

Exhibit 1

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 Class, Collective and PAGA Action
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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

ALBERT PARIS SUAZO, ALEXA SUART, and
 LEEDA HABIBI, on behalf of themselves and all
 others similarly situated,

Plaintiffs,

v.

BLUEMERCURY, INC., a Delaware corporation,

Defendant.

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Case No. 3:22-cv-06307-JD

**REVISED JOINT STIPULATION OF
 CLASS, COLLECTIVE, AND PAGA
 ACTION SETTLEMENT AND
 RELEASE BETWEEN PLAINTIFFS
 AND DEFENDANT**

1
2 This Revised Joint Stipulation of Class, Collective, and PAGA Action Settlement and
3 Release Between Plaintiffs and Defendant (“Stipulation of Settlement” or “Settlement”) is made
4 and entered into by and between Plaintiffs Albert Paris Suazo, Alexa Suart, and Leeda Habibi,
5 individually and on behalf of all similarly situated and aggrieved employees (“Plaintiffs”), and
6 Bluemercury, Inc. (“Defendant”).

7 This Stipulation of Settlement shall be binding on Plaintiffs and those persons Plaintiffs
8 seek to represent, and on: (i) Defendant; (ii) Defendant’s past and present direct and indirect
9 parents, subsidiaries and affiliates of any of the foregoing; (iii) the past and present shareholders,
10 directors, officers, owners, agents, employees, clients, attorneys, insurers, predecessors,
11 successors and assigns of the foregoing; and (iv) any individual or entity which could be jointly
12 liable with any of the foregoing. The Settlement contemplated by this Stipulation of Settlement
13 may hereinafter be referred to as the “Settlement” or “Stipulation of Settlement.”

14 THE PARTIES STIPULATE AND AGREE as follows:

- 15 1. Plaintiffs and Defendant are collectively referred to herein as “the Parties.”
- 16 2. On October 20, 2022, Plaintiffs Albert Paris Suazo and Alexa Suart filed a
17 complaint against Defendant in the United States District Court, Northern District of
18 California, San Francisco Division, on behalf of themselves and other Store Managers who
19 worked for Defendant in California and nationwide, except New York. Plaintiff Leeda Habibi
20 later joined the case. The term “Action” means this class, collective, and PAGA action in
21 federal court in San Francisco, Case No. 3:22-cv-06307. Plaintiffs alleged violations of state
22 and federal law for unpaid wages, overtime or double time wages, minimum wages, regular
23 rate of pay, timely payment of wages during employment, timely payment of wages at
24 separation, meal periods and meal period premiums, rest periods and rest period premiums,
25 off-the-clock work, payroll deductions, unreimbursed business expenses, wage statements,
26 payroll records and recordkeeping, and unfair competition. Plaintiffs’ complaint seeks
27 compensatory damages, penalties, interest, and attorneys’ fees and costs. Plaintiffs alleged a
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1 putative class action under FRCP Rule 23 on behalf of Store Managers who worked in
2 California, and a nationwide collective action under the federal Fair Labor Standards Act on
3 behalf of Store Managers who worked throughout the United States, except for New York.
4 Defendant answered the complaint and denied all claims and damages.

5 3. The Action was actively litigated and defended. Defendant filed a motion to
6 dismiss, which the Court granted in part dismissing Plaintiffs' collective action allegations for
7 opt-in plaintiffs who did not work in California. The Court's order limited the potential scope
8 of Plaintiffs' Complaint to Store Managers who worked in California.

9 4. There have been on-going investigations, and an exchange of extensive
10 documentation and information. The Parties also agreed to participate in voluntary private
11 mediation before a well-respected class action mediator, Michael J. Loeb, on June 14, 2023
12 which resulted in a mediator's proposal that was accepted by the Parties and resulted in the
13 Settlement.

14 5. To effectuate the Settlement, on July 31, 2023, Plaintiff Leeda Habibi sent a letter
15 to the Labor and Workplace Development Agency ("LWDA") alleging violations of the
16 Private Attorneys General Act ("PAGA") for the Released PAGA Claims, as defined below.

17 6. On October 18, 2023, Plaintiffs filed a first amended complaint ("Complaint")
18 that included an additional cause of action for penalties under PAGA. Plaintiffs have not filed a
19 motion for class or conditional certification in this Action, nor has a date been set by the Court
20 for the filing of such motions. Defendant denies all claims and denies Plaintiffs and the Class
21 and Collective Members and PAGA Members (as defined below) are entitled to any recovery.

22 7. The "Class and Collective Period" is from October 20, 2018 through September
23 12, 2023, and the "PAGA Period" is from July 31, 2022 through September 12, 2023.
24 "Settlement Class" and "Class Members" mean all persons employed by Defendant as a Store
25 Manager in California from October 20, 2018 through September 12, 2023. Class Members are
26 also Fair Labor Standards Act ("FLSA") Collective Members. The Settlement Class will not
27 include any person who previously settled or released any of the claims covered by this
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1 Settlement, or any person who previously was paid or received awards through civil or
2 administrative actions for the claims covered by this Settlement. All Class Members who
3 worked any hours for Defendant in California as a Store Manager during any pay period from
4 July 31, 2022 through September 12, 2023 are aggrieved employees under PAGA (“PAGA
5 Members”), and will be paid their PAGA Share (defined below) and release the Released PAGA
6 Claims (defined below), regardless of whether they submit a timely and valid Request for
7 Exclusion from the Settlement.

8 8. Solely for purposes of settling this Action, the Parties stipulate and agree that the
9 requisites for establishing class and collective action certification have been met and are met for
10 settlement purposes only. More specifically, the Parties stipulate and agree that:

11 a. The Settlement Class is ascertainable and so numerous as to make it
12 impracticable to join all Class Members.

13 b. There are common questions of law and fact, including but not limited to
14 the following:

15 i. Whether Defendant complied with applicable laws affecting
16 Plaintiffs and the Settlement Class under the California Labor Code and the Wage Orders of the
17 California Industrial Welfare Commission, and the federal Fair Labor Standards Act; and

18 ii. Whether Plaintiffs and the Settlement Class are entitled to alleged
19 unpaid wages, penalties, interest, and attorneys’ fees and costs.

20 c. Plaintiffs believe that Plaintiffs’ claims are typical of the claims of the
21 members of the Settlement Class.

22 d. Plaintiffs believe that they fairly and adequately protect the interests of the
23 Settlement Class and PAGA Members, and that Plaintiffs’ Counsel Jahan C. Sagafi, Sabine Jean,
24 and Jarron D. McAllister of OUTTEN & GOLDEN LLP, and Gregg I. Shavitz and Camar R.
25 Jones of SHAVITZ LAW GROUP, P.A., should be “Class Counsel” and will fairly and
26 adequately protect the interests of the Settlement Class.

27 e. The prosecution of separate actions by individual members of the
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1 Settlement Class would create the risk of inconsistent or varying adjudications, which would
2 establish incompatible standards of conduct.

3 f. With respect to the Settlement Class, Plaintiffs believe that questions of
4 law and fact common to the members of the Settlement Class predominate over any questions
5 affecting any individual member in such Settlement Class, and a class action is superior to other
6 available means for the fair and efficient adjudication of the controversy.

7 9. Defendant denies any liability or wrongdoing of any kind whatsoever associated
8 with the claims alleged in the Complaint, and further denies that, for any purpose other than
9 settling this Action, this Action is appropriate for class, collective and representative treatment.
10 With respect to Plaintiffs' claims, Defendant contends, among other things, that it has complied
11 with all applicable state, federal and local laws affecting Plaintiffs and the Settlement Class and
12 PAGA Members.

13 10. It is the desire of the Parties to fully, finally and forever settle, compromise and
14 discharge all disputes and claims arising from the allegations and causes of action stated in the
15 Complaint. To achieve a full and complete release of Defendant, and each Class Member and
16 PAGA Member, acknowledge that this Stipulation of Settlement is intended to include in its
17 effect all claims of any nature reasonably arising out of the allegations made in the Complaint.

18 11. It is the intention of the Parties that this Stipulation of Settlement shall constitute
19 a full and complete settlement and release of all claims arising from the allegations in the
20 Complaint against: (i) Defendant; (ii) Defendant's respective past and present direct and indirect
21 parents, subsidiaries and affiliates; (iii) the past and present shareholders, directors, officers,
22 owners, agents, employees, clients, attorneys, insurers, predecessors, successors and assigns of
23 the foregoing; and (iv) any individual or entity which could be jointly liable with any of the
24 foregoing (collectively "Released Parties").

25 12. Class Counsel have conducted a thorough investigation into the facts of this
26 Action, and have diligently pursued an investigation of the claims by Class Members and PAGA
27 Members against Defendant. Based on their own independent investigation and evaluation,
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1 Class Counsel are of the opinion that the Settlement with Defendant for the consideration and on
2 the terms set forth in this Stipulation of Settlement is fair, reasonable, and adequate and is in the
3 best interest of the Settlement Class and PAGA Members in light of all known facts and
4 circumstances, including the risk of significant delay, the risk the Settlement Class will not be
5 certified by the Court, the defenses asserted by Defendant, and numerous potential appellate
6 issues. Defendant and Defendant's Counsel also agree that the Settlement is fair and in the best
7 interest of the Parties.

8 13. The Parties agree to cooperate and take all steps necessary and appropriate to
9 consummate this Settlement and for entry of judgment in accordance with this Stipulation of
10 Settlement.

11 14. This Settlement provides that Defendant will pay Settlement Awards and PAGA
12 Shares (defined below) according to a specified formula to each Class Member who does not
13 request to be excluded from this Settlement and to each PAGA Member. The total payment
14 under the Settlement is \$437,500.00 (the "Maximum Settlement Amount"), which includes all
15 payments to Class Members and PAGA Members, Class Counsel's attorneys' fees, Class
16 Counsel's litigation expenses and costs, the enhancement awards to the Class Representative,
17 penalties of any nature, including PAGA penalties, and settlement administration expenses. It is
18 understood and agreed that Defendant shall have no obligation to pay any person, entity or
19 organization more than the Maximum Settlement Amount, except that Defendant will pay the
20 employer payroll taxes for the wage portion of the Settlement Awards.

21 TERMS OF SETTLEMENT

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

24 a. It is agreed by and among Plaintiffs and Defendant that this Action and
25 any claims, damages or causes of action arising out of the Complaint which are the subject of
26 this Action, be settled and compromised as between the Settlement Class, PAGA Members and
27 Defendant, subject to the terms and conditions set forth in this Stipulation of Settlement and the

1 approval of the Court.

