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Attorneys for Plaintiff, on a representative basis and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

CLARENCE PHILLIPS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

HARDY WINDOW COMPANY, a
California Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: CIVSB2312048
*[Assigned to the Hon. Christian Towns, Dept.
S26, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing:
Date: December 16, 2024
Time: 8:30 a.m.
Dept.: S26

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in Orange County and Riverside County, and I manage the firm's employment law practice. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Final Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled well over 500 employee vs. employer litigation matters during my
7 23 years in practice. Over the last 17 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled well over 300 class action and
10 representative action wage/hour cases, and have been appointed by the court as class counsel and
11 have received final court approval and judgment in over half of those actions to date, and
12 anticipate receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). My team and I once held the record for the largest known PAGA-only
17 case in California’s history - a \$12.5 million-dollar court approved settlement, which followed
18 extensive litigation, summary adjudication and writs to the CA Supreme Court against a Fortune
19 50 company (*Garcia v. Macy’s*, San Bernardino Superior Court).

20 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
21 2018, I was lead counsel in a PAGA case that my firm tried in the Orange County Superior Court
22 and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case against
23 Walmart in District Court, wherein the jury awarded Plaintiffs and the class over \$6 million.
24 Both cases were appealed.

25 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
26 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17
27 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I
28 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that

only 5% of lawyers receive.

ADEQUACY OF THE SETTLEMENT

7. The Class, as conditionally certified by this Court, consists of 405 Participating Class Members, which includes current and former nonexempt employees employed by Defendant Hardy Window Company in California at any time during the Class Period of December 10, 2019, through August 1, 2024.

8. As set forth in the Declaration of the Administrator, the Net Settlement Amount is approximately \$361,816.51, after the deductions set forth in the chart below:

<i>Settlement Amount</i>	\$ 662,500.00
Attorneys' Fees (1/3)	\$ 220,833.33
Litigation Costs	\$ 20,350.16
Administrator Costs	\$ 9,500.00
PAGA Penalties	\$ 40,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 361,816.51

9. The process of mailing the Notice Packets was very successful, as only 14 Class Notices were determined to be undeliverable, resulting in a 96.6% success rate in mailing the notices.

10. The response from the Class Members was overwhelmingly positive, as no Class Member has objected to the settlement and only one has opted-out.

11. As discussed at length in Plaintiffs' motion for preliminary approval, as well as in the Motion for Final Approval, this Settlement is favorable to the Class and the release is narrowly limited to the claims alleged.

12. Sufficient information existed to allow Class Counsel to intelligently value this case. Given the parties' arms' length bargaining facilitated by a reputable and experienced wage and hour mediator, the exchange of informal discovery, the experience of Class Counsel, the fact that 99.75% of the Class has elected to participate and no objections were submitted thus far, the presumption of fairness is justified.

13. I believe that the Settlement is fair, reasonable and adequate, and in the best interests of the Class, given the litigation risks and delay inherent in further litigation and

possible appeals. As set forth in Plaintiff's motion for preliminary approval and the declarations submitted in support thereof, Defendant vigorously contested Plaintiff's claims, and Plaintiff faced real challenges in certifying the Class and obtaining a recovery on the claims in this matter. Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and that it is desirable that the action be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to limit further expense, inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit the operation of Defendant's business without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue. All parties took into account the uncertainty of risks inherent in any litigation, especially in complex cases such as this case. The parties determined that it is desirable and beneficial to both the Class and Defendant that this case be settled. Risks on both sides were considered in reaching the Settlement Agreement. The recoveries contemplated by the Settlement represent a good result for the Class, fairly proportioned to the likely risk-adjusted recovery in litigation.

ADEQUACY OF COUNSEL AND

REASONABLENESS OF REQUESTED FEE AND COST AWARDS

14. As set forth above, I have handled well over 300 class and representative actions, have been appointed as class counsel and have successfully resolved over half of those cases, and many others remain pending and will successfully resolve in the future while recovering hundreds of millions of dollars for my clients and Class Members. This is substantially better than average accordingly to Mayer Brown LLP's study entitled, *An Empirical Analysis of Class Actions*, cited in *Laguna v. Coverall North America, Inc.*, No. 12-55479 (9th Cir. 2014), which found that only one-third of class actions are successful, compared to two-thirds that are defeated and result in no payment to the class members.¹

15. When this case was taken on a contingency fee basis, with Plaintiff's counsel agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain. In the course of this litigation, Class Counsel paid all costs including filing fees, court costs,

¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 research fees, and mediation costs. There was never a guarantee that we would recoup those
2 expenditures.

