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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

KATHRYN JEANINE FAGAN ENGLES, as an
individual, on behalf of herself, and all persons
similarly situated,

Plaintiff,

v.

PREMIUM BRANDS OPCO LLC, an Ohio
limited liability company authorized to do
business in California; and DOES 1 through 50
inclusive,

Defendant.

Case No.: 30-2023-01319973-CU-OE-CXC

CLASS AND REPRESENTATIVE ACTION

**DECLARATION OF JAMES R. HAWKINS
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

[Filed concurrently with Notice of Motion and
Motion, Memorandum of Points and Authorities,
and [Proposed] Order]

Date: March 14, 2025

Time: 10:00 a.m.

Dept.: CX105

Judge: Hon. Randall J. Sherman

Trial Date: None set

Complaint filed: April 18, 2023

1 I, James R. Hawkins, declare as follows:

2 1. I am an attorney admitted and licensed to practice law in the state of California. I am the
3 founding partner of James Hawkins APLC, counsel of record for Plaintiff Kathryn Jeanine Fagan Engles
4 (“Plaintiff”) in the matter of *Kathryn Jeanine Fagan Engles vs. Premium Brands Opco LLC*, Orange
5 Superior Court, Case No. 30-2023-01319973-CU-OE-CXC. I am thoroughly familiar with, and have
6 personal knowledge of, the facts set forth herein, except if otherwise stated. If called as a witness, I could
7 and would competently testify to the information set forth below.

8 2. I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of Class
9 Action and PAGA Settlement (“Motion for Preliminary Approval” or “Motion”), which is filed
10 concurrently herewith.

11 3. A true and correct copy of the fully executed Class Action and PAGA Representative
12 Action Settlement Agreement (“Settlement Agreement”) is attached hereto as **Exhibit 1**.¹

13 4. A true and correct copy of the proposed Notice of Class Action and PAGA Representative
14 Settlement (“Class Notice”) is attached as **Exhibit A** to the Settlement Agreement.

15 5. As required by the Private Attorneys General Act of 2004 (“PAGA”), on October 29, 2024,
16 my office submitted the executed Settlement Agreement to the California Labor and Workforce
17 Development Agency (“LWDA”). A true and correct copy of the confirmation of submission of the
18 Settlement Agreement to the LWDA is attached hereto as **Exhibit 2** and is incorporated herein by
19 reference.

20 **Case Background and Procedural History**

21 6. Plaintiff was employed by Defendant Premium Brands Opco, LLC (“Defendant”) as a
22 Sales Associates at the LOFT store located in San Clemente, California from December 1, 2021, through
23 February 10, 2022. At all times, she was classified as a nonexempt employee and was paid on an hourly
24 basis. Plaintiff contends that over the course of her employment, Defendant failed to include shift
25 differentials in her regular rate of pay for purposes of overtime, sick leave, and meal and rest period
26

27 ¹ To the extent the terms used in this declaration are defined in the Class Action and PAGA
28 Representative Action Settlement Agreement (“Settlement Agreement”), the defined terms contained
herein shall have the same meaning as set forth in the Settlement Agreement.

1 premiums; often required her to perform off-the-clock work and through meal and rest periods; failed to
2 timely pay all wages owed during employment and at separation from employment; failed to reimburse
3 her for expenses she incurred, including her personal cellphone for business purposes and company-
4 mandated purchases of company-sold clothing; and failed to provide accurate, itemized wage statements.

5 7. On February 10, 2023, Plaintiff notified the LWDA and Defendant of his intent to assert
6 the rights granted to him under PAGA. Shortly thereafter, on February 21, 2023, Plaintiff filed a putative
7 class action in this Court asserting claims for (1) failure to pay minimum wages; (2) failure to authorize
8 and permit rest periods; (3) failure to timely pay wages during employment; (4) failure to timely pay
9 wages owed upon separation from employment; (5) failure to reimburse necessary business expenses; (6)
10 failure to provide accurate itemized wage statements; and (7) violation of Business and Professions Code
11 section 17200 et seq.

12 8. On April 18, 2023, after providing notice to the LWDA, Plaintiff filed a separate PAGA-
13 only complaint asserting violations of the California Labor Code and applicable Industrial Welfare
14 Commission (“IWC”) Wage Order for: (1) failure to pay minimum wages; (2) failure to pay overtime
15 wages; (3) failure to provide lawful meal periods; (4) failure to authorize and permit rest periods; (5)
16 failure to timely pay wages during employment; (6) failure to timely pay wages owed upon separation
17 from employment; (7) failure to reimburse necessary expenses; (8) knowing and intentional failure to
18 comply with itemized wage statement provisions; (9) failure to maintain accurate employment records;
19 (10) failure to provide suitable seating; and (11) failure to pay sick pay at the proper rate.

20 9. On May 3, 2023, Defendant filed a notice of removal, removing Plaintiff’s class action
21 (30-2023-01309041-CU-OE-CXC) to the Central District of California. On November 30, 2023, the
22 Parties attended mediation, as discussed below, and achieved a resolution. On September 23, 2024, the
23 parties submitted a stipulation asking the Court to grant Plaintiff leave to file a First Amended Complaint
24 (FAC) for settlement purposes, enabling Plaintiff to add her class claims to her PAGA action, and
25 subsequently to dismiss the class action, per the terms of resolution achieved through mediation. The FAC,
26 filed on September 24, 2024, is, for settlement purposes, the operative complaint.

27 **Investigation and Discovery**

28 10. My firm conducted a thorough investigation into the facts and legal claims raised by this

1 action, as well as the applicable law related thereto. Prior to filing the initial complaint, my firm requested
2 Plaintiff's employment file and spent several hours conferring with Plaintiff and reviewing her
3 timekeeping and payroll records. Given what appeared to be a common course of conduct affecting
4 nonexempt employees, my firm determined that Plaintiff's claims were well suited for class adjudication.

5 11. Between May 2023 and November 2023, Plaintiff propounded both formal and informal
6 discovery, including Special Interrogatories, Requests for Admission, and Requests for Production of
7 Documents. Defendant provided written responses and produced thousands of pages of documents and
8 data. Defendant also produced the names and contact information for more than 2,974 putative Class
9 Members.

10 12. In conducting a thorough evaluation of the documents and data provided by Defendant,
11 Class Counsel determined the matter would be well-suited for resolution by mediation. In August 2023,
12 the parties began discussing the possibility of attending private mediation in order to avoid the expense,
13 delay, and risk inherent with continued litigation. Following extensive meet and confer efforts, the parties
14 eventually agreed to mediate this case with highly experienced class action mediator, Lisa Klerman.

15 13. Following the parties' agreement to mediate the claims in the complaint, Defendant
16 provided additional data points, including a list of all nonexempt positions Class Members held, the total
17 number of Class Members, total number of workweeks and pay periods in the PAGA and Class Periods,
18 timekeeping and payroll records for a random sample of approximately 76 percent of the Class, wage
19 statement exemplars, and training and policy documents.

20 14. Class Counsel reviewed the voluminous document production and performed a
21 comprehensive analysis of the timekeeping and payroll records. The firm retained Berger Consulting
22 Group to perform data analysis on the records and to advise on Defendant's potential exposure.

23 15. Class Counsel also conducted a thorough investigation into the merits and legal basis of
24 the claims asserted in the operative complaint. This included performing legal research with respect to the
25 applicable law and the defenses raised by Defendant, as well as conducting fact-finding interviews with
26 Class Members regarding their employment with Defendant in order to assess the relative strengths and
27 weaknesses of the claims asserted and to identify an appropriate range of settlement figures.

28 16. In advance of mediation, Class Counsel prepared a comprehensive mediation brief that

1 outlined the relevant factual and legal issues, contained a detailed analysis of the timekeeping and payroll
2 records, and presented a complete breakdown of the liability exposure for Defendant if Plaintiff succeeded
3 on each of her claims at trial.

4 17. I believe that the documents and information exchanged and analyzed by the parties in
5 preparation for mediation, as well as the parties' discussions during mediation and subsequent
6 negotiations, were sufficient for the parties to make an informed decision about a fair resolution of this
7 action.

8 **Mediation**

9 18. On November 30, 2023, the parties attended a full-day private mediation with well-
10 respected and highly experienced wage and hour mediator, Lisa Klerman. During the mediation session,
11 the parties engaged in good-faith, non-collusive negotiations wherein the parties exchanged additional
12 information regarding Defendant's realistic exposure in this matter, discussed the relative strengths and
13 weaknesses of Plaintiff's claims, considered the risks and delays of further litigation, the current state of
14 the law as it related to Plaintiff's claims, and contemplated the difficulty Plaintiff may have in obtaining
15 and maintaining class certification of each claim.

16 19. Following steadfast efforts by both parties in mediation, Ms. Klerman made a mediator's
17 proposal to settle all claims for a total of \$1,500,000, which all parties accepted on December 4, 2023.

18 20. Ms. Klerman's role in mediating this case was extremely helpful in managing the parties'
19 expectations and providing a useful and neutral analysis of the issues and risks to all parties. At all times,
20 the parties' negotiations were hard-fought and conducted at arm's-length between attorneys with
21 substantial wage and hour class action experience, and the settlement is evidence of the parties' efforts to
22 reach a mutually agreeable compromise.

23 21. In the months following mediation, the parties continued to negotiate the terms of the
24 proposed settlement and eventually memorialized such terms in the written Settlement Agreement.

25 **Evaluation of the Claims for Settlement Purposes**

26 22. I believe the \$1,500,000 settlement provides a real and substantial benefit to the Class
27 considering the highly disputed nature of the claims, the risk of obtaining and maintaining class
28 certification, and the likelihood that the Court would reduce the amount of any civil penalties awarded.

1 Class Counsel's determination of the fair value of the settlement was based on a number of factors,
2 including our investigation of the applicable law as it applied to the facts discovered, as well as
3 Defendant's potential defenses. In my experience, the amount of the proposed settlement is well within
4 line of the amounts received in other wage and hour class actions.

5 23. Throughout the course of this litigation, Defendant has consistently denied (a) all of the
6 material allegations in the complaint; (b) that they have violated any applicable laws; (c) that they are
7 liable for damages, restitution, penalties, interest, attorneys' fees, costs, or for any other remedy sought
8 by Plaintiff; and (d) that class certification and representative treatment are appropriate as to the claims
9 asserted in the complaint. Defendant contends that at all times, their policies, practices, and procedures
10 complied with California law. (See Settlement Agreement, ¶¶ 46, 51.a.)

11 24. The Settlement Agreement reflects the parties' good faith compromise of the claims raised
12 in this action, based upon their assessment of the mutual risks and costs of further litigation. (Settlement
13 Agreement, ¶ 51.a.)

14 25. The maximum value of Plaintiff's claims, assuming complete and total success on every
15 disputed point, has been calculated by Class Counsel to be approximately \$23,371,185 for the Class
16 Claims and \$18,951,200 for the PAGA claims. The calculation of damages in this matter is based on
17 extensive formal and informal discovery and a thorough understanding of the strengths and weaknesses
18 of each claim. In calculating Defendant's maximum potential exposure in this matter, Class Counsel
19 assumed that class certification would be granted, that Plaintiff would prevail on all claims at trial, and
20 that Plaintiff would recover the full amount of damages and civil penalties sought. This calculation also
21 assumes that PAGA penalties can be stacked – a question that to my knowledge remains unsettled by
22 California courts. Thus, the maximum possible exposure was premised on an inflated "everything goes
23 right" scenario for each and every claim.

24 26. Defendant's records indicate that the Class of nearly 3,000 current and former employees
25 hold and/or held a variety of different nonexempt positions in retail stores throughout the state, thereby
26 making class certification extremely challenging. As such, for purposes of settlement, Class Counsel
27 assumes a 65 percent discount on the merits to account for the possibility that Plaintiff will not prevail on
28 all of their claims and the potential for a reduction in any PAGA penalties awarded. Accordingly, Class

1 Counsel believes a more realistic valuation of the claims in this case is \$8,452,500.

2 27. The Settlement results in a substantial benefit to all Class Members. The average payout to
3 Class Members, assuming full participation, will be approximately \$284.96 (i.e., the estimated \$847,500
4 Net Settlement Amount divided by 2,974 Class Members). If Plaintiff were to take their case to trial,
5 Defendant likely has a number of affirmative defenses that they would pursue, and if defeated at trial, on
6 appeal. A lengthy appeal in this case would leave resolution uncertain for several more years. This creates
7 a steep risk for Plaintiff and the Class, especially when compared with the certainty of recovery under the
8 proposed settlement.

9 Class Claims

10 28. Plaintiff's claims for failure to pay minimum and overtime wages were premised on
11 Defendant's failure to: (1) include night shift differentials in employees' regular rate of pay for purposes
12 of meal and rest period premiums and paid sick leave; and (2) pay employees for pre and post shift work,
13 and work performed during meal periods. If completely successful on their minimum wage claim, Class
14 Counsel estimated that Class Members would be entitled to approximately \$2,902,534 for unpaid wages.
15 This is based on one hour of off-the-clock work per week (with 46.6% at the overtime rate) and an average
16 hourly rate of \$17.08.

17 29. Plaintiff's claim for meal period violations stems from Defendant's failure to provide
18 uninterrupted, duty-free meal periods and/or a second meal period for shifts in excess of 10 hours. The
19 penalties recoverable under Labor Code section 226.7 are one additional hour of pay at the regular rate of
20 compensation for each workday in which a violation occurs. If completely successful on their meal period
21 claim, the total value would be approximately \$289,881. This is based on a violation rate of 4.6 percent,
22 as evidenced by timekeeping records. However, Defendant produced evidence that it paid a significant
23 number of meal period premiums which would offset the damages for any meal period violations.

24 30. Plaintiff's claim for rest period violations stems from Defendant's failure to provide an
25 uninterrupted, duty-free rest period of at least 10 minutes for every four hours worked, or major fraction
26 thereof. As with Plaintiff's meal period claim, the penalties recoverable under Labor Code section 226.7
27 are one additional hour of pay at the regular rate of compensation for each workday in which a violation
28 occurs. Based on an estimated violation rate of 100 percent for all shifts over 3.5 hours, Plaintiff calculated

1 the maximum value of this claim at approximately \$6,363,873.

2 31. Plaintiff's waiting time penalties claim is premised on the separation of employment
3 without payment for all wages earned, including regular, minimum and overtime, as well as meal and rest
4 premiums owed. Labor Code section 203 provides penalties of the wages of an employee for up to 30
5 days if an employer willfully fails to pay wages owed at the time of separation. Plaintiff have calculated
6 waiting time penalties at \$7,917,111 on behalf of approximately 2,091 terminated employees. This
7 assumes that each former employee was entitled to unpaid wages at the time of separation and would
8 receive the maximum statutory penalties.

9 32. Plaintiff's wage statement claim is premised on Defendant's failure to record and
10 accurately pay for all hours worked, which resulted in wage statements that inaccurately reflected the total
11 number of hours worked and wages earned in the pay period. Further, Defendant's failure to pay Class
12 Members an additional hour of pay for each workday in which the Class Member was not provided a
13 compliant meal and/or rest period likewise resulted in wage statements that inaccurately reflected the total
14 wages earned. For each pay period in which Defendant failed to provide compliant wage statements, Class
15 Members are entitled to damages based on the number of pay periods in which a violation occurred, up to
16 a cap of \$4,000 per person. (Lab. Code § 226(e)(1).) If Plaintiff was completely successful on her wage
17 statement claim, the total value of the claim would be approximately \$4,340,300.

18 33. Plaintiff's claim for unreimbursed expenses under Labor Code section 2802 is primarily
19 based on Defendant's policy and practice of requiring employees to use their personal cellphones for work
20 purposes, as well as its policy of requiring employees to purchase company-sold clothing to wear during
21 shifts but failing to compensate them for these incurred expenses. Assuming an expense of \$20 per month
22 for cell phone usage, and \$100 per quarter for mandated clothing purchases, if Plaintiff prevailed on this
23 claim and were awarded the full amount of damages sought plus pre-judgment interest, the class would
24 be entitled to \$1,876,540 in unreimbursed expenses.