2 b. Effective Date: The Settlement embodied in this Stipulation of Settlement
3 shall become effective when all of the following events have occurred: (i) this Stipulation of
4 Settlement has been executed by all Parties and by counsel for Plaintiffs and Defendant; (ii) the
5 Court has given preliminary approval to the Settlement; (iii) the class settlement notice has been
6 given to the Settlement Class, providing them with an opportunity to opt out of or to object to the
7 Settlement; (iv) the Court has held a formal final fairness hearing and entered a final order and
8 judgment certifying the Settlement Class and finally approving this Stipulation of Settlement,
9 without objection by the LWDA; and (v) in the event there are objections to the Settlement that
10 are not later withdrawn, the later of the following events: when the period for filing any appeal,
11 writ or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ
12 or other appellate proceeding having been filed; or any appeal, writ or other appellate proceeding
13 opposing the Settlement has been dismissed finally and conclusively with no right to pursue
14 further remedies or relief; or any appeal, writ or other appellate proceeding has upheld the
15 Court's final order with no right to pursue further remedies or relief. In this regard, it is the
16 intention of the Parties that the Settlement shall not become effective until the Court's order
17 approving the Settlement is completely final, and there is no further recourse by an appellant or
18 objector who seeks to contest the Settlement. It is further agreed by the Parties that this
19 Settlement will not become effective if Defendant, contrary to Paragraph 14 above, is required
20 by the Court to pay more than the Maximum Settlement Amount as set forth in Paragraph 14
21 under any circumstances. It is further agreed by and between the Parties that this Settlement
22 shall not become effective, and Defendant shall not have any obligation (monetary or otherwise)
23 under the terms of this Settlement, unless and until any objections, writs and/or appeals, and any
24 rights of appeal with respect to any objections or the judgment, have been finally exhausted and
25 resolved upholding the terms of this Settlement.

26 c. Maximum Settlement Amount, and Net Settlement Amount: To
27 implement the terms of this Settlement, Defendant, on behalf of the Released Parties, agrees to

pay a the Maximum Settlement Amount, which includes: all payments to Class Members and PAGA Members; Class Counsel's attorneys' fees; Class Counsel's litigation expenses and costs; the Enhancement Awards to the Class Representatives; \$6,562.50 allocated to penalties under PAGA with \$4,921.87 (three-quarters) paid to the LWDA and \$1,640.63 (one-fourth) paid to the Settlement Class as described below; and settlement administration expenses. The Parties agree the Maximum Settlement Amount will be fully paid out, with no residue returning to Defendant. At no time shall Defendant have the obligation to segregate the funds comprising the Maximum Settlement Amount, and Defendant shall retain exclusive authority over, and the responsibility for, those funds. All payments to Class Members and PAGA Members, Class Counsel's attorneys' fees, Class Counsel's litigation expenses and costs, the Enhancement Awards, the PAGA penalties paid to LWDA, and settlement administration expenses will be paid out of the Maximum Settlement Amount. Under no condition will the Released Parties' aggregate liability exceed the Maximum Settlement Amount, except that Defendant will pay the employer payroll taxes for the wage portion of the Settlement Awards in addition to the Maximum Settlement Amount. The "Net Settlement Amount," the amount available for potential distribution to Class Members, shall be calculated by deducting from the Maximum Settlement Amount: (i) Class Counsel's attorneys' fees and litigation expenses and costs; (ii) the Enhancement Awards to the Class Representatives; (iii) the PAGA penalty payment to the LWDA as described further below; and (iv) settlement administration expenses. Settlement Awards to Class Members and PAGA Shares to PAGA Members will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth below. The entire Net Settlement Amount will be paid out pro rata to Class Members who do not opt out and to PAGA Members.

i. Settlement Awards to Class Members: Payments to Class Members under the Settlement ("Settlement Awards") will be determined based on the number of weeks worked by all Class Members as a Store Manager of Defendant in California during the Class Period based on information provided by Defendant. The workweeks will be calculated by the "Settlement Administrator," as defined below, for Class Members by dividing the total days

employed as a Store Manager of Defendant in California during the Class Period by seven (7). Partial workweeks will not be counted, meaning incomplete workweeks and/or incomplete pay periods, will be rounded down; however, if a Class Member worked only one day as a Store Manager of Defendant in California, such Class Member will be credited with having worked one workweek for purposes of the Settlement. Defendant's workweek data will be presumed to be correct, unless a particular Class Member proves otherwise to the Settlement Administrator by credible written evidence. All workweek disputes will be resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all workweek disputes will be final and non-appealable. The amount to be paid per workweek to eligible Class Members will be calculated by the Settlement Administrator by dividing the Net Settlement Amount by the number of weeks worked by Class Members who do not opt out of the Settlement. No claim form shall be required for Class Members to receive their Settlement Awards.

ii. Private Attorneys General Act Allocation: Subject to Court approval, the Parties have agreed to allocate \$6,562.50 of the Maximum Settlement Amount to Plaintiffs' representative claims under PAGA. Seventy-five percent (75%) of this amount, or in other words \$4,921.87, will be paid out of the Maximum Settlement Amount to the LWDA of the State of California, and the remaining twenty-five percent (25%), or in other words \$1,640.63 ("Net PAGA Settlement Amount"), will remain included in the Net Settlement Amount and paid to the PAGA Member under the Settlement (the "PAGA Awards"). The Settlement Administrator will calculate the number of workweeks covered by the PAGA Members during the PAGA Period based on information to be provided by Defendant. Partial workweeks will not be counted; however, if a PAGA Member worked only one day as a Store Manager of Defendant in California, such PAGA Member will be credited with having worked one workweek for purposes of the Settlement. Defendant's workweek data will be presumed to be correct, unless a particular PAGA Member proves otherwise to the Settlement Administrator by credible written evidence. All workweek disputes will be resolved and decided by the Settlement Administrator,

1 and the Settlement Administrator's decision on all workweek disputes will be final and non-
2 appealable. The amount to be paid per workweek to PAGA Members will be calculated by the
3 Settlement Administrator by dividing the Net PAGA Settlement Amount by the aggregate
4 number of weeks worked by PAGA Members. No claim form shall be required for PAGA
5 Members to receive their PAGA Awards.

6 iii. Allocation of Settlement Awards: The Parties have agreed, based
7 on the allegations in the Action, that individual Settlement Awards payable to eligible Class
8 Members will be allocated from the Net Settlement Amount and paid as follows: one-third (1/3)
9 will be allocated to alleged unpaid wages for which IRS Forms W-2 will be issued; two-thirds
10 (2/3) will be allocated to alleged unpaid interest and penalties for which IRS Forms 1099-MISC
11 will be issued. Individual PAGA Awards for the PAGA Members will be paid from the Net
12 PAGA Settlement Amount, after the required payment to the LWDA, as alleged penalties for
13 which IRS Form 1099 will be issued.

14 iv. Settlement Awards and PAGA Awards Do Not Trigger Additional
15 Benefits: All Settlement Awards to Class Members, and all PAGA Awards to PAGA Members,
16 shall be deemed to be income to such Class Members and PAGA Members solely in the year in
17 which such awards are received by the Class Members and the PAGA Members. It is expressly
18 understood and agreed that the receipt of Settlement Awards and PAGA Awards will not entitle
19 any Class Member or PAGA Member to additional compensation or benefits under any company
20 bonus, contest or other compensation or benefit plan or agreement in place during the period
21 covered by the Settlement, nor will it entitle any Class Member or PAGA Member to any
22 increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It
23 is the intent of this Settlement that the Settlement Awards and PAGA Awards provided for in
24 this Agreement are the sole payments to be made by Defendant to the Class Members and the
25 PAGA Members in connection with this Settlement, and that the Class Members and PAGA
26 Members are not entitled to any new or additional compensation or benefits as a result of having
27 received the Settlement Awards and PAGA Awards (notwithstanding any contrary language or
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1 agreement in any benefit or compensation plan document that might have been in effect during
2 the period covered by this Settlement).

3 v. Attorneys' Fees and Litigation Costs: Subject to Court approval or
4 modification, Defendant agrees to pay, from the Maximum Settlement Amount, Class Counsel's
5 attorneys' fees and litigation expenses and costs as set forth in Paragraph 17 below.

6 vi. Class Representatives: The Parties agree to the designation of
7 Plaintiffs Albert Paris Suazo, Alexa Suart, and Leeda Habibi as "Class Representatives." Subject
8 to Court approval, and subject to Plaintiffs' execution of a general release of all claims under
9 California Code of Civil Procedure section 1542, Defendant agrees to pay to Plaintiffs, from the
10 Maximum Settlement Amount, an award at no additional cost to the Released Parties
11 ("Enhancement Awards"). The Enhancement Awards paid to the Class Representative cannot
12 exceed \$7,500.00 collectively, is subject to Court approval, and is in addition to any claimed
13 individual Settlement Award or PAGA Award to which the Class Representative is entitled under
14 this Stipulation of Settlement. The Parties agree to an Enhancement Award to Plaintiffs Albert
15 Paris Suazo, Alexa Suart and Leeda Habibi in the amount of \$2,500.00 each. The Enhancement
16 Awards are to be paid out of, and to be deducted from, the Maximum Settlement Amount. The
17 Settlement Administrator will issue an IRS Form 1099-MISC for the Enhancement Awards to
18 Plaintiffs for Plaintiffs' service as Class Representatives, and the Settlement Administrator will be
19 responsible for correctly characterizing this compensation for tax purposes and for paying any
20 taxes on the amount received. Should the Court approve Enhancement Awards to the Class
21 Representatives in an amount less than that set forth above, the difference between the lesser
22 amount approved by the Court and the Enhancement Awards set forth above shall be added to the
23 Net Settlement Amount.

24 vii. Settlement Administrator: The "Settlement Administrator" will be
25 Simpluris, or such other administrator mutually agreed upon by the Parties, after review and
26 approval by the Parties of a not-to-exceed quote for settlement administration expenses which
27 Plaintiff's Counsel agrees to request and circulate to Defendant's Counsel. All settlement
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administration expenses shall be paid out of, and be deducted from, the Maximum Settlement Amount.

viii. Mailing of Settlement and PAGA Awards: The Settlement Administrator will cause the Settlement Awards to be mailed to the Class Members who have not opted out of the Settlement and have not previously released their claims as to Defendant, and the PAGA Awards to be mailed to PAGA Members, within thirty-five (35) calendar days after the Settlement becomes effective as defined in Paragraph 15.b.

ix. Mailing of Enhancement Awards to Class Representatives: The Settlement Administrator will pay the Enhancement Awards approved by the Court to Plaintiffs and Class Representatives within thirty-five (35) calendar days after the Settlement becomes effective as defined in Paragraph 15.b.

e. Right to Rescission: If more than ten percent (10%) of the Settlement Class opts out of the Settlement by submitting valid and timely Requests for Exclusion as set forth in the Notice of Proposed Class and PAGA Action Settlement and Hearing Date for Final Court Approval of Settlement (“Class Notice”), Defendant shall have the right (but not the obligation) in its sole discretion to rescind and void the Settlement, before final approval by the Court, by providing written notice to Class Counsel no later than fourteen (14) calendar days after the opt-out deadline. If Defendant exercises this option, Defendant shall pay any costs of settlement administration incurred up to that date, and shall not be obligated to pay any other portion of the Settlement.

