter.
4 I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein.

5 2. I submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of
6 Class Action Settlement. If called as a witness, I could and would competently testify thereto.

7 **Case History**

8 3. On December 30, 2022, Plaintiff’s counsel provided written notice to the LWDA and
9 Defendant regarding Defendant’s alleged Labor Code violations, as required by Lab. Code § 2699.3(a).
10 The LWDA did not respond to this notice, indicating it did not intend to investigate, thus allowing
11 Plaintiff to bring a PAGA claim against Defendant. On December 30, 2022, Plaintiff Williams filed a
12 putative class action on behalf of Defendant’s non-exempt employees alleging the following causes of
13 action: (1) failure to provide meal periods; (2) failure to permit rest breaks; (3) failure to provide
14 accurate itemized wage statements; (4) failure to pay all wages due upon separation of employment; (5)
15 violation of Business and Professions Code § 17200, *et seq.*; for the preceding claims. On May 2, 2023,
16 Plaintiff filed a First Amended Complaint to add a cause of action under PAGA and to add Plaintiff
17 Duran as a second named plaintiff.

18 4. The Parties agreed to attend early private mediation. Through informal discovery,
19 Defendant produced significant amount of documents and information, including relevant policy
20 documents and a 20% sample of class members’ timekeeping and pay records.

21 5. On February 21, 2024, the Parties attended a mediation session with Jill Sperber, a
22 respected mediator, and reached a settlement. After a full day of negotiating, the Parties agreed to a
23 settlement amount and executed a Memorandum of Understanding with the material terms the parties
24 had agreed to. The Parties spent the next few months negotiating the terms of the Settlement, which was
25 finalized in July of 2024. The negotiations were adversarial, conducted at arm’s length and tempered
26 by the efforts of both sides to serve the interests of their clients

27 6. On July 24, 2024, Plaintiffs submitted the Settlement to the LWDA pursuant to Lab.
28 Code § 2699(1)(2).

7. Defendant's records show the Class consists of approximately 150 individuals, making joinder of all Class Members impracticable. Further, the Class is readily ascertainable from Defendant's business records because all Class Members are current or former employees of Defendant.

8. Plaintiff alleged that Defendant maintained uniform employment policies and/or practices that illegally deprived Class Members of lawful wages, meal periods, rest breaks, accurate wage statements, and waiting time pay. Plaintiff's allegations present common legal and factual questions of, *inter alia*, whether Defendant applied the same scheduling, timekeeping, minimum and overtime pay, meal period, and rest break policies to all Class Members; whether these policies and practices resulted in Labor Code violations; whether Defendant's conduct was intentional; and whether Class Members are entitled to penalties. These common questions could be resolved using Class Members' schedules, time punches, and payroll records, Defendant's corporate representative's testimony, written communications between Defendant and Class Members, and Class Member declarations.

9. Plaintiffs allege that they and other Class Members were employed by Defendant and injured by Defendant's common wage and hour policies and practices, including Defendant's scheduling, timekeeping, minimum wage pay, overtime pay, meal period, and rest break practices and policies. Through documents and information exchanged in informal discovery, Plaintiffs confirmed that these common policies and practices similarly affected Plaintiffs and the Class. Further, Plaintiffs' Counsel engaged an expert to quantify the potential exposure using the time and payroll records, and then assessed the risks associated with each of the claims meriting reductions in the likely recovery at trial. Accordingly, Plaintiffs' Counsel fully understood the strengths and weaknesses of the claims before the Parties reached a settlement.

10. Plaintiffs contend that their claims are based on Defendant's common, class-wide policies and procedures, and that liability could be determined on a class-wide basis without dependence on individual assessments of liability.

Exposure Analysis

11. While Plaintiffs and their counsel believed and continue to believe this is a strong case for certification, the significant risks and expenses associated with class certification and liability

proceedings must be taken into account. To determine if the amount offered at mediation was reasonable, Plaintiffs' Counsel weighed that figure against many risk factors. If Plaintiffs continued to prosecute the claims rather than accept a settlement, Plaintiffs would have faced deadlines to file a motion for class certification, had to have engaged in formal written discovery and taken depositions, expended time and resources to resolve disputes, prepared and filed potential dispositive motions and/or discovery motions, and engaged in extensive trial preparation. An adverse ruling at any one of these stages could have prevented the Class from obtaining any recovery.

12. In determining whether the amount offered in settlement was reasonable, Plaintiffs' Counsel weighed that figure against many risk factors. Although the amount of the Class's maximum potential damages – if proven – is substantial, legitimate and serious risks compelled a considerable discount for settlement.

13. Plaintiffs' minimum wage and overtime claims were premised on the theory that Defendants failed to compensate class members for all time worked, including by requiring them to conduct Covid-19 health screenings prior to clocking in for work. Assuming unpaid wages of two minutes per shift, Plaintiffs' expert calculated a maximum exposure of \$44,833. However, because any time spent completing the Covid-19 screenings was not recorded, this theory would be dependent on competing testimonial evidence about Defendant's practices. Plaintiffs would need supportive testimony through depositions and declarations (which will likely be countered with Defendants' own testimony received by Class Members) to support that wages were unpaid under these theories in every pay period. The reliance on supportive testimony through depositions and declarations renders the value of this claim uncertain. As such, Plaintiffs assumed there was a 50% chance of success at class certification and 30% chance of success on the merits at trial, rendering the claim worth approximately \$6,725.

