

## CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Adriana Cruz (“Plaintiff”), individually and in her representative capacity on behalf of the Settlement Class, as defined below, and as a private attorney general on behalf of the State of California; and Defendant NIKE Retail Services, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as the “Parties,” or individually as “Party.”

### 1. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Adriana Cruz v. Nike Retail Services, Inc.*, Case No. 37-2023-00012353-CU-OE-CTL, initiated on March 24, 2023 and pending in Superior Court of the State of California, County of San Diego.
- 1.2. “Administrator” means Apex Class Action LLC, 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.
- 1.4. “Aggrieved Employees” means all individuals who were employed by Defendant who were classified as non-exempt employees in the State of California at any time during the PAGA Period.
- 1.5. “Class” means all individuals who are or previously were employed by Defendant who were classified as non-exempt, employees in the State of California at any time during the Class Period.
- 1.6. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Christine T. LeVu, Brooke Waldrop and Adolfo Sanchez Contreras of Blumenthal Nordrehaug Bhowmik De Blouw LLP and John Gomez of the Gomez Trial Attorneys.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with 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 Workweeks and PAGA Pay Periods.
- 1.9. “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 with a Spanish translation in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Notice Packet” means the Class Notice to be provided to the Class Members by the Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Administrator).
- 1.13. “Class Period” means the period of time from March 24, 2019, through July 22, 2025.
- 1.14. “Class Representative” means Adriana Cruz, the named Plaintiff in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.15. “Class Representative Service Payment” means the service payment made to the Plaintiff as Class Representative in order to compensate for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses, and for the general release of all claims by the Plaintiff.
- 1.16. “Court” means the Superior Court of California, County of San Diego.
- 1.17. “Defendant” means the named defendant in the Action, NIKE Retail Services, Inc.
- 1.18. “Defense Counsel means the attorneys representing Defendant, Matthew A. Tobias and Angela S. Chuang of Sheppard, Mullin, Richter & Hampton LLP.

- 1.19. “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 upon service of the Notice of Entry of Order and/or Final Judgment; 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.
- 1.20. “Final Approval” means the Court’s order granting final approval of the Settlement substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- 1.22. “Gross Settlement Amount” means One Million Three Hundred Fifty Thousand Dollars and Zero Cents (**\$1,350,000.00**), which is the total amount to be paid by Defendant as provided by this Agreement 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 Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administration Expenses Payment. This Gross Settlement Amount is an all-in amount without any reversion to Defendant, and excludes any employer payroll taxes, if any, due on the portion of the Individual Class Payments allocated to wages which shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendant.
- 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 twenty-five percent (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 Final Approval substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 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 seventy-five percent (75%) of the PAGA Penalties paid to the LWDA under 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 Net Settlement Amount is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means a Class Member who opts out of the Settlement by submitting a valid and timely Request for Exclusion to the Administrator.
- 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 of time from January 12, 2022 through July 22, 2025.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. “PAGA Notice” means the Plaintiff’s January 12, 2023 letter to Defendant 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 (\$7,500) and 75% to the LWDA (\$22,500) 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.
- 1.36. “Plaintiff” means Adriana Cruz, the named plaintiff in the Action.
- 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement, substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- 1.38. “Released Class Claims” means the claims being released as described in Paragraph 6.2 below.
- 1.39. “Released PAGA Claims” means the claims being released as described in Paragraph 6.3 below.

- 1.40. “Released Parties” means Defendant, and each of its past, present and future agents, employees, servants, officers, directors, managing agents, members, owners (whether direct or indirect), partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, , divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, potential and alleged joint employers, temporary staffing agencies and employees thereof, common law employers, potential and alleged common law employers, dual employers, potential and alleged dual employers, co-employers, potential and alleged co-employers, contractors, service providers, alter-egos, potential and alleged alter-egos, any person and/or entity with potential or alleged to have joint liability, and all of their respective past, present and future employees, directors, officers, members, owners, agents, representatives, payroll agencies, attorneys, stockholders, fiduciaries, parents, subsidiaries, other service providers, and assigns.
- 1.41. “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.
- 1.42. “Response Deadline” means sixty (60) calendar days after the Administrator mails Class Notice Packet to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) submit Requests for Exclusion from the Settlement, or (b) submit his or her Objection to the Settlement. Class Members to whom Class Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the Response Deadline.
- 1.43. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement and the Judgment.
- 1.44. “Workweek” means any week during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one shift.

## **2. RECITALS**

- 2.1. On March 24, 2023, Plaintiff commenced this Action by filing a Complaint against Defendant in the Superior Court of the State of California, County of San Diego. Plaintiff’s Complaint alleges the following causes of action: (1) violation of California Business and Professions Code § 17200 et seq.; (2) failure to pay minimum wages in violation of California Labor Code §§ 1194, 1197 & 1197.1; (3) failure to pay overtime wages in violation of California Labor Code § 510, et seq.; (4) failure to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; (5) failure to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; (6) failure to provide accurate itemized wage statements in violation of California Labor Code § 226; (7) failure to reimburse employees for required

expenses in violation of California Labor Code § 2802; (8) failure to provide wages when due in violation of California Labor Code §§ 201, 202 and 203; (9) failure to pay sick pay in violation of California Labor Code §§ 201-204, 233 and 246; (10) discrimination and retaliation in violation of the Fair Employment and Housing Act; and (11) wrongful termination in violation of public policy.

- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave written notice to Defendant and the Labor and Workforce Development Agency by sending the Private Attorney General Act Notice on or about January 12, 2023.
- 2.3. On May 11, 2023, Defendant removed this Action to United States District Court, Southern District of California.
- 2.4. On May 22, 2023, Plaintiff filed a Representative Action Complaint alleging a single cause of action against Defendant for recovery of civil penalties for violation of Private Attorney General Act, Cal. Labor Code §§ 2698, et seq. (“PAGA”) in the Superior Court of the State of California, County of Orange (“PAGA Action”).
- 2.5. On April 10, 2025, the Parties participated in an all-day mediation presided over by Steve Cerveris, a respected mediator of wage and hour representative and class actions. Following the mediation, each Party, represented by its respective counsel, agreed to settle this Action and the PAGA Action based upon a mediator’s proposal, which was memorialized in the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.
- 2.6. Prior to mediation, Plaintiff obtained various documents and information that allowed both Parties to evaluate the potential exposure and potential risk, including relevant policies, Plaintiff’s personnel file, Plaintiff’s payroll and time records, and a sampling of the time and pay records for the Class Members and Aggrieved Employees. Plaintiff took the depositions of two of Defendant’s Persons Most Qualified, two current employees of Defendant, and one of Defendant’s designated experts. Defendant took the depositions of Plaintiff, three proposed class members, and two of Plaintiff’s designated experts. 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*”).
- 2.7. As a condition of this Settlement, and to conserve judicial resources and facilitate the efficient resolution of this Action and the PAGA Action: (a) the Parties agree to stipulate to remand this Action to Superior Court of California for the County of San Diego for settlement purposes only; (b) Plaintiff will seek leave to amend to file a First Amended Class Action and Representative Action Complaint to add the PAGA claim to this Action; and (c) Plaintiff will dismiss the PAGA Action thereafter without prejudice. In the event the Settlement is not approved by the Court, and this case proceeds to litigation, the Parties agree that Defendant has the

right to remove the Action, and Plaintiff will not object to the removal or seek to remand the Action.

- 2.8. On October 2, 2025, the Parties filed an Amended Joint Motion to Remand this Action to the Superior Court of the State of California, County of San Diego.
- 2.9. On October 7, 2025, the United States District Court remanded this Action to the Superior Court of the State of California, County of San Diego.
- 2.10. On November 5, 2025, the Parties stipulated to the filing of a First Amended Class Action and Representative Action Complaint to add the PAGA claims to this Action.
- 2.11. On November 19, 2025, Plaintiff filed a First Amended Class Action and Representative Action Complaint.
- 2.12. The First Amended Class Action and Representative Action Complaint is the operative complaint in the Action (the “Operative Complaint”).
- 2.13. 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.
- 2.14. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Class have merit or that Defendant bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant’s defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

### **3. MONETARY TERMS**

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay the total gross amount of One Million Three Hundred Fifty Thousand Dollars and Zero Cents (\$1,350,000.00) and no more as the Gross Settlement Amount. This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages which shall be separately paid by Defendant to the Administrator. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 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 Defendant.

3.2. Payments from the Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the Administrator will make the following payments out of 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 \$15,000 (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 Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment no later than sixteen (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. Plaintiff assumes 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 \$450,000.00, and a Class Counsel Litigation Expenses Payment of not more than \$135,000.00. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than sixteen (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 Plaintiff's 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. The payment of the Class Counsel Fees Payment shall be allocated as follows: 75% to Blumenthal Nordrehaug Bhowmik De Blouw LLP and 25% the Gomez Law Firm. The Class Counsel Litigation Expenses Payment shall be allocated between firms based upon the expenses actually incurred by each firm as set forth in the declarations by Class Counsel. 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 Administration Expenses Payment not to exceed \$66,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses Payment is less or the Court approves payment less than \$66,000.00, the Administrator will retain the remainder in the Net Settlement Amount for distribution to Participating Class Members.