SETTLEMENT ADMINISTRATION

16. The Settlement Administrator shall be mutually agreed upon by the Parties to perform the customary duties of Settlement Administrator, subject to Court approval. The Settlement Administrator shall (a) establish a Qualified Settlement Fund (“QSF”); (b) serve as a Trustee of the settlement fund; (c) act as a fiduciary with respect to its handling, management, and distribution; and (d) handle tax reporting obligations for the QSF. The Settlement Administrator will disseminate the Class Notice to all Class Members and PAGA Members by

1 email where email addresses are available to Defendant, and by First-Class U.S. Mail. . The
2 Settlement Administrator will confirm, based on Defendant's data, the number of weeks worked
3 during the Class Period, and the number of weeks worked during the PAGA Period, and will
4 calculate the Settlement Awards due to Class Members, and the PAGA Awards due to PAGA
5 Members, in accordance with this Stipulation of Settlement. The Settlement Administrator shall
6 report in summary form the substance of its findings. At the request of Defendant, and upon
7 receipt of funds from Defendant, the Settlement Administrator will issue and send out Settlement
8 Awards to Class Members and PAGA Awards to PAGA Members. Defendant shall be entitled
9 to review proposed distributions, class workweek data and PAGA pay period data to ensure
10 correct and accurate distributions and representations to the Class Members and PAGA Members
11 through the Class Notice. Tax treatment of the Settlement Awards and PAGA Awards will be as
12 set forth herein and in accordance with state and federal tax laws. All disputes relating to the
13 Settlement Administrator's performance of its duties shall be referred to the Court, if necessary,
14 which will have continuing jurisdiction over the terms and conditions of this Stipulation of
15 Settlement until all payments and obligations from this Stipulation of Settlement have been fully
16 carried out.

17 ATTORNEYS' FEES AND LITIGATION COSTS

18 17. In consideration for settling the Action, in exchange for the release of claims by
19 the Settlement Class and PAGA Members, and subject to final approval or modification by the
20 Court, Defendant agrees to pay, from the Maximum Settlement Amount, Class Counsel
21 attorneys' fees not to exceed thirty-three and one-third percent (33 1/3%) of the Maximum
22 Settlement Amount, or in other words up to \$145,833.33, and attorneys' costs and expenses not
23 to exceed \$6,000.00. Defendant will not object to Class Counsel's application for attorneys' fees
24 and litigation costs up to these amounts. The amounts set forth above will cover all work
25 performed and all fees and costs incurred to date, and all work to be performed and all fees and
26 costs to be incurred in connection with the approval by the Court of this Stipulation of
27 Settlement, the administration of the Settlement, and obtaining the final judgment. Should Class
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1 Counsel request lesser amounts, or should the Court approve lesser amounts for attorneys' fees
2 and litigation costs, the difference between the lesser amounts and the fees and litigation
3 expenses and costs set forth above shall be added to the Net Settlement Amount.

4 18. The attorneys' fees and litigation expenses costs approved by the Court shall be
5 paid to Class Counsel within thirty-five (35) calendar days after the Settlement becomes
6 effective as defined in Paragraph 15.b.

7 NOTICE TO THE PLAINTIFF CLASS

8 19. The Class Notice has been jointly drafted by the Parties and, as approved by the
9 Court, shall be sent by the Settlement Administrator to the Class Members by First-Class U.S.
10 Mail and by email if email addresses are available to Defendant. The Class Notice shall be
11 substantially in the form approved by the Parties and identified as **Exhibit A** to this Stipulation
12 of Settlement.

13 a. Within thirty (30) calendar days after preliminary approval of this
14 Settlement by the Court, Defendant shall provide to the Settlement Administrator the Class
15 Members' and PAGA Members' names, last-known addresses, last-known telephone numbers,
16 Social Security Numbers, and number of workweeks during the Class Period and PAGA Period
17 ("Class Data"). The Parties agree the contact information and Social Security Numbers will be
18 used only by the Settlement Administrator for the sole purpose of effectuating the Settlement,
19 and will not be provided to Class Counsel at any time or in any form. The Settlement
20 Administrator shall take reasonable steps to protect this confidential and private information. To
21 the extent Class Counsel possesses or comes to possess the contact information and/or Social
22 Security Numbers from the Settlement Administrator, Class Counsel shall return all such
23 information (including copies and data or information derived therefrom) within five (5) calendar
24 days from the date the Court finally approves the Settlement, shall destroy all copies in any form
25 of such information, and shall not retain, maintain or use such information for any purpose. The
26 information provided for above shall be based on Defendant's payroll and other business records
27 and in a format acceptable to the Settlement Administrator. Defendant agrees to consult with the

b. Class Notices returned to the Settlement Administrator as non-delivered shall be re-sent to the forwarding address, if any, on the returned envelope. If there is no forwarding address, the Settlement Administrator will do an NCOA check and will skip-trace returned mail using the Class Member's and PAGA Member's, as applicable, Social Security Number and re-mail within five (5) calendar days of receipt; this search will be performed only once per Class Member and PAGA Member by the Settlement Administrator. Upon completion of these steps by the Settlement Administrator, Defendant and the Settlement Administrator shall be deemed to have satisfied their obligations to provide the Class Notice to the affected member of the Settlement Class. The affected member of the Settlement Class shall remain a member of the Settlement Class and shall be bound by all the terms of the Stipulation of Settlement and the Court's Order and Final Judgment.

c. The Class Notice shall identify the procedures for opting out of or objecting to the Settlement.

d. Class Counsel shall provide to the Court, at least sixteen (16) court days before the Final Fairness hearing, an initial declaration by the Settlement Administrator of due diligence and proof of mailing with regard to the mailing of the Class Notice.

26 20. The Class Members will have sixty (60) calendar days from the date of mailing of
27 the Notice in which to submit requests for exclusion (“opt out”) of the Settlement Class. PAGA

1 Members are not entitled to opt out as a PAGA Member. Class Members whose Class Notices
2 are re-mailed shall have ten (10) calendar days from the re-mailing of the Class Notice or until
3 the end of the initial 60-day period, whichever comes later, in which to opt out.

4 21. Defendant, on behalf of the Released Parties, will deposit the Maximum
5 Settlement Amount by wire transfer into the QSF within thirty (30) calendar days after the
6 Settlement becomes effective as defined in Paragraph 15.b. The Settlement Administrator will
7 be responsible for making appropriate deductions, calculating and reporting the employer payroll
8 taxes on the Settlement Awards, paying to Class Counsel any Court-approved attorneys' fees and
9 litigation expenses and costs, paying to the Class Representatives the Court-approved
10 Enhancement Awards, paying to the LWDA seventy-five percent (75%) of the amount allocated
11 for PAGA penalties above, paying the settlement administration expenses, meeting tax reporting
12 obligations, and for issuing the individual Settlement Awards to Class Members and PAGA
13 Awards to PAGA Members. Settlement Awards to Class Members and PAGA Awards to
14 PAGA Members will be mailed or disbursed by the Settlement Administrator within forty-five
15 (45) calendar days after the Settlement becomes effective as defined in Paragraph 15.b. The
16 Settlement Administrator shall distribute the Settlement Awards by check, or by direct deposit or
17 Zelle if Class Members request the Settlement Administrator to do so through a secure email link
18 provided by the Settlement Administrator to all Class Members with email addresses. Settlement
19 Award and PAGA Award checks shall remain valid and negotiable for one hundred twenty (120)
20 calendar days from the date of their issuance; the Parties agree the Settlement Administrator will
21 send one (1) reminder notice to all Class Members and PAGA Members who have not cashed the
22 Settlement Award or PAGA Award check thirty (30) calendar days prior to the deadline; upon
23 the deadline to cash the Settlement Award and PAGA Award checks, the checks will
24 automatically be cancelled by the Settlement Administrator if not cashed by the Class Member or
25 the PAGA Member within that time, at which point the Class Members' and PAGA Members'
26 checks will be deemed void and of no further force or effect, and the Class Members' and PAGA
27 Members' claims will remain released by the Settlement. The checks provided to Class

Members and PAGA Members shall prominently state the expiration date or a statement that the checks will expire in one hundred twenty (120) days, or alternatively, such a statement may be made in a letter accompanying the check. Expired Settlement Award and PAGA Award checks will not be reissued, except for good cause and as mutually agreed by the Parties in writing. Any residue from uncashed Settlement Award or PAGA Award checks after the expiration date will be paid within fourteen (14) calendar days after the one hundred twenty (120) day check cashing period expires shall be transferred in the name of the Class Member(s) to the California State Controller's Office (SCO), Unclaimed Property Division, P.O. Box 942850, Sacramento, CA 94250-5873. Upon completion of its calculation of payments, the Settlement Administrator shall provide Defendant with a report listing the amount of all payments to be made to each Class Member and PAGA Member. Proof of compliance with the Court's final approval order will be provided to counsel for the Parties by the Settlement Administrator within twenty-one (21) days after all payment obligations, the check cashing deadline for Class Members, and payment to the *cy pres* beneficiary have passed.

OPTING OUT OF / OBJECTING TO THE SETTLEMENT

22. Opting Out of the Settlement: For those Class Members who do not wish to participate in the Settlement, such Class Members may exclude themselves by submitting a timely written request to the Settlement Administrator; PAGA Members cannot opt out as a PAGA Member. The written request ("Request for Exclusion") should state that he/she has received the Class Notice, he/she has decided not to participate in the Settlement, and words to the effect that he/she desires to be excluded from the class action portion of the Settlement. The Request for Exclusion must also state the individual's full name, address, date of birth, and dates he/she worked as a Store Manager for Defendant in California during the Class Period. The Request for Exclusion must be signed, dated, and mailed by First-Class U.S. Mail, or the equivalent, to the Settlement Administrator. All Requests for Exclusion must be postmarked and mailed to the Settlement Administrator no later than sixty (60) calendar days after the Settlement Administrator mails the Class Notice to the Class Members. Any individual who submits

1 a Request for Exclusion will not be allowed to object to the terms of the Settlement.

2 23. Objecting to the Settlement: Any individual who does not exclude himself/herself
 3 from the Settlement can object to the terms of the Settlement in writing before the deadline to
 4 object to the Settlement. To object, the individual must file a written objection and a notice of
 5 intention to appear at the final approval hearing with the Clerk of the Court. Any written
 6 objection must state each specific reason in support of the objection and any legal support for
 7 each objection. The individual must state his/her full name, address, date of birth, and dates
 8 he/she worked as a Store Manager in California for Defendant during the Class Period. To be
 9 valid and effective, any written objections to approval of the Settlement must be filed with the
 10 Clerk of the Court no later than sixty (60) calendar days after the Settlement Administrator mails
 11 the Class Notice. However, a Class Member may appear at the final approval hearing, either in
 12 person or through his/her own counsel, and object to the Settlement Agreement and any of its
 13 terms without submitting a prior objection in the manner and by the deadline specified above. If
 14 the Court rejects the objection, the individual will be bound by the terms of the Settlement.