25 PAGA Penalties

26 34. Plaintiff's estimated maximum amount of civil penalties recoverable under PAGA is
27 approximately \$18,951,200, derived of Defendant's alleged violations of Labor Code sections 201, 202,
28 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,

1 1198.5, 1199, 2699 et. seq., 2802, 6317, 6342, and 6400 et seq. As with the other claims referenced above,
2 Plaintiff's estimate of civil penalties was based on an "everything goes right" scenario and was vulnerable
3 to being substantially devalued. Furthermore, as with the imposition of any penalties under PAGA, there
4 was a very real risk that the Court may further reduce Plaintiff's estimated amount under Labor Code §
5 2699(e)(2), and it was likely that, given the attenuated nature of some of the claims, the Court would, in
6 its discretion, limit the award as unjust, arbitrary, and oppressive, or confiscatory. (*Amaral v. Cintas Corp.*
7 *No. 2* (2008) 163 Cal.App.4th 1157, 1213.) Therefore, the settlement of the claim for penalties under
8 PAGA in the amount of \$100,000 is reasonable under the circumstances here because the parties
9 negotiated a good faith amount for PAGA penalties, which was not the result of self-interest at the expense
10 of Class Members. (See, e.g., *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 [trial
11 court only awarded 0.21%, or \$150,000, of the maximum penalty because imposing the maximum penalty
12 would be "unjust, arbitrary, and oppressive"].) It also ensures that a larger portion of the overall settlement
13 will go to Class Members while still serving the primary law enforcement objectives of PAGA.

14 35. While the \$1,500,000 Gross Settlement Amount represents a significant discount on
15 Plaintiff's estimate of Defendant's maximum potential exposure, this reduction represents a reasonable
16 compromise considering the substantial risks that Plaintiff and the Class faced in this action. This is
17 particularly true given the fact that Defendant has legitimate defenses to the merits of the claims.

18 36. In evaluating the proposed settlement, Plaintiff and Class Counsel considered the
19 likelihood of obtaining and maintaining class certification of Plaintiff's class claims through trial and
20 being awarded 100 percent of the damages and penalties claimed, as well as the risk that the Court may
21 reverse a favorable ruling on the merits on appeal. These risks are obviated by the proposed settlement.
22 Additionally, continued litigation would likely be extremely expensive and time consuming, reducing and
23 substantially delaying any recovery by the Class. In contrast, the proposed settlement will guarantee that
24 the Class will receive timely relief and avoid the risk of an unfavorable judgment.

25 37. Based on my experience litigating almost exclusively wage and hour claims for nearly 20
26 years, I believe the Gross Settlement Amount is a fair and reasonable compromise based on the strengths
27 and weaknesses of the claims, the avoidance of further risk, and the avoidance of the time and expense of
28 continued litigation. I believe the information obtained and exchanged between the parties was sufficient

1 for the parties to make an informed decision about the resolution of this case at mediation.

2 **Settlement Administration and Notice Procedure**

3 38. The parties agree that subject to the Court’s approval, CPT Group, Inc. will act as the third-
4 party Settlement Administrator in this matter. (Settlement Agreement, ¶ 59.a.) My office has obtained a
5 “not to exceed” bid from CPT Group, Inc. The bid represents CPT Group, Inc.’s agreement that, based on
6 the class size and distributions under the terms of this Settlement, the cost for administration of the terms
7 of this Settlement will not exceed a specified monetary amount, which in this case is \$19,500, which is,
8 in my experience, a reasonable amount based on the size of the Class and the work required. (See
9 Declaration of CPT Group, Inc.).

10 39. All of the awarded Administration Expenses will be paid from the Gross Settlement
11 Amount upon completion of the duties required to be performed by the Settlement Administrator under
12 the terms of the Settlement Agreement, or as otherwise required by the Court. (Settlement Agreement ¶¶
13 51–52, 55–56, 64.) Should the Court approve less than the amount requested in Administration Expenses,
14 the difference shall be included in the Net Settlement Amount.

15 40. The proposed Notice of Proposed Class Action and PAGA Settlement is accurate and
16 informative. It summarizes the lawsuit, including the contentions and denials of the parties and the
17 proceedings to date, in plain language and in an informative and coherent manner. (Settlement Agreement,
18 Ex. A.) The Class Notice also fully informs Class Members of the terms and conditions of the Settlement,
19 of its effect on their rights, of their options as Class Members (i.e., to object, opt out, and/or do nothing),
20 and of the consequences of exercising those options. The Class Notice also outlines the procedure and
21 deadlines for opting out of the settlement, for submitting objections to the settlement, and how to receive
22 a Settlement Payment and PAGA Payment.

23 41. The Class Notice further states the amount of the proposed Class Representative Incentive
24 Payment to be paid to Plaintiff; states the amount of Class Counsel’s request for attorneys’ fees; states the
25 maximum amount that Class Counsel may be awarded as reimbursement for litigation costs; states the
26 maximum amount to be paid to the Settlement Administrator; states that amount to be allocated to the
27 PAGA Settlement; states the date, time, and place of the Final Approval Hearing; and explains how Class
28 Members can obtain additional information.

42. Furthermore, the Class Notice also makes clear that the settlement does not constitute an admission of liability by Defendant, that the Court has not ruled on the merits of the action, and that the final settlement approval decision has yet to be made.

43. The proposed notice plan, which calls for first-class mailed notice to all Class Members, as well as in-depth skip tracing upon return of all undeliverable mailing, is consistent with class notices approved by state and federal courts, and under the circumstances here, is the best notice practicable and the method most likely to reach the greatest number of Class Members.

Class Counsel's View of the Settlement

44. While the Gross Settlement Amount represents a significant discount on the overall exposure to Defendant, assuming Plaintiff prevails on all issues pertinent to class certification, liability on all claims, and proven damages as estimated, this reduction in compromise is extremely reasonable considering the substantial risks Plaintiff and the Class face on class certification, liability, damages, and manageability.

45. Absent a settlement, the parties would likely spend considerable time, effort, and money on additional discovery and depositions, including substantial meet and confer and motion work, preparing Plaintiff's motion for class certification and—if class certification were granted—opposing Defendant's likely motion to decertify the class, in addition to likely filing cross-motions for summary judgment. Indeed, even if Plaintiff could successfully prove all of her claims at trial and recover the full amount of damages as estimated, it is likely that Defendant would appeal any judgment in Plaintiff's favor, potentially drawing out the litigation for many more years with no guarantee of recovery by Plaintiff or the Class.

46. As a result, the parties would incur considerably more attorneys' fees and costs through trial. Thus, in considering the adequacy and fairness of the proposed Settlement, I acknowledged the cost and delay of continued proceedings necessary to prosecute the action through trial and appeal and carefully considered the uncertain outcome and the risks associated with any litigation, particularly complex actions such as this. I am also mindful of the inherent problems of proof, and possible defenses to the claims asserted in the lawsuit. Although Plaintiff asserts that Defendant is liable to all Class Members for their unpaid wages, damages, and penalties, none of these claims are certain. While Plaintiff believes that the

1 case possesses substantial merit, the litigation cannot legitimately be characterized as being one without
2 risk or one where Plaintiff would inevitably prevail at trial.

3 47. In the absence of a settlement, Plaintiff and the Class would not see any monetary recovery
4 for years. Granting approval of the settlement, however, would guarantee payment of the Gross Settlement
5 Amount of \$1,500,000, which would streamline the litigation process and provide prompt payment to
6 Class Members who decide to participate in the settlement. As demonstrated herein, the payments to Class
7 Members are meaningful and provide the best resolution for this case considering the risks involved in
8 continuing litigation, the delay, and the expenses the parties will incur, and the fact that this Court has not
9 yet addressed the class certification, liability, and damages issues. Class Members will receive a pro rata
10 portion of the Settlement, such that those who worked a greater number of pay periods during the Class
11 Period, and who presumably would have experienced more Labor Code violations, will receive a larger
12 portion of the Settlement.

13 48. Throughout this litigation, Defendant was represented by experienced counsel from
14 Morgan, Lewis, & Bockius LLP, who mounted a strong defense against the claims asserted herein.
15 Throughout this litigation, Defendant has denied any liability for the claims alleged, contending among
16 other things, that it followed all applicable law with respect to Plaintiff's and Class Members'
17 employment, that Class Members were timely paid all wages owed, were provided compliant meal and
18 rest periods, and were indemnified for all necessary business expenses.

19 49. In reaching the proposed Settlement, Class Counsel carefully considered the strength of the
20 case versus the amount offered in settlement; the risk, expense, and complexity and likely duration of
21 further litigation and maintaining class certification through trial; the present state of the law as it applies
22 to wage-and-hour class actions and PAGA actions; and the burdens of proof necessary to establish liability
23 against Defendant.

24 50. As set forth below, Class Counsel is well qualified to evaluate the class claims and viability
25 of defenses in this action based on our combined experience in other similar cases. As such, I strongly
26 support this Settlement and believe it provides the best resolution for this action.

27 **The Class Representative Incentive Payment is Reasonable**

28 51. The Settlement Agreement provides that Plaintiff can request, and Plaintiff does so request,

1 a Class Representative Incentive Payment in the amount of \$10,000, which will be in addition to the
2 Settlement Payments and PAGA Payments that she is entitled to receive as Class Members.

3 52. Plaintiff initiated this action by seeking legal assistance from my firm. She spent numerous
4 hours assisting with the preparation of the LWDA letter, the complaint, and witness questionnaire;
5 communicating with counsel; identifying potential witnesses; and providing all information and
6 documents requested. Over the course of more than a year and a half, Plaintiff worked closely with Class
7 Counsel to protect the best interests of the Class. her participation was an essential element that allowed
8 my firm to reach the proposed Settlement on behalf of the Class.

9 53. Plaintiff also assumed the risk of an adverse judgment and the financial responsibility of
10 such judgment by bringing and maintaining the action. By stepping forward as the class representative,
11 she jeopardized the availability of prospective employment because her name is now associated with a
12 lawsuit against her former employer.

13 54. Plaintiff has also agreed to a general release of her claims, which is an expansive release
14 that was not required of any other Class Members.

15 55. I believe that the requested Class Representative Incentive Payment in the amount of
16 \$10,000 for Plaintiff is fair and reasonable and is in line with awards granted in similar actions.

17 **The Requested Attorneys' Fees and Litigation Costs are Reasonable**

18 56. Class Counsel will request an attorneys' fee award in the amount of one-third of the Gross
19 Settlement Amount (i.e., \$500,000) and reimbursement of actual litigation costs in an amount not to
20 exceed \$23,000.

21 57. The fee is warranted and reasonable because of the substantial work and effort incurred to
22 achieve the Settlement on behalf of the Class and the real and significant monetary relief obtained. This
23 work includes, *inter alia*, preparing and filing a pre-litigation letter with the LWDA; preparing and filing
24 the complaint and amended complaint; propounding extensive written discovery and engaging in
25 substantial meet and confer efforts; conducting lengthy interviews with Class Members; performing legal
26 and factual research; engaging in extensive informal document and information exchange; preparing for
27 and participating in mediation; and analyzing the time and payroll records for Plaintiff and other Class
28 Members.

58. The fee request at final approval will be supported by a detailed explanation of the qualifications of each timekeeper, and their corresponding hourly rate, along with an explanation of the amount of time worked on the various tasks performed on behalf of Plaintiff and the Class. Similarly, the costs request will be supported at the time of final approval with an explanation of the amount and nature of the costs incurred.

59. Although case law supports fee awards as high as 50 percent on common settlement funds of less than \$10 million, Class Counsel's request for attorneys' fees in the amount of \$500,000, representing one-third of the Gross Settlement Amount, is both reasonable and fair in light of the time, money, and effort invested in this case to date.

60. My firm has committed and continues to commit significant financial and staffing resources to the representation of Class Members. This work ultimately resulted in the proposed Settlement, which provides significant benefits to Class Members. Moreover, my firm undertook this action on a contingency basis, thereby bearing all the costs of this very complex, risky, expensive, and time-consuming litigation.

61. In making a fee request in a class action case, I always analyze the factors that a court must consider in awarding fees. I believe that such circumstances exist here to justify the requested attorneys' fees award of \$500,000, including: (a) the work involved in achieving an excellent result for the Class and bringing the action to an efficient conclusion; and (b) the associated risks to my firm in taking a matter on a contingent basis.

62. All costs incurred were necessary to the prosecution of this action, would normally have been billed to a client paying for my firm's services on a non-contingency basis, and are reasonable for a case such as this in which substantial discovery and investigation took place over the more than a year and a half since submission of the LWDA letter. Class Counsel's request for reimbursement of actual litigation expenses, which counsel anticipates will not exceed \$23,000, is reasonable, and all costs were necessarily incurred in pursuit of the Settlement.

63. In my opinion, the requested fee award takes into account the excellent result and the risk undertaken in bringing this case on a purely contingent basis, advancing all costs to date, and deferring payment for all the time that my firm has worked on this case, with no guarantee that any of the fees and

costs incurred would ever be recovered.

64. I believe the fees and costs requested are fair, reasonable, and necessarily incurred in pursuit of the settlement. I believe the time spent working on this case by attorneys and paralegals at my firm reflect the reasonable and necessary amount of time to properly represent the interests of the Class.

Provisional Certification of the Class is Appropriate

65. For the purposes of settlement only, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. (Settlement Agreement, ¶ 51.b.)

66. Documents and information exchanged during the litigation reflect a class size of approximately 2,974 Class Members. The class definition is precise, objective, and presently ascertainable, and it makes abundantly clear who is a Class Member. In addition, Class Members can be identified easily by way of Defendant's personnel records, which include Class Members' full names, mailing addresses, telephone numbers, and dates of employment during the applicable time periods.

67. During discovery and the informal exchange of information, Defendant produced Plaintiff's personnel, timekeeping, and payroll records, as well as policies related to meal and rest periods, compensation, expense reimbursement, job descriptions for all nonexempt positions, the total number of workweeks and pay periods, average rates of pay, the names and contact information for Class Members, and the timekeeping and payroll records for a 76 percent sample of Class Members.

68. After reviewing the documents and data produced, I believe common issues of fact and law predominate as to each of the claims alleged by Plaintiff on behalf of Class Members, because the legality of Defendant's policies and practices including, but not limited to, Plaintiff's allegations that Class Members were not timely paid all wages owed, were not provided compliant meal and rest periods, and were not reimbursed for necessary business expenses, are common questions applicable to all Class Members.

69. At all times during her employment with Defendant, Plaintiff performed the same or similar duties as other Class Members and contends that she is similarly situated with other Class Members. Plaintiff was subject to the same employee handbooks, policies, and procedures during the relevant time period, which she contends were similarly applicable to all other Class Members. Therefore, the claims asserted are typical of the Class he seeks to represent. Moreover, the issues central to this

litigation, which Plaintiff alleges on behalf of herself and all other similarly situated persons, include, without limitation, all of the following:

- a. Whether Defendant failed to timely pay all minimum and overtime wages owed to Class Members;
- b. Whether Defendant included shift differentials when calculating Class Members' regular rate of pay for purposes of paying sick leave and meal or rest period premiums;
- c. Whether Defendant failed to provide Class Members with compliant meal periods;
- d. Whether Defendant failed to authorize and permit Class Members to take uninterrupted, off-duty rest periods;
- e. Whether Defendant failed to timely pay all wages due upon separation of employment or pay the applicable waiting time penalties;
- f. Whether Defendant failed to properly reimburse Class Members for the expenses they incurred in the discharge of their duties;
- g. Whether Defendant failed to provide accurate wage statements to Class Members;
- h. Whether Defendant failed to maintain accurate employment records; and
- i. Whether Defendant's practices constitute unfair business practices.