3.2.4 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$30,000.00 to be paid from the Gross Settlement Amount, with 75% (\$22,500.00) allocated to the LWDA PAGA Payment and 25% (\$7,500.00) allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by **(a)** dividing the amount of the Aggrieved Employees' twenty-five percent (25%) share of PAGA Penalties (\$7,500) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and **(b)** multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2. 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.

3.2.5 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.

3.2.5.1. Tax Allocation of Individual Class Payments. Twenty percent (20%) 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. Eighty percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for non-wages, expense reimbursement, 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.

3.2.5.2. 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.

3.2.6 The settlement payments made to Plaintiff and Class Members under this Settlement, and any other payments made pursuant to this Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to, profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. The Parties' intention that this settlement will not affect any rights, contributions, or amounts to which Plaintiff and Class Members may be entitled under any benefit plans. The payment under this Agreement shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members beyond those specified in this Agreement.

#### **4. SETTLEMENT FUNDING**

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on its records, Defendant has represented that as of July 22, 2025 the Class consists of 10,010 Class Members who collectively worked a total of 823,094 Workweeks, and 8,425 Aggrieved Employees who worked a total of 229,097 PAGA Pay Periods.
- 4.2. Class Data. Not later than fifteen (15) business days after the Court grants Preliminary Approval of the Settlement, Defendant will 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 the 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 fourteen (14) days after the Effective Date.

#### **5. PAYMENTS FROM THE GROSS SETTLEMENT AMOUNT**

- 5.1. Within fourteen (14) days after Defendant funds the Gross Settlement Amount, 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.
- 5.2. 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 one hundred eighty (180) days after the date of mailing) when the check will be voided (“void date”). The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class 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). 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 Administrator must update the recipients’ mailing addresses using the National Change of Address Database. If a Participating Class Member’s or Aggrieved Employee’s check is not cashed within 120 days after its last mailing to the affected individual, the Administrator will also send the individual a notice informing him or her that unless the check is cashed by the void date, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed.
- 5.3. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (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.
- 5.4. 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 a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384(b), Legal Aid Foundation of Los Angeles (“Cy Pres Recipient”). The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.

- 5.5. 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.

## **6. RELEASES OF CLAIMS**

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments (“Funding Date”), Plaintiff, Participating Class Members, Aggrieved Employees and the LWDA will release claims against all Released Parties as follows:

- 6.1. Plaintiff’s Release. Upon the Funding Date, and as a condition of receiving any portion of her Class Representative Service Payment, Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, fully and finally release Defendant and the Released Parties, from any and all claims, known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, including but not limited to claims arising from or related to her employment with Defendant and her compensation while an employee of Defendant (“Plaintiff’s Released Claims”). Plaintiff’s Released Claims include, but are not limited to, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, reporting time pay, and interest; the calculation of the regular rate of pay; failure to provide required meal and rest periods; missed meal period and rest-period premiums, including failure to pay premiums at the regular rate of compensation; wage statement penalties; reimbursement for all necessary business expenses; payment for all hours worked, including off-the-clock work; failure to pay vested, unused vacation and holiday pay; failure to pay sick leave pay at the regular rate of pay; deductions; failure to keep accurate records; failure to provide seating; unfair business practices; penalties, including, but not limited to, civil penalties, statutory penalties, recordkeeping penalties, minimum-wage penalties, wage statement penalties, and waiting-time penalties; and attorneys’ fees and costs. Plaintiffs’ Released Claims include all claims arising under the California Labor Code (including, but not limited to, sections 201, 202, 203, 204 *et seq.*, 210, 218, 221, 223, 226 *et seq.*, 226.7, 227.3, 233, 246 *et seq.*, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, 2699 *et seq.*, 2699.3, and 2802); the Wage Orders of the California Industrial Welfare Commission; California Business and Professions Code section 17200, *et seq.*; California Civil Code, to include but not limited to, sections 3287, 3336 and 3294; California Code of Civil Procedure § 1021.5; the California common law of contract; the FLSA, 29 U.S.C. § 201, *et seq.*, federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* (“ERISA”) (except for claims for vested benefits that may not be forfeited pursuant to the ERISA). Plaintiff’s Released Claims expressly excludes any claims or actions to enforce this Agreement, or to any claims for unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits that arose at any time, or based on occurrences outside the Class Period, the release of claims not

permitted by law, and Plaintiff's Individual Claims subject to the separate individual settlement agreement as further discussed in Section 6.1.2 below

6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. Plaintiff's Released Claims include all claims, whether known or unknown. Even if Plaintiff discovers facts in addition to or different from those that she now knows or believes to be true with respect to the subject matter of Plaintiff's Released Claims, those claims will remain released and forever barred. Plaintiff's 1542 waiver does not apply to Plaintiff's Individual Claims subject to the separate individual settlement agreement as further discussed in Section 6.1.2 below. Thus, Plaintiff expressly waives and relinquishes the provisions, rights and benefits 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."

6.1.2 Plaintiff's Individual Settlement. In addition to the Gross Settlement Amount, Defendant has agreed to separately settle Plaintiff's Individual Claims, pursuant to a separate confidential Individual Settlement Agreement. Plaintiff's Individual Claims include, but are not limited to, discrimination and retaliation in violation of the Fair Employment and Housing Act and wrongful termination in violation of public policy. Plaintiff's Individual Claims exist independent and apart from the class and PAGA claims at issue in the Action. If the Court and/or the LWDA requires the Parties to submit the terms of Plaintiff's Individual Settlement Agreement to obtain approval of the PAGA settlement in the Action, the Parties agree that the terms of Plaintiff's Individual Settlement Agreement will only be submitted under seal or disclosed to the Court and/or LWDA in some other way to ensure that the Individual Settlement amount is not disclosed publicly.

6.2. Release by Participating Class Members. Upon the Funding Date, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, fully and finally release Defendant and the Released Parties from the Released Class Claims. The "Released Class Claims" include all claims asserted in the Operative Complaint, arising from or reasonably related to the facts and claims alleged in the Operative Complaint during the Class Period. The Released Class Claims include claims under California Labor Code sections 201-204, 226, 226.7, 233, 246, 510, 512, 1194, 1197, 1197.1 and 2802, the applicable Wage Orders of the Industrial Welfare Commission, and the California Business and Professions Code Section 17200, *et seq.* asserted in or related to the facts alleged in the Operative Complaint, including: (i) unfair competition; (ii) failure to pay minimum wages; (iii) failure to pay overtime wages, including but not limited to claims

related to the calculation of the regular rate for overtime purposes; (iv) failure to provide required meal periods; (v) failure to provide required rest periods; (vi) failure to provide accurate itemized statements; (vii) failure to reimburse employees for required expenses; (viii) failure to provide wages when due; and (ix) failure to pay sick pay wages. The Released Class Claims expressly excludes 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 class claims based on facts outside the Class Period.

- 6.3. Release by Aggrieved Employees. Upon the Funding Date, all Aggrieved Employees and the LWDA are deemed to, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, fully and finally release Defendant and the Released Parties from all Released PAGA Claims. The "Released PAGA Claims" include all claims for civil penalties under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.* arising from any of the factual allegations asserted in the Operative Complaint and/or PAGA Notice submitted by Plaintiff arising during the PAGA Period including all claims for attorneys' fees and costs related thereto, including PAGA claims predicated on California Labor Code sections 201, 202, 203, 204 *et seq.*, 210, 218, 221, , 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, 2699 *et seq.*, 2699.3, and 2802; the applicable Wage Orders of the Industrial Welfare Commission; California Code of Regulations, Title 8, Sections 11040, Subdivision 5(A)-(B) and 11070(14); and the California Business and Professions Code Section 17200, *et seq.* The Released PAGA Claims do not include other PAGA claims, claims for vested benefits, wrongful termination, discrimination, unemployment insurance, disability, social security, and worker's compensation, and PAGA claims outside of the PAGA Period.

## **7. 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 procedures and instructions.

- 7.1. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members and/or the proposed Cy Pres

Recipient; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming her willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator and/or the proposed Cy Pres Recipient; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vii) a redlined version of the Parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (viii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiff and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement

- 7.2. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than thirty (30) days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 7.3. 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.

## **8. SETTLEMENT ADMINISTRATION**

- 8.1. Selection of Administrator. The Parties have jointly selected Apex Class Action LLC to serve as the Administrator and verified that, as a condition of appointment, Apex Class Action LLC 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 Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number and email and a fax number to receive communications from Class Members; receiving

and reviewing for validity completed Requests for Exclusion; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of Requests for Exclusion, objections and disputes; calculating Individual Class Payments and Individual PAGA Payments; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. 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.

- 8.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 8.3. 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.
- 8.4. Notice to Class Members.
  - 8.4.1 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.
  - 8.4.2 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 with Spanish translation, if applicable 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.
  - 8.4.3 Not later than seven (7) calendar 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.



- 8.4.4 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 Response Deadline 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. Class Members who submit a written, signed challenge to his or her Individual Settlement Amount must opt out within fourteen (14) days from the date the Claims Administrator mails an adjusted Individual Settlement Amount or notice of rejection of the challenge, or by the Response Deadline, whichever is later.
- 8.4.5 If the Administrator, the Parties, Defense Counsel, 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 fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

8.5. Requests for Exclusion (Opt-Outs).

- 8.5.1 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 the Response Deadline (plus an additional fourteen (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.
- 8.5.2 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.