15 RELEASE BY THE CLASS

16 24. Effective upon the date of final approval by the Court of this Stipulation of
 17 Settlement, and except as to such rights or claims as may be created by this Stipulation of
 18 Settlement, the Settlement Class and each member of the Settlement Class who has not
 19 submitted a valid Request for Exclusion fully release and discharge the Released Parties from all
 20 claims under state, federal and local law that were or could have been asserted based on the facts
 21 and allegations made in the Action, and any amendments thereto, as to the Class Members,
 22 including without limitation, California Labor Code sections 200, 201, 202, 203, 204, 210, 221,
 23 223, 225.5, 226, 226.3, 226.7, 246, 510, 512, 516, 558, 1174, 1174.5, 1182.11, 1182.12, 1194,
 24 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, and 2802, California Industrial Commission Wage
 25 Orders, Cal. Code Regs., title 8, section 11040, *et seq.*, California Code of Civil Procedure
 26 section 1021.5, Business and Professions Code section 17200, *et seq.*, the federal Fair Labor
 27 Standards Act, 29 U.S.C. §§ 201, *et seq.*, as amended (“FLSA”), and including all claims for or

related to alleged unpaid wages, overtime or double time wages, minimum wages, regular rate of pay, timely payment of wages during employment, timely payment of wages at separation, meal periods and meal period premiums, rest periods and rest period premiums, off-the-clock work, payroll deductions, unreimbursed business expenses, wage statements, payroll records and recordkeeping, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, conversion, class actions, representative actions, aggrieved party claims, injunctive relief, declaratory relief, accounting, punitive damages, liquidated damages, penalties of any nature (including but not limited to civil penalties and waiting time penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Action (collectively “Released Class Claims”) from October 20, 2018 through September 12, 2023 (“the Class Release Period”). The Released Class Claims during the Class Release Period cover, and release of all claims under the FLSA by Plaintiffs and all Class Members who receive Settlement Awards, regardless of whether Plaintiffs and/or Class Members negotiate their Settlement Award checks pursuant to this Settlement. In addition, as of the date of final approval of the Settlement, the Class Representatives and the Settlement Class, and each member of the Class who has not submitted a valid Request for Exclusion, are forever barred and enjoined from instituting or accepting damages or obtaining relief against the Released Parties for the Released Class Claims during the Class Release Period.

25. Effective upon the date of final approval by the Court of this Stipulation of Settlement, the claims released by the PAGA Members include all claims arising during the PAGA Period seeking civil penalties under PAGA, that Plaintiff Habibi as proxy for the State of California and/or the LWDA, to the maximum extent permitted by law, and as a private attorney general acting on behalf of Plaintiff and the PAGA Members, asserted or could reasonably have asserted based on the facts alleged in the Action and/or the LWDA letter, including but not limited to all claims arising under the California Labor Code (including, but not limited to, sections 200, 201, 202, 203, 204, 210, 221, 223, 225.5, 226, 226.3, 226.7, 246, 510, 512, 516,

558, 1174, 1174.5, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, and 2802, as alleged in the Complaint) and the wage orders of the California Industrial Welfare Commission and any other Labor Code section or Wage Order based on the facts alleged in the Action (collectively “Released PAGA Claims”). This release shall release all Released PAGA Claims by or on behalf of Plaintiffs and all PAGA Members from July 31, 2022 through September 12, 2023 (“PAGA Release Period”), and for the entire PAGA Release Period regardless of whether Plaintiffs and/or a PAGA Member negotiate their PAGA Award checks sent pursuant to this Settlement and regardless of whether any such PAGA Member opts out and excludes himself or herself from the class action portion of the Settlement.

26. In addition to the Released Class Claims and the Released PAGA Claims, Plaintiffs and Class Representatives agree to generally release the Released Parties from any and all claims, whether known or unknown, under all federal, state and local statutes, and federal and state common law (including but not limited to those for contract, tort and equity), except for workers’ compensation claims. Plaintiffs acknowledge the language of Section 1542 of the California Civil Code, which provides:

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.

Plaintiffs and Class Representatives expressly waive the protection of Section 1542. Plaintiffs and Class Representatives understand and agree that claims or facts in addition to or different from those which are now known or believed by Plaintiffs and Class Representatives to exist may hereafter be discovered. It is the intention of the Plaintiffs and Class Representatives to settle fully and release all of the claims, except for workers’ compensation claims, Plaintiffs now have against the Released Parties, whether known or unknown, suspected or unsuspected.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

27. To effectuate the terms of the Settlement, the Parties agree all formal and informal discovery shall be stayed pending Court approval of the Settlement. The Parties have notified

1 the Court of the Settlement through a Notice of Settlement and have requested that all current
2 Court deadlines be continued pending Court approval of the Settlement. *See* ECF No. 43. Class
3 Counsel agree to cease all affirmative communication (oral and written) with Class Members and
4 PAGA Members, other than through Court-approved notices; this provision does not prevent
5 Class Counsel from communicating with Plaintiffs and Class Representatives and from
6 communicating with any Class Member or PAGA Member who may contact Class Counsel.
7 Plaintiffs shall promptly submit this Stipulation of Settlement to the Court in support of
8 Plaintiffs' motion for preliminary approval and determination by the Court as to its fairness,
9 adequacy and reasonableness. Plaintiffs agree to provide Defendant the opportunity to review
10 and to approve before filing, Plaintiffs' motion for preliminary approval of the Settlement. At
11 the same time that Plaintiffs submit this Stipulation of Settlement to the Court, Plaintiffs agree to
12 submit a copy of the Stipulation of Settlement to the LWDA. Promptly upon execution of this
13 Stipulation of Settlement, Plaintiffs shall apply to the Court for the entry of an order
14 preliminarily approving the Settlement in a form that is mutually agreeable between the Parties
15 and also provides for the following:

- 16 a. Scheduling a Final Fairness hearing on the question of whether the
17 proposed Settlement, including payment of attorneys' fees and litigation expenses and costs,
18 costs of administration, and the Class Representatives' Enhancement Awards should be finally
19 approved as fair, reasonable and adequate as to the members of the Settlement Class;
- 20 b. Certifying a Settlement Class, Plaintiffs as Class Representatives, and
21 approval of Class Counsel;
- 22 c. Approving as to form and content the proposed Class Notice;
- 23 d. Approving the manner and method for Class Members to request
24 exclusion from the Settlement as contained herein and within the Class Notice;
- 25 e. Directing the mailing of the Class Notice by first-class mail to the Class
26 Members and PAGA Members;
- 27 f. Preliminarily approving the Settlement, subject only to the objections of
28

1 Class Members and PAGA Members, and final review by the Court; and

2 (g) The Preliminary Approval Order shall be substantially in the form
3 identified as **Exhibit B** to this Stipulation of Settlement.

4 DUTIES OF THE PARTIES FOR FINAL COURT APPROVAL

5 28. Class Counsel agree to return any confidential documents, lists and data in all
6 forms and formats (originals and copies) within seven (7) calendar days from final Court
7 approval of the Settlement. Plaintiffs agree to provide Defendant the opportunity to review and
8 to approve Plaintiffs' motion for final approval before filing. Class Counsel agrees to submit a
9 proposed final order and judgment mutually agreeable between the Parties, and substantially in
10 the form identified as **Exhibit C** to this Stipulation of Settlement, and provides for the following:

11 a. Approving the Settlement, adjudging the terms thereof to be fair,
12 reasonable and adequate, and directing consummation of its terms and provisions;

13 b. Approving Class Counsel's application for an award of attorneys' fees and
14 litigation expenses and costs;

15 c. Approving the Enhancement Awards to the Class Representatives; and

16 d. Entering judgment and permanently barring and enjoining all Class
17 Members and PAGA Members from prosecuting the Released Class Claims and the Released
18 PAGA Claims against Defendant and the Released Parties.

19 PARTIES' AUTHORITY

20 29. The signatories hereto hereby represent that they are fully authorized to enter into
21 this Stipulation of Settlement and bind the Parties hereto to the terms and conditions thereof.

22 MUTUAL FULL COOPERATION

23 30. The Parties agree to fully cooperate with each other to accomplish the terms of
24 this Stipulation of Settlement, including but not limited to execution of such documents and
25 taking such other action as reasonably may be necessary to implement the terms of this
26 Stipulation of Settlement. The Parties shall use their best efforts, including all efforts
27 contemplated by this Stipulation of Settlement and any other efforts that may become necessary

1 by order of the Court, or otherwise, to effectuate this Stipulation of Settlement and the terms set
2 forth herein. As soon as practicable after execution of this Stipulation of Settlement, Class
3 Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all
4 necessary steps to secure the Court's final approval of this Stipulation of Settlement.

5 31. The Parties and their respective counsel agree that they will not attempt to
6 encourage or discourage Class Members from filing Requests for Exclusion.

7 NO PRIOR ASSIGNMENTS

8 32. The Parties and their counsel represent, covenant and warrant that they have not,
9 directly or indirectly, assigned, transferred or encumbered, or purported to assign, transfer or
10 encumber, to any person or entity any portion of any liability, claim, demand, action, cause of
11 action or right herein released and discharged except as set forth herein.

12 NO ADMISSION

13 33. Nothing contained herein, nor the consummation of this Stipulation of Settlement,
14 is to be construed or deemed an admission of liability, culpability, negligence or wrongdoing on
15 the part of Defendant. Each of the Parties hereto has entered into this Stipulation of Settlement
16 solely with the intention to avoid further disputes and litigation with the attendant inconvenience
17 and expenses.

18 ENFORCEMENT ACTIONS

19 34. The Parties agree that the Court shall retain jurisdiction to enforce the terms of
20 this Settlement. In the event one or more of the Parties to this Stipulation of Settlement institutes
21 any legal action or other proceeding against any other Party or Parties to enforce the provisions
22 of this Stipulation of Settlement or to declare rights or obligations under this Stipulation of
23 Settlement, the successful Party or Parties shall be entitled to recover from the unsuccessful
24 Party or Parties' reasonable attorneys' fees and litigation costs, including expert witness fees,
25 incurred in connection with any enforcement actions.

NOTICES

35. 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 (3rd) business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

CLASS COUNSEL

Jahan C. Sagafi
 OUTTEN & GOLDEN LLP
 One California Street, Suite 1250
 San Francisco, CA 94111

DEFENDANT'S COUNSEL

Cary G. Palmer
 JACKSON LEWIS P.C.
 400 Capitol Mall, Suite 1600
 Sacramento, CA 95814

NO PUBLIC COMMENT

36. The Class Representatives and Class Counsel will not make any public disclosure of the Settlement, except through Court filings to preliminarily and finally approve the Settlement. Class Counsel will take all steps necessary to ensure that the Class Representatives are aware of, and will ensure that the Class Representatives adhere to, the restriction against any public disclosure of the Settlement. Following preliminary Court approval of the Settlement, the Class Representatives and Class Counsel will not initiate any communications (directly or indirectly) with the media regarding the Action. Notwithstanding the foregoing, the Class Representatives and Class Counsel may, in response to a communication initiated by the media, direct the inquiring media member to the public records of the Action on file with the Court. Class Counsel will take all steps reasonably necessary to ensure that the Class Representatives are aware of, and will ensure that they will adhere to, the restriction against any media comment on the Settlement and its terms.