70. Plaintiff has no conflict of interest with the Class and has, along with her counsel, worked toward a positive resolution of this action, demonstrating her interest in prosecuting this action and dedication to obtaining the best possible recovery for the Class. In addition, Plaintiff's interests are co-extensive with those of the Class, and she seeks relief identical to that sought by every other Class Member. Since all Class Members need to demonstrate the same elements to recover on their claims, the interests of Class Members are sufficiently aligned with those of Plaintiff, and Plaintiff can be expected to pursue the interests of all Class Members adequately. In addition, both Plaintiff retained counsel with extensive experience in prosecuting complex wage and hour class actions who have worked diligently to obtain the proposed Settlement for the Class. I believe that this case could not have continued without Plaintiff's efforts and desire to obtain this positive result for the Class. There are no known conflicts between Plaintiff, Class Counsel, and Class Members.

71. By consolidating nearly 3,000 potential individual actions into a single proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that promotes a better use of the time, effort, and expense for the litigants and the judicial system. Absent class treatment, similarly-situated employees with small, but nevertheless potentially meritorious claims for damages would, as a practical matter, have no means of redress because of the time, effort, and expense required to prosecute individual actions. Accordingly, I believe class treatment is superior to other available methods for the fair and efficient adjudication of the controversy.

Class Counsel's Litigation Experience

72. I am an attorney at law licensed to practice before the Courts of the State of California and before this Court.

73. In 1993, I graduated from the University of California, Los Angeles with a Bachelor of Arts Degree. Following graduation, I attended Whittier Law School. In 1996, while a full-time law student, I was also a full-time Judicial Extern for the Honorable Consuelo B. Marshall, United States District Court, Central District. After approximately five months of service for Judge Marshall, I became a full-time extern for the United States Attorney's Office, Central District of California. My externship lasted for approximately five months. Thereafter, in 1997, I graduated from Whittier Law School. The same year, I was admitted to practice law in the State of California.

74. From 1997-2007, I was a named partner at Hawkins & Sofonio, a law firm based out of Irvine, California. At Hawkins & Sofonio, I pioneered the employment department litigating Plaintiffs related employment issues such as: Wrongful Termination, Age Discrimination, Disability, Wage and Hour and Sexual Harassment claims. Through the success and experience I obtained litigating employment related matters, I commenced the Wage and Hour division of our employment department in 2002. Since then, I have spent the vast majority of my practice litigating wage and hour class actions.

75. In 2007, I incorporated my wage and hour class action practice as James Hawkins APLC. Since its inception, this law firm has been exclusively involved in class action and complex litigation. In 2009, I opened an additional office in Miami, Florida, prosecuting wage and hour class actions. I have been lead or co-lead counsel in all of the cases listed below.

76. I have a great deal of experience in wage and hour class action litigation. I have been

certified and approved as class counsel in many other wage/hour class actions, and I am currently litigating numerous others before this Court and others. Although not an all-inclusive list, over the years I have prosecuted the following class action matters as lead and/or co-lead counsel, all of which implicated similar law and facts to those associated with this Action:

- a. *Mojica v. Compass Group, Inc., et. al.* USDC Central District, Case No. 8:13-cv-01754. Wage and Hour Class Action case seeking past wages for meal and rest break violations for production workers in the State of California. Plaintiffs' Counsel preliminarily appointed as Class Counsel. Case settled. Final approval granted, and funds fully disbursed.
- b. *Dao v. 3M Company, et al.* USDC, CENTRAL DISTRICT, Case No. CV-08-04554. Wage and Hour Class Action case seeking past wages for "off the clock", overtime and meal and rest break violations for production workers in the State of California. Plaintiffs' Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no objections and funds fully distributed.
- c. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW. Wage and Hour Class Action case seeking past wages for meal and rest period violations for retail employees in the State of California. Plaintiffs' counsel appointed co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.
- d. *Morgan v. Aramark Campus, LLC*, USDC, CENTRAL DISTRICT, Case No. SACV08-00412. Wage and Hour Class Action case seeking past wages for meal and rest period violations for retail employees in the State of California. Plaintiffs' Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no objections and funds fully distributed.
- e. *West v Iron Mountain Information Management, Inc, et. al.*; Los Angeles County Superior Court, Case No. BC393709. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for driver employees in the State of California. Stipulation for "binding arbitration." Arbitration Award for Plaintiffs Class. Arbitration Award confirmed. Plaintiffs' counsel lead trial counsel and class counsel.

- 1 f. *Gonzalez v. Superior Industries International, Inc.*, et al., Los Angeles County Superior
2 Court, Case No. BC 357912. Wage and Hour Class Action seeking past wages for
3 overtime, meal and rest breaks violations for production employees in the State of
4 California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval
5 granted, no objections and funds fully distributed.
- 6 g. *Acosta v. Fleetwood Travel Trailers of California, Inc.*, et al., Riverside County Superior
7 Court, Case No. RIC 440630. Wage and Hour Class Action seeking past wages for
8 overtime, meal and rest break violations for production employees in the State of
9 California. Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final
10 Approval granted, no objections and funds fully distributed.
- 11 h. *Walker v. Sharkeez*, et al., Orange County Superior Court, Case No. 05CC00293. Wage
12 and Hour Class Action seeking past wages for unlawful deductions, meal and rest break
13 violations for restaurant employees in the State of California. Plaintiffs' counsel
14 appointed as lead counsel. Case settled. Final Approval granted and funds fully
15 distributed.
- 16 i. *Padron v. Universal Protection Service, et al*, Orange County Superior Court, Case No.
17 05CC00013. Wage and Hour Class Action seeking past wages for overtime, meal and
18 rest break violations for security officers in the State of California. Plaintiffs' counsel
19 appointed as co-lead counsel. Case settled, Final Approval granted, no objections and
20 funds fully distributed.
- 21 j. *Martinez v. Securitas Security Services USA, et al.*, Santa Clara Superior Court, Case No.
22 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour Class Action seeking past
23 wages for meal and rest break violations for security officers employed by defendant in
24 the State of California. Plaintiffs' counsel and co-counsel. Case settled, Final Approval
25 granted and funds fully distributed.
- 26 k. *Velasquez-Lopez v. Hotel Cleaning Services, Inc. et al.*, Riverside Superior Court, Case
27 No. RIC 420909. Wage and Hour Class Action seeking past wages for overtime, meal
28 and rest break violations for housekeepers employed by defendant in the State of

California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

- l. *Ruiz, et al. v. Unisource Worldwide, Inc., et al.*, USDC, CENTRAL DISTRICT, Case No. CV09-05848. Wage and Hour Class Action seeking past wages for meal and rest period violations for non-exempt employees employed by defendant in the state of California. Case settled. Awaiting Preliminary Approval hearing. Plaintiffs has petitioned the Court for Lead Counsel.
- m. *Herrador v. Culligan International Company, et al.*, USDC, CENTRAL DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action seeking past wages for field and branch employees of defendant in the State of California. Plaintiffs' counsel appointed as lead counsel. Case settled and awaiting Final Approval.
- n. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court, Case No. 05CC00128. Wage and Hour Class Action seeking past wages for restaurant employees of defendant in the State of California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.
- o. *Denton v. BLB Enterprises, Inc., et al.*, Orange County Superior Court, Case No. 07CC01292. Wage and Hour Class Action seeking unpaid overtime, meal and rest break violations for security guards employed by defendant in the State of California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.
- p. *Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.*, Los Angeles Superior Court, Case No. BC411477. Wage and Hour Class Action seeking unpaid meal and rest break violations for production employees employed by defendant in the State of California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.
- q. *McMurray v. Dave and Busters, Inc., et al.*, Orange County Superior Court, Case No. 06CC00099. Wage and Hour Class Action seeking past wages for meal and rest break violations for restaurant employees employed by defendant in the State of California.

- 1 Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final Approval granted, no
2 objections and funds fully distributed.
- 3 r. *Osuna v. DFG Restaurants, Inc., et al.*, Los Angeles Superior Court, Case No. BC
4 330145. Wage and Hour Class Action seeking past wages of overtime for mis-
5 classification of managers employed by Defendant, DBA Carl's Jrs. in the State of
6 California. Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final
7 Approval granted, no objections and funds fully distributed.
- 8 s. *Burns v. Gymboree Operations, Inc., et al.*, San Francisco Superior Court, Case No.
9 CGC-07-461612. Wage and Hour Class Action seeking past wages for meal and rest
10 break violations for retail employees employed by defendant in the State of California.
11 Plaintiffs' counsel appointed lead counsel. Case settled, Final Approval granted, no
12 objections and funds fully distributed.
- 13 t. *Willems v. Diedrich Coffee, Inc., et al.*, Orange County Superior Court, Case No.
14 07CC00015. Wage and Hour Class Action seeking past wages of overtime for mis-
15 classification of managers employed by Defendant in the State of California. Plaintiffs'
16 counsel appointed lead counsel. Case settled, Final Approval granted, no objections and
17 funds fully distributed.
- 18 u. *Davila, et al. v. Beckman Coulter, Inc., et al.*, Orange County Superior Court, Case No.
19 07CC01347. Wage and Hour Class Action seeking past wages for overtime, meal and
20 rest break violations for production workers employed by defendant in the State of
21 California. Plaintiffs' counsel appointed lead counsel. Case settled, Final Approval
22 granted, no objections and funds fully distributed.
- 23 v. *Perez v. Naked Juice Company of Glendora, Inc.*, Los Angeles Superior Court, Case No.
24 BC387088. Wage and Hour Class Action seeking past wages for overtime, meal and rest
25 period violations for production employees employed by defendant in the State of
26 California. Plaintiffs' counsel appointed as lead counsel. Case settled. Final Approval
27 granted, no objections and funds fully distributed.
- 28 w. *Coordination Proceeding Special Title [Rule 1550(b)] Wackenhut Wage and Hour
Cases*, Los Angeles Superior Court, Case No. JCCP 4545. Wage and Hour Class Action

1 seeking past wages for overtime, meal and rest period violations for security guards
2 employed by defendant in the State of California. Certification granted. Plaintiffs'
3 counsel appointed as co-lead counsel. Writ taken. Court stays action pending Appellate
4 Court ruling. Court lifts stay.

- 5 x. *Placencia v. Amcor Packaging Distribution, Inc.*, Orange County Superior Court, Case
6 No. 30-2013-00694012-CU-OE-CXC. Wage and Hour Class Action seeking past wages
7 for overtime, meal and rest period violations, and penalties on behalf of non-exempt
8 production, maintenance, shipping, and receiving employees employed by Defendant in
9 California. Plaintiffs' counsel appointed as lead counsel. Case settled. Final Approval
10 granted, no objections and funds fully distributed.
- 11 y. *Trani v. Lisi Aerospace, et al.*, Los Angeles Superior Court, Case No. BC495527. Wage
12 and Hour Class Action seeking past wages for overtime, meal and rest period violations,
13 and penalties on behalf of non-exempt manufacturing employees employed by Defendant
14 in California. Plaintiffs' counsel appointed as lead counsel. Case settled. Final Approval
15 granted, no objections and funds fully distributed.
- 16 z. *Galvan v. Goodwin Co.*, Orange County Superior Court, Case No. 30-2013-00637062-
17 CU-OE-CXC, Wage and Hour Class Action seeking past wages for meal period
18 violations, and non-compliant wage statements on behalf of non-exempt production
19 employees employed by Defendant in California. Plaintiffs' counsel appointed as lead
20 counsel. Case settled. Final Approval granted, no objections and funds fully distributed.
- 21 aa. *Reyes v. Bristol Fiberlite*, Orange County Superior Court, Case No. 30-2013-00653425-
22 CU-OE-CXC. Wage and Hour Class Action seeking past wages for overtime, meal and
23 rest period violations, inaccurate wage statements, and penalties on behalf of non-exempt
24 employees employed by Defendant in California. Plaintiffs' counsel appointed as lead
25 counsel. Case settled. Final Approval granted, no objections and funds fully distributed.
- 26 bb. *Gutierrez v. HMT Tank*, USDC Central Dist., Case No. CV14-1967-CAS(MANx). Wage
27 and Hour Class Action seeking past wages for meal and rest period violations, failure to
28 indemnify necessary expenses, inaccurate wage statements, and penalties on behalf of
non-exempt employees working in positions related to servicing, refabricating and

1 repairing storage tanks employed by Defendant in California. Plaintiffs' counsel
2 appointed as lead counsel. Case settled. Final Approval granted, no objections and funds
3 fully distributed.

4 cc. *Williams v. Il Fornaio America Corp.*, Sacramento County, Case No. 34-2011-0009616.

5 Wage and Hour Class Action seeking past wages for overtime, meal and rest period
6 violations, reimbursements, and penalties on behalf of non-exempt restaurant employees
7 employed by Defendant in California. Plaintiffs' counsel appointed as lead counsel.
8 Case settled. Final Approval granted, and funds fully distributed.

9 dd. *Aguilar v. 7-Eleven, Inc.*, Orange County, Case No. 30-2009-002687141-CU-OE-CXC.

10 Wage and Hour Class Action seeking past wages for overtime, meal and rest period
11 violations, and penalties on behalf of non-exempt retail clerks employed by Defendant in
12 California. Plaintiffs' counsel appointed as lead counsel. Case settled. Final Approval
13 granted, no objections and funds fully distributed.

14 ee. *Madrigal v. Huntington Beach Market Broiler, Inc.*, Orange County, Case No. 30-2012-

15 00611260. Wage and Hour Class Action seeking past wages for overtime, meal and rest
16 period violations, reimbursements, and penalties on behalf of non-exempt employees
17 employed by Defendant in California. Plaintiffs' counsel appointed as lead counsel.
18 Case settled. Final Approval granted, no objections and funds fully distributed.

19 ff. *Vang v. Jazz Semiconductor, Inc.*, Orange County, Case no. 30-2011-00460278. Wage

20 and Hour Class Action seeking past wages for overtime, meal and rest period violations,
21 reimbursements, and penalties on behalf of non-exempt production workers employed by
22 Defendant in California. Plaintiffs' counsel appointed as lead counsel. Case settled.
23 Final Approval granted, no objections and funds fully distributed.

24 gg. *Cano v. Financial Statement Services, Inc.*, Orange County, Case No. 30-2013-

25 00653349-CU-OE-CXC.

26 hh. *Gonzalez v. Quality Aluminum Force, LLC*, Orange County, Case No. 30-2015-

27 00817941-CU-OE-CXC.

28 ii. *Smith v. Space Exploration Technologies Corp.*, Los Angeles County Case No.

BC554258.

1 jj. *Madrigal v. Balda C Brewer, Inc.*, Orange County Case No. 30-2015-00820218-CU-OE-
2 CXC.

3 kk. *Mendez v. Liberty Glass Fabricators, Inc.*, Riverside County Case No. RIC 1800119.

4 ll. *Attia v. Neiman Marcus Group, Inc.*, United States District Court for the Central District
5 of California Case No. 8:16-cv-001504-DOC-FFM

6 mm. *Vigueras v. Red Robin*, United States District Court for the Central District of California
7 Case No. 8:17-cv-1422-JVS-DFM.

8 nn. *Payne v. Marriott Ownership Resorts, Inc.*, San Diego County Case No. 37-2018-
9 00015175-CU-OE-CTL.

10 77. In sum, my firm has been lead or co-lead counsel in hundreds of cases since its inception.
11 We have recovered hundreds of millions of dollars for employees in the State of California and millions
12 for the State as well through PAGA.

13 78. Our firm has served as class counsel in a number of significant wage and hour settlements.
14 Of particular note, in 2019, our firm was co-lead counsel in securing the largest wage and hour class action
15 settlement in California history at \$130,000,000.00. During this case, plaintiffs appealed a decertification
16 order. This case involved several appeals. The appellate record amassed an extensive appellate record
17 comprising a 23-volume joint appendix, a three-volume reporters' transcript, five briefs, four letter briefs,
18 two motions for judicial notice, a motion to augment the record, and several additional letters informing
19 the appellate court of new legal authority issued after *Dukes*. The matter was argued to and submitted by
20 the Court of Appeal on September 15, 2016, and on November 21, 2016, the decertification order was
21 reversed and the case was remanded for further proceedings. (*Lubin v. The Wackenhut Corporation*
22 ("Lubin"), 5 Cal. App. 5th 960 (2016)). Wackenhut filed a petition for review of the Court of Appeal
23 decision to the California Supreme Court. The Supreme Court denied Wackenhut's petition for review of
24 Lubin. The Court of Appeal issued remittitur on April 10, 2017. Eventually through additional litigation,
25 the parties were able to secure the \$130 million settlement that was approved on October 21, 2019 by
26 Judge Highberger in the Los Angeles Superior Court.