- 8.5.3 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 Paragraph 6.2 of the Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 8.5.4 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. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted and the objection will be void.
- 8.6. Challenges to Calculation of Workweeks. Each Class Member shall have until the Response Deadline (plus an additional fourteen (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 so 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 as to the challenges
- 8.7. Objections to Settlement.
- 8.7.1 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.
- 8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, or in addition to a written objection, 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 no later than the Response

Deadline (plus an additional fourteen (14) days for Class Members whose Class Notice was re-mailed).

8.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted and the objection will be void.

8.8. 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.

8.8.1 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.

8.8.2 Request 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 seven (7) 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).

8.8.3 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.

8.8.4 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.

8.8.5 Administrator's Declaration. Not later than seven (7) 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 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.

8.8.6 Final Report by Administrator. Within ten (10) days after the Administrator disburses all funds of 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 fifteen (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. If a second declaration attesting to the distribution of uncashed checks is required, the Administrator shall provide this second declaration at least seven (7) days before any deadline for a second declaration, and Class Counsel shall be responsible for filing the second declaration with the Court.

9. **CLASS SIZE MODIFICATION AND ESCALATOR CLAUSE**

Based on its records, Defendant provided figures as to the Class size as set forth in Paragraph 4.1 above. If the actual number of Class Members eligible to participate in the Settlement is greater than 10% of this estimate (i.e., 110% of 823,094 workweeks), Defendant shall have the option of: (a) paying a proportional increase in the Gross Settlement Amount for each additional workweek over 110% of 823,094 (e.g., if the actual number of work weeks is 12% higher than 823,094, the Gross Settlement Amount shall be increased by 2%); or (b) modifying the end date of the Class Period and PAGA Period to the date when the actual number of Workweeks exceeded 110% of 823,094. Any election by the Defendant to move the end date for the Class Period and the end date for the PAGA Period shall be made prior to the hearing on the Motion for Preliminary Approval.

## **10. DEFENDANT'S RIGHT TO WITHDRAW**

If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendant may, but is not obligated, 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 Administration Expenses incurred as of the date Defendant makes this election to withdraw. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 7 days after the Administrator sends the final Exclusion List to Defense Counsel. Invalid Requests for Exclusion will have no effect on this threshold for an election.

## **11. MOTION FOR FINAL APPROVAL**

Unless otherwise ordered by the Court, not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff 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(l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven (7) days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

- 11.1. 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 (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 11.2. 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 a Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this Paragraph.
- 11.3. 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 under Code of Civil Procedure section 664.6 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.
- 11.4. Waiver of the 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.

- 11.5. 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 an equal 50-50 basis, any additional Administration Expenses reasonably incurred at the time of 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.

## **12. 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 and a proposed amended judgment.

## **13. ADDITIONAL PROVISIONS**

- 13.1. 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 Plaintiff 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 or Final Approval or grant Judgment pursuant to this Agreement, Defendant reserves 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 Defendant's 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).

- 13.2. Confidentiality Prior to Preliminary Approval. Neither Plaintiff nor Plaintiff's counsel shall issue any press release or announcement of any kind related in any way to the settlement. Plaintiff and Plaintiff's counsel agree that, prior to preliminary approval of the settlement, they will keep the terms of this settlement confidential except for purposes of communicating with Plaintiff only. Plaintiff shall be informed that the settlement is confidential and shall be advised to keep the settlement confidential. From and after preliminary approval of the settlement, the Class Members (including Plaintiff and Class Counsel) may: (1) as required by law; (2) as required under the terms of the settlement; or (3) as required under counsel's duties and responsibilities as Class Counsel, comment regarding the specific terms of the settlement. In all other cases, Plaintiff and Class Counsel agree to limit their statements regarding the terms of the settlement, whether oral, written or electronic (including the world wide web), to say the Class Action has been resolved and that Plaintiff and Class Counsel are satisfied with the settlement terms. Nothing in this Paragraph is intended to interfere with Class Counsel's duties and obligations to faithfully discharge their duties as Class Counsel, including but not limited to, communicating with Class Members regarding the settlement.
- 13.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees have not and 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.
- 13.4. 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.
- 13.5. 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.
- 13.6. 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.

- 13.7. 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.
- 13.8. 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.
- 13.9. 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.
- 13.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11. 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.
- 13.12. 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.
- 13.13. 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.
- 13.14. 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. Not later than ninety (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, Plaintiff 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.
- 13.15. 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.



- 13.16. 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.
- 13.17. 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 Plaintiffs and the Class:*

Norman B. Blumenthal  
Kyle R. Nordrehaug  
Blumenthal Nordrehaug Bhowmik De Blouw LLP  
2255 Calle Clara  
La Jolla, CA 92037  
Tel.: (858) 551-1223  
Fax: (858) 551-1232  
E-Mail: norm@bamlawca.com  
kyle@bamlawca.com

*To Defendant:*

Matthew A. Tobias  
Angela S. Chuang  
Sheppard, Mullin, Richter & Hampton LLP  
350 South Grand Avenue, 40th Floor  
Los Angeles, CA 90071-3460  
Tel.: (213) 620-1780  
Fax: (213) 620-1398  
E-Mail: mtobias@sheppardmullin.com  
achuang@sheppardmullin.com

- 13.18. 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 counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 13.19. 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 Code of Civil Procedure section 583.330 to extend the date to bring a case to trial under Code of Civil Procedure section 583.310 for a period of not less than one (1) year

starting from the date of the signing of this Agreement by all Parties until the entry of the final approval order and judgment or the date this Agreement shall no longer be of any force or effect.

13.20. Fair Settlement. The Parties, Class Counsel, and Defense Counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, both current and potential.

**14. EXECUTION BY PARTIES AND COUNSEL**

**CLASS REPRESENTATIVE: ADRIANA CRUZ**

Dated: 06/24/2026

  
Theresa R. Azhocar (Jun 24, 2026 09:34:35 PDT)

The Estate of Adriana Cruz  
Plaintiff and Class Representative

**DEFENDANT: NIKE RETAIL SERVICES, INC.**

Dated: \_\_\_\_\_

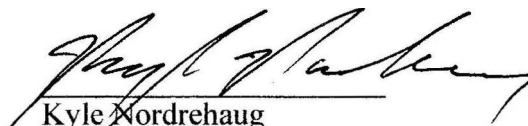
By:  
Its:

**APPROVED AS TO FORM BY COUNSEL**

**CLASS COUNSEL**

**BLUMENTHAL NORDREHAUG BHOWMIK DE  
BLOUW LLP**

Dated: 6/26/26

  
Kyle Nordrehaug  
Attorney for Plaintiff

**GOMEZ LAW FIRM**

Dated: \_\_\_\_\_

John Gomez  
Attorney for Plaintiff

starting from the date of the signing of this Agreement by all Parties until the entry of the final approval order and judgment or the date this Agreement shall no longer be of any force or effect.

13.20. Fair Settlement. The Parties, Class Counsel, and Defense Counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, both current and potential.

**14. EXECUTION BY PARTIES AND COUNSEL**

**CLASS REPRESENTATIVE:           ADRIANA CRUZ**

Dated: \_\_\_\_\_  
The Estate of Adriana Cruz  
Plaintiff and Class Representative

**DEFENDANT:                           NIKE RETAIL SERVICES, INC.**

Dated: Jun 25, 2026 \_\_\_\_\_  
  
By: VP, Employment Law & Employee Relations  
Its:

**APPROVED AS TO FORM BY COUNSEL**

**CLASS COUNSEL                           BLUMENTHAL NORDREHAUG BHOWMIK DE  
                                                         BLOUW LLP**

Dated: \_\_\_\_\_  
Kyle Nordrehaug  
Attorney for Plaintiff

**GOMEZ LAW FIRM**  
  
Dated: June 26, 2026 \_\_\_\_\_  
John Gomez  
Attorney for Plaintiff

**DEFENSE COUNSEL:**

**SHEPPARD MULLIN RICHTER & HAMPTON LLP**

Dated: June 25, 2026

---



---

Matthew A. Tobias  
Attorney for Defendant

**EXHIBIT A**

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR  
FINAL COURT APPROVAL]

**EXHIBIT “A”**

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

***Cruz v. Nike Retail Services, Inc., Superior Court of the State of California,  
County of San Diego, Case No. 37-2023-00012353-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.***

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT  
ACT. PLEASE READ THIS NOTICE CAREFULLY.**

**You may be eligible to receive money** from an employment class action and California Private Attorneys General Act (“PAGA”) lawsuit (“Action”) against Defendant NIKE Retail Services, Inc. (“Defendant”), for alleged wage and hour violations. The Action is brought by a former employee of Defendant, Plaintiff Adriana Cruz (“Plaintiff”), and seeks payment of (1) wages, statutory penalties, and other relief for a class of all individuals who are or previously were employed by Defendant who were classified as non-exempt employees in the State of California at any time during the Class Period (March 24, 2019 through July 22, 2025) (“Class Members”), and (2) civil penalties under the PAGA for all individuals who were employed by Defendant who were classified as non-exempt employees in the State of California at any time during the PAGA Period (January 12, 2022 through July 22, 2025) (“Aggrieved Employees”). While Defendant disputes Plaintiff’s claims in the Action and denies all liability, in order to resolve the Action, the Parties have reached a proposed class action and PAGA settlement (“Settlement”).