CONSTRUCTION

37. The Parties hereto agree that the terms and conditions of this Stipulation of Settlement are the result of lengthy, intensive arm's-length negotiations between the Parties and this Stipulation of Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her or its counsel participated in the drafting of this

1 Stipulation of Settlement.

2 CAPTIONS AND INTERPRETATIONS

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

7 MODIFICATION

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

12 INTEGRATION CLAUSE

13 40. This Stipulation of Settlement, and the fully executed Confidential Memorandum
14 of Understanding, contain the entire agreement between the Parties relating to the Settlement and
15 transaction contemplated hereby, and all other prior or contemporaneous agreements,
16 understandings, representations and statements, whether oral or written and whether by a Party
17 or such Party's legal counsel, are merged herein. No rights may be waived except in writing.

18 BINDING ON ASSIGNS

19 41. This Stipulation of Settlement shall be binding upon and inure to the benefit of the
20 Parties and the Released Parties hereto, and their respective heirs, trustees, executors,
21 administrators, successors and assigns.

22 CLASS MEMBER SIGNATORIES

23 42. It is agreed that because the Class Members and PAGA Members are so
24 numerous, it is impossible or impractical to have each Class Member and PAGA Member
25 execute this Stipulation of Settlement. The Class Notice will advise all Class Members and
26 PAGA Members of the binding nature of the release, and the release shall have the same force
27 and effect as if this Stipulation of Settlement were executed by each member of the Class.

COUNTERPARTS

43. This Stipulation of Settlement may be executed in counterparts and by facsimile signatures, and when each Party has signed and delivered at least one such counterpart, each counterpart, including e-mail and PDF versions, shall be deemed an original and, when taken together with other signed counterparts, shall constitute one Stipulation of Settlement binding upon and effective as to all Parties.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily execute this Joint Stipulation of Class, Collective, and PAGA Action Settlement and Release between Plaintiffs and Defendant, as follows:

PLAINTIFFS AND CLASS REPRESENTATIVES:

Dated: 03/19/2024

Albert Paris Suazo

ALBERT PARIS SUAZO

Dated: _____

ALEXA SUART

Dated: _____

LEEDA HABIBI

DEFENDANT:

Dated: Mar 25, 2024

BLUEMERCURY, INC.

Katie Acevedo
By: [Katie Acevedo \(Mar 25, 2024 16:38 EDT\)](#)

Authorized Officer or Agent

APPROVED AS TO FORM:

Dated: _____

OUTTEN & GOLDEN LLP

By: _____

Jahan C. Sagafi

Sabine Jean

Jarron D. McAllister

Attorneys for Plaintiffs,

Class Members and PAGA Members

Dated: 03/22/2024

SHAVITZ LAW GROUP, P.A.

By: *Gregg I. Shavitz*

Gregg I. Shavitz

Camar R. Jones

Attorneys for Plaintiffs,

Class Members and PAGA Members

COUNTERPARTS

43. This Stipulation of Settlement may be executed in counterparts and by facsimile signatures, and when each Party has signed and delivered at least one such counterpart, each counterpart, including e-mail and PDF versions, shall be deemed an original and, when taken together with other signed counterparts, shall constitute one Stipulation of Settlement binding upon and effective as to all Parties.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily execute this Joint Stipulation of Class, Collective, and PAGA Action Settlement and Release between Plaintiffs and Defendant, as follows:

PLAINTIFFS AND CLASS REPRESENTATIVES:

Dated: _____

ALBERT PARIS SUAZO

Dated: 03/21/2024 _____

ALEXA SUART

Dated: _____

LEEDA HABIBI**DEFENDANT:**

BLUEMERCURY, INC.

Dated: _____

By: _____
Authorized Officer or Agent**APPROVED AS TO FORM:**

OUTTEN & GOLDEN LLP

Dated: _____

By: _____
Jahan C. Sagafi
Sabine Jean
Jarron D. McAllister
Attorneys for Plaintiffs,
Class Members and PAGA Members

Dated: 03/22/2024 _____

SHAVITZ LAW GROUP, P.A.
By: _____
Gregg I. Shavitz
Camar R. Jones
Attorneys for Plaintiffs,
Class Members and PAGA Members

COUNTERPARTS

43. This Stipulation of Settlement may be executed in counterparts and by facsimile signatures, and when each Party has signed and delivered at least one such counterpart, each counterpart, including e-mail and PDF versions, shall be deemed an original and, when taken together with other signed counterparts, shall constitute one Stipulation of Settlement binding upon and effective as to all Parties.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily execute this Joint Stipulation of Class, Collective, and PAGA Action Settlement and Release between Plaintiffs and Defendant, as follows:

PLAINTIFFS AND CLASS REPRESENTATIVES:

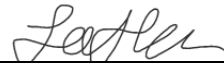
Dated: _____

ALBERT PARIS SUAZO

Dated: _____

ALEXA SUART

Dated: 03/19/2024 _____


LEEDA HABIBI**DEFENDANT:**

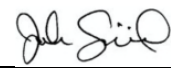
BLUEMERCURY, INC.

Dated: _____

By: _____
Authorized Officer or Agent**APPROVED AS TO FORM:**

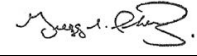
OUTTEN & GOLDEN LLP

Dated: 03/21/2024 _____

By:  _____
Jahan C. Sagafi
Sabine Jean
Jarron D. McAllister
Attorneys for Plaintiffs,
Class Members and PAGA Members

SHAVITZ LAW GROUP, P.A.

Dated: 03/22/2024 _____

By:  _____
Gregg I. Shavitz
Camar R. Jones
Attorneys for Plaintiffs,
Class Members and PAGA Members

1 Dated: 03/26/2024

JACKSON LEWIS P.C.

2 By: 

3 Cary G. Palmer
4 Keelia K. Lee

5 Attorneys for Defendant
6 BLUEMERCURY, INC.

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4873-9503-8638, v. 1
4873-9503-8638, v. 1
4873-9503-8638, v. 1

Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ALBERT PARIS SUAZO, ALEXA SUART, and LEEDA
HABIBI, on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

BLUEMERCURY, INC., a Delaware corporation,

Defendant.

Case No. 3:22-cv-06307-JD

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

**ATTENTION ALL PERSONS EMPLOYED BY BLUEMERCURY, INC. AS A STORE MANAGER IN CALIFORNIA FROM
OCTOBER 20, 2018 TO SEPTEMBER 12, 2023 (“SETTLEMENT CLASS OR “CLASS MEMBERS”):**

**PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED CLASS, COLLECTIVE, AND
PAGA ACTION SETTLEMENT. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION
ABOUT YOUR RIGHT TO RECEIVE PAYMENT OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE
PROCEDURES BELOW.**

**IF YOU DO NOT WISH TO RECEIVE PAYMENT UNDER THE SETTLEMENT OR TO PARTICIPATE IN THE
SETTLEMENT, YOU MUST REQUEST TO BE EXCLUDED ON OR BEFORE [INSERT DATE 60 DAYS FROM NOTICE
MAILING].**

Pursuant to the Order Granting Preliminary Approval of Class, Collective, and PAGA Action Settlement of the United States District
Court, Northern District of California, San Francisco Division, entered [REDACTED], YOU ARE HEREBY NOTIFIED
AS FOLLOWS:

A class, collective, and PAGA action settlement has been reached between the Parties in the above-captioned lawsuit pending in federal
court in San Francisco on behalf of all persons currently and formerly employed by Bluemercury, Inc. (“Defendant”) as a Store Manager
in California from October 20, 2018 to September 12, 2023 (the “Settlement Class” or “Class Members”); the Settlement Class does not
include persons who submit valid Requests for Exclusion (as explained below), or who previously settled, released or received awards
for claims covered by the Settlement.

All Class Members who worked any hours for Defendant in California during any pay period from July 31, 2022 through September
12, 2023 are aggrieved employees with respect to the California Private Attorneys General Act (“PAGA”) (“PAGA Members”), and
will be paid their PAGA Award and will release the Released PAGA Claims, regardless of whether they submit a timely and valid
Request for Exclusion from the Settlement Class.

The “Released Parties” include: (i) Defendant; (ii) Defendant’s respective past and present direct and indirect parents, subsidiaries and
affiliates; (iii) the past and present shareholders, directors, officers, owners, agents, employees, clients, attorneys, insurers, predecessors,
successors and assigns of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing.

You have received this notice because records indicate you worked for Defendant as a Store Manager in California during the Class
Period and/or PAGA Period (defined below). This notice is to advise you of how you can either participate in the Settlement or be
excluded from the class action portion of the Settlement.

I. BACKGROUND OF THE CASE

On October 20, 2022 Plaintiffs Albert Paris Suazo and Alexa Suart filed a complaint against Defendant in the United States District
Court, Northern District of California, San Francisco Division, on behalf of themselves and other Store Managers who worked for
Defendant in California. Plaintiff Leeda Habibi later joined the case. The term “Action” means this class, collective, and PAGA action
in federal court in San Francisco, Case No. 3:22-cv-06307. The class period is from October 20, 2018 through September 12, 2023 (the
“Class Period”). The PAGA period is from July 31, 2022 through September 12, 2023 (“PAGA Period”).

Plaintiffs alleged violations of state and federal law for or related to alleged unpaid wages, overtime or double time wages, minimum wages, regular rate of pay, timely payment of wages during employment, timely payment of wages at separation, meal periods and meal period premiums, rest periods and rest period premiums, off-the-clock work, payroll deductions, unreimbursed business expenses, wage statements, payroll records and recordkeeping, unfair competition, and for penalties under the California Private Attorneys General Act (“PAGA”) (“Complaint”). Plaintiffs’ Complaint seeks recovery of compensatory damages, penalties, interest, and attorneys’ fees and costs. Defendant denies all claims and denies that Plaintiffs, Class Members and PAGA Members are entitled to any recovery.

The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties participated in a private mediation before a well-respected class action mediator. Based upon the Parties’ negotiations at mediation and the proposal by the mediator, and all known facts and circumstances, including the various risks and uncertainties related to legal actions including the complete defenses to liability potentially available to Defendant, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation, the Parties reached a Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Settlement, Defendant continues to deny all allegations and claims, and entering into the Settlement is not an admission of wrongdoing or liability. The Parties have entered into a Joint Stipulation of Class, Collective, and PAGA Action Settlement and Release between Plaintiffs and Defendant, which has been preliminarily approved by the Court.