3 16. It has been my experience that the benchmark for attorney fee awards in
4 California state cases is one-third of a common settlement fund, which the CA Supreme Court
5 upheld in the *Robert Half* case. Here, in accordance with the Settlement Agreement, Class
6 Counsel is seeking a fee of one-third of the Settlement Amount.

7 17. There are several additional factors why I believe that the Court should award
8 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
9 resulted in a common fund settlement amount of \$662,500, whereby the Class Members will
10 receive approximately \$893.37 on average and up to a maximum of \$3,905.25 for those
11 employees that worked the entire Class Period. This is a good result in light of the disputed
12 nature of the claims alleged. This result was achieved by the work and success of my office,
13 who negotiated the settlement after extensive preparation, investigation, mediation, and
14 substantial work thereafter.

15 18. Second, Plaintiff faced significant risks going forward with the litigation. As
16 discussed in the motion for preliminary approval, Defendant raised various defenses throughout
17 this litigation, any one of which, if successful, could have decimated Plaintiff's case. And
18 Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues
19 going forward with this litigation, and it would have taken several more years to realize any
20 recovery in this action along with the possibility of post-trial appeals.

21 19. Third, Class Counsel are experienced class action litigators. This experience and
22 expertise, combined with the high quality of work performed in this case, resulted in the
23 settlement achieved in this case.

24 20. Fourth, Class Counsel have been representing Plaintiff in this matter strictly on a
25 contingency fee basis. To that end, we have incurred the risk of non-recovery after investing a
26 substantial amount of time, money, and resources, and have done so since the inception of this
27 case without any payment or compensation. If Plaintiff had lost this case, we would have
28 recovered nothing, and would have lost our out-of-pocket costs. This is not an easy burden for

1 my office, which is a small firm. If, despite these hardships and risks, the best my office could
2 hope for is merely to be paid our hourly rate, then Class Counsel would not be compensated for
3 the hardships and serious risks we faced litigating this contingency case, and would not be
4 incentivized to take on similar cases in the future. Indeed, not all class/PAGA cases are
5 successful. Many cases end with no fees or a greatly reduced fee that is far less than lodestar,
6 often due to no fault of counsel (i.e., bankruptcy, change in the law, consolidation- coordination-
7 preemption, being top filed, etc.). As noted in the Mayer Brown LLP's study discussed above,
8 only one-third of class actions are successful, compared to two-thirds that are defeated and result
9 in no payment to the class members.

10 21. Fifth, the request for attorney's fees in the amount of one-third of the common
11 fund falls well within the norms accepted by state and federal courts in California in comparable
12 wage and hour actions actually handled by my office. Moreover, the award of a one-third fee
13 recovery under the common fund doctrine was approved by the California Supreme Court in
14 *Laffitte, supra*, 1 Cal.5th 480, 503.

15 22. For all of the above reasons, a common fund fee award here in the amount of one-
16 third of the common fund created by Plaintiff and Class Counsel is fair and reasonable.

17 23. At my office, through mediation this case was primarily handled by my senior
18 associate attorney, Peter Carlson, while I performed the role of the supervising attorney, but after
19 mediation I took on a leading role in handling the case so that Mr. Carlson could focus on new
20 cases. As set forth in his declaration, Mr. Carlson works exclusively with me on employment
21 law matters and has been in practice for 10 years. He bills at the hourly rate of \$650/hour. I
22 have been in practice for 23 years, with most of those years handling complex litigation and for
23 over the last 17 years, my practice has almost entirely consisted of handling class action wage
24 and hour matters. My billing rate is \$775/hour. I believe these rates are consistent with Plaintiff
25 and Defense attorneys who handle complex class action litigation, if not somewhat lower.

