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INNOVATION GROUP INCORPORATED

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MONTEREY

VERONICA ESPARZA RODRIGUEZ,
individually, and on behalf of all others
similarly situated,

Plaintiff,

vs.

WELLNESS INNOVATION GROUP
INCORPORATED, a California corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: 23CV001695

CLASS ACTION

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

Complaint filed:	May 25, 2023
FAC filed:	January 11, 2024
Trial date:	Not set

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

This Joint Stipulation of Class Action and PAGA Settlement (“Joint Stipulation of Settlement” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiff VERONICA ESPARZA RODRIGUEZ, individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class Representative”), and Defendant WELLNESS INNOVATION GROUP INCORPORATED (“Defendant”). Plaintiff and Defendant are sometimes referred to individually as a “Party” or collectively referred to herein as “the Parties.” THE PARTIES STIPULATE AND AGREE as follows:

DEFINITIONS

1. For purposes of this Settlement, “Complaint” refers to the First Amended Complaint, filed on January 11, 2024.

2. “Action” means and refers to *Veronica Esparza Rodriguez v. Wellness Innovation Group Incorporated*, Case No. 23CV001695, which is currently pending in the Monterey County Superior Court of the State of California.

3. For purposes of this Settlement, the “Class Period” is May 25, 2019 to November 29, 2023.

4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All current and former non-exempt employees who are or were employed by Defendant in the State of California during the Class Period (the “Settlement Class” or “Settlement Class Members”).

5. For purposes of this Settlement, “Class Counsel” means Moon Law Group, PC.

6. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a Class Member worked at Defendant’s locations in California during the Class Period.

7. For purposes of this Settlement, “Response Deadline” means the date sixty (60) days after the Settlement Administrator initially mails the Notice to Settlement Class Members (“Notice”) and the last date on which Settlement Class Members may submit a request for exclusion or written objection to the Settlement. In the case of a re-mailed Notice, the Response Deadline will be the later of 60 calendar days after initial mailing or 14 calendar days from re-mailing. The Response Deadline may be extended only as expressly described herein.

8. For purposes of the Settlement, “Defendant’s Counsel” means Payne & Fears, LLP.

9. For purposes of this Settlement, “PAGA” means the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*).

10. For purposes of this Settlement, “PAGA Allocation” means the portion of the Gross Settlement Amount that the Parties have agreed to allocate to resolution of the Released PAGA Claims. The Parties have agreed that the PAGA Allocation will be \$10,000.00 from the Gross Settlement Amount. Pursuant to PAGA, Seventy Five Percent (75%), or \$7,500.00, of the PAGA Allocation will be paid to the Labor and Workforce Development Agency (“LWDA”) (“PAGA Penalty Payment”), and Twenty Five Percent (25%), or \$2,500.00, of the PAGA Allocation will be included in the Net Settlement Amount for aggrieved employees (“PAGA Settlement Payment”).

11. For purposes of this Settlement, “PAGA Period” means the period between May 20, 2022 through November 29, 2023.

12. For purposes of this Settlement, “Aggrieved Employees” means all non-exempt employees of Defendant who worked for Defendant in California during the PAGA Period. It is stipulated by the Parties that, for purposes of this Settlement, all Aggrieved Employees are “aggrieved employees” as defined pursuant to PAGA.

13. For purposes of this Settlement, “PAGA Pay Periods” means the number of pay periods each Aggrieved Employee worked during the PAGA Period.

14. For purposes of this Settlement, “PAGA Representative” means Plaintiff.

15. For purposes of this Settlement, “Released PAGA Claims” means all claims for penalties and any other available relief pursuant to PAGA, to the extent asserted in Plaintiff’s administrative exhaustion letters submitted to the LWDA in this Action, arising during the PAGA Period.

16. For purposes of this Settlement, “Settlement Payments” means all of the payments to Settlement Class Members (the “Settlement Class Payments”) and all of the payments to Aggrieved Employees (the “PAGA Settlement Payment”).

STIPULATED BACKGROUND

17. On May 25, 2023, Plaintiff, by and through her counsel Moon Law Group, PC, filed a

putative Class Action alleging the following labelled causes of action: (1) Failure to Pay Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and (8) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, *et seq.*]. In this Complaint, Plaintiff sought to represent all persons that worked for Defendant in California as hourly-paid, non-exempt employees at any time during the period beginning four years before the filing of the initial complaint and ending when Notice to the Class is sent.

18. Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*] (“PAGA”). On January 11, 2024, Plaintiff filed a First Amended Complaint adding a cause of action for Civil Penalties Under PAGA [Cal. Lab. Code § 2699, *et seq.*].