If you are part of the Settlement Class, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the class action portion of the Settlement. PAGA Members are not eligible to opt out of the Released PAGA Claims.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Settlement, Defendant agrees to pay a Gross Settlement Amount of \$437,500 for all claims, attorneys’ fees and costs, enhancement awards, penalties, and settlement administration expenses (“Maximum Settlement Amount”). Deducted from this Maximum Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed thirty-three and one third percent (33 1/3%) of the Maximum Settlement Amount which equals \$145,833.33, attorneys’ costs not to exceed \$6,000.00, Enhancement Awards to the Class Representatives not to exceed \$7,500.00 collectively, the fees and expenses of the settlement administrator estimated not to exceed \$7,000.00, and \$6,562.50 payable to the California Labor and Workforce Development Agency (“LWDA”) for alleged PAGA penalties (the “Net Settlement Amount”); the Net Settlement Amount will be distributed *pro rata* to Class Members and PAGA Members. As explained further below, the amount of each Class Member’s Settlement Award, and each PAGA Member’s PAGA Award, will depend on the number of weeks worked during the Class Period and the PAGA Period. Defendant’s employer taxes on the wage portion of the Settlement Awards will be a separate obligation owed by Defendant above the Maximum Settlement Amount.

This Class Notice will list for each Class Member the number of weeks worked during the Class Period and estimated Settlement Award. This Class Notice will also list for each PAGA Member the number of weeks worked during the PAGA Period and estimated PAGA Award.

B. Settlement Formula, and Settlement Awards

Defendant will pay Settlement Awards through a Settlement Administrator, as described below, to each Class Member who has not submitted a Request for Exclusion from the Settlement. All Settlement Awards will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action, that all Settlement Awards payable to Class Members will be allocated from the Net Settlement Amount, and paid as one-third (1/3) alleged unpaid wages for which IRS Forms W-2 will issue, and two-thirds (2/3) for alleged unpaid penalties and interest for which IRS Forms 1099-MISC will issue.

Defendant will pay PAGA Awards to PAGA Members from the Net PAGA Settlement Amount, after the required payment to the LWDA, as alleged penalties for which IRS Form 1099 will issue. PAGA Members cannot opt out of the PAGA portion of the Settlement.

Settlement Awards to Class Members will be based on the number of weeks worked by Class Members during the Class Period. PAGA Awards to PAGA Members will be based on the number of weeks worked by PAGA Members during the PAGA Period. The number of workweeks will be determined by Defendant’s records. The number of weeks worked will be calculated by dividing by seven (7) the total number of days worked by the Class Member as a Store Manager for Defendant in California during the Class Period, and the total number of days worked by the PAGA Member as a Store Manager for Defendant in California during the PAGA Period. Partial workweeks will not be counted, meaning incomplete workweeks will be rounded down; however, if a Class Member or PAGA Member worked only one day as a Class Member or PAGA Member, such person will be credited with having worked one workweek. Receipt of the Settlement Awards or PAGA Awards will not entitle Class Members or PAGA Members to additional compensation or benefits under any compensation plan, benefit plan or agreement during the Class Period or PAGA Period. Settlement Awards will be paid by check and mailed by U.S First Class Mail to Class Members, or by direct deposit or Zelle if Class Members direct the Settlement

Administrator to do so; all Class Members for whom Defendant currently possesses email addresses will receive an email from the Settlement Administrator with a secure link for payment options by direct deposit or Zelle.

C. Calculations to Be Based on Defendant's Records

For each Class Member and PAGA Member, the amount payable to the Class Member and/or the PAGA Member will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct, unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks or pay periods worked by an individual Class Member or PAGA Member. If a Class Member or PAGA Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member or PAGA Member. The dispute will be resolved by the Settlement Administrator as described in Section E below.

D. Release of Claims

The Joint Stipulation of Class, Collective, and PAGA Action Settlement and Release between Plaintiffs and Defendant contains a release which releases Defendant and the Released Parties from all claims under state, federal and local law alleged in the Action and that reasonably could have been alleged in the Action based on the factual allegations contained in the operative Complaint in the Action and any amendments thereto, as to the Class Members, including without limitation, California Labor Code sections 200, 201, 202, 203, 204, 210, 221, 223, 225.5, 226, 226.3, 226.7, 246, 510, 512, 516, 558, 1174, 1174.5, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, and 2802, California Industrial Commission Wage Orders, Cal. Code Regs., title 8, section 11040, *et seq.*, California Code of Civil Procedure section 1021.5, Business and Professions Code section 17200, *et seq.*, the federal Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, as amended ("FLSA"), and including all claims for or related to alleged unpaid wages, overtime or double time wages, minimum wages, regular rate of pay, timely payment of wages during employment, timely payment of wages at separation, meal periods and meal period premiums, rest periods and rest period premiums, off-the-clock work, payroll deductions, unreimbursed business expenses, wage statements, payroll records and recordkeeping, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, conversion, class actions, representative actions, aggrieved party claims, injunctive relief, declaratory relief, accounting, punitive damages, liquidated damages, penalties of any nature (including but not limited to civil penalties and waiting time penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Action ("Released Class Claims") from October 20, 2018 through September 12, 2023 ("Class Release Period"). The Released Class Claims during the Class Release Period cover, and release of all claims under the FLSA by Plaintiffs and all Class Members who receive Settlement Awards, regardless of whether Plaintiffs and/or Class Members negotiate their Settlement Award checks pursuant to this Settlement.

The claims to be released by PAGA Members include all claims arising during the PAGA Period seeking civil penalties under PAGA, that Plaintiffs as proxies for the State of California and/or the LWDA, to the maximum extent permitted by law, and as a private attorney general acting on behalf of Plaintiffs and the PAGA Members, asserted or could reasonably have asserted based on the facts alleged in the Action and/or the LWDA letter, including but not limited to all claims arising under the California Labor Code (including, but not limited to, sections 200, 201, 202, 203, 204, 210, 221, 223, 225.5, 226, 226.3, 226.7, 246, 510, 512, 516, 558, 1174, 1174.5, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, and 2802, as alleged in the Complaint) and the wage orders of the California Industrial Welfare Commission and any other Labor Code section or Wage Order based on the facts alleged in the Action (collectively "Released PAGA Claims"). This release shall release all Released PAGA Claims by or on behalf of Plaintiffs and all PAGA Members from July 31, 2022 through September 12, 2023 ("PAGA Release Period"), and for the entire PAGA Release Period regardless of whether PAGA Members negotiate (cashes) their PAGA Award checks sent pursuant to this Settlement and regardless of whether any such PAGA Member opts out and excludes himself or herself from the class action portion of the Settlement.

E. Resolution of Workweek Disputes

If a Class Member or PAGA Member disputes the accuracy of Defendant's records as to the number of workweeks worked, any documentation supporting such dispute must be submitted to the Settlement Administrator. All workweek disputes will be resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all disputes will be final and binding.

F. Enhancement Awards for Class Representatives

Subject to final approval by the Court, the Class Representatives will receive Enhancement Awards up to \$7,500 collectively. The Enhancement Awards will be made for their service as Class Representatives, including active participation in prosecution of the Action, as well as willingness to accept the risk of incurring Class Counsel's costs or paying Defendant's attorneys' fees and costs for an unsuccessful outcome in the Action. The Class Representative also signed a general release of all claims, which is broader than the release applicable to all other Class Members, to be eligible for the Enhancement Awards. The Enhancement Awards to Plaintiffs and

Class Representatives include awards to Albert Paris Suazo, Alexa Suart and Leeda Habibi in the amount up to \$2,500.00 each, to be paid from the Maximum Settlement Amount, and in addition to the Class Representatives' individual Settlement Awards and PAGA Awards.

G. Attorneys' Fees and Costs

As consideration for the Settlement and in exchange for the release by the Settlement Class, Defendant agrees to pay Class Counsel's attorneys' fees and costs to be set by the Court, up to a maximum of thirty-three and one third percent (33 1/3%) of the Maximum Settlement Amount, which equals \$145,833.33, and attorneys' costs not to exceed \$6,000.00. Class Counsel's attorneys' fees and costs will be paid and deducted from the Maximum Settlement Amount.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Excluding Yourself from the Class Action Portion of the Settlement

If you do not wish to participate in the Settlement, you may be excluded from being a Class Member (i.e., "opt out") by submitting a timely written request to the Settlement Administrator stating you have received notice of the Settlement, decided not to participate in the Settlement, and desire to be excluded from the Settlement, or words to that effect ("Request for Exclusion"). Your Request for Exclusion must also state your full name, address, date of birth, and dates you were employed by Defendant as a Store Manager in California. The Request for Exclusion must be signed, dated, and either emailed or mailed by First-Class U.S. Mail, or equivalent, to:

Simpluris
[redacted]
Telephone: [redacted]
[email]

The Request for Exclusion must be postmarked, emailed or received by [redacted]. All Class Members except those who timely and properly submit a Request for Exclusion will be bound by the Release and all other Settlement terms. If the Request for Exclusion is mailed from within the United States, it must be sent through the United States Postal Service by First-Class Mail, or the equivalent. Do not use a postage meter, as that may not result in a postmark appearing on the envelope containing your Request for Exclusion. You may only exclude yourself from the class action portion of the Settlement; you are not entitled to exclude yourself from the PAGA portion of the Settlement.

Any person who submits a complete and timely Request for Exclusion shall, upon receipt by the Settlement Administrator, no longer be a Class Member, shall be barred from participating in the class action portion of the Settlement, shall not be entitled to object to the Settlement, shall receive no benefits from the class portion of the Settlement, shall not be deemed to have relinquished the Released Class Claims against the Released Parties, and, at his or her own expense, may pursue any claims he or she may have against the Released Parties. PAGA Members cannot opt out of the Released PAGA Claims.

B. Objection to Class Action Portion of the Settlement

If you do not exclude yourself from the Settlement, you can object to the terms of the Settlement before the Court grants final approval of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. The Court can only approve or deny the settlement and cannot change the terms of the settlement. To object, you may file a written objection and a notice of intention to appear at the Final Approval hearing currently set for [redacted], [redacted], Courtroom 11. You must file the written objection and notice of intention to appear at the final approval hearing with the Office of the Clerk of the United States District Court, Northern District of California, San Francisco Division, 450 Golden Gate Avenue, San Francisco, CA 94102.

Any written objection must state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, date of birth, and dates you were employed as a non-exempt employee in California by Defendant. To be valid and effective, any objections to approval of the Settlement must be filed with the Office of the Clerk of the United States District Court, Northern District of California, San Francisco Division, 450 Golden Gate Avenue, San Francisco, CA 94102, by [insert date]. **DO NOT TELEPHONE THE COURT.**

A Class Member may appear at the Final Approval Hearing, either in person or through their own counsel, and object to the Settlement, and any of its terms without submitting a prior objection in the manner and by the deadline specified above. If you choose to file an objection to the terms of this Settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney at your own expense. To do so, you must file an Entry of Appearance with the Clerk of the Court. Such

Entry of Appearance must be filed with the Court by [insert date]. You will then continue as a Class Member either by representing yourself or with representation by your own attorney, and you will be solely responsible for the fees and costs of your own attorney. The final fairness hearing at which the Court will be asked to approve the Settlement will be at [] a.m./p.m. (Pacific Time) on [], in Courtroom 11 of the above Court, or such other date as the Court may authorize. You may also learn more about making a remote appearance in this matter by reviewing the webpage located at: [].