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

Based on Defendant’s records and the Parties’ current assumptions, **your share of the settlement of the class claims (referred to as your “Individual Class Payment”) is estimated to be <<\$ [REDACTED]>> (less withholding) and your share of the PAGA Penalties (“Individual PAGA Payment”) is estimated to <<be \$ [REDACTED]>>.** 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 Defendant’s records, you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work for Defendant in California during the PAGA Period.)

The above estimates are based on Defendant’s records showing that **you worked << [REDACTED]>> workweeks during the Class Period and you worked << [REDACTED]>> pay periods during the PAGA Period.** If you believe that you worked more workweeks and/or pay periods during either period, you can submit a challenge by the deadline date. See Section 5 of this Notice below.

The Court has already preliminarily approved the Settlement and approved this Notice. The Court has not yet decided whether to grant final approval of the Settlement. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires payments under the Settlement and requires Class Members and Aggrieved Employees to release their rights to assert certain claims against Defendant.

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

### **SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

|                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>You Don't Have to Do Anything to Participate in the Settlement</b>                                                                                                    | 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 and hour claims against Defendant and others that are covered by this Settlement (namely, the Released Class Claims).                                                                                                                                                                                                                                                                                                                                                                       |
| <b>You Can Opt-out of the Class Settlement but not the PAGA Settlement</b><br><br><b>The Opt-out Deadline is [REDACTED], 2026</b>                                        | 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 be eligible for an Individual Class Payment.<br><br>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 PAGA Claims (defined below).                                                                                                                                                 |
| <b>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</b><br><br><b>Written Objections Must be Submitted by [REDACTED], 2026</b> | 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 Plaintiff who pursued the Action on behalf of the Class and Aggrieved Employees. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 8 of this Notice. |
| <b>You Can Participate in the [REDACTED] Final Approval</b>                                                                                                              | The Court's Final Approval Hearing is scheduled to take place on [REDACTED], at [REDACTED] a.m., at the San Diego County Superior Court, located at 330 West Broadway, San Diego, CA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

|                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Hearing</b>                                                                                                                                                                                                 | <p>92101, in Department 70 before Judge Carolyn M. Caietti. This hearing may change as explained below in Section 9.</p> <p>You do not 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 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 9 of this Notice.</p>                                                                                                                                                                                                            |
| <p><b>You Can Challenge the Calculation of Your Workweeks / PAGA Pay Periods</b></p> <p><b>Written Challenges Must be Submitted by</b> <span style="background-color: yellow;">                    </span></p> | <p>The amount of your Individual Class Payment and your Individual PAGA Payment (if any) depend on how many workweeks you worked for Defendant in California during the Class Period and how many pay periods you worked for Defendant in California during the PAGA Period, respectively. The number of workweeks during the Class Period and number of pay periods during the PAGA Period you worked according to Defendant’s records are stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by <span style="background-color: yellow;">                    </span>, 2026. See Section 5 of this Notice.</p> |

## 1. WHY DID I RECEIVE THIS NOTICE?

A proposed class and PAGA action settlement of the above-captioned action pending in the Superior Court of the State of California, in and for the County of San Diego (the “Court”), has been reached between Plaintiff and Defendant and has been granted preliminary approval by the Court by Order dated << \_\_\_\_\_ >>. You may be entitled to receive money from this Settlement.

You have received this Notice because you have been identified as a member of the Class, which is defined as:

All individuals who are or previously were employed by Defendant who were classified as non-exempt, employees in the State of California at any time during the Class Period (March 24, 2019 through July 22, 2025).

So far, the Court has made no determination whether Defendant or Plaintiff are correct on the merits.

In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a written Class Action and PAGA Settlement Agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement that memorializes the Settlement reached between the Parties, Plaintiff and Defendant have negotiated a resolution that is subject to the Court’s final approval. Both sides agree the Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any of Plaintiff’s claims or allegations.



Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of Plaintiff's claims, the strength of Defendant's defenses, and the risks and uncertainties of continued litigation; and (2) the Settlement is in the best interests of the Class Members. The Court preliminarily approved the Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine whether to grant final approval of the Settlement.

## **2. WHAT IS THIS ACTION ABOUT?**

On March 23, 2023, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of San Diego ("Class Action"). The Action asserts class claims against Defendant for unfair competition, failure to pay minimum wages, failure to pay overtime wages, failure to provide required meal periods, failure to provide required rest breaks, failure to provide accurate itemized wage statements, failure to reimburse employees for required expenses, failure to timely provide wages due during employment, failure to timely pay all wages due upon cessation of employment, and failure to pay sick wages. Plaintiff also asserts a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiff is represented by attorneys in the Action: Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Christine T. LeVu, and Adolfo Sanchez Contreras of Blumenthal Nordrehaug Bhowmik De Blouw LLP; John Gomez of the Gomez Law Firm ("Class Counsel").

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

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

- A. Defendant Will Pay \$1,350,000.00 as the Gross Settlement Amount. The Gross Settlement Amount will be used to pay the Individual Class Payments to Participating Class Members, the Administration Expenses Payment, the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the PAGA Penalties. Any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages shall be separately paid by Defendant. Assuming the Court grants final approval, Defendant shall fund the Gross Settlement Amount and the amount necessary to pay employer-side payroll taxes within fourteen (14) days after the judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
- B. Court Approved Deductions from Gross Settlement Amount. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:
  - i. Administration Expenses Payment. Up to \$66,000.00, to the Administrator for services administering the Settlement, including expenses of notifying the Class

Members of the Settlement, processing requests for exclusions and disputes, and distributing settlement checks and tax forms.

- ii. Attorneys' Fees and Costs. Up to \$450,000.00 (1/3 of the Gross Settlement Amount) to Class Counsel of reasonable attorneys' fees and up to \$135,000.00 for actual litigation costs incurred by the Plaintiff. To date, Class Counsel have worked and incurred expenses on the Action without payment. The attorneys' fees awarded shall be allocated as follows: 75% to Blumenthal Nordrehaug Bhowmik De Blouw LLP and 25% the Gomez Law Firm.
- iii. Class Representative Service Payment. Up to \$15,000.00 as a Class Representative Award to the named Plaintiff for filing the Action, working with Class Counsel and representing the Class. The amount stated is what Plaintiff will be requesting, and the final amount to be paid will be decided at the Final Approval Hearing.
- iv. PAGA Penalties. Up to \$30,000.00 for PAGA Penalties, allocated 75% (\$22,500.00) to the State of California's Labor and Workforce Development Agency ("LWDA") and 25% (\$7,500.00) 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.

- C. Calculation of Individual Class Payments to Participating Class Members. After all of the payments of the court-approved Attorneys' Fees and Costs, the Class Representative Service Payment, the PAGA Penalties, and the Administration Expenses Payment are deducted from the Gross Settlement Amount, the remaining portion (the "Net Settlement Amount") shall be distributed as Individual Class Payments to the Participating Class Members. The Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member. The Individual Class Payment for each Participating Class Member shall be 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. "Workweek" means any week during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one day in California. The number of Workweeks will be based on Defendant's records, however, Class Members may challenge the number of Workweeks worked as explained below.
- D. Tax Matters. Plaintiff and Defendant are asking the Court to approve an allocation of twenty percent (20%) of each Individual Class Payment to the settlement of wage claims ("Wage Portion") and eighty percent (80%) to the settlement of claims for penalties and interest ("Non-Wage Portion"). The Non-Wage Portion and any Individual PAGA Payment shall not be subject to wage withholdings and shall be reported on IRS Form 1099. The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members. Neither Class Counsel nor Defendant's Counsel intend anything contained in this Class Notice to constitute advice

regarding taxes or taxability. The tax issues for each Participating Class Member are unique to him/her, and each Participating Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

- E. Conditions of Settlement. This Settlement and your receipt of the Individual Class Payment and Individual PAGA Payment are conditioned upon the Court entering an order granting final approval of the Settlement and entering a judgment.
- F. The Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a judgment. It is also possible the Court will enter a judgment that is reversed on appeal. Plaintiff and 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.
- G. Need to Promptly Cash Payment Checks. The front of every check issued 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 funds represented by such checks will be sent to a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384(b). The Parties have proposed Legal Aid Foundation of Los Angeles to be this Cy Pres Recipient. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.

#### **4. WHAT DO I RELEASE UNDER THE SETTLEMENT?**

- A. Released Class Claims. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, fully and finally release Defendant and the Released Parties from the Released Class Claims. The "Released Class Claims" include all claims asserted in the Operative Complaint, arising from or reasonably related to the facts and claims alleged in the Operative Complaint during the Class Period. The Released Class Claims include claims under California Labor Code sections 201-204, 226, 226.7, 233, 246, 510, 512, 1194, 1197, 1197.1 and 2802, the applicable Wage Orders of the Industrial Welfare Commission, and the California Business and Professions Code Section 17200, *et seq.* asserted in or related to the facts alleged in the Operative Complaint, including: (i) unfair competition; (ii) failure to pay minimum wages; (iii) failure to pay overtime wages, including but not limited to claims related to the calculation of the regular rate for overtime purposes; (iv) failure to provide required meal periods; (v) failure to provide required rest periods; (vi) failure to provide accurate itemized statements; (vii) failure to reimburse employees for required expenses; (viii) failure to provide wages when due; and (ix) failure to pay sick pay wages. The Released Class Claims expressly excludes 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 class claims based on facts outside the Class Period.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant and any other Released Party about the Released Class Claims resolved by this Settlement. It also means that all of the Court's orders in the Action will apply to you and legally bind you.