27 79. Additionally, in early 2020, our firm served as lead counsel in a class action jury trial in
28 the Central District of California involving the class and PAGA representative claims of over 23,000

1 employees which successfully resolved in the midst of trial for \$8,500,000.00.

2 80. Our firm has settled many high-stakes class and representative actions. Our settlements
3 have directly compensated hundreds of thousands of California workers and consumers. Our actions have
4 also forced employers to modify their policies for the benefit of employees including changing the
5 compensation structure for certain employees and changing practices to ensure that workers will be able
6 to take timely rest and meal breaks. A leader in prosecuting class and PAGA enforcement actions, our
7 firm has secured millions of dollars for workers and in civil penalties for the State of California.

8 81. Based on our experience, demonstrated competence, resources to prosecute the claims at
9 issue and reputation among our colleagues in the both the defense and plaintiffs' bar, I respectfully submit
10 our firm's experience in the field of wage and hour cases provides us the ability to prosecute claims swiftly
11 and often times without the need for protracted litigation. Although, as demonstrated in the Wackenhut
12 cases, we do not give up fighting for class members when challenged and necessary.

13 82. As is the case with many wage and hour cases, conditional class certification is vastly
14 superior to the litigation of numerous individual claims because most of the claims are too small to litigate
15 outside of the class context. As such, the superiority requirement is met for purposes of conditional
16 certification.

17 83. Further, based on our experience, we consider ourselves experienced and qualified to
18 evaluate the claims and viability of the defenses. Based on the history of this case and given our firm's
19 extensive experience as class and representative action employment and wage and hour litigators, it is our
20 view that the Settlement is fair, reasonable, and adequate, and in the best interest of the Class.

21 I declare under penalty of perjury that the foregoing is true and correct. Executed on October 30,
22 2024 in Irvine, California.

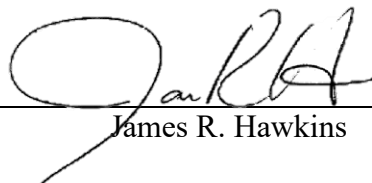
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25 James R. Hawkins
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Exhibit 1

CLASS ACTION AND PAGA REPRESENTATIVE ACTION SETTLEMENT AGREEMENT

I. INTRODUCTION

1. This Class Action and PAGA Representative Action Settlement Agreement (hereinafter “Settlement” or “Settlement Agreement”) is made by and between Plaintiff Kathryn Jeanine Fagan Engles (“Plaintiff”), individually and on behalf of all others similarly situated, and Defendant Premium Brands Opco LLC (“Defendant”) (collectively, the “Parties”). This Settlement Agreement is subject to the terms and conditions set forth below and to the approval of the Court. This Settlement Agreement supersedes any and all prior agreements and understandings concerning the subject matter of this Settlement Agreement and accurately sets forth the Parties’ class action and PAGA settlement to resolve all claims as detailed below. The Parties agree that the consideration described herein constitutes adequate consideration for the Settlement and releases described herein.

II. DEFINITIONS

2. “Action” means Plaintiff’s PAGA representative action captioned *Kathryn Jeanine Fagan Engles v. Premium Brands Opco LLC, et al.*, Case No. 30-2023-01319973-CU-OE-CXC, initiated on April 18, 2023, and pending in the Superior Court of California for the County of Orange.

3. “Class Action” means Plaintiff’s lawsuit captioned *Kathryn Jeanine Fagan Engles v. Premium Brands Opco LLC, et al.*, Case No. 8:23-cv-00778-DOC-DFM, initiated on February 21, 2023, and removed on May 3, 2023, and pending in the United States District Court, Central District of California.

4. “Class Counsel” or “Plaintiff’s Counsel” means James R. Hawkins, Christina M. Lucio, and Mitchell J. Murray of James Hawkins APLC.

5. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” means the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action and Class Action.

6. “Class Member” or “Settlement Class Member” mean any person who worked for Defendant as a non-exempt, hourly employee in the State of California at any time during the

Class Period, and who does not timely opt-out of the Settlement.

7. “Class Period” means the period commencing on January 1, 2021, through and including April 30, 2024.

8. “Class Representative” means Plaintiff Kathryn Jeanine Fagan Engles, who is to be designated as the Class Representative for settlement purposes subject to Court approval.

9. “Complaint” means the First Amended Complaint to be filed in the Action, which consolidates the Action and Class Action for settlement purposes.

10. “Court” means the California Superior Court for the County of Orange.

11. “Date of Preliminary Approval” means the date the Court approves this Settlement Agreement, and the exhibits thereto, and enters an Order providing for notice to the Class Members and PGA Members, an opportunity to opt-out of being a Participating Class Member, an opportunity to submit timely objections to the settlement, and setting a hearing for Final Approval of the Settlement, including approval of attorneys’ fees and costs.

12. “Defendant’s Counsel” means Carrie A. Gonell and David J. Rashe of Morgan, Lewis & Bockius LLP.

13. “Deficient Opt-Out” means a Class Member has submitted a Deficient Request for Exclusion and has failed to cure its deficiencies within the time required by this Settlement Agreement.

14. “Deficient Request for Exclusion” means a Request for Exclusion that is not signed by the Class Member submitting the Request for Exclusion or cannot be verified by the Settlement Administrator as being an authentic submission by the Class Member.

15. “Final Approval” means the date on which the Court enters the Final Approval Order.

16. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

17. “Final Approval Order” means the Court’s order granting the Motion for Final Approval of the Settlement.

18. “Gross Settlement Amount” is the sum of One Million Five Hundred Thousand Dollars (\$1,500,000), which represents the maximum amount payable in this Settlement by Defendant, except as

provided in Paragraph 51(f) below. The Gross Settlement Amount includes Class Counsel's Fees Payment, Class Counsel's Litigation Expenses Payment, Settlement Administration Expenses, Incentive Payment to the Class Representative, LWDA PAGA Amount, PAGA Member Payment, Settlement Class Payment, and all taxes except the employer's share of payroll taxes.

19. "Incentive Payment" means the incentive payment in an amount not to exceed Ten Thousand Dollars (\$10,000) total to the Class Representative.

20. "Judgment" means the judgment entered by the Court based upon the Final Approval Order.

21. "Late Request for Exclusion" means a Request for Exclusion that is submitted to the Settlement Administrator after the end of the Notice Period.

22. "LWDA" means the California Labor and Workforce Development Agency.

23. "LWDA PAGA Amount" is the 75% share of the One Hundred Thousand Dollars (\$100,000) (or Seventy-Five Thousand Dollars (\$75,000)) allocated from the Gross Settlement Amount for PAGA penalties that will be paid to the LWDA.

24. "Named Plaintiff" means Plaintiff Kathryn Jeanine Fagan Engles.

25. "Net Settlement Amount" is the portion of the Gross Settlement Amount eligible for distribution to Participating Class Members. It equals the Gross Settlement Amount less Class Counsel's Fees Payment and Class Counsel's Litigation Expenses Payment as ordered to be paid by this Court, Settlement Administration Expenses, Incentive Payment to the Class Representative, LWDA PAGA Amount, PAGA Member Payment, and all taxes except the employer's share of payroll taxes.

26. "Notice Period" shall mean the period of forty-five (45) days following the mailing of the Notice of Settlement by the Settlement Administrator. If the 45th day falls on a Sunday or holiday, the Notice Period shall end on the next business day that is not a Sunday or holiday.

27. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code §§ 2698 *et seq.*

28. "PAGA Member" means any person who worked for Defendant as a non-exempt, hourly

employee in the State of California at any time during the PAGA Period.

29. “PAGA Member Payment” is the 25% share of the One Hundred Thousand Dollars (\$100,000) (or Twenty-Five Thousand Dollars (\$25,000)) allocated from the Gross Settlement Amount for PAGA penalties that will be paid to the PAGA Members.

30. “PAGA Period” means the period commencing on February 12, 2022, through April 30, 2024.

31. “Participating Class Member” means any Class Member who does not timely opt out of the Settlement or who opts out but subsequently rescinds the opt-out in a timely manner.

32. “Pay Period” means any biweekly pay period in which a PAGA Member worked at least one day during the PAGA Period based on Defendant’s records.

33. “Qualified Settlement Fund” means the Qualified Settlement Fund (“QSF”) created under Internal Revenue Code Section 468B, to be overseen by the Settlement Administrator.

34. “Released Parties” means Defendant and its predecessors, successors and assigns, its current and former direct and indirect parents, affiliates, subsidiaries, divisions, insurers, partnerships, and related business entities, past and present, as well as their current and former officers, directors, shareholders, employees, agents, representatives and employee benefit programs (including the trustees, administrators, fiduciaries and insurers of such programs).

35. “Request for Exclusion” means a signed request from a Class Member to be excluded from the non-PAGA portion of this Settlement.

36. “Settlement Administration Expenses” are those expenses incurred by the Settlement Administrator in effectuating the Settlement and are not to exceed \$19,500.00.

37. “Settlement Administrator” means CPT Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

38. “Settlement Documents” means the Notice of Settlement attached hereto as Exhibit A.

39. “Settlement Effective Date” means, after the Final Approval Order and Judgment has been entered by the Court in the Action, the latter of the following dates: (1) if an appeal, review, or writ is not sought from the Final Approval Order and Judgment, the 63rd day after entry of the Final Approval

Order and Judgment; or (2) if an appeal, writ, or review is sought from the Final Approval Order and Judgment, the day after the Final Approval Order and Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Final Approval Order and Judgment is no longer subject to any further judicial review. The Settlement Effective Date cannot occur unless and until there is no possibility of an appeal or further appeal (by anyone who has the right to, or claims to have the ability to, take an appeal) that could potentially prevent this Settlement Agreement from becoming final and binding. The Parties intend that the Final Approval Order will extinguish all released claims, including but not limited to PAGA claims, for the periods covered by this Settlement upon the Settlement Effective Date and Defendant's full funding of the Gross Settlement Amount and the employer's share of payroll taxes. The Court will retain jurisdiction to enforce the Settlement after the Settlement Effective Date.

40. "Settlement 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.

41. "Workweek" means any week in which a Class Member worked at least one day during the Class Period based on Defendant's records.

III. LITIGATION BACKGROUND

42. On or about February 10, 2023, Plaintiff submitted a notice letter to the LWDA alleging Labor Code violations by Defendant (hereinafter referred to as the "LWDA Notice"). The allegations in the LWDA Notice included: (1) Failure to Pay Minimum Wages; (2) Failure to Authorize and Permit Rest Periods; (3) Failure to Provide Meal Periods; (4) Failure to Timely Pay Wages During Employment; (5) Failure to Timely Pay Wages Owed Upon Separation from Employment; (6) Failure to Reimburse Necessary Business Expenses; (7) Knowing and Intentional Failure to Comply with Itemized Wage Statement Provisions; (8) Failure to Maintain Accurate Payroll Records; (9) Failure to Provide Suitable Seating; and (10) Failure to Comply with California's Paid Sick Leave Law, including by not paying sick leave at the regular rate.

43. On or about February 21, 2023, Plaintiff filed a putative class action in the Orange County Superior Court, asserting causes of action for (1) Failure to Pay Minimum Wages; (2) Failure to

Authorize and Permit Rest Periods; (3) Failure to Timely Pay Wages During Employment; (4) Failure to Timely Pay Wages Owed Upon Separation from Employment; (5) Failure to Reimburse Necessary Expenses; (6) Knowing and Intentional Failure to Comply with Itemized Wage Statement Provisions; (7) Failure to Maintain Accurate Payroll Records; and (8) Violation of the California Business and Professions Code section 17200, *et seq.*

44. On or about April 18, 2023, Plaintiff filed a PAGA representative action in the Orange County Superior Court alleging the same Labor Code and Wage Order violations set forth in her LWDA Notice.

45. On or about May 3, 2023, Defendant filed a Notice of Removal of the Class Action to Federal Court.

46. Defendant denies Plaintiff's claims, and asserts that, during all relevant times, it complied with the California Labor Code and related authorities, and that Plaintiff, Class Members, and PAGA Members are not entitled to any recovery.

47. On November 30, 2023, the Parties participated in a mediation session with mediator Lisa Klerman, Esq. With Ms. Klerman's guidance, the Parties were able to reach a resolution of Plaintiff's claims in the Action and Class Action.

48. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims against Defendant and the Released Parties arising from or related to the Action and Class Action.

49. It is the intention of the Parties that this Settlement Agreement shall constitute a full and complete settlement and release of the claims averred in the Action and Class Action. This release includes in its effect a release of all Released Parties.

IV. JURISDICTION AND VENUE

50. This Court has jurisdiction over the Parties and the subject matter of this Action. This Court will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until

all payments and obligations provided for herein have been fully executed.

V. TERMS OF SETTLEMENT

51. NOW, THEREFORE, in consideration of the mutual covenants, promises, and undertakings set forth herein, the Parties agree, subject to the Court's approval, as follows:

- a. **Non-Admission.** Nothing in this Settlement shall be construed to be or deemed an admission by Defendant of any liability, culpability, negligence, or wrongdoing toward the Class Representative, the Class Members, the PAGA Members, or any other person, and Defendant specifically disclaims any liability, culpability, negligence, or wrongdoing toward the Class Representative, the Class Members, the PAGA Members, or any other person, or that class certification or proceeding on a class or representative basis is appropriate. Each of the Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant risk, inconvenience, expenses, and contingencies. This Settlement and any settlement-related court documents or orders between the Parties may not be cited or otherwise admitted as evidence of liability or that class or collective certification is appropriate or that a representative action could ever be manageably tried before a court. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class should be certified, other than for settlement purposes only. Furthermore, nothing in this Settlement shall be considered any form of waiver of any alternative dispute resolution provisions, including but not limited to any arbitration agreements, if any, signed by any Class Members and/or PAGA Members.
- b. **Certification.** The Parties stipulate, for settlement purposes only, to the certification of the Class described above in Paragraph 6 as to all claims asserted in the Complaint. If for any reason the Court does not approve this Settlement, fails to enter the Final Approval Order, or fails to enter the Judgment, or if this

Settlement Agreement is lawfully terminated for any other reason, Defendant shall retain the absolute right to dispute the propriety of class or conditional certification and/or the ability of this action to proceed as a class and/or representative action on all applicable grounds.