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

Upon Final Approval being granted by the Court, each and every Class Member, who does not opt out of the Settlement, will release Defendant and the Released Parties from the Released Class Claims as described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement Class, you will be deemed to have entered into this release and to have released the above-described Released Class Claims. Further, each and every PAGA Member will release Defendant and the Released Parties from the Released PAGA Claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the Released Class Claims and the Released PAGA Claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Courtroom 11, 19th Floor, of the United States District Court, Northern District of California, San Francisco Division, on [], at [] a.m./p.m. (Pacific Time), to determine whether the Settlement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs, the costs of administration, and the Enhancement Awards to be paid to the Class Representatives. Class Counsel's application for attorneys' fees and litigation costs will be on file with the Court by [], and will be available for review after that date. Class Counsel are seeking approval of a total of not more than thirty-three and one third percent (33 1/3%) of the Maximum Settlement Amount for attorneys' fees, which equals \$145,833.33, and not more than \$6,000 for attorneys' costs. The hearing may be continued without further notice to the Settlement Class. It is not necessary for you to appear at this hearing, unless you wish to object to the Settlement.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the detailed Joint Stipulation of Class Action Settlement and Release between Plaintiffs and Defendant ("Stipulation of Settlement") which is on file with the Clerk of the Court. The pleadings and other records in this Action, including the Stipulation of Settlement may be examined at any time during regular business hours at the Office of the Clerk of the United States District Court, Northern District of California, San Francisco Division, 450 Golden Gate Avenue, San Francisco, CA 94102. If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel:

Jahan C. Sagafi
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One California Street, Suite 1250
San Francisco, CA 94111

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Facsimile: (415) 638-8810
Email: jsagafi@outtengolden.com

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.

**BY ORDER OF THE UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION.**

4869-2382-7630, v. 1

Exhibit B

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**Admitted pro hac vice*
***Pro hac vice motions forthcoming*

*Attorneys for Plaintiffs and Proposed
Class, Collective, and, PAGA Action
Members*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ALBERT PARIS SUAZO, ALEXA SUART, and
LEEDA HABIBI, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

BLUEMERCURY, INC., a Delaware corporation,
Defendant.

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*Attorneys for Defendant
Bluemercury, Inc.*

Case No. 3:22-cv-06307-JD

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS, COLLECTIVE, AND PAGA
ACTION SETTLEMENT**

Date: May 2, 2024
Time: 10:00 a.m.
Courtroom: 11 – 19th Floor
Judge: Honorable James Donato

Plaintiffs Albert Paris Suazo, Alexa Suart and Leeda Habibi's ("Plaintiffs") Motion for Preliminary Approval of Class, Collective, and PAGA Action Settlement ("Motion") came before this Court on [REDACTED], in Courtroom 11 before the Honorable James Donato. The Court having considered the papers submitted in support of the Motion and good cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Court grants preliminary approval of the Settlement based upon the terms set forth in the Joint Stipulation of Class, Collective, and PAGA Action Settlement and Release Between Plaintiffs and Defendant ("Stipulation of Settlement" or "Settlement") filed with the Motion. All terms used herein have the same meaning as defined in the Stipulation of Settlement.

2. The Settlement set forth in the Stipulation of Settlement appears to be fair, adequate and reasonable to the Settlement Class. The Settlement falls within the range of reasonableness and appears to be presumptively valid, subject only to any objections that may be raised at the final fairness hearing and final approval by this Court. The Court finds the requisites for establishing class certification under Federal Rule of Civil Procedure Rule 23, and collective action certification under the Federal Fair Labor Standards Act pursuant to 29 U.S.C. section 216(b), are met for purposes of the Settlement only.

3. A final fairness hearing on the question of whether the proposed Settlement, attorneys' fees and costs to Class Counsel, costs of administration and Class Representatives' Enhancement Awards should be finally approved as fair, reasonable, and adequate as to the members of the Class is scheduled in Courtroom 11 on the date and time set forth in the Implementation Schedule below in Paragraph 10.

4. "Settlement Class" and "Class Members" mean all persons employed by Defendant as a Store Manager in California from October 20, 2018 through September 12, 2023. The Settlement Class will not include any person who previously settled or released any of the claims covered by this Settlement, or any person who previously was paid or received awards through civil or administrative actions for the claims covered by this Settlement. All Class Members who worked

any hours for Defendant in California as a Store Manager during any pay period from July 31, 2022 through September 12, 2023 are aggrieved employees with respect to the California Private Attorneys General Act (“PAGA”) (“PAGA Members”), and will be paid their PAGA Share and release the Released PAGA Claims regardless of whether they submit a timely and valid Request for Exclusion from the Settlement.

5. This Court approves, as to form and content, the Notice of Proposed Class, Collective, and PAGA Action Settlement and Hearing Date for Final Court Approval of Settlement (“Class Notice”) (**Exhibit A**). The Court approves the procedure for Class Members to opt out of and to object to the Settlement as set forth in the Stipulation of Settlement and Class Notice.

6. The Court directs the mailing of the Class Notice by first-class mail to the Class Members, and by email to all Class Members for whom Defendants currently possess email addresses, in accordance with the Implementation Schedule set forth in Paragraph 10 below. The Court finds the dates selected for the mailing and distribution of the Class Notice, as set forth in the Implementation Schedule, meet the requirements of due process and provide the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

7. It is ordered that the Settlement Class is preliminarily certified for settlement purposes only.

8. The Court confirms Plaintiffs Albert Paris Suazo, Alexa Suart and Leeda Habibi as “Class Representatives,” and approves Plaintiffs’ Counsel Jahan C. Sagafi, Sabine Jean and Jarron D. McAllister of OUTTEN & GOLDEN LLP, and Gregg I. Shavitz and Camar R. Jones of SHAVITZ LAW GROUP, P.A. as “Class Counsel” for purposes of the Settlement.

9. The Court confirms the appointment of Simpluris as the Settlement Administrator.

10. The Court orders the following Implementation Schedule for further proceedings to effectuate and administer the Settlement. “PAO” denotes this Order:

a.	Deadline for Defendant to Submit Class Member and PAGA Member Information to Settlement Administrator	30 calendar days after PAO
b.	Deadline for Settlement Administrator to Mail and Email Class Notice to Class Members and PAGA Members	45 calendar days after PAO
	Deadline for Class Counsel to file Motion for Attorneys' Fees, Costs, and Enhancement Awards	35 calendar days before exclusion / objection deadline
c.	Deadline for Class Members to Postmark Requests for Exclusion	60 calendar days after Class Notice sent
d.	Deadline for Defendant to provide written Notice of Rescission of Settlement to Class Counsel (if applicable)	14 calendar days after opt-out deadline
e.	Deadline for Receipt by Court, Settlement Administrator, and Counsel of Objections to Settlement	60 calendar days after Class Notice sent
f.	Deadline for Class Counsel to file Motion for Final Approval of Settlement	35 Court days before Final Approval Hearing
g.	Deadline for Settlement Administrator to file Declaration of Due Diligence and Proof of Mailing	35 Court days before Final Approval Hearing
h.	Final Fairness Hearing and Final Approval	Date: [REDACTED], 2024 Time: [REDACTED] Courtroom: 11
i.	Deadline for Defendant to fund Settlement	30 calendar days after Effective Date
j.	Deadline for Settlement Administrator to mail Settlement Awards, PAGA Awards and Enhancement Awards, and to wire transfer Attorneys' Fees and Costs	35 calendar days after Effective Date
k.	Deadline for Class Members and PAGA Members to cash Settlement checks (if Settlement is Effective)	120 calendar days after Awards sent
l.	Deadline for Settlement Administrator to distribute uncashed Settlement checks amount to the California State Controller's Office	14 calendar days after checks become stale
m.	Settlement Administrator to File Proof of Payment of Settlement Awards, PAGA Awards, Enhancement Awards, Attorneys' Fees and Costs, <i>cy pres</i> payment, and payment to LWDA	21 calendar days after Settlement Administrator completes all payments

IT IS HEREBY ORDERED.

Dated: _____, 2024

Honorable James Donato
United States District Court Judge

Exhibit C

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**Admitted pro hac vice*

***Pro hac vice motions forthcoming*

*Attorneys for Plaintiffs and Proposed
Class Collective, and PAGA Action
Members*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ALBERT PARIS SUAZO, ALEXA SUART, and
LEEDA HABIBI, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

BLUEMERCURY, INC., a Delaware corporation,
Defendant.

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Keelia K. Lee (SBN 346549)
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*Attorneys for Defendant
Bluemercury, Inc.*

Case No. 3:22-cv-06307-JD

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS,
COLLECTIVE, AND PAGA ACTION
SETTLEMENT**

Date:

Time:

Courtroom: 11

Judge: Honorable James Donato

The above-referenced action (“Action”) having come before the Court on _____, in Courtroom 11 before the Honorable James Donato, for a hearing and Order Granting Final Approval of Class, Collective, and PAGA Action Settlement and Judgment (“Final Order”), consistent with the Court’s Preliminary Approval Order (“Preliminary Approval Order”), filed and entered _____, and as set forth in the Joint Stipulation of Class, Collective, and PAGA Action Settlement and Release Between Plaintiffs and Defendant (“Stipulation of Settlement” or “Settlement”) in this Action, and due and adequate notice having been given to all Class Members and PAGA Members as required in the Preliminary Approval Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. All terms used herein shall have the same meaning as defined in the Stipulation of Settlement.

2. Consistent with the definitions provided in the Stipulation of Settlement, the terms “Settlement Class” and “Class Members” shall mean all persons employed by Defendant as a Store Manager in California from October 20, 2018 through September 12, 2023. The Settlement Class, however, shall not include any person who previously settled or released the claims covered by this Settlement, or any person who previously was paid or received awards through civil or administrative actions for the claims covered by this Settlement, or any person who submitted a timely and valid Request for Exclusion as provided in this Settlement. The “Class Period” shall be from October 20, 2018 through September 12, 2023. All Class Members who worked any hours for Defendant in California as a Store Manager during any pay period from July 31, 2022 through September 12, 2023 are allegedly aggrieved employees with respect to the California Private Attorneys General Act (“PAGA”) (“PAGA Members”), and will be paid their PAGA Share and release the Released PAGA Claims regardless of whether they submit a timely and valid Request for Exclusion from the Settlement. PAGA Members are not eligible to exclude themselves from, or to opt out of, the Released PAGA Claims. For purposes of the Settlement and this Final Order, “Released Parties” as referenced herein and as released in the Settlement shall collectively mean:

(i) Defendant; (ii) Defendant's respective past and present direct and indirect parents, subsidiaries and affiliates of any of the foregoing; (iii) the past and present shareholders, directors, officers, owners, agents, employees, clients, attorneys, insurers, predecessors, successors and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing.