19. Solely for purposes of settling this case, the Parties and their respective counsel stipulate and agree that the requisites for establishing class certification with respect to the Class Members have been met and are met. More specifically, for settlement purposes only, the Parties stipulate and agree that:

- (a) The Class is ascertainable and so numerous as to make it impracticable to join all Class Members.
- (b) There are common questions of law and fact including, but not limited to, the following:
 - 1) Whether or not Defendant paid proper wages to the Class;
 - 2) Whether or not Defendant provided meal periods to the Class;
 - 3) Whether or not Defendant provided rest periods to the Class;
 - 4) Whether or not Defendant paid compensation timely upon separation of employment to former Class Members;

- 5) Whether or not Defendant paid compensation timely throughout Class Members' employment;
 - 6) Whether or not Defendant provided accurate itemized statements to the Class;
 - 7) Whether or not Defendant suffered the Class to purchase necessary business expenses without reimbursement;
 - 8) Whether or not waiting-time penalties are available to the Class for violation of California Labor Code § 203;
 - 9) Whether or not Defendant maintained requisite records;
 - 10) Whether or not Defendant paid proper meal period pay or rest period pay to the Class; and,
 - 11) Whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208.
- (c) Plaintiff's claims are typical of the claims of the Class Members.
 - (d) Plaintiff and Class Counsel will fairly and adequately protect the interests of the Class.
 - (e) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.
 - (f) With respect to the Class, questions of law and fact common to the members of the Class predominate over any questions affecting any individual member in such Class, and that a class action is superior to other available means for the fair and efficient adjudication of the controversy.

20. Should, for whatever reason, the Settlement not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of whether the Class Members and/or the Class Claims should

1 be certified in a non-Settlement context in this Action or in any other lawsuit. Defendant expressly
2 reserves its right to oppose claims or class certification in this or any other action should this Settlement
3 not become effective.

4 21. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the
5 claims alleged in the Complaint, and Defendant further denies that, for any purpose other than settling
6 this lawsuit, the action is appropriate for class or representative treatment. With respect to Plaintiff's
7 claims, Defendant contends, among other things, that Plaintiff and the Class Members have been paid
8 proper wages, have been provided meal periods or they have been made available as required, have been
9 provided rest periods or they have been authorized and permitted as required, have been paid timely
10 wages upon separation of employment, have been provided with accurate itemized wage statements, and
11 have been reimbursed for reasonable and necessary business expenses as required. Defendant contends,
12 among other things, that it has complied at all times with the California Labor Code and the applicable
13 Wage Orders of the Industrial Welfare Commission. Furthermore, with respect to all claims, Defendant
14 contends that it has complied at all times with the California Business and Professions Code.

15 22. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge
16 all disputes and claims arising from or related to the Complaint.

17 23. Class Counsel has conducted a thorough investigation into the facts of this Action,
18 including an extensive review of relevant documents, and has diligently pursued an investigation of the
19 claims of the Class against Defendant. Based on its own independent investigation and evaluation, Class
20 Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set
21 forth in this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of
22 the Class in light of all known facts and circumstances, including the risk of significant delay, the risk the
23 Class will not be certified by the Court, defenses asserted by Defendant, and numerous potential appellate
24 issues. Defendant and Defendant's Counsel also agree that the Settlement is fair and in the best interest
25 of the Class.

26 24. The Parties agree to cooperate and take all steps necessary and appropriate to obtain
27 preliminary and final approval of this Settlement.
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1 25. The Parties agree to stay all proceedings in the Action, except such proceedings necessary
2 to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the
3 Court.

4 **PRIMARY TERMS OF SETTLEMENT**

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

7 (a) It is agreed by and among the Class and Defendant that this Action and any
8 claims, damages, or causes of action arising out of the disputes which are the
9 subject of this Action, be settled and compromised as between the Class and
10 Defendant, subject to the terms and conditions set forth in this Settlement and the
11 approval of the Court.

12 (b) Effective Date: The terms of settlement embodied in this Settlement shall
13 become effective when all of the following events have occurred: (i) this Joint
14 Stipulation of Settlement has been executed by all Parties and their respective
15 counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) the
16 Notice has been given to the Class, providing them with an opportunity to dispute
17 information contained in the Notice, to opt out of the Settlement, or to object to
18 the Settlement; (iv) the Court has held a final approval hearing and entered a final
19 order and judgment certifying the Class and approving this Settlement; and (v)
20 the later of the following events: (a) five (5) calendar days have passed since final
21 approval is granted if there are no objections to the settlement; (b) sixty-five (65)
22 days following notice of entry of the Court's final order approving the Settlement
23 if there are any objections by any Class Member; (c) or if any appeal, writ or other
24 appellate proceeding opposing this Settlement has been filed within sixty-five
25 (65) days following notice of entry of the Court's final order approving the
26 Settlement, then twenty (20) days after when any appeal, writ or other appellate
27 proceeding opposing the Settlement has been resolved finally and conclusively
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1 with no right to pursue further remedies or relief.

2 (c) Gross Settlement Amount: Defendant's maximum total payment under the
3 Settlement, including all attorney's fees and costs, the Service Payment to the
4 named Plaintiff, the costs of settlement administration, the PAGA Allocation, and
5 any other payments provided by this Settlement, is \$250,000.00 ("Gross
6 Settlement Amount"), subject to the Escalator Clause and except that, to the
7 extent that any portions of the Class Members' Settlement Payments constitute
8 wages, Defendant will be separately responsible for any employer payroll taxes
9 required by law, including the employer FICA, FUTA, and SDI contributions.