26 24. The hourly rates above are comparable to those of other attorneys with equal or
27 similar experience, if not somewhat lower (i.e., the Laffey Matrix at www.laffeymatrix.com
28 indicates that the benchmark rates are: \$777/hour for an 8–10-year attorney, \$878/hour for a 11–

1 19-year attorney, and \$1,057/hour for a 20+ year attorney). Moreover, the Wolters Kluwer 2023
2 Real Rate Report (“Real Rate Report”) provides directly applicable information in this regard.
3 The Real Rate Report is based on an enormous and statistically significant compilation of data,
4 comprising millions of billing entries from a hundred thousand individual timekeepers who
5 worked at thousands of law firms. The Real Rate Report then compiles and analyzes this data to
6 provide the hourly rates for partners and associates in major metropolitan areas. For the southern
7 California area: (a) the rate for partners in Los Angeles is between \$840 and \$1,159 per hour for
8 the middle and upper quartiles, and (b) the rates for associates with seven or more years of
9 experience, the median rate is \$674 per hour, and the upper quartile rate is \$888 per hour. And,
10 perhaps most importantly, the information provided in the Real Rate Report is not based on self-
11 reported numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate
12 Report is based on the actual hours and fees billed by law firms, which makes it “a much better
13 reflection of true market rates than self-reported rates in all practice areas.” *Brown v. CVS*
14 *Pharmacy, Inc.* (C.D. Cal. Apr. 24, 2017) 2017 U.S. Dist. LEXIS 182309, at *21; *PLCM Group*,
15 22 Cal.4th at 1085 (holding that rates should be premised upon precisely this form of
16 independent, “objective” rate data that reflects “fair market” rates actually billed to clients “in
17 the community for similar work”).

18 25. The table below includes a summary of the hours worked by my office, plus an
19 estimated 30 hours that I will bill in finalizing and filing the motion, preparing for and attending
20 the approval hearing, and working with the Settlement Administrator and defense counsel to
21 finalize this matter. Thus, the actual aggregated lodestar between the attorneys that have worked
22 on this case is approximately \$193,345, resulting in a fair and reasonable 1.14 multiplier, which
23 is summarized in the following table:

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Attorney/Timekeeper	Role	Yrs Experience	Rate	Hours	Fee
Brian J. Mankin (Partner – LML)	Trial Counsel	23	\$775	71²	\$55,025
Peter Carlson (Senior Associate – LML)	Handling Attorney	10	\$650	212.8	\$138,320
Grand Total for All Attorneys					\$193,345

26. The fee is warranted because of the results achieved for the Class Members, both in terms of the immediate cash settlement, as well as the fact that the Class Members resoundingly supported the Settlement. Defendant does not oppose this fee request.

27. In the course of prosecuting this action, my office has incurred expenses that were incidental and necessary to the effective representation of the Class. These expenses included but were not limited to: court filings, messenger services, postage, mediator fees, expert statistician expenses, and other incidental expenses directly related to this action. The Settlement Agreement provided up to \$25,000 in costs. Through final approval, my office incurred \$20,350.16 in litigation costs (see Exhibit “B” attached hereto). The saving will be placed in the Net Settlement Amount for payment to the Class Members. Defendant does not oppose this request for costs.

REASONABLENESS OF REQUESTED SERVICE AWARD

28. I also believe that the service award of \$10,000 to Plaintiff is fair and warranted for the reasons outlined in his declaration and in the motion. He came forward and worked directly with our offices in analyzing the claims and documents, providing valuable information. Indeed, his participation was an essential element of Defendant’s desire to mediate and of the pre and post mediation analysis that allowed Class Counsel to settle the case. In addition to foregoing to separate individual claims, he also took on various risks, including the risk that he could have been ordered to pay Defendant’s costs if he lost and the risk of retaliation and being black-balled in the industry. He also provided a full release of all claims. Defendant does not oppose the requested service award.

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30. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit “A.”

30. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit “A.”

31. Attached hereto as Exhibit “B” is a true and correct copy of an itemized statement of my firm’s litigation costs.

33. For the foregoing reasons, it is respectfully requested that the Court grant final approval of the settlement as being fair, reasonable, and in the best interest of the class, and approve the requested attorneys fees, costs, and service award.

By: Brian J. Mankin
Brian J. Mankin, Esq.