14. Plaintiff's meal period claim was potentially worth about \$75,379 in light of the violations shown in the records. However, Defendant argued that it maintained compliant written policies and that employees could waive their meal periods, as evidenced by the written meal period waivers produced for mediation. Further, Defendant provided evidence of several instances in which it paid meal period premiums. Thus, Plaintiffs discounted this claim for the risk that the damages could

1 at least be reduced, and that the claim would be hard to certify with a compliant policy. As such,
2 Plaintiff's counsel believed there was a 40% chance succeeding at class certification and a 430%
3 chance at trial, resulting in a value of \$9,045.

4 15. Plaintiff alleged that Defendant failed to authorize timely rest breaks due to the
5 requirement that Class Members must remain on-premises during rest breaks. If Plaintiff could prove
6 a 100% violation rate for each shift over 3.5 hours, then damages could reach up to \$1,116,284.
7 However, Defendant argued that it maintained compliant written rest break policies, that it never
8 penalized an employee for leaving during a rest break, and that class members could again choose to
9 waive their rest breaks. As such, this claim would have relied on Class Member testimony, making it a
10 riskier claim at class certification and liability stages. Plaintiff's counsel believed there was a 30%
11 chance succeeding at class certification and a 20% chance at trial, resulting in a value of \$66,977.

12 16. Plaintiffs' Counsel also considered the arguable presence of various derivative
13 penalties, and weighed the potential recoveries against probable defenses. Specifically, Defendant
14 could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties
15 under Labor Code § 203. Additionally, Defendant could argue that Plaintiff could not show that Class
16 Members suffered an "injury" as a result of derivative wage statement violations, as required by Labor
17 Code § 226. Moreover, Plaintiffs would not recover any of these derivative penalties if they failed to
18 prove the underlying claims. Although the Class arguably could have seen a payout of approximately
19 \$893,685 for waiting time penalties and \$40,000 for wage statement penalties, Plaintiffs would not
20 recover any of these derivative penalties if they failed to prove the underlying claims. Thus, Plaintiffs
21 discounted these claims assuming a 40% chance of class certification and 20% chance at the merits for
22 both claims, resulting in a realistic value of \$71,495 for the waiting time claim and \$3,200 for the
23 wage statement claim.

24 17. The PAGA claim presented even higher hurdles. Although Plaintiffs' Counsel found
25 Defendant's exposure could potentially reach approximately \$1,294,900 under Lab. Code § 2699(f),
26 assuming the initial penalty rate of \$100 for each pay period, Plaintiffs would have to prove a
27 violation in every pay period. Most importantly, the Court would have discretion to reduce the PAGA
28 award based on whether the amount of the award would be "unjust, arbitrary and oppressive, or

1 confiscatory.” Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so
2 wished. Plaintiffs were doubtful they could recover any PAGA penalties, especially if a large class
3 judgment was entered for the same violations. Accordingly, Plaintiffs could not place a high value on
4 the PAGA penalties, and therefore allocated \$12,000 of the Gross Settlement Amount to settle these
5 claims.

6 **Service Award**

7 18. Plaintiffs had the option to pursue their claims individually, but instead chose to pursue
8 this class action, delaying individual recovery until approval of a class action settlement. Throughout
9 the case, Plaintiffs assisted counsel in gathering the evidence necessary to prosecute the class claims,
10 maintained regular contact with counsel, was available on the day of mediation and communicated
11 with their attorneys during the day of mediation to answer critical questions, and reviewed the
12 Settlement to make sure it was fair to the Class. None of the other 150 Class Members had shown any
13 interest in bearing the expense and burden of litigating their own claims. No action would likely have
14 been taken by Class Members individually, and no compensation would have been recovered for them,
15 but for Plaintiffs’ services on behalf of the Class.

16 19. The amount of Plaintiffs’ requested Service Awards was not negotiated until after the
17 Parties agreed to the Gross Settlement Amount and many other terms.

18 20. At the final approval stage, Plaintiffs will further support the request for the Service
19 Awards by a declaration that addresses the factors for the award.

20 **Counsel’s Qualifications**

21 21. Aegis Law Firm prosecutes wage and hour cases, including class actions on behalf of
22 employees and others who have had their rights violated. Aegis, either on its own, or with co-counsel
23 is currently serving as plaintiffs’ counsel of record in dozens of wage and hour and employment class
24 action cases pending in both state and federal court.

25 22. The attorneys working on this case have been appointed class counsel in many cases,
26 through both contested motions and settlement approval motions.