- B. Released PAGA Claims. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer-side payroll taxes owed on the Wage Portion of the Individual Class Payments, all Aggrieved Employees and the LWDA are deemed to, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, fully and finally release Defendant and the Released Parties from all Released PAGA Claims. The "Released PAGA Claims" include all claims for civil penalties under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.* arising from any of the factual allegations asserted in the Operative Complaint and/or PAGA Notice submitted by Plaintiff arising during the PAGA Period including all claims for attorneys' fees and costs related thereto, including PAGA claims predicated on California Labor Code sections 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, 2699 *et seq.*, 2699.3, and 2802; the applicable Wage Orders of the Industrial Welfare Commission; California Code of Regulations, Title 8, Sections 11040, Subdivision 5(A)-(B) and 11070(14); and the California Business and Professions Code Section 17200, *et seq.* The Released PAGA Claims do not include other PAGA claims, claims for vested benefits, wrongful termination, discrimination, unemployment insurance, disability, social security, and worker's compensation, and PAGA claims outside of the PAGA Period.
- C. Released Parties. Released Parties are defined as: Defendant, and each of its past, present and future agents, employees, servants, officers, directors, managing agents, members, owners (whether direct or indirect), partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, potential and alleged joint employers, temporary staffing agencies and employees thereof, common law employers, potential and alleged common law employers, dual employers, potential and alleged dual employers, co-employers, potential and alleged co-employers, contractors, service providers, alter-egos, potential and alleged alter-egos, any person and/or entity with potential or alleged to have joint liability, and all of their respective past, present and future employees, directors, officers, members, owners, agents, representatives, payroll agencies, attorneys, stockholders, fiduciaries, parents, subsidiaries, other service providers, and assigns.

## **5. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

- A. 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.

- B. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$7,500.00 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.
- C. 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 Whole Foods records, are stated in the first page of this Notice. You have until [REDACTED] 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 8 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.

#### **6. HOW WILL I GET PAID?**

To receive money from the Settlement, you do not have to do anything. **A check for your Individual Class Payment and Individual PAGA Payment (if any) will be mailed automatically to the same address as this Class Notice. If your address is incorrect or has changed, you must notify the Administrator. The Administrator is: Apex Class Action LLC, [REDACTED], (800) [REDACTED].**

The Court will hold a Final Approval Hearing on [REDACTED], at [REDACTED] a.m. to decide whether to approve the Settlement and fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as a service payment to Plaintiff. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed approximately a month after the hearing. If there are objections or appeals, resolving them can take time and delay the settlement, perhaps more than a year. Please be patient.

#### **7. WHAT IF I DON'T WANT TO BE A PART OF THE SETTLEMENT?**

To opt out of the class portion of the settlement, you must submit to the Administrator a written, signed and dated request for exclusion ("opt-out") postmarked no later than the Response Deadline which is [REDACTED] [sixty (60) days after the mailing of the Class Notice or an additional 14 days in the case of re-mailing]. You may also fax your request to opt out to [REDACTED] or email to [REDACTED] by no later than the Response Deadline. The request to opt-out should state in substance that you wish to be excluded from the class settlement in the *Cruz v. Nike Retail Services, Inc.* lawsuit. The request to opt-out should state the Class Member's full name, address, and telephone number or email address. Please include

the name and number of the case, which is *Cruz v. Nike Retail Services, Inc.*, Case No. 37-2023-00012353-CU-OE-CTL. The request to opt-out must be completed and signed by you. No other person may opt-out for a living member of the Class.

The address for the Administrator is [REDACTED]. Written requests for exclusion that are postmarked after [REDACTED], or are incomplete or unsigned will be rejected, and those Class Members will be considered Participating Class Members and be bound by the Settlement and the releases described above.

## 8. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Class Settlement. At least sixteen (16) court days before the Final Approval Hearing, scheduled for [REDACTED], Class Counsel and Plaintiff will file in Court a Motion for Final Approval that includes, among other things, the reasons why the Settlement is fair, and a request stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Payment. Upon reasonable request, Class Counsel (whose contact information is below) will send you copies of these documents at no cost to you. You can also view them on Class Counsel's website at [www.bamlawca.com](http://www.bamlawca.com) under "Class Notices" for *Cruz v. Nike Retail Services* or on the Court's website via the Register of Actions page for the California Superior Court for the County of San Diego (<https://www.sdcourt.ca.gov/sdcourt/generalinformation/accesscourtrecords>) and entering the Case No. 37-2023-00012353.

A Participating Class Member who disagrees with any aspect of the Agreement (aside from the PAGA Settlement), the Motion for Final Approval, or the attorneys' fees, litigation expenses and service payments may wish to object, for example, that the Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The Response Deadline for sending written objections to the Administrator is [REDACTED] [sixty (60) days after the mailing of the Class Notice or an additional 14 days in the case of re-mailing].** You may also fax the dispute to [REDACTED] or email to [REDACTED]. 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, *Cruz v. Nike Retail Services, Inc.*, Case No. 37-2023-00012353-CU-OE-CTL, and include your name, current address, telephone number, email address, and approximate dates of employment for Defendant and sign the objection. The Administrator's contact information is as follows:

### Administrator:

Name of Company: Apex Class Action LLC

Email Address: [REDACTED]

Mailing Address: [REDACTED]

Telephone Number: [REDACTED]

Fax Number: [REDACTED]

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at his/her 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. If you do wish to appear at the hearing, check the Court's website for the most current information concerning appearances and procedures (<https://www.sdcourt.ca.gov/virtualhearings>). You may also have the option to appear at the hearing by audio or video. For assistance in making an appearance at the Final Approval Hearing, please contact Class Counsel below. See Section 9 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

The address for Class Counsel is as follows:

Kyle Nordrehaug  
Blumenthal Nordrehaug Bhowmik DeBlouw LLP  
2255 Calle Clara  
La Jolla, CA 92037  
Tel.: (858) 551-1223  
Fax: (858) 551-1232  
E-Mail: [kyle@bamlawca.com](mailto:kyle@bamlawca.com)

The address for Defendant's counsel is as follows:

Matthew A. Tobias  
Angela S. Chuang  
Shepard, Mullin, Richter & Hampton LLP  
350 South Grand Avenue, 40th Floor  
Los Angeles, CA 90071-3460  
Tel: (213) 620-1780  
Email: [mtobias@sheppardmullin.com](mailto:mtobias@sheppardmullin.com)

## **9. CAN I ATTEND THE FINAL APPROVAL HEARING?**

The Court will hold a Final Approval Hearing at [REDACTED] a.m. (Pacific Standard Time) on [REDACTED], in Department 70 of the Superior Court of California, County of San Diego, located at 330 West Broadway, San Diego, California 92101, before Judge Carolyn M. Caietti. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval of the Settlement and to fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as a service payment to Plaintiff. If there are objections, the Court will consider them. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing. Check the Court's website for the most current information concerning appearances and procedures at the Court - <https://www.sdcourt.ca.gov/virtualhearings>.

It's possible the Court will reschedule the Final Approval Hearing. If the hearing is continued, notice will be posted on Class Counsel's website at [www.bamlawca.com](http://www.bamlawca.com) under "Class Notices" for *Cruz v. Nike Retail Services*. In addition, hearing dates are posted on the Internet via the Register of Actions page for the California Superior Court for the County of San Diego (<https://www.sdcourt.ca.gov/sdcourt/generalinformation/accesscourtrecords>) and entering the Case No. 37-2023-00012353.

## **10. HOW CAN I GET MORE INFORMATION?**

You may call the Administrator at [REDACTED] or write to *Cruz v. Nike Retail Services* Administrator, c/o [REDACTED].

This Class Notice summarizes the proposed settlement. More details are in the Agreement. You may receive a copy of the Agreement, the Judgment, the motion for final approval and for attorneys' fees and costs or other Settlement documents by going to Class Counsel's website at [www.bamlawca.com](http://www.bamlawca.com) under "Class Notices" for *Cruz v. Nike Retail Services*, where these documents will be posted as they become available. You may also get more details by examining the Court's file on the Internet via the Register of Actions for the San Diego County Superior Court (<https://www.sdcourt.ca.gov/sdcourt/generalinformation/accesscourtrecords>) and entering the Case No. 37-2023-00012353. If you wish to view the Court files in person, you must go to the Clerk's Office at the Hall of Justice, 330 West Broadway, San Diego, CA 92101.

**PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE OR TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.**

#### **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.

#### **12. WHAT IF I FAIL TO CASH MY SETTLEMENT CHECK?**

Settlement checks will be null and void 180 days after issuance if not deposited or cashed, and this expiration date will be printed on the check. In such events, the Administrator shall direct all unclaimed funds to a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384(b), which is proposed to be the Legal Aid Foundation of Los Angeles.