10 (d) Escalator Clause: Defendant represents that as of November 29, 2023, the
11 number of workweeks worked by Settlement Class Members is approximately
12 25,000. Should the number of workweeks increase by more than 10%, the payout
13 will increase proportionately over the 10% grace percentage (i.e. meaning if the
14 workweeks increase by 11%, the settlement amount will increase by 1%).
15 However, if this escalator clause is triggered, Defendant may alternatively choose
16 to end the Class Period on the last date before which the increase would otherwise
17 trigger this escalator clause. The Gross Settlement Amount will not be reduced
18 for any reason.

19 (e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will
20 revert to Defendant.

21 (f) No Claims Required: Class Members will not be required to submit a claim to
22 receive their Settlement payment.

23 (g) Net Settlement Amount: The Net Settlement Amount shall be calculated by
24 deducting from the Gross Settlement Amount (\$250,000.00) the following sums,
25 subject to approval by the Court: (1) attorney's fees (not to exceed one-third of
26 the Gross Settlement Amount, or \$83,333.33); (2) reasonable litigation costs; (3)
27 the Service Payment (not to exceed \$7,500.00 to the named Plaintiff); (4) the
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1 PAGA Penalty Payment in the amount of \$10,000.00 (which is 75% of the PAGA
2 Allocation); and (5) costs of settlement administration. Settlement Payments to
3 the Class Members will be calculated by the Settlement Administrator and paid
4 out of the Net Settlement Amount as set forth below.

5 (h) Payroll Taxes and Required Withholdings: To the extent that any portions of the
6 Settlement Class Members' Settlement Payments constitute wages, Defendant
7 will be separately responsible for any employer payroll taxes required by law,
8 including the employer FICA, FUTA, and SDI contributions. Except for any
9 employer payroll taxes and subject to the Escalator Clause, it is understood and
10 agreed that Defendant's maximum total liability under this Settlement shall not
11 exceed the Gross Settlement Amount. The Settlement Administrator will
12 calculate and submit Defendant's employer share of payroll taxes after advising
13 Defendant of the total amount owed, in aggregate, as employer-side payroll taxes
14 and receiving a lump sum payment from Defendant in that amount when the
15 Gross Settlement Amount is delivered to the Settlement Administrator.

16 (i) Settlement Class Payments (Excludes PAGA Payments): Settlement Class
17 Payments will be paid out of the Net Settlement Amount. Each Settlement Class
18 Member will be paid a pro-rata share of the Net Settlement Amount (less the
19 PAGA Settlement Payments to the LWDA), as calculated by the Settlement
20 Administrator. The pro-rata share will be determined by comparing the
21 individual Settlement Class Member's Covered Workweeks employed during the
22 Class Period in California to the total Covered Workweeks of all the Settlement
23 Class Members during the Class Period as follows: [Workweeks worked by a
24 Settlement Class Member] ÷ [Sum of all Covered Workweeks worked by all
25 Settlement Class Members] × [Net Settlement Amount – all PAGA Settlement
26 Payments to the LWDA] = individual Settlement Payment for a Settlement Class
27 Member. Settlement Class Payments in the appropriate amounts will be
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distributed by the Settlement Administrator by mail to the Settlement Class Members. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below.

(j) PAGA Payments: PAGA Settlement Payments will be paid out of the Net Settlement Amount. Each Aggrieved Employee will be paid a pro-rata share of the Aggrieved Employees' PAGA Settlement Payment, as calculated by the Settlement Administrator minus PAGA Settlement Payments to the LWDA. Class Members will not be permitted to exclude themselves from this portion of the Settlement. The pro-rata share will be determined by comparing the individual Aggrieved Employee's PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the Aggrieved Employees during the PAGA Period as follows:
$$\frac{[\text{PAGA Pay Periods worked by an Aggrieved Employee}]}{[\text{Sum of all PAGA Pay Periods worked by all Aggrieved Employees}]} \times [\text{PAGA Settlement Payment}] = \text{individual Aggrieved Employee's portion of the PAGA Settlement Payment.}$$
 PAGA Settlement Payments to Aggrieved Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Aggrieved Employees at the same time Settlement Class Payments issue to the Settlement Class. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below. The LWDA's PAGA Penalty Payment will issue to the LWDA at the same time Settlement Payments issue to the Settlement Class.

(k) Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments will be allocated as follows: 10% to wages and 90% to penalties and interest. The PAGA Settlement Payment shares to Aggrieved Employees will be entirely allocated to penalties. Appropriate federal, state and local withholding taxes will be taken out of the wage allocations, and each Class Member will receive an IRS Form W-2 with respect to this portion of the

1 Settlement Payment. The employer's share of payroll taxes and other required
2 withholdings will be paid as set forth above, including but not limited to the
3 Defendant's FICA and FUTA contributions, based on the payment of claims to
4 the Class Members. IRS Forms 1099 will be issued to each Class Member
5 reflecting the payments for penalties and interest. Class Members are responsible
6 to pay appropriate taxes due on the Settlement Payments they receive. To the
7 extent required by law, IRS Forms 1099 and W-2 will be issued to each Class
8 Member with respect to such payments.