3. This Court has jurisdiction over the subject matter of this Action, and for settlement purposes only, over all Parties to this Action, including all Class Members and PAGA Members.

4. Distribution of the Class Notice directed to the Class Members and PAGA Members as set forth in the Stipulation of Settlement, and the other matters set forth therein has been completed in conformity with the Preliminary Approval Order, including notice to all Class Members and PAGA Members who could be identified through reasonable effort, and is the best notice practicable under the circumstances. The Class Notice provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Stipulation of Settlement, to all persons entitled to such Class Notice, and the Class Notice fully satisfied the requirements of due process. All Class Members, PAGA Members, Released Class Claims, and Released PAGA Claims, are covered by and included within the Settlement and this Final Order.

5. The Court hereby finds the Settlement was entered into in good faith. The Court further finds that the Settlement is fair, adequate and reasonable, and that Plaintiff has satisfied the standards and applicable requirements for final approval of the Settlement.

6. The Court hereby approves the Settlement set forth in the Stipulation of Settlement and finds that the Settlement is, in all respects, fair, adequate and reasonable, and directs the Parties to effectuate the Settlement according to its terms. The Court finds that the Settlement has been reached as a result of intensive, serious and non-collusive arm's-length negotiations. The Court further finds that the Parties have conducted extensive investigation and research, and counsel for the Parties are able to reasonably evaluate their respective positions. The Court also finds that Settlement at this time will avoid additional substantial costs, as well as avoid the delay and risks that would be presented by the further prosecution of the Action. The Court has reviewed the

benefits that are being granted as part of the Settlement and recognizes the significant value to the Class Members and PAGA Members. The Court also finds that the Class is properly certified for settlement purposes only.

7. As of the date of entry of this Final Order, each and every Released Class Claim (as defined in the Stipulation of Settlement and set forth below) of each and every Class Member is and shall be deemed to be conclusively released as against the Released Parties. As of the date of this Final Order, the Class Representatives and each and every Class Member who have not submitted a valid Request for Exclusion are hereby released and forever barred and enjoined from prosecuting the Released Claims, except as to such rights or claims as may be created by the Settlement, against Defendant and the Released Parties from any and all claims under state, federal and local law alleged in this Action and that reasonably could have been alleged in this Action based on the factual allegations contained in the operative Complaint in this Action and any amendments thereto, as to the Class Members, including without limitation California Labor Code sections 200, 201, 202, 203, 204, 210, 221, 223, 225.5, 226, 226.3, 226.7, 246, 510, 512, 516, 558, 1174, 1174.5, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, and 2802, California Industrial Commission Wage Orders, Cal. Code Regs., title 8, section 11040, *et seq.*, California Code of Civil Procedure section 1021.5, Business and Professions Code section 17200, *et seq.*, the federal Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, as amended (“FLSA”), and including all claims for or related to alleged unpaid wages, overtime or double time wages, minimum wages, regular rate of pay, timely payment of wages during employment, timely payment of wages at separation, meal periods and meal period premiums, rest periods and rest period premiums, off-the-clock work, payroll deductions, unreimbursed business expenses, wage statements, payroll records and recordkeeping, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, conversion, class actions, representative actions, aggrieved party claims, injunctive relief, declaratory relief, accounting, punitive damages, liquidated damages, penalties of any nature (including but not limited to civil penalties and waiting time penalties), interest, fees,

costs, as well as all other claims and allegations alleged in the Action (collectively “Released Class Claims”) from October 20, 2018 through September 12, 2023 (“the Class Release Period”). The Released Class Claims during the Class Release Period cover, and release of all claims under the FLSA by Plaintiffs and all Class Members who receive Settlement Awards, regardless of whether Plaintiffs and/or Class Members negotiate their Settlement Award checks pursuant to this Settlement. In addition, as of the date of this Final Order, the Class Representatives and the Settlement Class, and each member of the Class who has not submitted a valid Request for Exclusion, are forever barred and enjoined from instituting or accepting damages or obtaining relief against the Released Parties for the Released Class Claims during the Class Release Period.

8. As of the date of entry of this Final Order, the claims to be released by the PAGA Members include all claims arising during the PAGA Period seeking civil penalties under PAGA, that Plaintiffs proxies for the State of California and/or the LWDA, to the maximum extent permitted by law, and as a private attorney general acting on behalf of Plaintiffs and the PAGA Members, asserted or could reasonably have asserted based on the facts alleged in the Action and/or the LWDA letter, including but not limited to all claims arising under the California Labor Code (including, but not limited to, sections 200, 201, 202, 203, 204, 210, 221, 223, 225.5, 226, 226.3, 226.7, 246, 510, 512, 516, 558, 1174, 1174.5, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, and 2802, as alleged in the Complaint) and the wage orders of the California Industrial Welfare Commission and any other Labor Code section or Wage Order based on the facts alleged in the Action (collectively “Released PAGA Claims”). This release shall release all Released PAGA Claims by or on behalf of Plaintiffs and all PAGA Members from July 31, 2022 through September 12, 2023 (“PAGA Release Period”), and for the entire PAGA Release Period regardless of whether Plaintiffs and/or a PAGA Member negotiate their PAGA Award checks sent pursuant to this Settlement and regardless of whether any such PAGA Member opts out and excludes himself or herself from the class action portion of the Settlement.

9. Neither the Settlement nor any of the terms set forth in the Stipulation of Settlement is an admission by Defendant, or any of the other Released Parties, nor is this Final Order a finding of the validity of any claims in this Action, or of any wrongdoing by Defendant or any of the other

Released Parties. Neither this Final Order, the Stipulation of Settlement, nor any document referred to herein, nor any action taken to carry out the Stipulation of Settlement, may be construed as, or may be used as, an admission by or against Defendant, or any of the other Released Parties, of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Stipulation of Settlement, and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession with regard to the denials or defenses by Defendant, or any of the other Released Parties, and shall not be offered in evidence in any action or proceeding in any court, administrative agency or other tribunal for any purpose whatsoever other than to enforce the provisions of this Final Order, the Stipulation of Settlement, the Released Class Claims, the Released PAGA Claims, and any related agreement or release. Notwithstanding these restrictions, any of the Released Parties may file in this Action, or submit in any other proceeding, the Final Order, the Stipulation of Settlement, and any other papers and records on file in this Action as evidence of the Settlement to support a defense of *res judicata*, *collateral estoppel*, release, or other theory of claim or issue preclusion or similar defense as to the Released Class Claims and the Released PAGA Claims.

10. The Court hereby enters judgment in the Action as of the filing date of this Final Order, pursuant to the terms set forth in the Stipulation of Settlement. Without affecting the finality of this Final Order in any way, the Court hereby retains continuing jurisdiction over the interpretation, implementation and enforcement of the Settlement and all orders entered in connection therewith.

11. The Court finds the Settlement Awards and the PAGA Awards provided for under the Settlement to be fair and reasonable in light of all of the circumstances. The Court orders the calculations and the payments to be made and administered in accordance with the terms of the Settlement.

12. The Court hereby confirms Plaintiffs Albert Paris Suazo, Alexa Suart and Leeda Habibi as “Class Representatives,” and Plaintiffs’ Counsel Jahan C. Sagafi, Sabine Jean and Jarron D. McAllister of OUTTEN & GOLDEN LLP, and Gregg I. Shavitz and Camar R. Jones of SHAVITZ LAW GROUP, P.A. as “Class Counsel”.

13. The Court further finds that the common fund doctrine is applicable to this Action because there is a sufficiently identifiable class of beneficiaries (the Class), the benefits can be accurately traced to the Settlement that Plaintiffs and Class Counsel negotiated on behalf of the Settlement Class and PAGA Members, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the common fund. The Court finds the attorneys' fees request of thirty-three and one third percent (33.33%) of the Maximum Settlement Amount to be appropriate compensation for Class Counsel. The attorneys' fees request is within the range that has been approved by other courts in similar cases and reasonable in light of the circumstances of this Action, the substantial and beneficial results obtained on behalf of the Settlement Class, and the contingent nature of the recovery over the course of this Action, which included potential loss at summary judgment, certification and/or trial proceedings. Pursuant to the terms of the Settlement, and the authorities, evidence and argument submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees in the amount of \$145,833.33, and attorneys' costs and expenses in the amount of \$6,000.00 from the Maximum Settlement Amount as final payment for and complete satisfaction of any and all attorneys' fees and costs incurred by and/or owed to Class Counsel for representing Class Members and PAGA Members in this Action. The Court further orders that the award of attorneys' fees and costs shall be administered pursuant to the terms of the Stipulation of Settlement. The Court further orders that the allocation and payment of the award of attorneys' fees and costs between and among Class Counsel is subject to a separate agreement between Class Counsel, which shall be provided to the Settlement Administrator.

14. The Court further approves and orders payment of Enhancement Awards to Plaintiffs and Class Representatives, Albert Paris Suazo, Alexa Suart and Leeda Habibi in the amount of \$2,500.00 each, from the Maximum Settlement Amount, and in addition to Class Representatives' individual Settlement Awards and PAGA Awards.

15. The Court also hereby approves and orders payment in the amount of \$6,562.50 from the Maximum Settlement Amount for PAGA penalties, payable to the California Labor and Workforce Development Agency ("LWDA") pursuant to the Joint Stipulation of Settlement.

16. The Court also hereby approves and orders payment from the Maximum Settlement

Amount for actual claims administration expenses incurred by the Claims Administrator Simpluris in the amount of \$.00.

17. The Court also hereby approves and orders that any residue from uncashed checks for Settlement Awards or PAGA Awards, within fourteen (14) calendar days after the one hundred twenty (120) day check cashing period expires, shall be transferred in the name of the Class Member(s) to the California State Controller's Office (SCO), Unclaimed Property Division, P.O. Box 942850, Sacramento, CA 94250-5873.

18. The Court also hereby finds and orders that the Stipulation of Settlement is and constitutes a fair, adequate and reasonable compromise of the Released Class Claims and Released PAGA Claims against Defendant and the Released Parties.

19. Provided the Settlement becomes effective under the terms of the Stipulation of Settlement, the Court also hereby orders that the deadline for mailing the Court-approved Settlement Awards and PAGA Awards, the attorneys' fees and costs to Class Counsel, and the Enhancement Awards to the Class Representatives, are as set forth in the Implementation Schedule within the Preliminary Approval Order.

20. The Court also hereby finds that there were no objections to the Settlement raised by any person on the record at the hearing on the Final Approval Order.

IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: _____

Honorable James Donato
United States District Court Judge
4872-6501-5982, v. 1