- c. The Parties further stipulate that, for settlement purposes only, Plaintiff's Counsel may be appointed Class Counsel and that Named Plaintiff may be appointed as Class Representative. The Settlement Class may be provisionally certified as a class action for the purposes of the monetary relief provided in this Settlement Agreement. Plaintiff's Counsel, James Hawkins APLC, may be preliminarily and conditionally appointed as Class Counsel.
- d. **Non-Approval By The Court.** In the event that this Settlement Agreement is not approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court:
 - i. The Parties will meet and confer or attend mediation again in an effort to reach a settlement approved by the Court. Plaintiff may not withdraw from the Settlement if the Court reduces any amount of attorneys' fees, litigation costs and expenses, or the Incentive Payment to Plaintiff;
 - ii. The Settlement Agreement shall have no force or effect, other than the confidentiality and non-disclosure provisions in Section XVII and the non-admission provisions in Paragraph 51.a;
 - iii. The Settlement Agreement shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;
 - iv. The preliminary and conditional certification of the class shall become null and void, and the fact of certification shall not be cited to or admissible in any judicial, administrative or arbitral proceeding for any

purpose or with respect to any issue, substantive or procedural; and

v. None of the Parties to this Settlement Agreement will be deemed to have waived any claims, objections, defenses or arguments with respect to the issue of class certification or the merits of Plaintiff's claims.

e. **Settlement Payments.** Defendant agrees to pay a non-reversionary Gross

Settlement Amount of One Million Five Hundred Thousand Dollars (\$1,500,000), inclusive of all payments, fees and costs identified in this Settlement Agreement, including the Incentive Payment to the Class Representative, Settlement Administration Expenses, Class Counsel's Fees Payment and Litigation Expenses Payment, PAGA penalties (both the LWDA PAGA Amount and the PAGA Member Payment), and all taxes except the employer's share of payroll taxes. The Parties agree, subject to Court approval, to the following allocations to be paid from the Gross Settlement Amount:

i. From the Gross Settlement Amount, provided there is no breach of this Settlement Agreement by Named Plaintiff or her counsel, Class Counsel may seek from the Court a maximum of Five Hundred Thousand Dollars (\$500,000), or one-third (1/3) of the Gross Settlement Amount in attorneys' fees, plus actual litigation costs and expenses not to exceed 23,000.00, for serving as Class Counsel, which Defendant will not oppose.

ii. From the Gross Settlement Amount, provided there is no breach of this Settlement Agreement by Named Plaintiff or her counsel, Named Plaintiff may seek from the Court an Incentive Payment not to exceed Ten Thousand Dollars (\$10,000) for serving as Class Representative, which Defendant will not oppose. The Incentive Payment is in addition to whatever monetary settlement Plaintiff is entitled to recover from the Net Settlement Amount as a Participating Class Member and the PAGA

Member Payment. Any amount of the Incentive Payment not approved by the Court shall become part of the Net Settlement Amount.

- iii. From the Gross Settlement Amount, a payment of Seventy-Five Thousand Dollars (\$75,000) to the California Labor and Workforce Development Agency (the LWDA PAGA Amount), representing the LWDA's 75% share of the settlement attributable to PAGA penalties. In connection with seeking settlement approval, Plaintiff's counsel shall notify the LWDA of the existence of the Settlement. Should the LWDA object to the amount of this payment, the Parties agree to work in good faith to negotiate another agreeable amount.
- iv. From the Gross Settlement Amount, a payment of Twenty-Five Thousand Dollars (\$25,000) to be allocated among the PAGA Members (the PAGA Member Payment), calculated on a proportional basis by dividing the number of Pay Periods worked by each PAGA Member by the total Pay Periods worked by all PAGA Members during the PAGA Period, and multiplying the resulting fraction by the PAGA Member Payment.
- v. From the Gross Settlement Amount, Settlement Administration Expenses in a reasonable amount, which are not to exceed Nineteen Thousand Five Hundred Dollars (\$19,500). To the extent that Settlement Administration Expenses are less than \$19,500, the remainder shall become part of the Net Settlement Amount.
- vi. Plaintiff and Class Counsel agree not to appeal any reduction in the amount of attorneys' fees or litigation costs and expenses awarded by the Court. If the Court approves a lesser amount of attorney's fees or litigation costs and expenses than those sought by Named Plaintiff or Class Counsel, the amount shall become part of the Net Settlement

Amount.

- vii. The Settlement Administrator will administer the notice, challenges, and opt-outs, informing Class Members of their rights in regard to the proposed settlement as specified below; will disburse monies from the Qualified Settlement Fund as and when authorized in this Settlement Agreement and by order of the Court; and will inform the Parties and the Court of its fulfillment of the duties imposed by this Settlement Agreement. Settlement Administrator Expenses shall be paid from the Gross Settlement Amount.
- viii. The Net Settlement Amount is the balance of the Gross Settlement Amount, after payments have been made for Class Counsel's Fees Payment and Litigation Expenses Payment, Settlement Administration Expenses, Class Representative's Incentive Payment, PAGA penalties (both the LWDA PAGA Amount and the PAGA Member Payment), and all taxes except the employer's share of payroll taxes.
- ix. The Settlement Administrator shall, after Final Approval of the Settlement Agreement by the Court and after the Settlement Effective Date, pay each Participating Class Member from the Net Settlement Amount based on a proportional basis according to the number of Workweeks worked during the Class Period. The Settlement Administrator will also conduct a similar proportional calculation based on Pay Periods worked for each PAGA Member to determine their share of the PAGA Member Payment, as set forth in Section VIII.
- x. The dates of employment for each Class Member and PAGA Member and the corresponding number of Workweeks and Pay Periods during which Class Members worked during the Class Period and PAGA Members worked during the PAGA Period shall be provided by

Defendant to the Settlement Administrator and kept confidential by the Settlement Administrator. The Administrator shall calculate the number of Workweeks worked by Class Members during the Class Period and the number of Pay Periods worked by PAGA Members during the PAGA Period. All Class Members will be deemed to have worked during at least one Workweek during the Class Period, and all PAGA Members will be deemed to have worked during at least one Pay Period during the PAGA Period. Class Members and PAGA Members shall have the right to challenge the number of Workweeks and Pay Periods, respectively, that are reflected in Defendant's records as set forth in Paragraph 71.

- xi. Class Members entitled to recover under this Settlement Agreement will include only those individuals who are identified in Defendant's records as having worked as Class Members in California during the Class Period, or those additional individuals who can provide to the Settlement Administrator evidence that they worked in that capacity notwithstanding the absence of Defendant's records confirming such employment.
- xii. Within ten (10) days of the Settlement Effective Date, the Settlement Administrator shall issue Settlement Class Payment checks to Participating Class Members under this Settlement Agreement, as well as an Incentive Payment to the Class Representative, Class Counsel's Fees Payment and Litigation Expenses Payment, the LWDA PAGA Amount, and the PAGA Member Payment checks to PAGA Members by sending such payments by mail or other reliable means to the respective recipients as specified below.

- f. **Class Size Estimates and Escalator Clause.** Based on its records, Defendant

estimates that, as of the date of mediation, Class Members worked approximately 135,000 Workweeks during the Class Period. If the data reported to the Settlement Administrator for the period ending November 30, 2023 reflects an increase of more than 10% of the 135,000 approximation (i.e. if there are more than 148,500 Workweeks worked by all Class Members through the period ending November 30, 2023), Defendant shall have the option to: (a) increase the Gross Settlement Amount in proportion to the increase in Workweeks (for example, if there is a 12% increase in the total number of workweeks worked by all Class Members during the period ending November 30, 2023, the Gross Settlement Amount shall increase by 2% (i.e. \$30,000)) or (b) limit the end date of the Class Period and PAGA Period so that the cumulative Workweeks do not exceed 148,500.

- g. **Objections.** Only Participating Class Members who do not opt-out may object to the non-PAGA portion of the Settlement. Plaintiff may not object to the Settlement. Class Members who timely opt-out of the non-PAGA portion of the Settlement are not eligible to object. All written objections must be sent no later than forty-five (45) days after the mailing of the Settlement Documents and must include: (a) the Participating Class Member's full name, (b) the Participating Class Member's last four digits of their social security number, and (c) a clear statement explaining why the Participating Class Member objects to the non-PAGA portion of the Settlement. Such deadline applies notwithstanding any argument regarding non-receipt of the Settlement Documents. Notwithstanding this deadline to submit a written objection, Class Members shall retain the right to appear at the Final Approval Hearing regardless of whether they have submitted a written objection to the settlement. Anyone who fails to send timely written objections or make an oral objection at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from filing any

appeal from any Final Approval Order and Judgment issued by the Court. The Parties may file a response to any objections submitted by objecting Class Members at or prior to the Final Approval Hearing. Class Members shall be permitted to withdraw their objections in writing by submitting a withdrawal statement to the Settlement Administrator not later than one (1) business day prior to the Final Approval Hearing, or as otherwise ordered by the Court.

- h. **Opt Outs.** Class Members who wish to “opt out” of and be excluded from the non-PAGA portion of this Settlement must submit a written Request for Exclusion from the Settlement bearing a post-mark from a date within the Notice Period. Class Members may not opt out of the PAGA portion of this Settlement and are still bound by the release of PAGA claims even if they submit a valid Request for Exclusion from the non-PAGA portion of this Settlement and will receive a check with their PAGA Member Payment allocation from the \$25,000.00 PAGA Member Payment if they are a PAGA Member. The Request for Exclusion must include: (a) the Class Member’s name; (b) a statement that the Class Member desires to exclude himself or herself from the case; (c) the last four digits of the Class Member’s social security number; and (d) be signed by the Class Member. If a Class Member submits a Deficient Opt-Out, the Settlement Administrator shall notify the Class Member of the deficiency within five (5) business days of receipt. The Class Member shall have until the end of the Notice Period or five (5) business days after the close of the Notice Period if the notice of deficiency is sent by the Settlement Administrator within (5) business days of the end of the Notice Period to cure said deficiencies, at which point his or her Request for Exclusion will be rejected if not received. Class Members with Deficient Opt-Outs shall be bound by the Settlement and its releases and will be considered Participating Class Members for settlement distribution purposes. Class Members shall be permitted to rescind their Request

for Exclusion in writing by submitting a rescission statement to the Settlement Administrator not later than one (1) business day prior to the Final Approval Hearing, or as otherwise ordered by the Court. The Settlement Administrator shall not accept Late Requests for Exclusion without the written authorization of the Parties. Plaintiff may not opt out of the Settlement.

- i. **Released Claims.** Upon the Settlement Effective Date and Defendant's fully funding of the Gross Settlement Amount and the employer's share of payroll taxes, the Class Representative, PAGA Members, and Participating Class Members who did not opt out of the non-PAGA portion of this Settlement, shall be deemed to have fully, finally, and forever released Defendant and the Released Parties from the released claims as set forth in Sections X through XII below.
- j. **Entry of Judgment.** At the Final Approval Hearing, the Parties will request that the Court, among other things: (a) certify the Settlement Class for purposes of settlement only; (b) enter a Final Approval Order in accordance with the terms of this Settlement Agreement; (c) approve the settlement as fair, adequate, reasonable, and binding on all Participating Class Members, all PAGA Members, and the LWDA; (d) enter an order whereby Participating Class Members shall release the Released Class Claims; and (e) enter an order whereby the PAGA Members and LWDA shall release the Released PAGA Claims.

VI. SETTLEMENT ADMINISTRATION

52. The Parties have agreed to the appointment of CPT Group, Inc. to perform the duties of Settlement Administrator.

53. Within seven (7) days of the Final Approval Order, the Settlement Administrator shall calculate, and inform Defendant's counsel of, the employer's share of payroll taxes. Defendant shall provide all information necessary for the Settlement Administrator to calculate the employer's share of

payroll taxes.

54. Within sixty (60) days of the Final Approval Order, Defendant shall fund the settlement with the Gross Settlement Amount and the employer's share of payroll taxes by wire transfer or otherwise transmit to a depository bank designated by the Settlement Administrator in an account titled in the name of "Premium Brands Wage and Hour Settlement Fund." The account will be organized and existing under the laws of the State of California, intended by the Parties to be a "Qualified Settlement Fund" as described in Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, *et seq.* The monies so transferred, together with any interest subsequently earned thereon, shall constitute the Qualified Settlement Fund. The \$1,500,000 for the Gross Settlement Amount, plus any increase as provided in Paragraph 51(f), and the employer's share of payroll taxes transferred into the Qualified Settlement Fund by Defendant shall constitute the total Settlement cash outlay by Defendant in connection with: (1) the resolution of this matter; (2) this Settlement Agreement; and (3) the entry of Judgment in this Action. This sum is inclusive of payment for the Gross Settlement Amount (and all payments to be made from the Gross Settlement Amount as described herein).

55. The Settlement Administrator shall serve as Trustee of the Qualified Settlement Fund and shall act as a fiduciary with respect to the handling, management and distribution of the Qualified Settlement Fund, including with regard to payment of Settlement Class Payments and PAGA Member Payments and reporting and paying taxes on such awards. The Settlement Administrator shall act in a manner necessary to qualify the Qualified Settlement Fund as a "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, *et seq.*, and to maintain that qualification.

56. The Settlement Administrator shall be responsible for: (a) calculating each Class Member's potential recovery of the Net Settlement Amount and PAGA Member Payment amount; (b) preparing and mailing to all Class Members and PAGA Members the Settlement Documents with estimated Settlement Class Payment amounts and (if applicable) a PAGA Member Payment amount, and instructions on how to opt out of or object to the non-PAGA portion of the Settlement, and will take appropriate steps to trace, update and locate any individual Class Members and PAGA Members whose

address or contact information as provided to the Settlement Administrator is inaccurate or outdated; (c) receiving and serving on Class Counsel and Defendant's Counsel, and the Court, Requests for Exclusion and any withdrawal and rescission statements; (d) providing to Class Counsel and Defendant's Counsel a weekly report of activity; (e) establishing a toll free telephone line and responding to inquiries and requests for information or assistance from Class Members; (f) determining and paying the final amounts due to be paid to Participating Class Members after adjustment for funds due to Class Members who timely opt out of the non-PAGA portion of this Settlement; (g) reporting to Class Counsel, Defendant's Counsel, and the Court regarding the completion of the tasks identified in this paragraph; and (h) carrying out other related tasks including the proper maintenance of the QSF and reporting required for that account, in accordance with the terms of this Settlement Agreement. The weekly report of activity should include: (a) the number of Class Members who have submitted valid Requests for Exclusion, (b) the number of Notices returned and re-mailed, (c) whether any Class Member has submitted a dispute to any information contained in the Notice of Settlement, (d) whether any Class Members has submitted an objection to the Settlement, and (e) the final count of Class Members who successfully opted-out of the non-PAGA portion of this Settlement.

57. All disputes relating to the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all payments and obligations contemplated by the Settlement Agreement have been fully executed.

58. When and if the Court grants Final Approval of the Settlement, and the Settlement Effective Date as defined herein has passed, the Settlement Administrator shall prepare a final list of all Participating Class Members and PAGA Members. The Settlement Administrator shall provide a redacted final list to the Class Counsel and non-redacted final list to Defendant within ten (10) days after the Settlement Effective Date. For each Participating Class Member on this list, the Settlement Administrator will calculate the final amounts due to each Participating Class Member.

59. Except for the Incentive Payment described above to be paid to the Class Representative, all Settlement Class Payments to Participating Class Members shall be allocated as follows: 40%

allocation for wages to be reported on IRS Form W-2; and 60% allocation for penalties to be reported on IRS Form 1099. All PAGA Member Payments will be allocated entirely to civil penalties. The Incentive Payment to the Class Representative shall be treated as compensation for non-wage claims. The Settlement Administrator shall provide Participating Class Members, PAGA Members, and the Class Representative with an IRS Form 1099 as appropriate for the portions allocated to non-wages, if required. The Class Representative, Participating Class Members, and PAGA Members shall be exclusively liable for all tax liability, if any, resulting from any failure on their part to pay any taxes due on their receipt of the Settlement Class Payments and/or PAGA Member Payments. All Parties represent that they have not received, and shall not rely on, advice or representations from other Parties or their agents or attorneys regarding the tax treatment of payments under federal, state, or local law.

60. After all payments have been disbursed from the QSF, the Settlement Administrator shall dissolve the QSF and file a return (SF-1120) with the IRS.

VII. NOTICE TO THE CLASS MEMBERS AND LWDA

61. Within twenty-eight (28) days after the Date of Preliminary Approval by the Court, and subject to the Settlement Administrator executing a confidentiality agreement required by Defendant, Defendant shall provide the Settlement Administrator only with a Microsoft Excel spreadsheet containing the following for each Class Member: (1) full name; (2) last known mailing address; (3) social security number; (4) start and end dates of active employment as a Class Member and PAGA Member in the state of California; (5) the number of Workweeks during the Class Period which the Class Member worked; (6) the number of Pay Periods during the PAGA Period which the PAGA Member worked; and (7) any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement to the extent it can be reasonably provided by Defendant. Class Counsel will not be provided with the aforementioned data (including names, last known mailing address, social security numbers, and employment dates for Class Members and PAGA Members) unless Defendant provides consent in writing, but may receive summaries of the aforementioned data, including the total number of Workweeks worked by all Class Members during the Class Period to determine whether the escalator clause has been triggered, provided sensitive information such as names, last known mailing addresses,

and social security numbers are redacted.