9 (l) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement
10 Payments to individual Class Members shall be deemed to be paid to such Class
11 Member solely in the year in which such payments actually are received by the
12 Class Member. It is expressly understood and agreed that the receipt of such
13 Settlement Payments will not entitle any Class Member to additional
14 compensation or benefits under any company bonus, contest or other
15 compensation or benefit plan or agreement in place during the period covered by
16 the Settlement up to and including the date the Settlement becomes effective, nor
17 will it entitle any Class Member to any increased retirement, 401(k) benefits or
18 matching benefits or deferred compensation benefits. It is the intent that the
19 Settlement Payments provided for in this Settlement are the sole payments to be
20 made by Defendant to the Class Members, and that the Class Members are not
21 entitled to any new or additional compensation or benefits as a result of having
22 received the Settlement Payments (notwithstanding any contrary language or
23 agreement in any benefit or compensation plan document that might have been
24 in effect during the period covered by this Settlement).

25 (m) Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not
26 object to Class Counsel's application for attorney's fees not to exceed thirty-three
27 and one third percent (33.33%) of the Gross Settlement Amount and
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1 reimbursement of litigation costs and expenses.

- 2 (n) Service Payment: Subject to Court approval, and in exchange for a general
3 release, Defendant will not object to Class Counsel's application for an additional
4 payment of up to \$7,500.00 to Plaintiff for service as Class Representative
5 ("Service Payment"). It is understood that the Service Payment is in addition to
6 the individual Settlement Payment to which Plaintiff is entitled to along with the
7 other Class Members. In exchange, Plaintiff has agreed to release all claims,
8 whether known or unknown, under federal law or state law against the
9 Releasees, to the extent permitted by law, through the Class Period
10 ("Plaintiff's Released Claims"). Plaintiff understands that this release
11 includes unknown claims and that they are, as a result, waiving all rights and
12 benefits afforded by Section 1542 of the California Civil Code, which
13 provides:

14
15 **A general release does not extend to claims that the creditor**
16 **or releasing party does not know or suspect to exist in his or**
17 **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.

18 Specifically excluded from Plaintiff's Released Claims are any claims for
19 workers' compensation benefits. The Service Payment will issue at the same time
20 all Settlement Payments are mailed to the Settlement Class.

- 21 (o) Defendant or the Settlement Administrator will issue an IRS Form 1099 for the
22 Service Payment to Plaintiff. Plaintiff will be individually responsible for
23 correctly characterizing this compensation on personal income tax returns for tax
24 purposes and for paying any taxes on the amounts received. Should the Court
25 approve a Service Payment in an amount less than that set forth above, the
26 difference between the lesser amount(s) approved by the Court and the Service
27 Payment amount(s) set forth above shall be added to the Net Settlement Amount.

1 Plaintiff agrees not to opt out or object to the Service Payment as the Class
2 Representative.

3 (p) Settlement Administrator: The Settlement Administrator is Phoenix, the neutral
4 entity the Parties have agreed to appoint to administer the Settlement. The costs
5 of the Settlement Administrator for work done shall be paid regardless of the
6 outcome of this Settlement.

7 (q) Funding of Settlement Account: No later than thirty (30) days after the Effective
8 Date, Defendant shall fully fund the Gross Settlement Amount and the amounts
9 necessary to fully pay their share of payroll taxes by transmitting funds to the
10 Settlement Administrator.

11 (r) Mailing of Settlement Payments: The Settlement Administrator shall cause the
12 Settlement Payments to be mailed to the Class Members within 14 calendar days
13 of the receipt of funding.

14 (s) Notice of Settlement: Each Class Member will be mailed a notice setting forth
15 the material terms of the proposed Settlement, along with instructions about how
16 to object or request exclusion from the proposed class action Settlement
17 (“Notice”). For each Class Member, there will be pre-printed information on the
18 mailed Notice, based on Defendant’s records, stating the Class Member’s
19 Covered Workweeks during the Class Period and the estimated total Settlement
20 Payment under the Settlement, including the Settlement Class Payment and the
21 PAGA Settlement Payment that will be distributed irrespective of any exclusion
22 request. The pre-printed information based on Defendant’s records shall be
23 presumed to be correct. A Class Member may dispute the pre-printed information
24 on the Notice as to his or her Covered Workweeks during the Class Period. Class
25 Members must submit any dispute regarding the information on the Notice as to
26 his or her Covered Workweeks within the Response Deadline. Unless a disputing
27 Class Member submits documentary evidence in support of his or her dispute, the
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1 records of Defendant will be determinative.

2 (t) Settlement Notice Language: The Notice will issue in English and Spanish.

3 (u) Class Members Cannot Exclude Themselves from the Released PAGA Claims:

4 Class Members submitting a Request for Exclusion will nevertheless receive their
5 pro-rata share of the PAGA Settlement Payment. If the Court approves the
6 compromise of the PAGA Claim, all Class Members are bound by the Court's
7 resolution of that Claim. Plaintiff shall serve a notice of settlement on the
8 California Labor and Workforce Development Agency at or before the time
9 Plaintiff files the motion for preliminary approval.