DECLARATION OF BRIAN MANKIN IN SUPPORT OF MOTION FOR FINAL APPROVAL

EXHIBIT “A”

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Clarence Phillips (“Plaintiff”) and Hardy Window Company (“Defendant”). Plaintiff and Defendant shall collectively be referred to as “Parties,” or individually as “Party.”

1. DEFINITIONS.

1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Clarence Phillips v. Hardy Window Company*, San Bernardino County Superior Court Case No. CIVSB2312048, which was initiated on May 5, 2023, and pending in Superior Court of the State of California, County of San Bernardino.

1.2. “Adjusted Gross Settlement Amount” – in the event that the Escalator Clause is triggered (see Paragraph 9.1 below) – means the Gross Settlement Amount minus the Individual PAGA Payments, LWDA PAGA Payment, Class Representative Service Payment, and Class Counsel Litigation Expenses Payment.

1.3. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.4. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.5. “Agreement” shall mean this Class Action and PAGA Settlement Agreement, including the Class Notice.

1.6. “Aggrieved Employee” means all current and former nonexempt employees who were employed by Hardy Window Company in California at any time during the PAGA Period. Aggrieved Employees may not exclude themselves from receipt of the PAGA Penalties.

1.7. “Class” consists of all current and former nonexempt employees who were employed by Hardy Window Company in California at any time during the Class Period.

1.8. “Class Counsel” means Brian Mankin and Peter Carlson of Lauby Mankin Lauby LLP.

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

1.10. “Class Data” means Class Member and Aggrieved Employee identifying information in Defendant’s possession including the Class Member’s and Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of

Class Period workweeks and PAGA pay periods, as applicable..

1.11. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.12. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.13. “Class Notice” means the court approved notice of class action settlement to be mailed to Class Members and Aggrieved Employees in English only in the form attached as Exhibit A and incorporated by reference into this Agreement.

1.14. “Class Period” means the period from December 10, 2019, to Preliminary Approval.

1.15. “Class Representative” means the named Plaintiff in the operative Complaint in the Action seeking Court approval to serve as a class representative.

1.16. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.17. “Complaint” refers to the original complaint filed by Plaintiff in the Action on or about May 5, 2023, and the operative First Amended Complaint on file in the Action, filed on or about July 10, 2023, which is pending in the Court and designated as Case No. CIVSB2312048.

1.18. “Court” means the Superior Court of California, County of San Bernardino.

1.19. “Defendant” means Hardy Window Company.

1.20. “Defense Counsel” means Roger M. Mansukhani and Emma R. Horner, of Gordon Rees Scully Mansukhani, LLP.

1.21. “Effective Date” means and refers to the latest of the following dates: (i) if no Class Member timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil Procedure § 663, then the date the Court enters an order granting Final Approval of the Settlement; (ii) if a Class Member intervenes or files a motion to vacate the Judgment, then sixty-one (61) calendar days following the date the Court enters an order granting Final Approval, assuming no appeal is filed; or (iii) if a Class Member timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil Procedure § 663 or initiates another collateral attack, and if a timely appeal is filed, then the date of final resolution of that appeal or other collateral attack (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

1.22. “Exclusion List” means the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion.

1.23. “Final Approval” means the Court’s order granting final approval of the Settlement.

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

1.25. “Final Judgment” means the Judgment entered by the Court upon granting Final Approval of the Settlement.

1.26. “Gross Settlement Amount” or “GSA” means \$662,500, which is the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 9 below and except for the employer’s share of applicable payroll tax obligations that Defendant shall pay to the Administrator. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.

1.27. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Weeks Worked during the Class Period.

1.28. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Weeks Worked during the PAGA Period.

1.29. “Judgment” means the judgment entered by the Court based upon the Final Approval.

1.30. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.31. “LWDA PAGA Payment” means 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.32. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.33. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion. A Non-Participating Class Member shall still receive their share of the PAGA Penalties.

1.34. “PAGA Period” means the period from May 4, 2022, through Preliminary Approval.

1.35. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.36. “PAGA Notice” means Plaintiff’s May 4, 2023, letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.37. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount (\$40,000), allocated 25% to the Aggrieved Employee (\$10,000) and 75% to LWDA (\$30,000) in settlement of PAGA claims.

1.38. “Participating Class Member” means all Class Members except for those who opt-out by submitting a timely valid Request for Exclusion.