#### **13. WHAT IF I LOSE MY SETTLEMENT CHECK?**

If your check is lost or misplaced, you should contact the Administrator immediately to request a replacement.



**EXHIBIT B**

[ORDER GRANTING PRELIMINARY APPROVAL]

**EXHIBIT "B"**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

ADRIANA CRUZ, an individual, on behalf of  
herself and on behalf of all persons similarly  
situated,

Plaintiff,

vs.

NIKE RETAIL SERVICES, INC., a  
Corporation; and DOES 1 through 50,  
inclusive,

Defendants.

CASE NO.: **37-2023-00012353-CU-OE-CTL**

**[PROPOSED] PRELIMINARY  
APPROVAL ORDER**

Hearing Date:  
Hearing Time:

Judge: Hon. Carolyn M. Caietti  
Dept.: 70

Date Action Filed: March 24, 2023  
Trial Date: Not set

PRELIMINARY APPROVAL ORDER

1 This matter has come before the Honorable Carolyn M. Caietti of the Superior Court of the  
2 State of California, in and for the County San Diego, on \_\_\_\_\_[DATE], for the motion by  
3 Plaintiff Adriana Cruz (“Plaintiff”) for preliminary approval of the class and PAGA settlement  
4 with Defendant NIKE Retail Services, Inc. (“Defendant”). The Court, having considered the  
5 briefs, argument of counsel and all matters presented to the Court and good cause appearing,  
6 hereby GRANTS Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA  
7 Settlement.

8 **IT IS HEREBY ORDERED:**

9 1. The Court preliminarily approves the Class Action and PAGA Settlement  
10 Agreement (“Agreement”) attached as Exhibit \_\_\_\_ to the Declaration of Kyle Nordrehaug in  
11 Support of Plaintiff’s Motion for Preliminary Approval of Class and PAGA Action Settlement.  
12 This is based on the Court’s determination that the Settlement set forth in the Agreement is within  
13 the range of possible final approval, pursuant to the provisions of Section 382 of the California  
14 Code of Civil Procedure and California Rules of Court, rule 3.769.

15 2. This Order incorporates by reference the definitions in the Agreement, and all  
16 terms in this Order shall have the same meaning as set forth in the Agreement.

17 3. The Gross Settlement Amount is One Million Three Hundred Fifty Thousand  
18 Dollars and Zero Cents (\$1,350,000.00). It appears to the Court on a preliminary basis that the  
19 settlement amount and terms are fair, adequate and reasonable as to all potential Class Members  
20 when balanced against the probable outcome of further litigation and the significant risks relating  
21 to certification, liability and damages issues. It further appears that investigation and research  
22 have been conducted such that counsel for the Parties are able to reasonably evaluate their  
23 respective positions. It further appears to the Court that settlement at this time will avoid  
24 substantial additional costs by all Parties, as well as avoid the delay and risks that would be  
25 presented by the further prosecution of the Action. It further appears that the Settlement has been  
26 reached as the result of serious and non-collusive, arms-length negotiations. The Court therefore  
27 preliminarily finds that the Settlement is fair, adequate, and reasonable when balanced against the  
28

1 probable outcome of further litigation and the significant risks relating to certification, liability,  
2 and damages issues.

3         4.       The Agreement specifies an attorneys' fees award not to exceed one-third of the  
4 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$135,000, and  
5 proposed Class Representative Service Payment to Plaintiff in an amount not to exceed \$15,000.  
6 The Court will not approve the amount of attorneys' fees and costs, nor the amount of any service  
7 award, until the Final Approval Hearing.

8         5.       The Court recognizes that Plaintiff and Defendant stipulate and agree to  
9 certification of a class for settlement purposes only. This stipulation will not be deemed  
10 admissible in this or any other proceeding should this Settlement not become final. For settlement  
11 purposes only, the Court conditionally certifies the following Class: "all individuals who are or  
12 previously were employed by Defendant who were classified as non-exempt, employees in the  
13 State of California at any time during the Class Period." The Class Period is March 24, 2019  
14 through July 22, 2025.

15         6.       The Court concludes that, for settlement purposes only, the Class meets the  
16 requirements for certification under section 382 of the California Code of Civil Procedure in that:  
17 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is  
18 impracticable; (b) common questions of law and fact predominate, and there is a well-defined  
19 community of interest amongst the members of the Class with respect to the subject matter of the  
20 litigation; (c) the claims of Plaintiff are typical of the claims of the members of the Class; (d)  
21 Plaintiff can fairly and adequately protect the interests of the members of the Class; (e) a class  
22 action is superior to other available methods for the efficient resolution of this controversy; and (f)  
23 counsel for the Class is qualified to act as counsel for the Class and Plaintiff is an adequate  
24 representative of the Class.

25         7.       The Court recognizes that Plaintiff and Defendant stipulate and agree that the group  
26 of Aggrieved Employees subject to the Settlement is manageable for settlement purposes only.  
27 The group of Aggrieved Employees subject to the Settlement is defined as: "all individuals who  
28

1 were employed by Defendant who were classified as non-exempt employees in the State of  
2 California at any time during the PAGA Period.” The PAGA Period means the period of time  
3 from January 12, 2022 through July 22, 2025.

4 8. The Court provisionally appoints Plaintiff as the representative of the Class. The  
5 Court provisionally appoints Blumenthal Nordrehaug Bhowmik De Blouw LLP and Gomez Trial  
6 Attorneys as Class Counsel for the Class.

7 9. The Court hereby approves, as to form and content, the Court Approved Notice of  
8 Proposed Settlement of Class and PAGA Action and Hearing Date for Final Court Approval  
9 (“Class Notice”) attached to the Agreement as Exhibit A. The Court finds that the Class Notice  
10 appears to fully and accurately inform the Class of all material elements of the proposed  
11 Settlement, of the Class Members’ right to be excluded from the Class by submitting a written opt-  
12 out request, and of each Class Member’s right and opportunity to object to the Settlement. The  
13 Court further finds that the distribution of the Class Notice substantially in the manner and form  
14 set forth in the Agreement and this Order meets the requirements of due process, is the best notice  
15 practicable under the circumstances, and shall constitute due and sufficient notice to all persons  
16 entitled thereto. The Court orders the mailing of the Class Notice by first class mail, pursuant to  
17 the terms set forth in the Agreement.

18 10. The Court hereby appoints Apex Class Action LLC as the Administrator. No later  
19 than fifteen (15) business days after preliminary approval of the Settlement by the Court,  
20 Defendant shall provide to the Administrator an electronic spreadsheet with the Class Data. The  
21 Administrator will perform address updates and verifications as necessary prior to the mailing of  
22 the Class Notice. Using best efforts to mail it as soon as possible, and in no event later than 14  
23 days after receiving the Class Data, the Administrator will mail the Class Notice Packets to all  
24 Class Members (and Aggrieved Employees) via first-class U.S. Mail. Before mailing Class  
25 Notices, the Administrator shall update Class Member addresses using the National Change of  
26 Address database.

1           11.     The Court hereby preliminarily approves the proposed procedure for exclusion  
2 from the Settlement. Any Class Member may individually choose to opt out of and be excluded  
3 from the Class as provided in the Class Notice by following the instructions for requesting  
4 exclusion from the Class that are set forth in the Class Notice. All Requests for Exclusion must be  
5 postmarked by no later than the Response Deadline, which is sixty (60) calendar days after the  
6 date of the mailing of the Class Notice and be received by the Administrator. If the Class Notice  
7 Packet is re-mailed, the Response Deadline will be extended an additional 14 days. Any such  
8 person who chooses to opt out of and be excluded from the Class will not be entitled to any  
9 recovery under the Class Action aspect of the Settlement and will not be bound by the class  
10 portion of the Settlement or have any right to object, appeal or comment thereon. Class Members  
11 who have not requested exclusion shall be bound by all determinations of the Court, the  
12 Agreement, and the Judgment. A Request for Exclusion may only opt out that particular  
13 individual, and any attempt to effect an opt out of a group, class, or subclass of individuals is not  
14 permitted and will be deemed invalid. Subject to the Court's final approval of the Settlement,  
15 each Aggrieved Employee will be paid his/her allocation of the PAGA Penalties and will remain  
16 bound by the release of the Released PAGA Claims, even if also deemed to be a Class Member  
17 who opts out of the class aspect of the Settlement.

18           12.     Any Class Member who has not opted out ("Participating Class Member") may  
19 appear at the final approval hearing and may object or express their views regarding the  
20 Settlement and may present evidence and file briefs or other papers that may be proper and  
21 relevant to the issues to be heard and determined by the Court as provided in the Notice.  
22 Participating Class Members will have until the Response Deadline, which is sixty (60) calendar  
23 days from the date of the mailing of the Class Notices, to submit their written objections to the  
24 Administrator in accordance with the instructions in the Class Notice. If the Class Notice Packet  
25 is re-mailed, the Response Deadline for written objections will be extended an additional 14 days.  
26 Alternatively, Participating Class Members may appear at the Final Approval Hearing to make an  
27 oral objection.