10 (v) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of
11 Defendant's records used to calculate Covered Workweeks, and the Parties'
12 counsel cannot resolve the dispute informally, the matter will be referred to the
13 Settlement Administrator. The Administrator shall review the challenge and
14 reach a conclusion. The Administrator shall promptly provide copies of all
15 challenges to calculation of Workweeks and/or Pay Periods to Defendant's
16 Counsel and Class Counsel and the Administrator's determination of the
17 challenges. Class Counsel and Defendant's Counsel shall submit the
18 Administrator's decision to the Court for the Court's review. The Court's
19 decision shall be final and not appealable or otherwise susceptible to challenge.

20 (w) Right of Class Member to Request Exclusion from the Settlement: Any Class
21 Member may request to be excluded from the Class by mailing a "Request for
22 Exclusion" from the Settlement within the Response Deadline, stating, their
23 intent to be excluded from this settlement. Any Request for Exclusion must
24 include the name, address, telephone number, last four digits of the Class
25 Member's Social Security Number, and the signature of the Class Member
26 requesting exclusion. Any such request must be made in accordance with the
27 terms of the Notice, and the Notice will advise Class Members of these
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1 requirements. Any Class Member who timely requests exclusion in compliance
2 with these requirements (i) shall not have any rights under this Settlement other
3 than a right to receive a pro-rata share of the portion of the PAGA payment
4 allocated to the Class Members if the Class Member is also an Aggrieved
5 Employee; (ii) shall not be entitled to receive any Settlement Payments under this
6 Settlement other than as stated in Paragraph 28(j) (“PAGA Payments”); and (iii)
7 shall not be bound by this Settlement or the Court’s Order and Final Judgment
8 other than as it applies to the PAGA Claim.

9 (x) Right of Settlement Class Member to Object to The Settlement: Any Class
10 Member may object to the Settlement. To object, the Class Member may (1)
11 appear at the Final Approval Hearing, remotely or in person, to explain any
12 objection, (2) have an attorney object for the Class Member, or (3) submit a
13 simple written brief or statement of objection to the Settlement Administrator. If
14 any Class Member chooses to submit a written objection, the written objection
15 should contain sufficient information to confirm the identity of the objector and
16 the basis of the objection, including (1) the full name of the Settlement Class
17 Member; (2) the signature of the Settlement Class Member; (3) the grounds for
18 the objection; and (4) be postmarked within the Response Deadline to permit
19 adequate time for processing and review by the Parties of the written statement
20 or objection. Class Counsel shall ensure that any written objections are
21 transmitted to the Court for the Court’s review (either by Class Counsel or as an
22 attachment to declaration from the Settlement Administrator). Regardless of the
23 form, an objection alone will not satisfy the requirement that a Settlement Class
24 Member must either make a timely complaint in intervention before final
25 judgment or by file a motion to set aside and vacate the class judgment under
26 Code of Civil Procedure § 663 to have standing to appeal entry of judgment
27 approving this Settlement, as is required under the California Supreme Court
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1 decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018). A Class
2 Member who does not object prior to or at the Final Approval Hearing, will be
3 deemed to have waived any objections and will be foreclosed from making any
4 objections (whether at the Final Approval Hearing, by appeal, or otherwise) to
5 the Settlement. If the objecting Class Member does not formally intervene in the
6 action or move to set aside any judgment and/or the Court rejects the Class
7 Member's objection, the Class Member will still be bound by the terms of this
8 Agreement. Class Counsel and Defendant's Counsel may, at least five (5)
9 calendar days (or some other number of days as the Court shall specify) before
10 the final approval hearing, file responses to any written objections submitted to
11 the Court.

12 **THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES**

13 27. Subject to the Court's approval, and subject to reconsideration by the Parties after a
14 competitive bidding process, the Parties have agreed to the appointment of Phoenix. to perform the
15 customary duties of Settlement Administrator. The Settlement Administrator will mail the Notice, both
16 in English and Spanish, to the Class Members.

17 28. The Settlement Administrator will independently review the Covered Workweeks
18 attributed to each Class Member and will calculate the estimated amounts due to each Class Member and
19 the actual amounts due to each Settlement Class Member in accordance with this Settlement. The
20 Settlement Administrator shall report, in summary or narrative form, the substance of its findings. The
21 Settlement Administrator shall be granted reasonable access to Defendant's records in order to perform
22 its duties.

23 29. In accordance with the terms of this Settlement, and upon receipt of the Gross Settlement
24 Amount from Defendant, the Settlement Administrator will issue and send out the Settlement Payment
25 checks to the Class Members. Tax treatment of the Settlement Payments will be as set forth herein, and
26 in accordance with state and federal tax laws. All disputes relating to the Settlement Administrator's
27 performance of its duties shall be referred to the Court, if necessary, which will have continuing
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1 jurisdiction over the terms and conditions of this Settlement until all payments and obligations
2 contemplated by this Settlement have been fully carried out.

3 30. The Settlement Administrator will post the final judgment approving the Settlement on a
4 website maintained by the Settlement Administrator for a period of not less than 90 calendar days after
5 the final judgment is entered. The address of that website will be included in the Notice.