1.39. “Plaintiff” means Clarence Phillips, the named plaintiff in the Action.

1.40. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.41. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

1.42. “Released Class Claims” means the claims being released as described in Paragraph 6.2 below.

1.43. “Released PAGA Claims” means the claims being released as described in Paragraph 6.3 below.

1.44. “Released Parties” means: Defendant and its former and present parents, subsidiaries, directors, owners, shareholders, officers, agents, attorneys, insurers (including, but not limited to, insurers and reinsurers), servants, joint employers, and employees, and each of them and anyone acting in concert with the foregoing.

1.45. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.46. “Response Deadline” means 45 days after the Administrator mails the Class Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days after the Response Deadline has expired.

1.47. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.48. “Weekly Report” refers to the report that the Administrator must email to Defense Counsel and Class Counsel on a weekly basis that, among other things, tallies the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to credited Weeks Worked, and checks mailed for Individual Class Payments and Individual PAGA Payments. The

Weekly Reports must include the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

1.49. "Weeks Worked" in the context of the Class Members, means all weeks during the Class Period in which the Class Member was employed by Defendant as a non-exempt employee in California and worked at least one shift during the workweek. In the context of Aggrieved Employees, it means all weeks during the PAGA Period in which the Aggrieved Employee was employed by Defendant as a non-exempt employee in California and worked at least one shift during the workweek.

2. RECITALS.

2.1. On May 5, 2023, Plaintiff commenced this Action by filing the original complaint alleging causes of action against Defendant for (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages upon separation of employment, (7) failure to provide accurate itemized wage statements; and (8) unfair and unlawful competition. Defendant denies the allegations in the Complaint, denies any failure to comply with the laws identified in the Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice. After the LWDA declined jurisdiction over the PAGA Claims, Plaintiff filed the operative first amended complaint on about July 10, 2023, alleging the same causes of action as in the originally filed complaint and adding PAGA claims (including failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods, failure to provide rest breaks, failure to reimburse business expenses, failure to timely pay wages each period, failure to timely pay final wages, and failure to provide accurate itemized wage statements).

2.3. On March 14, 2024, the Parties participated in an all-day mediation presided over by Kelly Knight, which culminated in a mediator's proposal. The Parties accepted the mediator's proposal, and thereafter entered into this Agreement to settle the Action.

2.4. Prior to the mediation and negotiating the Settlement, Plaintiff obtained, through informal discovery, documents and information, including but not limited to Defendant's written policies and practices, information relating to the size of the Class and Aggrieved Employees, number of weeks worked, as well as a sampling of payroll and timekeeping records. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.5. The Court has not granted class certification.

2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant agrees to pay \$662,500 and no more as the Gross Settlement Amount, and to separately pay to the Administrator any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member and Aggrieved Employee). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for the Class Representative Service Payment on a date set by the Court at the Preliminary Approval Hearing and no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third of the GSA (33.333%), which is currently estimated to be \$220,833.33 and a Class Counsel Litigation Expenses Payment of not more than \$25,000. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment on a date set by the Court at the Preliminary Approval Hearing and no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$9,500 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$9,500, the Administrator will retain the remainder in the Net Settlement Amount.

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

3.2.4.1. Tax Allocation of Individual Class Payments. Portions of the Individual Class Payment paid to the Participating Class Members will be allocated as 15% to wage claims (the "Wage Portion") and remaining 85% will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$40,000 to be paid from the Gross Settlement Amount, with 75% (\$30,000) allocated to the LWDA PAGA Payment and 25% (\$10,000) allocated to the Individual PAGA Payments.

3.2.6. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$10,000) by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's Weeks Worked during the PAGA period. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Weeks Worked. See Paragraph 9 below.

4.2. Class Data. Not later than 21 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who

need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 30 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 10 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will also send checks for Individual PAGA Payments to all Aggrieved Employees. If the recipient is both a Participating Class Member and Aggrieved Employee, the Payments may be contained on one check. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

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

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

California Code of Civil Procedure Section 384, subd. (b).