1           13.     A Final Approval Hearing shall be held before this Court on \_\_\_\_\_  
2 \_\_\_\_\_, at \_\_\_\_\_ a.m. in Department 70 at the San Diego County Superior Court to  
3 determine all necessary matters concerning the Settlement, including: whether the proposed  
4 settlement of the Action on the terms and conditions provided for in the Agreement is fair,  
5 adequate and reasonable and should be finally approved by the Court; whether the Final Approval  
6 Order and Judgment should be entered herein; whether the plan of allocation contained in the  
7 Agreement should be approved as fair, adequate and reasonable to the Class Members and to  
8 finally approve attorneys' fees and costs, the service award, and the expenses of the Administrator.  
9 All papers in support of the motion for final approval and for attorneys' fees, costs and service  
10 awards, to be heard at the Final Approval Hearing, shall be filed with the Court and served on all  
11 counsel no later than sixteen (16) court days before the hearing.

12           14.     Neither the Settlement nor any exhibit, document, or instrument delivered  
13 thereunder shall be construed as a concession or admission by Defendant in any way that the  
14 claims asserted have any merit or that this Action was properly brought as a class or representative  
15 action, and shall not be used as evidence of, or used against Defendant as, an admission or  
16 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or  
17 omission by Defendant or with respect to the truth of any allegation asserted by any person.  
18 Defendant has denied that it has done anything wrong and disputes all the claims in this Action.  
19 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,  
20 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts  
21 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or  
22 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,  
23 evidence of a presumption, concession, indication or admission by Defendant of any liability,  
24 fault, wrongdoing, omission, concession or damage.

25           15.     In the event the Settlement does not become effective in accordance with the terms  
26 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to  
27 become effective for any reason, this Order shall be rendered null and void and shall be vacated,

1 and the Parties shall revert to their respective positions as of before entering into the Agreement,  
2 and expressly reserve their respective rights regarding the prosecution and defense of this Action,  
3 including all available defenses and affirmative defenses, and arguments that any claim in the  
4 Action could not be certified as a class action and/or managed as a representative action. In such  
5 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or  
6 referred to in litigation for any purpose.

7 16. The Court reserves the right to adjourn or continue the date of the final approval  
8 hearing and all dates provided for in the Agreement without further notice to Class Members and  
9 retains jurisdiction to consider all further applications arising out of or connected with the  
10 proposed Settlement.

11 17. The Action is stayed and all trial and related pre-trial dates, if any, are vacated,  
12 subject to further orders of the Court at the Final Approval Hearing.

13 **IT IS SO ORDERED.**

14  
15 Dated: \_\_\_\_\_

\_\_\_\_\_  
HON. CAROLYN M. CAIETTI  
JUDGE, SUPERIOR COURT OF CALIFORNIA



## **EXHIBIT C**

[FINAL APPROVAL ORDER AND JUDGMENT]

**EXHIBIT "C"**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

ADRIANA CRUZ, an individual, on behalf of  
herself and on behalf of all persons similarly  
situated,

Plaintiff,

vs.

NIKE RETAIL SERVICES, INC., a  
Corporation; and DOES 1 through 50,  
inclusive,

Defendants.

CASE NO.: **37-2023-00012353-CU-OE-CTL**

**[PROPOSED] FINAL APPROVAL  
ORDER AND JUDGMENT**

Hearing Date:  
Hearing Time:

Judge: Hon. Carolyn M. Caietti  
Dept.: 70

Date Action Filed: March 24, 2023  
Trial Date: Not set

1 The motion of Plaintiff Adriana Cruz (“Plaintiff”) for an order finally approving the Class  
2 Action and PAGA Settlement Agreement (“Agreement”) that memorializes the settlement  
3 (“Settlement”) between Plaintiff and Defendant NIKE Retail Services, Inc. (“Defendant”) and for  
4 an award of attorneys’ fees and costs, service payment, and the fees of the Administrator, duly  
5 came on for hearing on \_\_\_\_\_ before the Honorable Carolyn M. Caietti.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the  
9 motion, the Court makes the following findings:

- 10 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 11 2. This Court has jurisdiction over the subject matter of this litigation pending before  
12 the California Superior Court for the County of San Diego, and over all Parties to this litigation,  
13 including the Class and the Aggrieved Employees.
- 14 3. Based on a review of the papers submitted by Plaintiff and a review of the  
15 applicable law, the Court finds that the Gross Settlement Amount of One Million Three Hundred  
16 Fifty Thousand Dollars and Zero Cents (\$1,350,000.00) and the terms set forth in the Agreement  
17 are fair, reasonable, and adequate.
- 18 4. The Court further finds that the Settlement was the result of arm’s length  
19 negotiations conducted after Class Counsel had adequately investigated the claims and became  
20 familiar with the strengths and weaknesses of those claims. In particular, the amount of the  
21 Settlement, the significant risks relating to certification, liability, and damages issues, and the  
22 assistance of an experienced mediator in the settlement process, among other factors, support the  
23 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

24 **Preliminary Approval of the Settlement**

- 25 5. On \_\_\_\_\_, the Court granted preliminary approval of the Settlement. At  
26 this same time, the Court approved conditional certification of the Class for settlement purposes  
27 only. The Court also determined the group of Aggrieved Employees was manageable for  
28

1 settlement purposes only.

2 **Notice to the Class**

3 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed  
4 by first class mail to members of the Class at their last known addresses on or about  
5 \_\_\_\_\_. Mailing of the Class Notice to their last known addresses was the best notice  
6 option under the circumstances and was reasonably calculated to communicate actual notice of the  
7 litigation and the Settlement to the Class. The Class Notice given to the Class Members fully and  
8 accurately informed the Class Members of all material elements of the Settlement and of their  
9 opportunity to object to or comment thereon or to seek exclusion from the Settlement; constituted  
10 valid, due, and sufficient notice to all Class Members; and complied fully with the laws of the  
11 State of California, the United States Constitution, due process and other applicable law. The  
12 Class Notice fairly and adequately described the Settlement and provided Class Members adequate  
13 instructions and a variety of means to obtain additional information.

14 7. The Response Deadline for opting out of the Class or submitting written objections  
15 to the Settlement was \_\_\_\_\_, which was extended by 14 days for re-mailed Class  
16 Notices. There was an adequate interval between mailing of the Class Notice and the response  
17 deadline to permit Class Members to choose what to do and act on their decision. A full  
18 opportunity has been afforded to the Participating Class Members to participate in this hearing,  
19 and all Participating Class Members and other persons wishing to be heard have been heard. Class  
20 Members also have had a full and fair opportunity to exclude themselves from the Settlement and  
21 Class. Accordingly, the Court determines that all Class Members who did not timely and properly  
22 submit a request for exclusion are bound by the Settlement and this Final Approval Order and  
23 Judgment.

24 **Fairness Of Settlement**

25 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*  
26 48 Cal.App.4th 1794, 1801 (1996).

27 a. The settlement was reached through arm's-length bargaining between the  
28

1 parties during an all-day mediation before Steve Cerveris, an experienced mediator of wage and  
2 hour class and representative actions. There has been no collusion between the parties in reaching  
3 the Settlement.

4 b. Plaintiff's investigation and discovery have been sufficient to allow the  
5 Court and counsel to act intelligently.

6 c. Counsel for both parties are experienced in similar employment class and  
7 representative action litigation. All counsel recommended approval of the Agreement.

8 d. The percentage of objectors and requests for exclusion is small, evidencing  
9 that the reaction of the Class is positive. \_\_\_\_ objections were received. \_\_\_\_ requests for  
10 exclusion were received.

11 e. The participation rate is high. \_\_\_\_ Participating Class Members will  
12 be mailed a settlement payment, representing \_\_\_\_% of the overall Class.

13 9. The consideration to be given to the Class Members under the terms of the  
14 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims  
15 asserted in this action and is fair, reasonable and adequate compensation for the release of Class  
16 Members' claims and those related to the Aggrieved Employees, given the uncertainties and  
17 significant risks of the litigation and the delays that would ensue from continued prosecution of  
18 the action. The Agreement is approved as fair, adequate and reasonable and in the best interests of  
19 the Class Members.

20 **Attorneys' Fees and Costs**

21 10. An award of \$450,000 for attorneys' fees, representing one-third of the Gross  
22 Settlement Amount, and \$ \_\_\_\_\_ for litigation costs and expenses, is reasonable, in  
23 light of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the  
24 results achieved by Class Counsel. The requested awards have been supported by Class Counsel's  
25 lodestar and billing statement.

26 **Class Representative Service Payment**

1           11.     The Agreement provides for a Class Representative Service Payment of not more  
2 than \$15,000 to Plaintiff, subject to the Court's approval. The Court finds that a Class  
3 Representative Service Payment in the amount of \$\_\_\_\_\_ to Plaintiff is reasonable in light of  
4 the risks and burdens undertaken by Plaintiff in the litigation and for her time and effort in  
5 bringing and prosecuting this matter on behalf of the Class.

6           **Administration Expenses Payment**

7           12.     The Administrator shall calculate and administer the payment to be made to the  
8 Participating Class Members in the manner set forth in the Agreement, transmit payment for  
9 attorneys' fees and costs to Class Counsel, transmit the Class Representative Service Payment to  
10 Plaintiff, distribute the PAGA Penalties, issue any required tax reporting forms, calculate  
11 withholdings and perform the other remaining duties set forth in the Agreement. The  
12 Administrator has documented \$\_\_\_\_\_ in fees and expenses, and this amount is reasonable in  
13 light of the work performed by the Administrator.