6 **ATTORNEY'S FEES AND COSTS**

7 31. In consideration for resolving this matter and in exchange for the release of all claims by
8 the Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not object
9 to Class Counsel's application for attorney's fees not to exceed thirty three and one third percent (33.33%)
10 of the Gross Settlement Amount (\$83,333.33 of \$250,000.00) and litigation costs actually incurred. The
11 amounts set forth above will cover all work performed and all fees and costs incurred to date, and all
12 work to be performed and all fees and costs to be incurred in connection with the approval by the Court
13 of this Settlement and administration of the Settlement. Should Class Counsel request a lesser amount
14 and/or the Court approve a lesser amount(s) of attorney's fees and/or attorneys' costs, the difference
15 between the lesser amount(s) and the maximum amount set forth above shall be added to the Net
16 Settlement Amount. The Parties agree that there is no prevailing party, and the Class and Class Counsel
17 shall not be entitled to any fees or costs other than those awarded out of and deducted from the Gross
18 Settlement Amount. As with the Settlement Payments to the Settlement Class, the attorney's fees and
19 costs approved by the Court shall be distributed by the Settlement Administrator to Class Counsel, within
20 14 calendar days of the receipt of settlement funds by the Settlement Administrator. In the event that the
21 Court awards less than 25% of the Gross Settlement Amount for attorney's fees, Class Counsel shall
22 retain the right to appeal that portion of any Final Approval Order and Judgment.

23 **THE NOTICE PROCESS**

24 32. A Notice in approximately the form attached hereto as **Exhibit "A,"** and as approved by
25 the Court, shall be sent by the Settlement Administrator to the Class Members by first class mail. The
26 Notice shall be translated into Spanish so that Spanish and English language versions of the Notice are
27 included in the mailing. Any returned envelopes from this mailing with forwarding addresses will be
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1 utilized by the Settlement Administrator to forward the Notices to the Class.

2 (a) Within 21 calendar days from the date of preliminary approval of this Settlement
3 by the Court, Defendant shall provide to the Settlement Administrator a class
4 database containing the following information for each Class Member: (1) name;
5 (2) last known address; (3) social security number; and (5) dates of employment
6 at Defendant's locations in California. This database shall be based on
7 Defendant's payroll and other business records and shall be provided in a
8 reasonable format to the Settlement Administrator. Defendant agrees to consult
9 with the Settlement Administrator prior to the production date to ensure that the
10 format will be acceptable to the Settlement Administrator. The Settlement
11 Administrator will run a check of the Class Members' addresses against those on
12 file with the U.S. Postal Service's National Change of Address List; this check
13 will be performed only once per Class Member by the Settlement Administrator.
14 Absent mutual written agreement of counsel for the Parties or Court order, the
15 Settlement Administrator will keep this database confidential and secure and use
16 it only for the purposes described herein and will return this database to
17 Defendant upon final approval of the settlement or destroy electronic records
18 containing the database after the Settlement is final and all payments are
19 distributed as required under this Agreement.

20 (b) Within 14 calendar days after the Class database is provided to the Settlement
21 Administrator, the Settlement Administrator will mail the Notices to the Class
22 Members by First Class United States mail.

23 (c) Notices returned to the Settlement Administrator as non-deliverable on or before
24 the initial Response Deadline shall be resent to the forwarding address, if any, on
25 the returned envelope. A returned Notice will be forwarded by the Settlement
26 Administrator any time that a forwarding address is provided with the returned
27 mail. If there is no forwarding address, the Settlement Administrator will do a
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1 computer search for a new address using the Class Member's social security
2 number or other information. In any instance where a Notice is re-mailed, that
3 Class Member will have until the extended Response Deadline as described
4 above. A letter prepared by the Settlement Administrator will be included in the
5 re-mailed Notice in that instance, stating the extended Response Deadline. Upon
6 completion of these steps by the Settlement Administrator, Defendant and the
7 Settlement Administrator shall be deemed to have satisfied their obligations to
8 provide the Notice to the affected Class Member. The affected Class Member
9 shall remain a member of the Settlement Class and shall be bound by all the terms
10 of the Settlement and the Court's Order and Final Judgment.

- 11 (d) Class Counsel shall provide to the Court, at least five calendar days prior to the
12 final approval hearing, or such other date as set by the Court, a declaration by the
13 Settlement Administrator of due diligence and confirming mailing of the Notices.

14 **DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS**

15 33. As set forth above, each Class Member will have until the expiration of the applicable
16 Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Class
17 Member's Covered Workweek information on the Notice. No disputes will be honored if they are
18 submitted after the Response Deadline, unless the Parties mutually agree to accept the untimely dispute.
19 Each Class Member is responsible to maintain a copy of any documents sent to the Settlement
20 Administrator and a record of proof of mailing.

21 34. The Settlement Administrator shall cause the Settlement Payments to be mailed to the
22 Settlement Class Members and Aggrieved Employees as provided herein. Settlement Class Payments
23 and PAGA Payments may be combined into one check. Settlement Payment checks shall remain valid
24 and negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will
25 automatically be cancelled by the Settlement Administrator if they are not cashed by the Class Member
26 within that time, and the Class Member's relevant claims will remain released by the Settlement.
27 Settlement Payment checks which have expired will not be reissued.

35. Funds from un-cashed or abandoned Settlement Payment checks, based on a 180-day void date, shall be transmitted to a *cy pres* recipient, approved by the Court. The Parties will propose Legal Aid at Work.

36. Upon completion of its calculation of Settlement Payments, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a report listing the amounts of all payments to be made to Class Members (to be identified anonymously by employee number or other identifier). A Declaration attesting to completion of all payment obligations will be provided to Class Counsel and Defendant's Counsel and filed with the Court by Class Counsel.

RELEASE BY THE CLASS AND PAGA EMPLOYEES

37. Upon the final approval by the Court of this Settlement and Defendant's payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representatives, the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, and each Aggrieved Employee, regardless of whether they have requested exclusion from the Settlement of Class claims, will release claims as follows:

(a) **Identity of Released Parties.** The released parties are Defendant, and each of its/their former and present direct and/or indirect owners, dba's, affiliates, parents, subsidiaries, brother and sister corporations, divisions, related companies, successors and predecessors, and current and former employees, attorneys, officers, directors, shareholders, owners, trustees, fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents, servants, insurers, representatives, administrators, employee benefit plans, and assigns of said entities (the "Released Parties").

(b) **Date Release Becomes Active.** The Released Claims and Released PAGA Claims will be released upon the later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and

distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, **and** Defendant has paid all amounts owing under the Settlement.

(c) **Claims Released by Settlement Class Members.** Each and every Class Member, on behalf of himself or herself and his or her heirs and assigns, unless he or she has submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period:

1) any and all claims stated in the Action, or that could have been stated based on the facts alleged in the Action, including but not limited to all state wage and hour claims (including all claims under the California Labor Code) for unpaid wages, minimum wage, overtime, off-the-clock work, meal periods, rest periods, unreimbursed business expenses, wage statement violations, interest, penalties, and attorneys' fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code including but limited to Labor Code §§ 201-204, 210, 216, 218.6, 226, 226.3 , 226.7, 510, 512, 512.5, 558, 1194, 1194.2, 1198, 2802 derivative claims under California Business & Professions Code §§ 17200 et seq., and all claims under the governing Wage Order ("Released Claims").

(d) **Claims Released by the Class, Including Aggrieved Employees.** All Class Members, including all Aggrieved Employees, release the Released PAGA Claims, regardless of whether they have requested exclusion from the Settlement as to Class claims.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

38. The Parties shall submit this Joint Stipulation of Class Action Settlement to the Court in

support of Plaintiff's unopposed motion for preliminary approval for determination by the Court as to its fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Class Action Settlement, the Parties shall apply to the Court for the entry of an order:

- (a) Scheduling a final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorney's fees and costs, and the Class Representative's service payment, should be finally approved as fair, reasonable, and adequate as to the members of the Class;
- (b) Certifying a Class for settlement purposes;
- (c) Approving as to form and content the proposed Notice;
- (d) Directing the mailing of the Notice;
- (e) Preliminarily approving the Settlement subject only to the objections of Class Members and final review by the Court;
- (f) Conditionally appointing Plaintiff and Class Counsel as representatives of the proposed Class Members; and,
- (g) Appointing Phoenix as the Settlement Administrator, and order the Settlement Administrator to issue Notices as outlined above.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

39. In conjunction with the hearing of a motion for final approval by the Court of the Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will provide to Defendant's Counsel for review and approval and then submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the following:

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) Approving Class Counsel's application for an award of attorney's fees and costs;
- (c) Approving the Service Payment to the Class Representatives;
- (d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement.

- 1 (e) Adjudging Plaintiff and Class Counsel may adequately represent the Final
2 Settlement Class for the purpose of entering into and implementing the
3 Agreement;
- 4 (f) Entering a final judgment in the action;
- 5 (g) Adjudging that notwithstanding the submission of a timely request for exclusion,
6 Class Members are still bound by the settlement and release of the Released
7 PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior*
8 *Court*, 46 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do
9 not apply to the Released PAGA Claims, and further affirms that the State's
10 claims for civil penalties pursuant to PAGA are also extinguished;
- 11 (h) Directing the posting of the final judgment on a website maintained by the
12 Settlement Administrator for a period of not less than 90 calendar days after entry
13 of final judgment.

14 **NULLIFICATION AND TERMINATION**

15 40. This Settlement will be null and void if any of the following occur: (a) the Court should
16 for any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to
17 preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than
18 adjustments made to the attorney's fees and costs or granting of the Service Payment; (c) the Court should
19 for any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared
20 or rendered void; or (e) the Settlement does not become final for any other reason.

21 41. If 10% or more of the Class Members opt out of this Settlement, then Defendant in its
22 sole discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall
23 provide Defendant's Counsel with the information necessary to effectuate this provision on a regular
24 basis, but no less frequently than on a monthly basis. To terminate this Settlement under this paragraph,
25 Defendant's Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later
26 than 14 calendar days after the Response Deadline. If this option is exercised by Defendant, Defendant
27 shall be solely responsible for the costs incurred by the Settlement Administrator for the settlement
28

1 administration.

2 42. In the event this Settlement is nullified or terminated as provided above: (i) this
3 Settlement shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations
4 or proceedings shall have any force or effect and no Party shall be bound by any of its terms, and (iii) all
5 Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been
6 neither entered into nor filed with the Court.

7 **PARTIES' AUTHORITY**

8 43. The signatories hereto hereby represent that they are fully authorized to enter into this
9 Settlement and bind the Parties hereto to the terms and conditions thereof.

10 **MUTUAL FULL COOPERATION**

11 44. The Parties agree to fully cooperate with each other to accomplish the terms of this
12 Settlement including, but not limited to, execution of such documents and taking such other action as
13 reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement
14 shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that
15 may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set
16 forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the
17 assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the
18 Court's preliminary and final approval of this Settlement.

19 **NO PRIOR ASSIGNMENTS**

20 45. The Parties and their respective counsel represent, covenant, and warrant that they have
21 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber
22 to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
23 released and discharged except as set forth herein, and that they are not on notice of any liens as to the
24 Gross Settlement Amount or any right to attorneys' fees or costs.

25 **NO ADMISSION OF LIABILITY**

26 46. Nothing contained herein, nor the consummation of this Settlement, is to be construed or
27 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.

Defendant denies all the claims and contentions alleged by the Plaintiff in this case. Defendant has entered into this Settlement solely with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

ENFORCEMENT ACTIONS

47. In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees incurred in connection with any enforcement actions.

NOTICES

48. 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:

Class Counsel:

Kane Moon
Lilit Ter-Astvatsatryan
Holly Williams
MOON LAW GROUP, PC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
kmoon@moonlawgroup.com
lilit@moonlawgroup.com
hwilliams@moonlawgroup.com

Counsel for Defendant:

Leila Narvid, Bar No. 229402
ln@paynefears.com
Matthew C. Lewis, Bar No. 274758
mcl@paynefears.com
Jonathan A. Arjonilla, Bar No. 305866
jaa@paynefears.com
PAYNE & FEARS LLP
Attorneys at Law
235 Pine Street, Suite 1175
San Francisco, California 94104
Telephone: (415) 738-6850
Facsimile: (415) 738-6855

CONSTRUCTION

49. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, including but not limited to an all day

1 mediation with Jeff Ross, and this Settlement shall not be construed in favor of or against any Party by
2 reason of the extent to which any Party or his, her or its counsel participated in the drafting of this
3 Settlement.

4 **CAPTIONS AND INTERPRETATIONS**

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

8 **MODIFICATION**

9 51. This Settlement may not be changed, altered, or modified, except in writing and signed
10 by the Parties hereto, and approved by the Court. This Settlement may not be discharged except by
11 performance in accordance with its terms or by a writing signed by the Parties hereto.

12 **INTEGRATION CLAUSE**

13 52. This Settlement contains the entire agreement between the Parties relating to the
14 Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,
15 understandings, representations, and statements, whether oral or written and whether by a Party or such
16 Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

17 **WAIVER OF APPEALS**

18 53. The Parties agree to waive appeals and to stipulate to class certification for purposes of
19 implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the
20 amount awarded as attorney's fees in the event that the Court awards less than twenty-five percent of the
21 Gross Settlement Amount as attorney's fees.

22 **BINDING ON ASSIGNS**

23 54. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and
24 their respective heirs, trustees, executors, administrators, successors and assigns.

25 **CLASS COUNSEL SIGNATORIES**

26 55. It is agreed that because the members of the Class are so numerous, it is impossible or
27 impractical to have each member of the Class execute this Settlement. The Notice will advise all Class
28

Members of the binding nature of the Released Claims and Released PAGA Claims, and the release shall have the same force and effect as if this Settlement were executed by each member of the Class.

COUNTERPARTS

56. This Settlement may be executed in counterparts and by electronic or facsimile signatures, and 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, which shall be binding upon and effective as to all Parties.

FINAL JUDGMENT

57. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will be made and entered in its entirety. The final judgment may be included in the Order granting Final Approval of the Settlement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

IT IS SO STIPULATED.

(Signature Page Follows)

Plaintiff & Class Representative:

Dated: 2/26/2024

By: _____

Veronica Esparza Rodriguez

Approved as to Form:

Dated: 2/26/2024

MOON LAW GROUP, PC

By: _____

Kane Moon
Lilit Ter-Astvatsatryan
Holly Williams

Defendant:

Dated: 2/29/24

WELLNESS INNOVATION GROUP INCORPORATED

By: _____

Mark L. Ainsworth

Print Name

Signature

CEO

Title

Approved as to Form:

Dated: March 1, 2024

PAYNE & FEARS LLP

By: _____

Leila Narvid
Matthew C. Lewis
Jonathan A. Arjonilla

Rodriguez v. Wellness Long form 20240115 MLG_P&F.docx