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

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

6.1 Plaintiff's Release. Plaintiff individually and on behalf of Plaintiff's successors, assigns, heirs, estates, executors, administrators, agents, representatives, and attorneys, and each of them, voluntarily, irrevocably, and unconditionally releases, acquits, and forever discharges Company and any of its present and former parents, subsidiaries, affiliates, affiliated entities, co-employers, officers, directors, trustees, employees, agents, representatives, members, managers, attorneys, and insurers (including but not limited to insurers and reinsurers), and/or any of their predecessors, successors and assigns, and each of them (referred collectively with Company as the "Plaintiff's Released Parties"), from any and all charges, complaints, claims, promises, agreements, controversies, suits, demands, costs, losses, debts, actions, causes of action, damages, judgments, obligations, liabilities, and expenses of whatever kind and character, known or unknown, suspected or unsuspected, including any claims for attorneys' fees and costs, which Employee now has, owns, holds, or claims to have, own, or hold, or may have had, owned, or held, or may claim to have, own, or hold against the Plaintiff's Released Parties, against the Plaintiff's Released Parties regarding, related, or connected to Plaintiff's employment with Defendant, or regarding, related, or connected to any acts or inactions of the Plaintiff's Released Parties, including, without limitation, any and all claims that have or could have been asserted in the Action, or through any related claim or complaint, cross-complaint, or cross-action of any kind, any and all claims that in any way relate to the facts and circumstances alleged in the Action, or any alleged violation of: Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; Sections 1981 through 1988 of Title 42 of the United States Code, as amended; the Employee Retirement Income Security Act of 1974; the Immigration Reform and Control Act; the Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Workers Adjustment and Retraining Notification Act; the Occupational Safety and Health Act; the Sarbanes-Oxley Act of 2002; the Fair Credit Reporting Act; the Family and Medical Leave Act; the Equal Pay Act; the Genetic Information Nondiscrimination Act of 2008; California Family Rights Act – Cal. Gov't Code § 12945.2; California Fair Employment and Housing Act – Cal. Gov't Code § 12900 *et seq.*; California Unruh Civil Rights Act – Cal. Civ. Code § 51 *et seq.*; statutory provisions regarding the confidentiality of AIDS information – Cal. Health & Safety Code § 120775 *et seq.*; California Confidentiality of Medical Information Act – Cal. Civ. Code § 56 *et seq.*; California Parental Leave Law – Cal. Lab. Code § 230.7 *et seq.*; California Apprenticeship Program Bias Law – Cal. Lab. Code § 3070 *et seq.*; California Equal Pay Law – Cal. Lab. Code § 1197.5; California Whistleblower Protection Law – Cal. Lab. Code § 1102.5; California Military Personnel Bias Law – Cal. Mil. & Vet. Code § 394; statutory provisions regarding California Family and Medical Leave – Cal. Lab. Code § 233; statutory provisions regarding California Electronic Monitoring of Employees – Cal. Lab. Code § 435; California Obligations of Investigative Consumer Reporting Agencies Law – Cal. Civ. Code § 1786.10 *et seq.*; California Political Activities of Employees Law – Cal. Lab. Code § 1101 *et seq.*; California Domestic Violence Victim Employment Leave Law – Cal. Lab. Code § 230.1; California Court Leave Law – Cal. Lab. Code § 230; California Private Attorney General Act – Cal. Lab. Code § 2698 *et seq.* (both on an individual and non-individual basis, to the extent permitted by law); any and all local, state, and/or federal wage and hour law, including but not limited to such law contained within the California Labor Code and Fair Labor Standards Act); those other provisions of the California Labor Code that lawfully may be released; any other federal,

state or local civil or human rights law or any other federal, state or local law, regulation or ordinance; any public policy, contract, tort or common law; and/or any basis for recovering costs, fees or other expenses including attorneys' fees incurred in these matters, with the express exception of Plaintiff's right to bring a claim or institute a proceeding for claims that cannot lawfully be released ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement or to any claims for vested benefits. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and shall remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

6.2 Release by Participating Class Members: All Participating Class Members will be bound by a release of all claims alleged in the Complaint, as set forth below: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims that were alleged in the Complaint, or that reasonably could have been alleged based upon the facts stated in the Complaint, including, but not limited to,: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay final wages, (7) failure to provide accurate itemized wage statements, and (8) unfair and unlawful competition. The time period governing the Released Class Claims shall be the Class Period ("Released Class Claims"). The operative release period for the Released Class Claims is the Class Period.