14           **PAGA Penalties**

15           13.     The Agreement provides for PAGA Penalties out of the Gross Settlement Amount  
16 of \$30,000, which shall be allocated as follows: 75% (\$22,500) to the LWDA PAGA Payment and  
17 25% (\$7,500) to the Individual PAGA Payments to be distributed to the Aggrieved Employees.  
18 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of  
19 the Aggrieved Employees' twenty-five percent (25%) share of PAGA Penalties (\$7,500) by the  
20 total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period  
21 and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. "Aggrieved  
22 Employees" are all individuals who were employed by Defendant who were classified as non-  
23 exempt employees in the State of California at any time during the PAGA Period (January 12,  
24 2022 through July 22, 2025). The Court finds the PAGA Penalties to be reasonable. All  
25 Aggrieved Employees will be sent their share of the PAGA Penalties and will be subject to the  
26 release of the Released PAGA Claims as set forth below, whether or not they opt out of the  
27 Settlement.

1 II.  
2 ORDERS

3 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

4 15. The certification of the Class for the purposes of settlement is confirmed. The  
5 Class is defined as follows:

6 All individuals who are or previously were employed by Defendant who were  
7 classified as non-exempt, employees in the State of California at any time during  
8 the Class Period (March 24, 2019 through July 22, 2025).

9 16. All persons who meet the foregoing definition are members of the Class, except for  
10 those individuals who filed a valid request for exclusion ("opt out") from the Class. [INSERT  
11 REFERENCE TO IDENTIFY ANY OPT OUTS].

12 17. The manageability of the group of Aggrieved Employees for purposes of settlement  
13 is confirmed. The group of Aggrieved Employees is defined as follows:

14 All individuals who were employed by Defendant who were classified as non-  
15 exempt employees in the State of California at any time during the PAGA Period  
16 (January 12, 2022 through July 22, 2025).

17 18. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the  
18 best interest of the Class,. Defendant shall fund the Gross Settlement Amount and the amount  
19 necessary to pay Defendant's share of payroll taxes thereon within fourteen (14) days of the  
20 Effective Date.

21 18. Class Counsel are awarded attorneys' fees in the amount of \$450,000 and costs in  
22 the amount of \$ \_\_\_\_\_. Class Counsel shall not seek or obtain any other compensation or  
23 reimbursement from Defendant, Plaintiff or members of the Class.

24 19. The payment of the Class Representative Service Payment in the amount of  
25 \$ \_\_\_\_\_ to Plaintiff is approved.

26 20. The payment of \$ \_\_\_\_\_ to the Administrator for their fees and expenses  
27 is approved.

28 21. The PAGA Penalties in the amount of \$30,000 are approved and shall be allocated  
in accordance with the Agreement.

1           22.     The Agreement and this Settlement are not an admission by Defendant, nor is this  
2 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any  
3 wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for  
4 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any  
5 document referred to herein, nor any action taken to carry out the Agreement is, may be construed  
6 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability  
7 whatsoever. Defendant has denied that it has done anything wrong and disputes all the claims in  
8 this Action. The entering into or carrying out of the Agreement, and any negotiations or  
9 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an  
10 admission or concession with regard to the denials or defenses by Defendant. Notwithstanding  
11 these restrictions, Defendant may file in the Action or in any other proceeding this Final Approval  
12 Order and Judgment, the Agreement, or any other papers and records on file in the Action as  
13 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other  
14 theory of claim or issue preclusion or similar defense as to the Released Class Claims and/or the  
15 Released PAGA Claims.

16           23.     Notice of entry of this Final Approval Order and Judgment shall be given to all  
17 Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Final Approval Order  
18 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the  
19 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment  
20 to individual Class Members. In accordance with California Code of Civil Procedure § 2699,  
21 Plaintiff shall serve this Final Approval Order and Judgment on the LWDA.

22           24.     If the Agreement does not become final and effective in accordance with the terms  
23 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in  
24 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall  
25 revert to their respective positions as of before entering into the Agreement, and expressly reserve  
26 their respective rights regarding the prosecution and defense of this Action, including all available  
27  
28



1 defenses and affirmative defenses, and arguments that any claim in the Action could not be  
2 certified as a class action and/or managed as a representative action.

3 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

4       25. Except as set forth in the Agreement and this Final Approval Order and Judgment,  
5 Plaintiff, and all members of the Class, shall take nothing in the Action.

6       26. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain  
7 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any  
8 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute  
9 arising from or in connection with the distribution of settlement benefits.

10       27. The Parties are authorized to agree to and to adopt such amendments, modifications  
11 and expansions of the Agreement and all exhibits attached thereto which are consistent with this  
12 Final Approval Order and Judgment and as approved by the Court.

13       28. Each party shall bear its own attorneys' fees and costs, except as otherwise  
14 provided in the Agreement and in this Final Approval Order and Judgment.

15       29. Effective on the date when Defendant fully funds the entire Gross Settlement  
16 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class  
17 Payments, all Participating Class Members, on behalf of themselves and their respective former  
18 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, fully  
19 and finally release Defendant and the Released Parties from the Released Class Claims. The  
20 "Released Class Claims" include all claims asserted in the Operative Complaint, arising from or  
21 reasonably related to the facts and claims alleged in the Operative Complaint during the Class  
22 Period. The Released Class Claims include claims under California Labor Code sections 201-204,  
23 226, 226.7, 233, 246, 510, 512, 1194, 1197, 1197.1 and 2802, the applicable Wage Orders of the  
24 Industrial Welfare Commission, and the California Business and Professions Code Section 17200,  
25 *et seq.* asserted in or related to the facts alleged in the Operative Complaint, including: (i) unfair  
26 competition; (ii) failure to pay minimum wages; (iii) failure to pay overtime wages, including but  
27 not limited to claims related to the calculation of the regular rate for overtime purposes; (iv) failure  
28

1 to provide required meal periods; (v) failure to provide required rest periods; (vi) failure to provide  
2 accurate itemized statements; (vii) failure to reimburse employees for required expenses; (viii)  
3 failure to provide wages when due; and (ix) failure to pay sick pay wages. The Released Class  
4 Claims expressly excludes any other claims including claims for vested benefits, wrongful  
5 termination, violation of the Fair Employment and Housing Act., unemployment insurance,  
6 disability, social security, workers' compensation, or class claims based on facts outside the Class  
7 Period.

8         30. "Released Parties" are defined as: Defendant, and each of its past, present and  
9 future agents, employees, servants, officers, directors, managing agents, members, owners  
10 (whether direct or indirect), partners, trustees, representatives, shareholders, stockholders,  
11 attorneys, parents, subsidiaries, , divisions, assigns, predecessors, successors, insurers, consultants,  
12 joint venturers, joint employers, potential and alleged joint employers, temporary staffing agencies  
13 and employees thereof, common law employers, potential and alleged common law employers,  
14 dual employers, potential and alleged dual employers, co-employers, potential and alleged co-  
15 employers, contractors, service providers, alter-egos, potential and alleged alter-egos, any person  
16 and/or entity with potential or alleged to have joint liability, and all of their respective past, present  
17 and future employees, directors, officers, members, owners, agents, representatives, payroll  
18 agencies, attorneys, stockholders, fiduciaries, parents, subsidiaries, other service providers, and  
19 assigns.

20         31. Effective on the date when Defendant fully funds the entire Gross Settlement  
21 Amount and funds all employer-side payroll taxes owed on the Wage Portion of the Individual  
22 Class Payments, all Aggrieved Employees and the LWDA are deemed to, on behalf of themselves  
23 and their respective former and present representatives, agents, attorneys, heirs, administrators,  
24 successors, and assigns, fully and finally release Defendant and the Released Parties from all  
25 Released PAGA Claims. The "Released PAGA Claims" include all claims for civil penalties  
26 under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*  
27 arising from any of the factual allegations asserted in the Operative Complaint and/or PAGA  
28

1 Notice submitted by Plaintiff arising during the PAGA Period including all claims for attorneys'  
2 fees and costs related thereto, including PAGA claims predicated on California Labor Code  
3 sections 201, 202, 203, 204 *et seq.*, 210, 218, 221, , 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512,  
4 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, 2699 *et seq.*, 2699.3, and 2802; the applicable Wage  
5 Orders of the Industrial Welfare Commission; California Code of Regulations, Title 8, Sections  
6 11040, Subdivision 5(A)-(B) and 11070(14); and the California Business and Professions Code  
7 Section 17200, *et seq.* The Released PAGA Claims do not include other PAGA claims, claims for  
8 vested benefits, wrongful termination, discrimination, unemployment insurance, disability, social  
9 security, and worker's compensation, and PAGA claims outside of the PAGA Period.

10 32. As of the Effective Date and upon full funding of the Gross Settlement Amount by  
11 Defendant, Plaintiff releases and discharges the Defendant and the Released Parties as to  
12 Plaintiff's Release, as set forth fully in paragraph 6.1 of the Agreement.

13 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

14  
15 Dated: \_\_\_\_\_

16  
17 \_\_\_\_\_  
HON. CAROLYN M. CAIETTI  
JUDGE, SUPERIOR COURT OF CALIFORNIA