62. Class data shall only be used by the Settlement Administrator for the purpose of calculating settlement payment shares and finding and notifying Class Members and PAGA Members of the settlement. Data and information for Class Members and PAGA Members shall not be disclosed to the Named Plaintiff, or any other Class Members or PAGA Members without the prior written consent of Defendant and will be subject to the Settlement Administrator's confidentiality agreement and redaction.

63. Prior to mailing the Settlement Documents, the Settlement Administrator will update the addresses for the Class Members and PAGA Members using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. Any returned envelopes from the initial mailing that are returned no later than thirty (30) days after the initial mailing shall be remailed on one occasion. Those envelopes returned with forwarding addresses will be used by the Settlement Administrator to locate Class Members and PAGA Members and re-mail the Settlement Documents to the correct or updated address. For envelopes without a forwarding address, the Settlement Administrator will use all appropriate tracing methods, including skip tracing, to ensure that the Settlement Documents are received by the Class Members and PAGA Members. The Settlement Administrator shall also take reasonable steps including skip tracing to locate any Class Member or PAGA Member whose Notice of Settlement is returned as undeliverable. Individuals who receive a remailed envelope shall be entitled to an additional 15 days beyond the response deadline to submit written objections or opt-out of the non-PAGA portion of this Settlement.

64. Within fourteen (14) days of receiving the class data from Defendant and after it has completed all of the address updates for Class Members (including any skip tracing), the Settlement Administrator shall mail the Notice of Settlement to Class Members and PAGA Members. The Notice of Settlement (attached as Exhibit A) shall provide a summary of the provisions of the Settlement. The Notice of Settlement shall also list the number of Workweeks worked by the Class Member and, if applicable, the number of Pay Periods worked by the PAGA Member, and the estimated individual payment each Class Member will receive as a Class Member and PAGA Member. The Notice shall provide instructions to employees regarding how to request to be excluded from the Settlement, how to

object to the Settlement, how to submit a dispute regarding the number of Workweeks and/or Pay Periods stated on the Settlement Documents, and the date of the final approval hearing. At least five (5) business days prior to this mailing, the Settlement Administrator shall provide the Parties with a report listing the estimated Settlement Class Payment and PAGA Member Payment amounts to each Class Member and PAGA Member.

65. Class Members shall have forty-five (45) days from the date of mailing of the Settlement Documents to opt-out of the Class (*i.e.*, the non-PAGA portion of this Settlement), object to the Settlement, or submit a dispute. If the 45th day falls on a Sunday or holiday, the deadline will be the next business day that is not a Sunday or holiday.

66. Plaintiff's counsel shall provide notice of this Settlement to the LWDA consistent with the requirements of Labor Code § 2699(l)(2).

VIII. CALCULATION OF SETTLEMENT PAYMENTS AND DISTRIBUTION OF NET SETTLEMENT AND PAGA MEMBER PAYMENT FUNDS

67. **Calculation of Settlement Class Payments.** The Settlement Administrator will calculate pro rata Settlement Class Payments to Class Members based on each Class Member's number of Workweeks during the Class Period as reflected on Defendant's records. That pro rata Settlement Class Payments shall be determined as follows: (1) the Settlement Administrator will divide the number of Workweeks worked by each Participating Class Member during the Class Period by the total Workweeks of all Participating Class Members during the Class Period, and (2) multiply the resulting fraction by the Net Settlement Amount allocated for distribution to Participating Class Members.

68. **Calculation of the PAGA Member Payment.** The Settlement Administrator will calculate pro rata PAGA Member Payments to PAGA Members by: (1) dividing the number of Pay Periods worked by each PAGA Member during the PAGA Period by the total Pay Periods of all PAGA Members during the PAGA Period, and (2) multiplying the resulting fraction by the PAGA Member Payment.

69. **Eligibility for Settlement Class Payments.** Only Class Members who have not opted-out of the non-PAGA portion of this Settlement will be considered Participating Class Members and

eligible to receive a Settlement Class Payment.

70. Each Notice of Settlement mailed to a Class Member will identify the dates of employment that Defendant's records indicate the individual worked as a Class Member; the number of Workweeks worked by the Class Member during the Class Period and the number of Pay Periods worked by the PAGA Member during PAGA Period; and an estimate of each Class Member's pro rata share of the Net Settlement Amount including the share of any PAGA Member Payment as a PAGA Member.

71. Participating Class Members and PAGA Members will have the right to dispute only the information described in Paragraph 70, *supra*, as shown on the Notice of Settlement. Challenges to the information listed on the Notice of Settlement shall be sent directly to the Settlement Administrator at the address indicated on the Notice of Settlement. Any dispute must be submitted to the Settlement Administrator during the Notice Period. The Settlement Administrator will inform Class Counsel and Defendant's Counsel in writing of any timely filed disputes. The information listed on the Notice of Settlement is presumed to be accurate unless the Participating Class Member and/or PAGA Member submits documentation demonstrating otherwise, *i.e.*, a Participating Class Member or PAGA Member who fails to provide documentary proof will have his or her challenge denied. In the event of any dispute over an individual's employment information, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Parties shall meet and confer and shall attempt to agree on a resolution for any such dispute. In the event the Parties cannot agree to a resolution, the Settlement Administrator will make the final decision on the dispute and the decision will be binding on the Participating Class Member and/or PAGA Member and no additional rights of appeal shall exist.

72. The Settlement Administrator shall (a) date stamp all original Requests for Exclusion that it receives; and (b) serve copies on Class Counsel and Defendant's Counsel no later than five (5) business days after receipt, or immediately if received within five (5) business days of the Final Approval Hearing.

73. The Settlement Administrator shall also (a) date stamp all original rescission of Requests for Exclusion it receives; and (b) serve copies on Class Counsel and Defendant's Counsel no later than five (5) business days after receipt, or immediately if received within five (5) business days of the Court's Final Approval Hearing; and (c) file the date-stamped originals with the Clerk of the Court no later than

five (5) business days prior to the date of the Final Approval Hearing or immediately if received less than five (5) business days prior to the date of the Final Approval Hearing.

74. The Settlement Administrator shall make the final calculation of Settlement Class Payments and PAGA Member Payments and within seven (7) days of the Settlement Effective Date, the Settlement Administrator shall provide the Parties with a redacted report listing the Participating Class Members by a unique identifier, the amount of each Participating Class Member's Settlement Class Payment, any PAGA Member Payment, and the number of corresponding Workweeks and Pay Periods. The Settlement Administrator shall also provide a non-redacted report only to Defendant within seven (7) days of the Settlement Effective Date.

75. Within ten (10) days after the Settlement Effective Date, the Settlement Administrator shall distribute and pay Settlement Class Payment checks to all Participating Class Members, pay the Class Representative her Incentive Payment, issue a check to the LWDA for the LWDA PAGA Amount, issue checks to the PAGA Members for their PAGA Member Payments, pay Class Counsel's approved Fees Payment and Litigation Expenses Payment, and pay itself the Settlement Administration Expenses.

76. The Settlement Administrator shall be responsible for issuing and mailing the checks and any necessary tax reporting forms to Participating Class Members, PAGA Members, the Class Representative, Class Counsel, and Defendant.

77. Uncashed Settlement Checks. Participating Class Members who are sent Settlement Class Payments and PAGA Members who are sent PAGA Member Payments shall have one hundred eighty (180) calendar days (which can be extended for good cause shown) after mailing by the Settlement Administrator to cash their checks and will be so advised of such deadline. If such Participating Class Members and/or PAGA Members do not cash their checks within that period, those checks will become void and a stop payment will be placed on the uncashed checks and the Settlement Administrator shall transmit the funds represented by the uncashed settlement checks to the California Controller's Unclaimed Property Fund in the name of the Class Member or PAGA Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). Within 14 days before the date set by the Court for the Compliance Hearing, the Settlement Administrator

shall provide to Class Counsel and Defendant's Counsel a verification/declaration signed under penalty of perjury that it has mailed the checks for Settlement Class Payments and PAGA Member Payments and the amounts of any uncashed checks to be transmitted to the California Controller's Unclaimed Property Fund. Defendant will not be required to pay any interest on such amounts and no such amount shall be reverted to Defendant.

IX. STIPULATION TO FILE FIRST AMENDED COMPLAINT

78. Prior to seeking the Court's approval of this Settlement, the Parties agree to file a stipulation with the Court for leave of Court for Plaintiff to file an amended complaint (the "First Amended Complaint") adding the putative class claims alleged in the Class Action and a putative class claim for the failure to provide meal periods.

X. RELEASE BY PARTICIPATING CLASS MEMBERS

79. Release by Participating Class Members. As of the Settlement Effective Date and Defendant's fully funding of the Gross Settlement Amount and the employer's share of payroll taxes, Participating Class Members shall fully and finally release the Released Parties, as defined above, from the Released Class Claims. The "Released Class Claims" are all claims, obligations, demands, rights, causes of action, and liabilities against Defendant and Released Parties that have been asserted in the Complaint (as defined herein), or that could reasonably have been asserted in the Complaint (as defined herein), and any amendments thereto, based on the facts, matters, and/or allegations pled therein. Released Class Claims include, but is not limited to, claims under Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 221-224, 226, 226.3 226.7, 245-249, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197, 1198, 2802, and Business and Professions Code § 17200, *et seq.*, including, but not limited to, claims for failure to pay minimum wages, overtime wages, and other wages, including at the regular rate, failure to provide meal periods and/or pay meal period premiums, failure to authorize and permit rest periods and/or pay rest period premiums, failure to provide accurate or otherwise compliant wage statements, failure to maintain payroll records, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to reimburse necessary business expenses, and violations of California's Unfair Competition Law, including unfair and unlawful business practices, and includes all

such claims during the Class Period.

XI. RELEASE BY PAGA MEMBERS AND THE LWDA

80. As of the Settlement Effective Date and Defendant's fully funding of the Gross Settlement Amount and the employer's share of payroll taxes, the PAGA Members and the LWDA shall release the Released Parties from all claims, obligations, demands, rights, causes of action, and liabilities against Defendant and Released Parties, for PAGA civil penalties that have been asserted in the Complaint (as defined herein) and/or the PAGA letter to the LWDA, and any amendments thereto, or that could reasonably have been asserted in the Complaint (as defined herein), and the PAGA letter to the LWDA, and any amendments thereto, based on the facts, matters and/or allegations pled therein. Released PAGA Claims include, but is not limited to, claims for PAGA civil penalties for violations of Labor Code sections 201, 202, 203, 204, 210, 216, 225.5, 226, 226.3, 226.7, 245-249, 510, 512, 558, 1174, 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC wage orders, including, but not limited to, claims for failure to pay minimum wages, overtime wages, paid sick leave, and other wages, including at the regular rate, failure to provide meal periods and/or pay meal period premiums, failure to authorize and permit rest periods and/or pay rest period premiums, failure to provide accurate or otherwise compliant wage statements, failure to maintain payroll records, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide suitable seating when the nature of the work reasonably permits the use of seats and when employees are not engaged in the active duties of employment and the nature of the work requires standing, and includes all such claims during the PAGA Period.

XII. RELEASE BY CLASS REPRESENTATIVE

81. Settlement by Class Representative. As of the Settlement Effective Date and Defendant's fully funding of the Gross Settlement Amount and the employer's share of payroll taxes, in consideration of the mutual covenants and promises set forth herein and by operation of the Final Approval Order and Judgment, in the event the Court grants an Incentive Payment, the release agreed upon and made part of the settlement by the Class Representative (the "Class Representative General Release") shall include a general release of the Released Parties, as defined above, from all claims,

actions, causes of action, lawsuits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, bonuses, controversies, agreements, promises, claims, charges, complaints and demands whatsoever, whether in law or equity, known or unknown, which against the Released Parties, the Class Representative and her heirs, executors, administrators, successors, and assigns, may now have or hereafter later determine that they have or had upon, or by reason of, any cause or thing whatsoever including, but not limited to, claims arising under the Americans With Disabilities Act, the National Labor Relations Act, the Fair Labor Standards Act, the Equal Pay Act, the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, as amended, but not limited to, breach of fiduciary duty and equitable claims to be brought under § 1132(a)(3) (“ERISA”), the Worker Adjustment and Retraining Notification Act, as amended, Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, the Civil Rights Acts of 1866, 1871 and 1991, including Section 1981 of the Civil Rights Act, the Family and Medical Leave Act (to the extent permitted by law), the California Family Rights Act (“CFRA”), California’s PAGA, Cal. Bus. and Prof. Code § 17200 *et seq.* (“UCL”), the California Labor Code, and/or any other federal, state or local human rights, civil rights, wage-hour, pension or labor law, rule, statute, regulation, constitution or ordinance and/or public policy, contract or tort law, or any claim of retaliation under such laws, or any claim of breach of any contract (whether express, oral, written or implied from any source), or any claim of intentional or negligent infliction of emotional distress, tortious interference with contractual relations, wrongful or abusive or constructive discharge, defamation, prima facie tort, fraud, negligence, loss of consortium, malpractice, breach of duty of care, breach of fiduciary duty or any action similar thereto against the Released Parties, including any claim for attorneys’ fees, expenses or costs based upon any conduct up to and including the date of Final Approval; provided, however, that the Class Representative does not waive any right to file an administrative charge with the Equal Employment Opportunity Commission (“EEOC”) or the National Labor Relations Board (“NLRB”), subject to the condition that the Class Representative agrees not to seek, or in any way obtain or accept, any monetary award, recovery or settlement therefrom and agrees that she understands that such limitation does not in any way restrict her ability to file and pursue such charge consistent with the confidentiality obligations set forth in this Settlement Agreement; and

further provided, however, that the Class Representative does not waive any rights with respect to, or release the Released Parties from, any claims for California Workers' Compensation benefits; and further provided, however, that the Class Representative does not release any claim for unemployment compensation benefits; and further provided, however, that the Class Representative does not release any claim that cannot be released by private contract, or for breach of the terms of the Settlement Agreement between the Class Representative and Defendant. It is further agreed that:

- a. The Class Representative, for the purpose of implementing a full and complete release and discharge of the Released Parties, expressly acknowledges that this Class Representative General Release is intended to include in its effect, without limitations, all claims through the date of Final Approval, which the Class Representative does not know or suspect to exist in the Class Representative's favor at the time of execution hereof, and that this Class Representative General Release contemplates the extinguishment of any such claim or claims.
- b. The Class Representative, in connection with such waiver and relinquishment, hereby acknowledges that she or her attorneys may hereafter discover claims or facts in addition to, or different from, those which she now knows or believes to exist, but that the Class Representative expressly agrees to fully, finally and forever settle and release any and all claims, known or unknown, suspected or unsuspected, which exist or may exist on her behalf against the Released Parties at the time of Final Approval, including, but not limited to, any and all claims relating to or arising from the Class Representative's employment with Defendant. The Parties further acknowledge, understand and agree that this representation and commitment is essential to each Party and that this Settlement Agreement would not have been entered into were it not for this representation and commitment.
- c. The Class Representative shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and

benefits she may otherwise have had relating to the claims covered by the Class Representative General Release pursuant to Section 1542 of the California Civil Code, which provides as follows:

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

- d. The Class Representative covenants that she will not participate, except as to this Settlement, in or receive recovery or monies as a class member or representative action member in connection with any proceeding seeking relief of any kind, including penalties under PAGA, which arises during the Class Period and/or PAGA Period for any known and unknown claims.
- e. As of the Settlement Effective Date, in consideration of the mutual covenants and promises set forth herein and by operation of the Final Approval Order and Judgment, in the event the Court grants an Incentive Payment, the Class Representative agrees to not disparage or impugn the reputation of any of the Released Parties. Notwithstanding the foregoing, the Parties agree that the Class Representative will not be prohibited or restricted from providing information to or cooperating with any government agencies or any self-regulating organizations.
- f. Excluded Claims. Nothing in this Settlement Agreement or Release, including the Class Representative General Release, is intended to release or waive and does not release or waive any claims, actions, disputes, or settlements arising from or related to Plaintiff's separately filed civil action against Defendant, filed with the assistance of separate legal counsel, entitled *Kathryn Engles v. Premium Brands Opco, LLC, et al.*, Case No. 30-2023-01328105-CU-WT-CJC, in the Superior Court of the State of California for the County of Orange. That action, which is the

subject of a separate confidential settlement and general release agreement, alleges claims under the Fair Employment and Housing Act for retaliation, association discrimination, failure to prevent discrimination, hostile work environment, and other related tort claims. The terms, conditions, and settlement pertaining to that separate action are independent and distinct from the Action and Class Action, and are not covered under the releases, compensations, or any other provisions of this Settlement Agreement concerning the Action or Class Action settled herein.