27 23. Aegis has litigated and successfully resolved many wage and hour class action cases
28 involving failure to pay wages and derivative Labor Code claims and penalties. *See, e.g., Roman, et al.*

1 *v. TRM Manufacturing, Inc.*, Riverside Superior Court, Case No. RIC1706458 (class certification
2 granted on December 17, 2020 for all current and former non-exempt workers' on issues of rounding,
3 meal period, and rest period claims); *Gamboa v. Kamran, et al.*, San Bernardino Superior Court, Case
4 No. CIVDS1605273 (class certification granted on September 16, 2019, for factory workers on issues of
5 rounding, automatic deduction of first meal period, and second meal period); *Romo, et. al, v. GMRI,*
6 *Inc. d/b/a/ Olive Garden*, United States District Court Central District of California, Case No. EDCV-
7 12-0715-JLQ (class certification granted for restaurant workers' rest period claims); *Sawyer v. Retail*
8 *Data, LLC*, Orange County Superior Court, Case No. 30-2014-00753767-CU-OE-CXC (unpaid wage
9 and rest break claims for piece rate workers); *Gonzalez v. SFFI Company, Inc., et. al*, San Bernardino
10 County Superior Court, Case No. CIV DS1504287 (unpaid wages, meal period and rest break claims
11 for non-exempt employees); *Antoine v. Riverstone Residential California, Inc., et. al*, Sacramento
12 County Superior Court, Case No. 34-2013-00155974 (rate of pay, on-call time, unpaid wage, meal
13 period, rest break, and expense reimbursement claims for non-exempt employees); *Nguyen v.*
14 *Pharmerica*, Orange County Superior Court, Case No. 30-2014-00716072-CU-OE-CXC (unpaid
15 wages and unreimbursed expenses for pharmacists); *Orellana v. Westlake*, Los Angeles County
16 Superior Court, Case No. BC539614 (unpaid overtime, meal period and rest break claims for call
17 center employees); *Kent v. Mountain View Child Care, Inc.*, Los Angeles County Superior Court,
18 Case No. BC539633 (minimum wage, overtime, meal period, and rest break claims for hospital
19 workers); *Durroh v. East West Bank*, Los Angeles County Superior Court, Case No. BC528860
20 (overtime claims for failure to include bonuses in regular rate of pay for bank workers); *O'Brien et al.*
21 *v. Pizza Hut of Southeast Kansas, Inc. et al.*, Riverside County Superior Court, Case No MCC
22 1301030 (meal period and expense reimbursement claims for delivery drivers); *Bell v. Prime*
23 *Healthcare*, Orange County Superior Court, Case No. 30-2011-00475240-CU-OE-CXC (overtime
24 claims for failure to include shift premiums in regular rate of pay and failure to provide meal and rest
25 periods to hospital workers), *Grana v. Toys R US-Delaware, Inc.*, Central District of California, Case
26 No. 2:13-cv-01302-DSF-JCG (bag check claims for unpaid wages and failure to provide meal periods
27 and rest breaks to retail employees); *Mendez v. H.J. Heinz Company, L.P., et. al*, Orange County
28 Superior Court, Case No. 30-2013-00644915-CU-OE-CXC (failure to pay all wages to factory

workers due to rounding practice); *Fresh & Easy Wage and Hour Cases*, Los Angeles Superior Court, Cas No. JCCP 4705 (failure to provide meal and rest periods to supermarket workers); *Lunsford v Stater Bros.*, Riverside Superior Court, Case No. RIC 1104475 (failure to provide meal and rest periods to supermarket workers); *Gregg v. Belo*, Riverside Superior Court, Case No. RIC 523697 (unpaid wages and missed meal and rest periods due to misclassification of newspaper delivery employees); *Brown v. Experian Information Solutions, Inc., et. al.*, Orange County Superior Court, Case No. 30-2012-00375163 (misclassification of engineers and similar positions); *Tereth v. Shakey's USA, Inc.*, Los Angeles Superior Court, Case No. BC441359 (failure to provide meal and rest periods to restaurant employees); *Azurin v. Harbor Distributing LLC, et. al.*, Los Angeles Superior Court, Case No. BC421392 (failure to pay overtime wages, provide meal and rest periods, reimburse business expenses to Account Managers); *Caffero v. ABC* (failure to provide meal periods and reimburse expenses of therapists). All cases cited above were successfully resolved for the plaintiff classes.

24. Kashif Haque received his J.D. in 2001 from Washington University School of Law. While in law school, Mr. Haque was a member of the Law Review Editorial Board, author of an article published in the Law Review, Executive Board Member of Moot Court, and a member of the Dean's List. He received a Bachelor's of Science in Business Administration from the University of Central Missouri in 1998, where he was a member of the Beta Alpha Psi honors fraternity.

25. Since 2004, Mr. Haque has exclusively focused his practice on plaintiff's employment litigation with a specific focus on wage and hour claims. Since then, he has represented over 500,000 employees with their employment claims, many of which included wage and hour claims. He has been appointed class counsel in approximately 100 cases and is currently litigating over 150 employment wage and hour class action cases.

26. Mr. Haque authored a book on employment litigation strategies with West Publishing and has been invited to speak on class action and wage and hour issues on numerous occasions. He has spoken at seminars by the State Bar of California, California Employment Lawyer's Association (CELA), Orange County Bar Association, and various other CLE providers. Mr. Haque is the former Chair for the Labor and Employment Section of the Orange County Bar Association. He was selected

1 as one of the Top 50 Attorneys in Orange County by Super Lawyers for 2017 and 2019. He has been a
2 Super Lawyer for every year from 2009 to the present. OC Register/Metro has selected him as one of
3 the Top 5 Employment Lawyers in Orange County for every year the list was published, from 2012 to
4 2018.