6.3 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for civil penalties under the Private Attorneys General Act, Labor Code § 2698 *et seq.*, that Plaintiff alleged against the Released Parties, on behalf of Aggrieved Employees and State of California, based on the facts stated in the Complaint and in Plaintiff's PAGA Notice to the LWDA, including all PAGA claims seeking civil penalties premised upon: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages each period, (7) failure to timely pay wages upon separation of employment, (8) failure to provide accurate itemized wage statements, and (9) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the

facts or claims alleged in the LWDA notice letter and Complaint. The time period governing the PAGA Released Claims shall be the PAGA Period. The Released PAGA Claims do not release any potential claims for wages or statutory penalties.

7. MOTION FOR PRELIMINARY APPROVAL. Plaintiff will prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”), as set forth below.

7.1 Deleted.

7.2 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class Members, and/or the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval by Code in accordance with the hearing date set for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator, and all related documents.

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

8. SETTLEMENT ADMINISTRATION.

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

8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

8.4 Notice to Class Members.

8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Weeks Worked (for the Class Period and PAGA Period, respectively) in the Class Data and whether the Escalator Clause has been triggered.

8.4.2 Using best efforts to perform as soon as possible, and in no event later than 10 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation substantially in the form attached to this Agreement as Exhibit A, or as modified by the Court and agreed to by the Parties. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Weeks Worked as a Class Member and Aggrieved Employee (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

8.4.3 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

8.4.4 The deadlines for Class Members’ written objections, Challenges to Weeks Worked, and Requests for Exclusion will be extended an additional 14 days beyond the Response Deadline otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

8.4.5 If the Administrator, Defense Counsel, Class Counsel, Plaintiff or Defendant is/are contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later. Nothing in this section shall require Defendant to contribute any additional sums to the Settlement of the Action.

8.5 Requests for Exclusion (Opt-Outs).

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

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

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

8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment.

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

8.7 Objections to Settlement.

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

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

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

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

8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email the Exclusion List to Class Counsel and Defense Counsel containing

(a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion; (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Weeks Worked received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

8.8.4 Weeks Worked Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Weeks Worked. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

8.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator must also provide a breakdown of the Gross Settlement Amount, high/low/average payments to Participating Class Members, the total Weeks Worked by Class Members and Aggrieved Employees and the per Weeks Worked value of each. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

8.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE Based on its records, Defendant estimates that there are 405 Class Members who worked approximately 26,500 workweeks during the Class Period. If the workweek number increases by more than 15% of the estimate stated herein by the end of the Class Period, Defendant will either: a) increase the Adjusted Gross Settlement Amount proportionately for the percentage of workweeks in excess of

the 15% threshold (i.e., a 16% increase in workweeks will result in a 1% increase of the Adjusted Gross Settlement Amount); or 2) adjust the end date of the Class Period so that the release covers no more than 30,475 workweeks. If Defendant chooses option 2, the end date of the PAGA Period shall be adjusted to match the end date of the Class Period, but under no circumstance shall the Class Period and/or PAGA Period be adjusted prior to the date of mediation (March 14, 2024).

10. DEFENDANT’S RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% or more of all Class Members, Defendant may, but is not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 7 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

11. MOTION FOR FINAL APPROVAL. Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than 5 court days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

11.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

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

11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their

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

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

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

13. ADDITIONAL PROVISIONS.

13.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,

all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency.

Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

13.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

13.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

13.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31

CFR Part 10, as amended) or otherwise.

13.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

13.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

13.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

13.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Brian Mankin
brian@LMLfirm.com
Lauby Mankin Lauby LLP
5198 Arlington Ave, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

To Defendant:

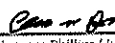
Roger M. Mansukhani
Emma R. Horner
rmansukhani@grsm.com
ehorner@grsm.com
Gordon Rees Scully Mansukhani, LLP
633 West Fifth Street, 52nd Floor
Los Angeles, CA 90071
Tel: (213) 576-5000 | Fax: (213) 680-4470
Cc: *mxdiaz@grsm.com*

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

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

Dated: Jun 7, 2024

PLAINTIFF AND CLASS REPRESENTATIVE:


Clarence Phillips (Jun 7, 2024 13:14 PDT)

Clarence Phillips

Dated: 6/10/24

DEFENDANT:
HARDY WINDOW COMPANY

By: Chance Hardy
Title: Owner

AS TO FORM ONLY:

Dated: June 7, 2024

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP



Brian J. Mankin
Attorneys for Plaintiff

Dated: June 10, 2024

DEFENDANT'S COUNSEL:
GORDON REES SCULLY MANSUKHANI, LLP



Emma Horner
Attorneys for Defendant

END OF DOCUMENT

EXHIBIT “B”

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00545 Phillips v Hardy
Windows (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
Clarence Phillips 14000-00545 Phillips v Hardy Windows									
05-04-2023	Approved		Billable	E101 Copying	Chiarito, Tracie	0.06	0.00	84.00	5.04
84 copies @ .06 each - initial letters to company									
05-04-2023	Approved		Billable	E108 Postage	Chiarito, Tracie	18.84	0.00	1.00	18.84
Postage for May 2023									
05-04-2023	Approved		Billable	Attorney Service	Chiarito, Tracie	462.66	0.00	1.00	462.66
TurboCourt Order #7961940 - file complaint									
05-04-2023	Approved		Billable	E112 Court fees	Chiarito, Tracie	75.00	0.00	1.00	75.00
Fees to LWDA to submit PAGA letter									
05-15-2023	Approved		Billable	Attorney Service	Chiarito, Tracie	140.03	0.00	1.00	140.03
Bosco Inv #8848285 Serve: Hardy Window Company, a California Corporation Summons; Complaint; Civil Case Cover Sheet; Certificate of Assignment; ADR Court: San Bernardino County Superior Court - Central District Completed on: 05/11/2023									
06-13-2023	Approved		Billable	E112 Court fees	Chiarito, Tracie	1,002.00	0.00	1.00	1,002.00
Receipt for San Bernardino Superior Court for complex fees									
07-10-2023	Approved		Billable	Attorney Service	Chiarito, Tracie	9.95	0.00	1.00	9.95
TurboCourt Order #8116473 - file FAC									
07-19-2023	Approved		Billable	Attorney Service	Chiarito, Tracie	9.95	0.00	1.00	9.95
TurboCourt Order #8138334 - file Joint Statement									
07-26-2023	Approved		Billable	Attorney Service	Chiarito, Tracie	72.00	0.00	1.00	72.00
Courtcall ID #11723031 for 7/25/23 CMC									
08-22-2023	Approved		Billable	E125 Mediation fees	Chiarito, Tracie	8,375.00	0.00	1.00	8,375.00
JudicateWest Inv #605693 for 3/14/24 mediation with Kelly Knight, Esq.									
03-28-2024	Approved		Billable	E119 Experts	Chiarito, Tracie	9,440.00	0.00	1.00	9,440.00
Berger Consulting Group Invoice #10851									
04-09-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	59.95	0.00	1.00	59.95

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00545 Phillips v Hardy
Windows (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Clarence Phillips</u>									
<u>14000-00545 Phillips v Hardy Windows</u>									
Bosco Inv #10814399									
File and Conform in Dept S26									
Notice of Settlement and Request to Reserve Prelim. Approval Date									
Court: San Bernardino County Superior Court - Central District									
Completed on: 4/8/2024									
07-11-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	160.60	0.00	1.00	160.60
Bosco Inv #11382037									
File and conform.									
-Motion									
-Declaration x3									
-Proposed Order									
advance fee									
Court: San Bernardino County Superior Court - Central District									
Completed on: 7/10/2024									
08-02-2024	Approved		Billable	E112 Court fees	Chiarito, Tracie	3.14	0.00	1.00	3.14
Receipt from San Bernardino Superior Court - copy of signed PA order									
08-02-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	72.00	0.00	1.00	72.00
Courtcall ID #11848075 for 8/1/24 MPA									
11-20-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	300.00	0.00	1.00	300.00
Estimated cost to file MFA and supporting documents via Bosco									
12-16-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	144.00	0.00	1.00	144.00
Estimated cost for Courtcall for MFA									
Project Total									20,350.16
Client Total									20,350.16
Grand Total									20,350.16

EXHIBIT “C”