XIII. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY APPROVAL AND BETWEEN PRELIMINARY AND FINAL APPROVAL.

82. The Parties shall promptly submit this Settlement Agreement to the Court together with a Motion for Preliminary Approval of Settlement and Certification of Settlement Class. The motion shall also seek an order:

- a. Preliminarily approving the Settlement;
- b. Approving as to form and content the proposed Notice of Settlement;
- c. Directing the mailing of the Notice of Settlement by first class mail to the Settlement Class Members and PAGA Members;
- d. Preliminarily certifying the settlement class for purposes of settlement and preliminarily appointing Named Plaintiff and Plaintiff's Counsel as representatives of the settlement class;
- e. Preliminarily approving settlement administration services to be provided by the Settlement Administrator;
- f. Preliminarily approving the Incentive Payment to Named Plaintiff as Class Representative;
- g. Preliminarily approving the application for payment of reasonable attorneys' fees

and litigation costs and expenses to Plaintiff's Counsel;

- h. Scheduling a Final Approval Hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable and adequate as to the Settlement Class Members and PAGA Members.

83. Plaintiff's Counsel shall provide the Court, at least 5 days prior to the Final Approval Hearing, a declaration by the Settlement Administrator of due diligence and proof of mailing of the Notice of Settlement required to be mailed to Class Members and PAGA Members by this Settlement Agreement, and of the delivery results of the Settlement Administrator's mailings including tracing and re-mailing efforts.

XIV. DUTIES OF THE PARTIES AFTER FINAL COURT APPROVAL

84. The Parties will submit a proposed Final Approval Order, which shall include findings and orders:

- a. Approving the settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing that its terms and provisions be carried out;
- b. Approving the Incentive Payment to the Named Plaintiff as Class Representative;
- c. Approving Class Counsel's application for an award of attorneys' fees and litigation costs and expenses, and the Settlement Administrator's fees;
- d. Ordering that the settlement payments be distributed to the Participating Class Members, the LWDA, and PAGA Members as set forth in the Agreement;
- e. Identifying the individuals who opted out of the non-PAGA portion of the Settlement;
- f. Releasing and extinguishing all Participating Class Members' Released Class Claims that arose during the Class Period and PAGA Members' Released PAGA Claims that arose during the PAGA Period, and the Class Representative General Release;
- g. Providing that the Court will retain jurisdiction to oversee administration and

enforcement of the terms of the Settlement and the Court's orders; and

- h. Directing Class Counsel to submit the Court's Final Approval Order and Judgment to the LWDA within 10 days of the date on which the Court enters its Final Approval Order and Judgment consistent with Labor Code § 2699(l)(3).

85. Following entry of the Court's Final Approval Order, the Parties will each act to assure its timely execution and the fulfillment of all its provisions, including but not limited to the following:

- a. Should an appeal be taken from the Final Approval Order, all Parties will support the approval order on appeal;
- b. Class Counsel and Defendant's Counsel will assist the Settlement Administrator as needed or requested in the process of identifying and locating Participating Class Members and PAGA Members entitled to payments from the Qualified Settlement Fund;
- c. Class Counsel and Defendant's Counsel will assist the Settlement Administrator as needed or requested in responding to late requests for payments;
- d. Class Counsel and Defendant's Counsel will cooperate with each other and assist the Settlement Administrator as needed;
- e. Class Counsel and the Settlement Administrator will certify to the Court completion of all payments required to be made by this Settlement Agreement.

XV. PRELIMINARY TIMELINE FOR COMPLETION OF SETTLEMENT

86. The preliminary schedule for notice, approval, and payment procedures carrying out this settlement is as follows. The schedule may be modified depending on whether and when the Court grants necessary approvals and orders notice to the class and sets further hearings. In the event of such modification, the Parties shall cooperate in order to complete the settlement procedures as expeditiously as reasonably practicable.

Within 28 days after the Date of Preliminary Approval	Defendant shall provide the Settlement Administrator only with the information set forth in Paragraph 61.
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Within 14 days after receipt of class data from Defendant	Settlement Administrator to complete updating any Class Member contact information and complete mailing by first class mail of Settlement Documents pursuant to Paragraph 64.
5 business days before mailing Settlement Documents	Settlement Administrator to provide the Parties with estimated Settlement Class Payments to each Class Member and PAGA Member Payments to each PAGA Member pursuant to Paragraph 64.
45 days after mailing Settlement Documents	Deadline for Class Members to opt-out of the non-PAGA portion of the settlement, object in writing, or submit Workweek and/or Pay Period disputes.
14 days before date by which Plaintiff is required to file Motion for Final Approval	Settlement Administrator to provide declaration to Class Counsel and Defense Counsel attesting to due diligence and compliance with its obligations under Settlement Agreement and Preliminary Approval Order pursuant to Paragraph 77.
1 business day prior to the Final Approval Hearing	Last day for Class Members to rescind objections or opt-outs.
Within 7 days of the Final Approval Order	Settlement Administrator to calculate and provide Defendant's counsel with the amount of the employer's share of payroll taxes.
Within 10 days of the Final Approval Order	Settlement Administrator to provide the Parties with a redacted list of all Participating Class Members and the re-calculated amounts due to each Participating Class Member. Settlement Administrator to also provide the same list in non-redacted format only to Defendant.
Within 60 days of the Final Approval Order	Defendant to fund the Gross Settlement Amount and the employer's share of payroll taxes.
The 63rd day after the entry of Judgment on the Final Approval Order, if no appeals are filed	Settlement Effective Date

Within 7 days of the Settlement Effective Date	Settlement Administrator to make the final calculation of Settlement Class Payments from the Net Settlement Amount and PAGA Member Payments to be distributed to the Participating Class Members and PAGA Members. Settlement Administrator to provide the Parties with a redacted report listing the Class Members with a unique identifier, the amount of Settlement Class Payment, any PAGA Member Payment, and number of Workweeks and Pay Periods. Settlement Administrator to provide the same report in non-redacted format only to Defendant.
Within 10 days after the Settlement Effective Date	Settlement Administrator to distribute and pay Settlement Class Payment checks to all Participating Class Members, pay the Class Representative her Incentive Payment, issue a check to the LWDA for the LWDA PAGA Amount, issues checks to the PAGA Members for their PAGA Member Payments, pay Class Counsel's Fees' Payment and Litigation Expenses Payment, and pay the settlement administration fees.
180 days after payment of first round settlement checks	Settlement Administrator to cancel all checks not cashed by the void date.
14 days before Compliance Hearing	Settlement Administrator shall prepare and submit to Class Counsel and Defense Counsel a declaration attesting to its disbursement of all payments required under this Agreement.
After Settlement Administrator submits final declaration of distributions and within fourteen (14) days of written request by Defendant	Named Plaintiff and Class Counsel to destroy and confirm the destruction of all confidential documents produced to them for settlement purposes.

XVI. VOIDING OR MODIFYING THE SETTLEMENT AGREEMENT

87. Defendant has the right to withdraw from the Settlement before Final Approval if: (a) the Settlement is construed in such a fashion that Defendant is required to pay more than the Gross Settlement Amount, with the exception of employer-side payroll taxes and as set forth in Paragraph 51(f), to resolve the class and PAGA claims; (b) the Court does not approve the Settlement; or (c) the Court does not order the release of claims of the Settlement Class Members and/or the PAGA Members agreed to by the Parties, or otherwise makes an order inconsistent with any of the materials terms of this

Settlement Agreement; or (d) Plaintiff or Plaintiff's counsel materially breaches the Parties' Settlement Agreement.

88. If for any reason the Settlement Effective Date does not occur, or if Defendant withdraws from the Settlement pursuant to Paragraph 87, this Settlement Agreement and any related Settlement Documents will be null and void, other than the confidentiality and non-disclosure provisions in Section XVII and the non-admission provisions in Paragraph 51.a, and any class action certified for settlement purposes will be vacated. In such an event, neither this Settlement Agreement, nor the settlement documents, nor the negotiations leading to the Settlement may be used as evidence for any purpose, and Defendant shall retain the right to challenge all claims and allegations in the action, to assert all applicable defenses, and to dispute the propriety of class or collective certification on all applicable grounds. If the Settlement is not initially approved by the Court following the filing of Plaintiff's Motion for Preliminary Approval, the parties shall meet and confer or attend mediation again in an effort to modify the Settlement in a manner that addresses the Court's concerns.

89. Other than as specified above, this Settlement Agreement may not be changed, altered, or modified, except in writing and signed by counsel for the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

XVII. CONFIDENTIALITY AND PUBLICITY

90. The names of Participating Class Members and their allocation amounts, except for Named Plaintiff, shall be kept strictly confidential by the Settlement Administrator, who will not release such information to Class Counsel, unless anonymized and with contact information redacted, and such information may only be filed with the Court under seal, if necessary. Any information received by Class Counsel in connection with this Settlement may be used for this action only, and may not be used for any purpose or in any other action or proceeding.

91. Named Plaintiff and Class Counsel agree not to disclose the terms of this settlement before the Motion for Preliminary Approval is filed or if required by legal process, except that Class Counsel may put publicly available information about the Settlement in any description of their

experience or the like in order to describe their experience to a court. Plaintiff and Class Counsel agree that they shall not, directly or indirectly, issue a press release, hold a press conference, publish information about the settlement on any website (other than used by the Settlement Administrator for claims administration purposes), or otherwise publicize the settlement. Plaintiff and Class Counsel agree not to respond to any press inquiries except to refer reports to the papers filed with the Court.

92. Destruction of Confidential Settlement Materials. Named Plaintiff and Class Counsel agree to destroy and confirm the destruction of all confidential documents produced to them for settlement purposes in this action after the Settlement Administrator submits the final declaration of distributions and within fourteen (14) days of written request by Defendant.

XVIII. PARTIES' AUTHORITY

93. The signatories hereby represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

XIX. MUTUAL FULL COOPERATION

94. The Parties agree to fully cooperate with each other to promote participation in Settlement and in seeking court approval of this Settlement Agreement, including but not limited to, working cooperatively to address any questions raised by the Court, executing documents or amending documents as required by the Court, and taking such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court or otherwise to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Plaintiff's Counsel shall, with the assistance and cooperation of Defendant and Defendant's counsel, take all necessary steps to secure the Court's preliminary and final approval of this Settlement Agreement.

XX. NOTICES

95. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested,

addressed as follows, or by e-mail to the email address(es) listed below:

To Plaintiff's Counsel:

James R. Hawkins, Christina M. Lucio and Mitchell J. Murray
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel: (949) 387-7200
Fax: (949) 387-6676
christina@jameshawkinsaplc.com

To Defendant's Counsel:

Carrie A. Gonell and David J. Rashe
MORGAN, LEWIS & BOCKIUS LLP
600 Anton Blvd., Suite 1800
Costa Mesa, CA 92626
Tel: 949.399.7000
Fax: 949.399.7001
carrie.gonell@morganlewis.com

If the identity of the persons to be notified for any Party changes, or their address changes, that Party shall notify all other Parties of said change in writing.

XXI. MISCELLANEOUS PROVISIONS

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

97. **Drafting.** The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms-length negotiations between the Parties. Neither party shall be considered the "drafter" of the Settlement Agreement for purposes of having terms construed against that party, and this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his, her or its counsel participated in the drafting of this Settlement Agreement.

98. **Extensions of Time.** If a party cannot reasonably comply with an obligation under this Settlement Agreement by the deadline set forth herein applicable to that obligation, that party may apply to the Court for a reasonable extension of time to fulfill that obligation. Consent to such a request for an

extension will not be unreasonably withheld by the other party. The parties agree to cooperate so that the matter will be resolved with appropriate dispatch and the settlement terms carried out without unnecessary delay.

99. **Governing Law.** The rights and obligations of the Parties hereunder shall be construed and enforced in accordance with, and shall be governed by, the laws of the State of California, without regard to principles of conflict of laws.

100. **No Impact on Benefit Plans.** Neither the Settlement nor any amounts paid under the Settlement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by the Released Parties. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under the Released Parties' sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any of the Released Parties' benefit plan, policy, or bonus program. The Released Parties retain the right to modify the language of the Released Parties' benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

101. **Integration.** This Settlement Agreement, along with attached exhibits, contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

102. **No Prior Assignments.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,

assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

103. **Class Member Signatories.** It is agreed that because the members of the Class are so numerous, it is impossible or impractical to have each member of the Class execute this Settlement Agreement. The Notice of Settlement attached hereto will advise all Class Members of the binding nature of the release and such shall have the same force and effect as if this Settlement Agreement were executed by each member of the Class.

XXII. COUNTERPARTS

104. This Settlement Agreement may be executed in counterparts with signatures transmitted by facsimile or as an electronic image of the original signature. When each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties. A facsimile signature shall have the same force and effect as the original signature.

[signatures on next page]

READ CAREFULLY BEFORE SIGNING

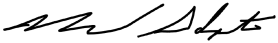
**PLAINTIFF KATHRYN JEANINE FAGAN
ENGLES**

Dated: _____, 2024

Kathryn Jeanine Fagan Engles

DEFENDANT PREMIUM BRANDS OPCO LLC

Dated: August 7, 2024

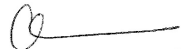


Michael Schept, Senior Vice President, Legal
On behalf of Defendant Premium Brands Opco LLC

APPROVED AS TO FORM

Dated: August 9, 2024

MORGAN, LEWIS & BOCKIUS LLP


By _____
Carrie A. Gonell
David J. Rashe
Attorneys for Defendant
Premium Brands Opco LLC

Dated: _____, 2024

JAMES HAWKINS APLC

By _____
James R. Hawkins
Christina M. Lucio
Mitchell J. Murray
Attorneys for Plaintiff
Kathryn Jeanine Fagan Engles, on behalf of all
others similarly situated

READ CAREFULLY BEFORE SIGNING

**PLAINTIFF KATHRYN JEANINE FAGAN
ENGLES**

Dated: 08/03/2024, 2024

Katie Engles

Katie Engles (Aug 3, 2024 12:36 PDT)

Kathryn Jeanine Fagan Engles

DEFENDANT PREMIUM BRANDS OPCO LLC

Dated: _____, 2024

Michael Schept, Senior Vice President, Legal
On behalf of Defendant Premium Brands Opco LLC

APPROVED AS TO FORM

Dated: _____, 2024

MORGAN, LEWIS & BOCKIUS LLP

By _____

Carrie A. Gonell
David J. Rashe
Attorneys for Defendant
Premium Brands Opco LLC

Dated: August 3, 2024

JAMES HAWKINS APLC

By _____

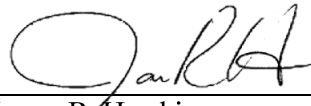

James R. Hawkins
Christina M. Lucio
Mitchell J. Murray
Attorneys for Plaintiff
Kathryn Jeanine Fagan Engles, on behalf of all
others similarly situated

Exhibit A

NOTICE OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT

Kathryn Jeanine Fagan Engles v. Premium Brands Opco LLC
Orange County Superior Court, Case No. 30-2023-01319973-CU-OE-CXC

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE EMPLOYED BY DEFENDANT PREMIUM BRANDS OPCO LLC (“Defendant”) AS A NON-EXEMPT, HOURLY EMPLOYEE IN THE STATE OF CALIFORNIA AT ANY TIME FROM JANUARY 1, 2021, THROUGH AND INCLUDING APRIL 30, 2024, A SETTLEMENT OF A CLASS AND PAGA REPRESENTATIVE ACTION LAWSUIT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a class action and California Labor Code Private Attorneys General Act representative action lawsuit entitled *Kathryn Jeanine Fagan Engles v. Premium Brands Opco LLC*, Case No. 30-2023-01319973-CU-OE-CXC (Orange County Superior Court) (the “Action”). The purpose of this Notice of Class and PAGA Representative Action Settlement (“Notice”) is to briefly describe the case, and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Action and will result in the entry of Judgment in the Action.