5 27. Samuel A. Wong is a graduate of University of Pennsylvania Law School, where he
6 received his J.D. in 2001. Mr. Wong received a Bachelors of Arts in Sociology from the University of
7 California at Berkeley in 1997.

8 28. After graduation from law school in 2001, the same year in which Mr. Wong took and
9 successfully passed the California Bar Exam, Mr. Wong moved to back to Los Angeles, California
10 where he was employed at Paul Hastings, Janofsky & Walker, LLP. While working in the
11 employment department at Paul Hastings, he was involved in numerous wage and hour class action
12 lawsuits and other employment related matters.

13 29. Mr. Wong became a founding partner of Aegis Law Firm, PC in 2003, and focused his
14 practice on plaintiff's side employment work. Throughout his years of practice, Mr. Wong represented
15 and obtained successful outcomes for his clients, including awards through arbitration and trial.

16 30. Mr. Wong is a member of the Orange County Bar Association, Orange County Trial
17 Lawyers Association, and California Employment Lawyers Association.

18 31. Mr. Wong was chosen by Law and Politics Magazine as a Super Lawyer Rising Star,
19 representing one of the top 2.5% of lawyers under 40 in Southern California in 2011, 2012, 2013, and
20 2014. He was chosen by Law and Politics Magazine as a Super Lawyer in 2015, 2016, 2017, and
21 2018. Mr. Wong was also chosen as a Top Attorney in the field of employment law by OC Metro in
22 2014, 2015, and 2018.

23 32. Jessica L. Campbell is a partner at Aegis Law Firm. Ms. Campbell was admitted to the
24 California Bar in December of 2011, and received her J.D. from Santa Clara University School of Law
25 and her B.A. from the University of California, Berkeley. Ms. Campbell has dedicated her career to
26 plaintiffs' side class actions. Ms. Campbell's experience includes successful work on class action
27 appeals, class certification motions, and class settlements. She was chosen by Law and Politics
28

1 Magazine as a Super Lawyer Rising Star, representing one of the top 2.5% of lawyers under 40 in
2 Southern California in 2018-2021.

3 33. I am an associate at Aegis Law Firm. I was admitted to the California Bar in December
4 of 2019. I received my J.D. from Chapman University Dale E. Fowler School of Law where I
5 graduated cum laude. While in law school, I was a recipient of numerous honors, including Merit
6 Scholarships and CALI Awards, and externed for Judge Di Cesare of the Orange County Superior
7 Court. I received my B.A. from the University of California, Davis. My career at Aegis Law Firm has
8 primarily focused on the representation of employees in wage and hour actions.

9 34. Aegis Law Firm has performed significant work and expended litigation costs in
10 prosecuting the matter with no guarantee of any payment.

11 35. At final approval, Plaintiffs' Counsel will fully brief the merits of its request for the
12 award of attorneys' fees and litigation costs.

13 **Exhibits**

14 36. A true and correct copy of the CLASS ACTION AND PAGA SETTLEMENT
15 AGREEMENT AND CLASS NOTICE is attached hereto as **Exhibit 1**.

16 37. A true and correct copy of the PAGA notice my office sent on behalf Plaintiff to the
17 LWDA and Defendant on December 30, 2022 is attached hereto as **Exhibit 2**.

18 38. A true and correct copy of the LWDA's confirmation that my office submitted the
19 Settlement and this Motion is attached hereto as **Exhibit 3**.

20
21 I declare under penalty of perjury under the laws of the State of California that the foregoing is
22 true and correct.

23 Executed on July 24, 2024 at Irvine, California.

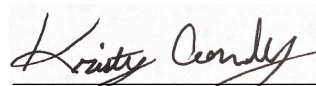
24
25 
26 Kristy R. Connolly
27
28

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiffs Rayna Menendez and Jose Duran (“Plaintiffs”) and defendant Petunia Holdings, LLC (“Defendant”). The Agreement refers to Plaintiffs and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiffs’ lawsuit alleging wage and hour violations against Defendant captioned *Menendez v. Petunia Holdings, LLC, et al.* initiated on December 30, 2022 and pending in Superior Court of the State of California, County of San Diego.
- 1.2. “Administrator” means Apex Class Action Administration, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all persons currently or formerly employed by Defendant as a non-exempt employee in the State of California at any time during the PAGA Period.
- 1.5. “Class” means all persons currently or formerly employed by Defendant as a non-exempt employee in the State of California at any time during the Class Period and who did not sign arbitration agreements.
- 1.6. “Class Counsel” means Kashif Haque, Samuel Wong, Jessica L. Campbell and Kristy R. Connolly of Aegis Law Firm, PC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” Means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available

sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from December 30, 2018 to February 21, 2024.
- 1.13. “Class Representative” means the named Plaintiffs in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of San Diego.
- 1.16. “Defendant” means named Defendant Petunia Holdings, LLC.
- 1.17. “Defense Counsel” means Grace Y. Horoupian and Josh Klein of Fisher & Phillips LLP.
- 1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22. “Gross Settlement Amount” means \$250,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel

Expenses, Class Representative Service Payment and the Administrator's Expenses.

- 1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period
- 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under the Labor Code section 2699, subd. (i).
- 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31. "PAGA Period" means the period from February 22, 2022 to February 21, 2024.
- 1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. "PAGA Notice" means Plaintiffs' December 30, 2022 letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$3,000) and the 75% to the LWDA (\$9,000) in settlement of PAGA claims.
- 1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

- 1.36. “Plaintiffs” means Rayna Menendez and Jose Duran, the named plaintiffs in the Action.
- 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.38. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.41. “Released Parties” means: Defendant and Hudson River OPCO, LLC and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns subsidiaries and affiliates.
- 1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. “Response Deadline” means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. “Workweek” means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On December 30, 2022, Plaintiff Menendez commenced this Action by filing a Complaint alleging causes of action against Defendant for failure to pay minimum wages; failure to pay overtime wages; failure to provide meal periods; failure to permit rest breaks; failure to reimburse business expenses; failure to provide accurate itemized wage statements; failure to pay wages timely during employment; failure to pay all wages due upon separation of employment; Violation of Business and Professions Code §§ 17200, *et seq.* On May 2, 2023, Plaintiff filed a First Amended Complaint alleging an additional cause of action against Defendants for Enforcement of Labor Code § 2698 *et seq.* (“PAGA”) and to add Plaintiff Duran as a second named plaintiff. The First

Amended Complaint is the operative complaint in the Action (the “Operative Complaint”). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.3. On February 21, 2024, the Parties participated in an all-day mediation presided over by Jill R. Sperber which led to this Agreement to settle the Action.
- 2.4. Prior to mediation, Plaintiffs obtained, through informal discovery, documents and information necessary to evaluate the claims alleged and calculate potential damages. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.5. The Court has not granted class certification.
- 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promise to pay \$250,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000 for Plaintiff Menendez and \$2,500 for Plaintiff Duran (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiffs’ request for Class Representative Service Payments that do not exceed these amounts. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment,

Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service payment using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$83,333.33 and a Class Counsel Litigation Expenses Payment of not more than \$25,000. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$6,990.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$6,990.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 10% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 90% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full

responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$12,000 to be paid from the Gross Settlement Amount, with 75% (\$9,000) allocated to the LWDA PAGA Payment and 25% (\$3,000) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$3,000 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 155 Class Members who collectively worked a total of 8,627 Workweeks, and 370 Aggrieved Employees who worked a total 12,949 PAGA Pay Periods.

4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to

missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than August 31, 2025. If the Court has not yet granted Final Approval by August 31, 2025, then the Settlement Administrator shall hold the Gross Settlement Amount in trust until Final Approval is granted.

4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, assuming Final Approval has been granted, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. If Final Approval has not been granted by the time Defendant funds the Gross Settlement Amount, then the Administrator will mail these checks within 14 days of the Effective Date.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered) along with a notice letter explaining why the check is being sent, substantially in the form that is attached hereto as Exhibit B. The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested

by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1. Plaintiffs' Releases. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2, below. ("Plaintiff Menendez's Release.") Plaintiffs Releases do not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that they may discover facts or law different from, or in addition to, the facts or law that they now know or believes to be true but agrees, nonetheless, that Plaintiffs Releases shall be and remain effective in all respects, notwithstanding such different or additional facts or her discovery of them.

5.1.1. Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement

with the debtor or Released Party

5.2. Release by Participating Class Members Who Are Not Aggrieved Employees:

Plaintiffs and all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims arising during the Class Period that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3. Release by Non-Participating Class Members Who Are Aggrieved Employees:

All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties arising during the PAGA Period that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, and the PAGA Notice.

6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

6.1. Responsibilities of Counsel. Class Counsel is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval Order to the Administrator.

6.2. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1. Selection of Administrator. The Parties have jointly selected Apex Class Action Administration to serve as the Administrator and verified that, as a condition of

appointment, Apex Class Action Administration agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

- 7.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 7.4. Notice to Class Members.
 - 7.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
 - 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
 - 7.4.3. Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
 - 7.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the

Class Member of the extended deadline with the re-mailed Class Notice.

- 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5. Requests for Exclusion (Opt-Outs).

- 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

- 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

- 7.5.3. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

- 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry

of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct as long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

7.7. Objections to Settlement.

7.7.1. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.7.2. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

7.7.3. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary

Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

- 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 7.8.3. Weekly Reports. The Administrator must, on a weekly basis provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5. Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including but not limited to, its mailing of the Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

- 7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.
8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE** If the number of Total Workweeks during the Class Period exceeds 8,627 by more than 10%, the Gross Settlement Amount will increase pro rata per additional Workweek. Additionally, if the number of PAGA Pay Periods in the PAGA Period exceeds 12,949 by more than 10%, the GSA will increase pro rata per additional PAGA Pay Period.
9. **DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 20% of the total of all Class Members, Defendant may, but is not obligated, to elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
10. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (1), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval").
- 10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this

paragraph.

10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment

is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserve the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendants defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 12.2. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.3. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.4. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.5. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.6. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.7. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury

Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

- 12.8. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.9. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.10. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.11. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.12. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.13. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Upon the request of Defendant, not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 12.14. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.15. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.16. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email

or messenger, addressed as follows:

To Plaintiff: Aegis Law Firm, PC
Kashif Haque
Samuel Wong
Jessica L. Campbell
jcampbell@aegislawfirm.com
Kristy R. Connolly
kconnolly@aegislawfirm.com
9811 Irvine Center Drive, Suite 100
Irvine, California 92618

To Defendant: Fisher & Phillips LLP
Grace Y. Horoupian
Josh Klein
jdklein@fisherphillips.com
ghoroupian@fisherphillips.com
2050 Main Street Suite 1000
Irvine, CA 92614

12.17. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically, (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterparts will be admissible in evidence to prove the existence and contents of this Agreement.

12.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Date: _____

PLAINTIFF RAYNA MENENDEZ

Rayna Menendez

Date: 05/22/2024

PLAINTIFF JOSE DURAN

Jose Duran
[Jose Duran \(May 22, 2024 21:43 PDT\)](#)

Jose Duran

or messenger, addressed as follows:

To Plaintiff: Aegis Law Firm, PC
Kashif Haque
Samuel Wong
Jessica L. Campbell
jcampbell@aegislawfirm.com
Kristy R. Connolly
kconnolly@aegislawfirm.com
9811 Irvine Center Drive, Suite 100
Irvine, California 92618

To Defendant: Fisher & Phillips LLP
Grace Y. Horoupian
Josh Klein
jdklein@fisherphillips.com
ghoroupian@fisherphillips.com
2050 Main Street Suite 1000
Irvine, CA 92614

12.17. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically, (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterparts will be admissible in evidence to prove the existence and contents of this Agreement.

12.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Date: 07/01/2024

PLAINTIFF RAYNA MENENDEZ

Rayna Menendez
Rayna Menendez (Jul 1, 2024 15:10 PDT)

Rayna Menendez

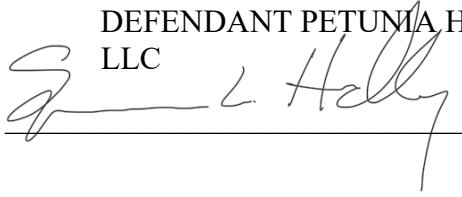
Date: _____

PLAINTIFF JOSE DURAN

Jose Duran

Date: 7/23/24

DEFENDANT PETUNIA HOLDINGS,
LLC

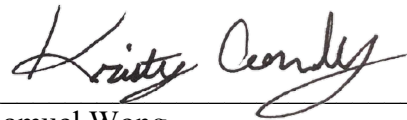


A handwritten signature in black ink, appearing to read "L. Holly", is written over a horizontal line.

By: _____

Date: July 1, 2024

AEGIS LAW FIRM, PC



A handwritten signature in black ink, appearing to read "Kristy R. Connolly", is written over a horizontal line.

Samuel Wong
Kashif Haque
Jessica Campbell
Kristy R. Connolly
Attorneys for Plaintiffs

Date: 7/24/24

FISHER & PHILLIPS LLP



A handwritten signature in blue ink, appearing to read "Grace Horoupian", is written over a horizontal line.

Grace Horoupian
Josh Klein
Attorneys for Defendants

EXHIBIT A

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND
HEARING DATE FOR FINAL COURT APPROVAL**

Menendez v. Petunia Holdings, LLC, et al.

37-2022-00052139-CU-OE-CTL

*The Superior Court for the State of California authorized this Notice. Read it Carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.*

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Petunia Holdings, LLC (“Defendant” is used herein as a placeholder) for alleged wage and hour violations. The Action was filed by former employees Rayna Menendez and Jose Duran (“Plaintiffs”) and seeks payment of (1) back wages and other relief for a class of hourly employees (“Class Members”) who worked for Defendant during the Class Period (December 30, 2018 to February 21, 2024) and who did not sign arbitration agreements; and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly employees who worked for Defendants during the PAGA Period (February 22, 2022 to February 21, 2024) (“Aggrieved Employees”).

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

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendants’ records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. 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 Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

EXHIBIT A

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendant.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendant, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is _____	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or

EXHIBIT A

	Plaintiff if you thing they are unreasonable. See Section 7 of this Notice.
You Can Participate in the _____ Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on _____. 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 verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendants' records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former employees of Defendant. The Action accuses Defendant of violating California labor laws by failure to pay minimum wages; failure to pay overtime wages; failure to provide meal periods; failure to permit rest breaks; failure to reimburse business expenses; failure to provide accurate itemized wage statements; failure to pay wages timely during employment; failure to pay all wages due upon separation of employment; Violation of Business and Professions Code §§ 17200, et seq. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiffs are represented by attorneys in the Action: Samuel A. Wong, Kashif Haque, Jessica L. Campbell, and Kristy R. Connolly from Aegis Law Firm, PC ("Class Counsel.")

Defendant strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

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

So far, the Court has made no determination whether Defendant or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendant 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 lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Defendant 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.

EXHIBIT A

By agreeing to settle, Defendant do not admit any violations or concede the merit of any claims. Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant 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. Defendant Will Pay \$250,000.00 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Defendant will fund the Gross Settlement by August 31, 2025 and assuming the Court has granted Final Approval by then, the checks will be mailed within 14 days the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$83,333.33 (one-third (1/3) of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$25,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$10,000 for Plaintiff Menendez and \$2,500 for Plaintiff Duran as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiffs will receive other than their Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$6,990 to the Administrator for services administering the Settlement.
 - D. Up to \$12,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

EXHIBIT A

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendant are asking the Court to approve an allocation of 10% of each Individual Class Payment to taxable wages (“Wage Portion”) and 90% to e.g., interest, etc. (“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.
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 Controller’s Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.
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 notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA Period facts alleged in the Action.

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. Plaintiffs and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

EXHIBIT A

8. Administrator. The Court has appointed a neutral company, Apex Class Action Administration (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, 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 have fully funded the Gross Settlement (and separately paid all 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 based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action. Except as set forth in Section 5.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and Defendant have paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Defendant, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees’ Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the

EXHIBIT A

Operative Complaint, and the PAGA Notice and ascertained in the course of the Action.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$12,000 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Workweeks and/or Pay Periods based on Defendant's 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 resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

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?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Menendez v. Petunia Holdings, LLC* and include your identifying information (full name, address, telephone number, and approximate dates of employment for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Defendant are asking the Court to approve. At least 16 business days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ (url) _____ or the Court's website <https://roa.sdcourt.ca.gov/roa/>

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action as *Menendez v. Petunia Holdings, LLC*, and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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. CAN I ATTEND THE FINAL APPROVAL HEARING?

EXHIBIT A

You can, but don't have to, attend the Final Approval Hearing on _____ at (time) in Department C-69 of the San Diego Superior Court, located at 330 West Broadway, San Diego, CA 92101. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making any decisions. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to Apex Class Action Administration's website at _____ (url) _____. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<https://roa.sdcourt.ca.gov/roa/>) and entering the Case Number for the Action, Case No. 37-2022-00052139-CU-OE-CTL.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Name of Attorney: Kashif Haque, Samuel Wong, Jessica L. Campbell, and Kristy R. Connolly

Email Address: kconnolly@aegislawfirm.com

Name of Firm: Aegis Law Firm, PC

Mailing Address: 9811 Irvine Center Drive, Suite 100

Telephone: (949) 379-6250

Settlement Administrator:

Name of Company:

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds

EXHIBIT A

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT B

<<Mailing Date>>

To: <<First Name>><<Last Name>>
<<Address>>
<<City>> <<State>> <<Zip>>

Re: Individual PAGA Payment from *Menendez v. Petunia Holdings, LLC*
San Diego County Superior Court, Case No. 37-2022-00052139-CU-OE-CTL

Dear <<First Name>><<Last Name>>:

Please find enclosed a check in the amount of <<**amount of payment**>> (“Individual PAGA Payment”). This check is your payment from the settlement of a lawsuit entitled *Menendez v. Petunia Holdings, LLC*, Case No. 37-2022-00052139-CU-OE-CTL (“Action”), filed in the Superior Court of California for the County of San Diego (“Court”).

The lawsuit was filed by Rayna Menendez and Jose Duran (“Plaintiffs”), former employees of Petunia Holdings, LLC (“Defendant”), on behalf of the State of California with respect to themselves and other allegedly aggrieved employees, to seek recovery of civil penalties pursuant to the California Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”). Plaintiffs alleged that Defendant violated the California Labor Code by failing to properly pay all minimum and overtime wages, provide lawful meal periods or compensation in lieu thereof, authorize or permit lawful rest breaks or provide compensation in lieu thereof, reimburse business expenses, provide accurate itemized wage statements, and timely pay all wages during employment and upon separation of employment.

Defendant denies these allegations and denies any wrongdoing of any kind associated with these allegations.

A settlement was reached between Plaintiffs and Defendant, on behalf of Plaintiff, the State of California, and the following Aggrieved Employees: all persons currently or formerly employed by Defendant as a non-exempt employee in the State of California at any time from February 22, 2022 to February 21, 2024. You are receiving a portion of the settlement (the enclosed Individual PAGA Payment check) because you have been identified as an Aggrieved Employee.

On <<Approval Date>>, the settlement was approved by the Court, with a portion to be paid to the State of California and a portion to be paid to the Aggrieved Employees. Your Individual PAGA Payment is based on the total number of pay periods that you worked as an Aggrieved Employee during the period between February 22, 2022 to February 21, 2024 (the “PAGA Period”). The Individual PAGA Payment is considered to be 100% penalties, which will be reported on an IRS Form 1099. You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the settlement and should consult a tax advisor regarding the tax consequences of such payment.

By way of the settlement, you will be deemed to release the Released Parties from the Released PAGA Claims. The “Released Parties” means Defendant and Hudson River OPCO, LLC and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns subsidiaries and affiliates. The “Released PAGA Claims” means

EXHIBIT B

all claims for PAGA penalties arising during the PAGA Period that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, and the PAGA Notice.

Your Individual PAGA Payment check is valid for 180 calendar days from the date of issuance, and if you do not cash, deposit, or otherwise negotiate the check within the 180-day timeframe, your Individual PAGA Payment will be cancelled and the funds will be transmitted to the State Controller's Office Unclaimed Property Fund in your name.

Do not call or write the Court or Office of the Clerk of the Court to ask questions about the settlement. If you have any questions concerning the settlement, you may contact the Settlement Administrator at <<INSERT CONTACT INFORMATION>>.

EXHIBIT 2



AEGIS LAW FIRM, PC
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: 949.379.6250
Facsimile: 949.379.6251
www.aegislawfirm.com

December 30, 2022

VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency
Attn: PAGA Administrator

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Agent for Service of Process for Petunia Holdings, LLC and Hudson River OPCO, LLC:
CSC – Lawyers Incorporating Service
2710 Gateway Oaks Dr., Suite 150N
Sacramento, CA 95833

Re: Rayna Menendez v. Petunia Holdings, LLC; Hudson River OPCO, LLC

Dear Labor and Workforce Development Agency; Petunia Holdings, LLC; Hudson River OPCO, LLC:

Please allow this correspondence to serve as written notice required by California Labor Code § 2699.3(a)(1) of the specific provisions of the Labor Code allegedly violated by Petunia Holdings, LLC; Hudson River OPCO, LLC; and any other employers or person(s) acting on behalf of the employer as such phrase is used under Labor Code sections 558 and 558.1 (“Respondent”), and the facts and theories in support of said allegations. This firm represents Rayna Menendez (“Claimant”); we hereby notify you that Claimant intends to seek penalties against Respondent under the Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698 *et seq.*, on Claimant’s own behalf and all other aggrieved employees.

Specific Provisions of the Labor Code Allegedly Violated by Respondent

The specific provisions of the Labor Code allegedly violated by Respondent and the provisions under which Claimant submits this correspondence include the following: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802.

Facts and Theories Supporting the Allegations Against Respondent

Claimant and other aggrieved employees worked for Respondent in California as non-exempt employees. Claimant was employed by Respondent in California within the past year.

During the past year, Respondent failed to provide 30-minute uninterrupted meal periods within the appropriate time intervals to Claimant and other aggrieved employees as required by

Labor Code section 512 and section 11 of the applicable Wage Order. Claimant and other aggrieved employees frequently worked shifts over five hours and did not receive lawful meal periods because they were discouraged from taking meal periods, were interrupted during their meal periods, were required to remain on call during meal periods, and/or were not scheduled to be relieved at the appropriate intervals to receive all lawful meal periods, among other reasons. As a result, their meal periods were missed, late, short, and/or interrupted.

When Claimant and other aggrieved employees missed meal periods or if the meal periods were late, short, and/or interrupted, Respondent violated Labor Code sections 226.7 and 512, as well as section 11 of the applicable Wage Order, by failing to pay an additional hour of pay at the regular rate of pay to Claimant and other aggrieved employees for every day in which they suffered a meal period violation.

Respondent failed to authorize or permit paid 10-minute rest periods for every four hours or major fraction thereof worked because Claimant and other aggrieved employees were required or incentivized to work through their rest periods, discouraged from taking their rest periods, required to remain on call during rest periods, and/or were not scheduled to be relieved at the appropriate intervals to receive all rest periods.

When Claimant and other aggrieved employees did not receive rest periods, Respondent violated Labor Code section 226.7 and section 12 of the applicable Wage Order by failing to pay an additional hour of pay at the regular rate of pay to Claimant and other aggrieved employees.

Respondent failed to pay Claimant and other aggrieved employees at least the legal minimum wage and overtime wage for all hours worked (in violation of Labor Code sections 246, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198) due to Respondent's policy and practice of requiring Claimant and aggrieved employees to work off-the-clock, failing to pay wages using the appropriate regular rate of pay (e.g., excluding bonuses from the overtime rate and sick pay rate) or the required minimum wage, and/or failing to pay for all recorded time, among other reasons. Respondent failed to pay Claimant and other aggrieved all minimum, regular, and overtime wages for these hours.

Claimant and other aggrieved employees incurred necessary business-related expenses as a direct consequence of the discharge of their job duties for the benefit of Respondent, such as cell phone use. As such, Respondent violated Labor Code §§ 2800 and 2802 by failing to reimburse Claimant and other aggrieved employees for such expenses.

As a result of, and in addition to, these actions, Respondent violated Labor Code sections 226, and 226.3 by failing to provide itemized wage statements that accurately reported the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate

by the employee. Specifically, the wage statements failed to list the correct hours, rates, and pay due to the above unpaid wage violations, among other violations.

Respondent violated Labor Code sections 1174 and 1174.5 by failing to maintain accurate and complete records showing the hours worked daily by the aggrieved employees and the wages paid to aggrieved employees (due to the same underpayment of wages referenced above).

Furthermore, Respondent violated the Labor Code by failing to properly pay all these wages owed throughout aggrieved employees' employment and following the end of these workers' employment with Respondent due to the above violations (in violation of Labor Code sections 201, 202, 203, 204).

Based on these violations, Claimant seeks attorneys' fees, interest, and penalties under the Labor Code. Enclosed and incorporated by reference is the class action complaint Claimant intends to file on behalf of herself and all other aggrieved employees against Respondent. Claimant intends to amend the complaint to include a cause of action pursuant to Labor Code §§ 2698, *et seq.*, after the minimum required review period elapses and will file a conformed copy of the complaint after it has been filed with the court.

Thank you for your assistance on this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,
AEGIS LAW FIRM, PC



Jessica L. Campbell

Enclosure: Class Action Complaint

EXHIBIT 3