A hearing concerning the Settlement will be held before the Hon. Randall Sherman on [DATE], 2024 at X:XX x.m. in Courtroom CX105 of the Orange County Superior Court, located at 751 West Santa Ana Blvd., Santa Ana, California 92701, to determine whether the Settlement is fair, adequate, and reasonable.

AS A CLASS MEMBER AND/OR PAGA MEMBER, YOU ARE ELIGIBLE TO RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT UNDER THE SETTLEMENT AND WILL BE BOUND BY THE RELEASE OF CLAIMS DESCRIBED IN THIS NOTICE AND THE SETTLEMENT AGREEMENT FILED WITH THE COURT, UNLESS YOU TIMELY REQUEST TO BE EXCLUDED FROM THE SETTLEMENT.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	If you do nothing, you will receive a settlement payment and will give up your right to pursue a separate legal action against Defendants for the claims alleged in this Action, as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT	You have the option to pursue separate legal action against Defendant about the class claims in the Action, except as to the claim under the California Private Attorneys General Act (“PAGA”). If you choose to do so, you must exclude yourself, in writing, from the Settlement. As a result, you will not receive benefits under the Settlement as a Settlement Class Member; however, you may still receive a settlement payment if you are determined to be a PAGA Member under the Settlement.
OBJECT	You may submit written objections to the Settlement Administrator about why you do not like the Settlement. You may also appear at the Final Approval Hearing on [REDACTED], 2025, and make an objection at this time. Objecting is available only if you do not request to be excluded from the Settlement.
DISPUTE YOUR AMOUNT	The amount you are eligible to receive under the Settlement is based on how long you worked for Defendant as a Class Member during the Class Period and, if applicable, as a PAGA Member during the PAGA Period. The number of Workweeks and Pay Periods you have been credited is set forth in this notice. If you believe the number of Workweeks or Pay

	Periods is incorrect, you can dispute the number credited to you by following the procedures set forth below.
--	---

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following class (the “Class”):

Any person who worked for Defendant as a non-exempt, hourly employee in the State of California at any time from January 1, 2021, through and including April 30, 2024, and who does not timely opt-out of the Settlement Class (“Class Period”).

According to Defendant’s records, you are a member of the Class (“Class Member”).

The proposed Settlement also affects “PAGA Members,” which are defined under the Settlement as:

Any person who worked for Defendant as a non-exempt, hourly employee in the State of California at any time from February 12, 2022, through and including April 30, 2024 (“PAGA Period”).

What is this case about?

In the Action, Plaintiff Kathryn Jeanine Fagan Engles (“Plaintiff”) alleges on behalf of herself, the Class, and PAGA Members the following claims against Defendant: (1) Failure to Pay Minimum Wages; (2) Failure to Authorize and Permit Rest Periods; (3) Failure to Provide Meal Periods; (4) Failure to Timely Pay Wages During Employment; (5) Failure to Pay Wages Owed Upon Separation from Employment; (6) Failure to Reimburse Necessary Expenses; (7) Knowing and Intentional Failure to Comply with Itemized Wage Statement Provisions; (8) Failure To Maintain Accurate Payroll Records; (9) Violation of the California Business and Professions Code section 17200, *et seq.*; and (10) Recovery of Civil Penalties Under PAGA. In the Action, Plaintiff seeks alleged unpaid wages, penalties under the California Labor Code, civil penalties under PAGA, interest, attorneys’ fees, costs, and expenses.

Defendant denies all liability and maintains that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant also maintains that its conduct is and has been lawful at all times relevant and that Plaintiff’s claims do not have merit and do not meet the requirements for class certification or to proceed on a representative basis.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiff and Defendant (the “Parties”), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members.

The Court has preliminarily approved the settlement, but the Court has not ruled on the merits of Plaintiff’s claims or Defendant’s defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

James R. Hawkins, Christina M. Lucio and
Mitchell Murray
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel: (949) 387-7200
Email: christina@jameshawkinsaplc.com

Defense Counsel

Carrie A. Gonell and David J. Rashe
MORGAN, LEWIS & BOCKIUS LLP
600 Anton Blvd., Suite 1800
Costa Mesa, CA 92626
Tel: 949.399.7000
Fax: 949.399.7001
carrie.gonell@morganlewis.com

What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$1,500,000.00 (the “Gross Settlement Amount”) for: (a) settlement payments to Class Members; (b) the Court-approved Incentive Payment to Plaintiff; (c) the Court-approved attorneys’ fees and costs to Class Counsel; (d) the costs of administering the Settlement; (e) payment to the State of California Labor and Workforce Development Agency (“LWDA”) for alleged PAGA penalties; and (f) and settlement payments to PAGA Members.

Class Settlement Payments. After deduction from the Gross Settlement Amount for attorneys’ fees and costs, the Incentive Payment to Plaintiff, the PAGA Member Payment (as defined below), the payment to the LWDA, and the costs of administering the Settlement, there will be a Net Settlement Amount. From this Net Settlement Amount, each Class Member who does not opt out of the Settlement (“Participating Class Members”) will receive a settlement payment (Class Settlement Payment”).

The Net Settlement Amount will be divided among all Participating Class Members based on a proportional basis according to the Workweeks¹ worked during the period of January 1, 2021, through and including April 30, 2024, and who does not timely opt-out of the Settlement Class (“Class Period”).

According to records maintained by Defendant, the total number of Workweeks you worked in California during the Class Period is [REDACTED].

Based on that information, your estimated Class Settlement Payment is \$ [REDACTED]. If you believe the information about the number of Workweeks assigned to you is inaccurate, you may contact the Settlement Administrator and provide the Settlement Administrator with a copy of any documentation you want to include to support your dispute. Absent such documentary evidence, your dispute, if any, will be denied. You may not dispute the formula used to calculate the estimated amount of your Class Settlement Payment.

Settlement Administrator
Address
Telephone Number
Fax Number

PAGA Settlement Payments. A portion of the Gross Settlement Amount, called the “PAGA Member Payment,” will be set aside for all persons who worked for Defendant as a non-exempt, hourly employee in the State of California at any time from February 12, 2022, through and including April 30, 2024 (“PAGA Members”). The PAGA Member Payment will be \$25,000.00, from which each PAGA Member will receive a pro rata share of the PAGA Member Payment based on the number of Pay Periods² worked between February 12, 2022, through and including April 30, 2024 (“PAGA Period”), regardless of whether he or she opts out of the non-PAGA portion of the Settlement.

Settlement Payments Generally. If a settlement check remains uncashed after 180 days from issuance, the check will become void and a stop payment will be placed on the uncashed check. These payments will then be sent to the Legal Aid Association of California, a non-profit organization. In such event, you will remain bound by the terms of the Settlement and all Court orders.

For tax reporting purposes, the Class Settlement Payment will be allocated as follows: 75% allocation for wages to be reported on IRS Form W-2; and 25% allocation for penalties. All PAGA Member Payments

¹ “Workweeks” means any week in which a Class Member worked at least one day during the Class Period based on Defendant’s records.

² “Pay Period” means any biweekly pay period in which a PAGA Member worked at least one day during the PAGA Period based on Defendant’s records.

will be allocated entirely to civil penalties. The Settlement Administrator shall provide all required tax forms.

None of the Parties or attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member. You should consult with your own tax advisors concerning the tax consequences of the Settlement and any payment you may receive under the Settlement.

Class Counsel Attorneys' Fees and Costs, Class Representative Incentive Payment, Settlement Administration Costs and Payment to the California LWDA. Class Counsel will ask the Court to award attorneys' fees up to \$500,000.00 (1/3 of the Gross Settlement Amount), plus reimbursement of actual litigation costs and expenses incurred in the Action not to exceed \$ [REDACTED]. In addition, Class Counsel will ask the Court to authorize an Incentive Payment of up to \$10,000.00 to Plaintiff for her efforts in prosecuting the case on behalf of the Class and \$ [REDACTED] to the Settlement Administrator for the cost of administering the Settlement. A payment in the amount of \$75,000.00 will also be made to the LWDA for the portion of the total amount of the Settlement allocated for alleged PAGA penalties.

What claims are being released by the proposed Settlement?

Upon the Settlement becoming final and distribution of the Net Settlement Amount, Plaintiff and other Participating Class Members shall release and discharge the "Released Parties"³ from all claims, obligations, demands, rights, causes of action, and liabilities against Defendant and Released Parties that have been asserted in the First Amended Complaint, or that could reasonably have been asserted in the First Amended Complaint, and any amendments thereto, based on the facts, matters, and/or allegations pled therein. Released Class Claims include, but is not limited to, claims under Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 245-249, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197, 1198, 2802, and Business and Professions Code § 17200, *et seq.*, including, but not limited to, claims for failure to pay minimum wages, overtime wages, and other wages, including at the regular rate, failure to provide meal periods and/or pay meal period premiums, failure to authorize and permit rest periods and/or pay rest period premiums, failure to provide accurate or otherwise compliant wage statements, failure to maintain payroll records, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to reimburse necessary business expenses, and violations of California's Unfair Competition Law, including unfair and unlawful business practices, and includes all such claims during the Class Period (the "Released Class Claims"). All Participating Class Members shall be bound by the release of the Released Class Claims that arose during the Class Period, unless they formally opt out. Final Approval of the Settlement effectuates this release and extinguishes the Released Class Claims.

The PAGA Members and the LWDA shall be bound by a release as to all claims, obligations, demands, rights, causes of action, and liabilities against Defendant and Released Parties, for PAGA civil penalties that have been asserted in the Complaint, First Amended Complaint and/or the PAGA letter to the LWDA, and any amendments thereto, or that could reasonably have been asserted in the Complaint, First Amended Complaint, the PAGA letter to the LWDA, and any amendments thereto, based on the facts, matters and/or allegations pled therein. Released PAGA Claims include, but is not limited to, claims for PAGA civil penalties for violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 245-249, 510, 512, 512, 558, 1174, 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC wage orders, including, but not limited to, claims for failure to pay minimum wages, overtime wages, paid sick leave, and other wages, including at the regular rate, failure to provide meal periods and/or pay meal period premiums, failure to authorize and permit rest periods and/or pay rest period premiums, failure to provide accurate

³ "Released Parties" means Defendant and its predecessors, successors and assigns, its current and former direct and indirect parents, affiliates, subsidiaries, divisions, insurers, partnerships, and related business entities, past and present, as well as their current and former officers, directors, shareholders, employees, agents, representatives and employee benefit programs (including the trustees, administrators, fiduciaries and insurers of such programs).

or otherwise compliant wage statements, failure to maintain payroll records, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide suitable seating when the nature of the work reasonably permits the use of seats and when employees are not engaged in the active duties of employment and the nature of the work requires standing, and includes all such claims during the PAGA Period (the “Released PAGA Claims”). The PAGA Members shall be bound by the release of the Released PAGA Claims even if they have formally opted out of being a Settlement Class Member. Final Approval of the Settlement effectuates this release by PAGA Members and the LWDA.

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive a Class Settlement Payment; or (B) exclude yourself from the Settlement (where you will not receive a Class Settlement Payment, but will still receive your PAGA Member Payment if you are entitled to such a payment). If you choose option (A), you may also object to the Settlement, as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive a Class Settlement Payment under the Settlement, you do not need to take any action. By remaining in the Class and receiving settlement monies, you consent to the release of the Released Class Claims as described above. You will also receive a PAGA Member Payment if you are determined to be a PAGA Member under the Settlement and will be bound by the release of the Released PAGA Claims.

OPTION B. If You Want To Be Excluded From the Class Settlement. If you do not want to be part of the Class Settlement, you must submit a written request to be excluded from the Settlement (“Request for Exclusion”) to the Settlement Administrator at **Kathryn Jeanine Fagan Engles v. Premium Brands Opco LLC Settlement**, P.O. Box _____, [City], [State] [Zip], postmarked on or before **[Response Deadline]**. In order to be valid, your Request for Exclusion must: (1) state your full name, and the last four digits of your Social Security Number; (2) contain a clear statement that you are requesting to opt out of, or be excluded from, the Settlement in **Kathryn Jeanine Fagan Engles v. Premium Brands Opco LLC**; and (3) be signed by you. If you do not submit a timely and valid Request for Exclusion, you will be deemed a Participating Class Member, you will receive a Class Settlement Payment, and you will be bound by the release of Released Class Claims described above and all other terms of the Settlement. If you submit a valid and timely Request for Exclusion, you: will not be able to object to the Settlement; will not receive benefits under the Settlement as a Class Member; and will have the option to pursue separate legal action against Defendant about the claims in the Action, except as to the claim under PAGA. Whether or not you submit a Request for Exclusion, you will still receive a PAGA Member Payment if you are determined to be a PAGA Member under the Settlement and will be bound by the release of the Released PAGA Claims.

Objecting to the Settlement: You can ask the Court to deny approval of the Settlement by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (**Kathryn Jeanine Fagan Engles v. Premium Brands Opco LLC**, No. 30-2023-01319973-CU-OE-CXC), (b) be filed with the Court and served on the Parties on or before **[Response Deadline]**. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Approval Hearing set for **[DATE]** at **X:XX x.m.** in Courtroom CX105 of the Orange County Superior Court, located at 751 West Santa Ana Blvd., Santa

Ana, California 92701, and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

Even if you submit an objection, you will be bound by the terms of the Settlement, including the Release of Claims as set forth above, unless the Settlement is not finally approved by the Court.

Disputing Your Workweeks and/or Pay Periods

As mentioned above, if you dispute the accuracy of Defendant's records as to the number of Workweeks and/or Pay Periods you worked during the Class Period and/or PAGA Period, you must contact the Settlement Administrator and provide any documentation you have supporting such dispute by **[Response Deadline]**. All disputes regarding your Workweeks and/or Pay Periods worked will be reviewed by the Parties and the Parties will attempt to agree to a resolution of the dispute. If the dispute is unable to be resolved by the Parties, Defendant will make the final decision on the dispute and the decision will be binding on the Class Member and/or PAGA Member and no additional rights of appeal shall exist.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's request for attorneys' fees and costs, the Incentive Payment to Plaintiff, the settlement administration costs, and the payment to the LWDA for PAGA penalties on **[DATE]**, 2024 at **X:XX x.m.** in Courtroom CX105 of the Orange County Superior Court, located at 751 West Santa Ana Blvd., Santa Ana, California 92701. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive a Settlement Payment but may attend if you wish.

How can I get additional information?

This Notice of Class and PAGA Representative Action Settlement is only a summary of the case and the Settlement. For a more detailed statement of the matters involved in the case and the Settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members and/or PAGA Members regarding this Notice and/or the Settlement should be directed to the Settlement Administrator at **1-XXX-XXX-XXXX** or Class Counsel.

PLEASE DO NOT CALL OR WRITE TO THE COURT WITH QUESTIONS ABOUT THIS NOTICE.

BY ORDER OF THE ORANGE COUNTY SUPERIOR COURT

Exhibit 2

From: [DIR PAGA Unit](#)
To: [Mitchell J Murray](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Tuesday, October 29, 2024 1:54:35 PM

10/29/2024 01:54:15 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm