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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

MARCELINO ORTUNO, in a Representative
capacity only, and on behalf of other members of
the general public similarly situated,

Plaintiff,

v.

DUNN-EDWARDS CORPORATION, a
Delaware Corporation, and DOES 1-10,
inclusive,

Defendants.

Case No. 37-2023-00046612-CU-OE-CTL

PAGA SETTLEMENT AGREEMENT

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11. “Released Parties” means Defendant and its officers, directors, agents, and employees and agents.

12. “Service Award” means the amount to be paid to Plaintiffs as payment for their services on behalf of the LWDA and Aggrieved Employees, and for a general release of all claims arising out of their employment with Defendant.

13. “Settled Claims” means all claims for PAGA civil penalties that were or could have been sought by the Plaintiffs and/or the LWDA for the violations identified in Plaintiffs’ pre-filing letters to the LWDA and the Plaintiffs’ Complaints filed in the Actions, including minimum wage and overtime violations, failure to provide compliant meal periods, failure to provide compliant rest periods, wage statement violations, failure to provide compliant expense reimbursement payments, and failure to provide all final compensation to former employees.

14. “Settlement Period” means the period from August 22, 2022 through approval of the settlement.

TERMS

15. Gross Settlement Amount. In consideration for Plaintiffs’ promises and representations described in this Settlement Agreement, and subject to all of the conditions of the Settlement being met, Defendant will pay One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00) (“Gross Settlement Amount”) to settle the Action. The Gross Settlement Amount includes Plaintiffs’ attorneys’ fees, litigation costs and expenses, consideration for Plaintiffs’ service on behalf of the LWDA and Aggrieved Employees, Settlement Administration Costs, and payments to Aggrieved Employees and the LWDA for their share of the PAGA Penalties Fund. No portion of the Gross Settlement Amount will be retained by, or revert to, Defendant.

16. PAGA Penalties Fund. The PAGA Penalties Fund will be paid to Aggrieved Employees and the LWDA in full satisfaction of all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in the Action with respect to Aggrieved Employees. Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Penalties Fund will be paid to the LWDA, and the remaining Twenty-Five Percent (25%) will be paid to all Aggrieved Employees according to the following formula:

1 16(a) Defendant will calculate: (i) the total number of pay periods worked by each
2 Aggrieved Employee during the Settlement Period, and (ii) the total number
3 of pay periods worked by all Aggrieved Employees during the Settlement
4 Period.

5 16(b) To determine each Aggrieved Employee's payment from the PAGA
6 Penalties Fund, Defendant will use the following formula: Settlement
7 Payment = 25% of PAGA Penalties Fund $\times$ [Pay Periods Worked by
8 Individual Aggrieved Employee During the Settlement Period $\div$ Total Pay
9 Periods Worked by All Aggrieved Employees during the Settlement Period].

10 16(c) Defendant estimates that Aggrieved Employees worked a combined total of
11 approximately Fifty-Five Thousand Three Hundred and Twelve (55,312) Pay
12 Periods during the Settlement Period. If the actual number of Pay Periods
13 worked by Aggrieved Employees during the Settlement Period is greater than
14 Ten Percent (10%) of this estimate, then Defendant must either (a) increase
15 the Gross Settlement Amount on a proportional basis above Ten Percent
16 (10%) (for example, if there is an Eleven Percent (11%) increase in the
17 number of Pay Periods worked during the Settlement Period, then Defendant
18 would increase the Gross Settlement Amount by One Percent (1%) or (b)
19 elect to cut off the Settlement Period as of the date the Pay Periods reach 10%
20 above 55,312 Pay Periods.

21 17. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application or
22 motion by Plaintiffs' Counsel for Attorneys' Fees and Costs of not more than one-third (1/3) of the Gross
23 Settlement Amount, or Four Hundred and Sixteen Thousand Six Hundred Sixty Six Dollars and Sixty
24 Seven Cents (\$416,666.67), plus the reimbursement of all out-of-pocket costs and expenses associated
25 with Plaintiffs' Counsel's litigation and settlement of the Action (including expert/consultant fees,
26 investigations costs, etc.), not to exceed Twenty One Thousand Dollars (\$21,000.00), both of which will
27 be paid from the Gross Settlement Amount. Any portion of the Attorneys' Fees and Costs not awarded to
28 Plaintiffs' Counsel will be added to the PAGA Penalties Fund.

1 18. Service Award. For a general release of all claims Plaintiffs may have against Defendant
2 arising out of their employment, and for their service on behalf of the LWDA and Aggrieved Employees,
3 Defendant agrees not to oppose or impede any application or motion by Plaintiffs for a service award of
4 up to Ten Thousand Dollars (\$10,000) (“Service Award”) each, for a total of Twenty Thousand Dollars
5 (\$20,000.00). Upon receipt of the Service Award, Plaintiffs will be deemed to have fully released and
6 discharged Defendant from any and all claims, demands, obligations, causes of action, rights, or liabilities
7 of any kind which have been or could have been asserted against Defendant arising out of, or relating to,
8 Plaintiffs’ employment with Defendant or termination thereof, including but not limited to claims for
9 wages, restitution, penalties, retaliation, defamation, discrimination, harassment or wrongful termination
10 of employment. This release specifically includes any and all claims, demands, obligations and/or causes
11 of action for damages, restitution, penalties, interest, and attorneys’ fees and costs (except provided by the
12 Settlement) relating to or in any way connected with the matters referred to herein, whether or not known
13 or suspected to exist, and whether or not specifically or particularly described herein. Specifically,
14 Plaintiffs will be deemed to have waived all rights and benefits afforded by California Civil Code Section
15 1542, which provides:

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

21 19. Plaintiffs understand and agrees that this Settlement Agreement shall remain in full force
22 and effect even if the full amount of Service Award sought by Plaintiffs are not ultimately awarded by the
23 Court.

24 20. Settlement Administration Costs. The Parties will retain CAC Services Group, LLC as
25 the third-party settlement administrator (“Settlement Administrator”). The Settlement Administrator will
26 be responsible for establishing a qualified settlement fund (“QSF”) and issuing payments and appropriate
27 tax forms to Aggrieved Employees, the LWDA, Plaintiffs, and Plaintiffs’ Counsel. The Settlement
28 Administration Costs will be paid from the Gross Settlement Amount. Based on the estimate that there are

approximately 1,339 Aggrieved Employees, Settlement Administration Costs are estimated at Seven Thousand Six Hundred Dollars (\$7,600.00).

21. First Amended Complaint: As a condition of settlement, prior to filing Plaintiffs' Motion for Approval of PAGA Settlement, Plaintiff Ortuno will file a First Amended Complaint ("FAC") in the Ortuno Action, specifically to add Plaintiff De La Rosa as a plaintiff and proposed PAGA Representative and to assert the claims alleged in the De La Rosa Action. Defendant will not be required to file an answer or other responsive pleading to the FAC. If, for any reason, the Court does not approve of the Settlement, or if the Settlement does not become final for any reason, then the FAC will be deemed withdrawn and the Complaint will again become the operative complaint in the Ortuno Action without prejudice to Plaintiffs' right to seek leave to file another amended complaint and without prejudice to Defendant's rights to object and/or challenge an amended pleading. Defendant does not impliedly or expressly waive any arguments or defenses to the FAC.

22. Dismissal of PAGA Cause of Action in the De La Rosa Action: As part of this Settlement, Plaintiff De La Rosa agrees to secure the Court's entry of the Order dismissing his causes of action from the De La Rosa Action without prejudice. The Parties shall cooperate in moving the Court to enter an order dismissing the causes of action in the De La Rosa Action without prejudice, after the entry of the final order and judgment in the Ortuno Action.

23. Court Approval of the Settlement and Distribution of Settlement Payments. The Parties will present this Settlement Agreement to the Court and the LWDA. The Parties will request that the Court issue an order and judgment approving and incorporating by reference the terms and conditions of the Settlement Agreement (the "Order and Judgment").

24. List of Aggrieved Employees. Within fourteen (14) calendar days after entry of the Order and Judgment, Defendant will provide the Settlement Administrator a complete list of all Aggrieved Employees ("Aggrieved Employee List"). The Aggrieved Employee List will be formatted in Microsoft Office Excel and will include each Aggrieved Employees full name; most recent mailing address and telephone number, if available; Social Security number; the respective number of pay periods during which each Aggrieved Employee worked during the Settlement Period; and any other relevant information needed to calculate settlement payments.

1 25. Funding of the Settlement. Within seven (7) calendar days after entry of the Order and
2 Judgment, Defendant will deposit the Gross Settlement Amount into the QSF to be established by the
3 Settlement Administrator. Within fourteen (14) calendar days of the funding of the Settlement, the
4 Settlement Administrator will issue payments to: (a) Aggrieved Employees; (b) the Labor and Workforce
5 Development Agency; (c) Plaintiffs; (d) Plaintiffs' Counsel; and (e) itself. The Settlement Administrator,
6 and not Defendant, will issue the appropriate tax forms for all payments issued under this Settlement.

7 26. Settlement Payments to Aggrieved Employees. The Settlement Administrator will issue
8 each Aggrieved Employee one check for his or her share of the PAGA Penalties Fund along with an
9 explanatory letter, attached as Exhibit A. Prior to mailing, the Settlement Administrator will perform a
10 search based on the National Change of Address Database for information to update and correct for any
11 known or identifiable address changes. Any checks returned as non-deliverable on or before the check
12 cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed
13 thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to
14 determine the correct address using a skip-trace, or other search using the name, address or Social Security
15 number of the Aggrieved Employee involved, and will then perform a single re-mailing. Checks will
16 remain negotiable for 180 days. Those funds represented by un-cashed checks which remain outstanding
17 180 days after the mailing of the Settlement checks by the Settlement Administrator will be tendered to
18 The Justice Gap Fund maintained by The State Bar of California. All settlement payments to Aggrieved
19 Employees will be treated as miscellaneous income for which a 1099 will be issued.

20 27. Settled Claims. Upon entry of the Order and Judgment, Plaintiffs and the LWDA will be
21 forever barred from pursuing against Defendant and the Released Parties any and all Settled Claims during
22 the Settlement Period. Other than for themselves, Plaintiffs do not release any Aggrieved Employee's
23 claims for wages or damages.

24 28. No Right to Exclusion or Objections by Representative Action Members. Because this
25 settlement resolves claims and actions brought pursuant to PAGA by Plaintiffs acting as a proxy and as a
26 Private Attorney General of, and for, the State of California and the LWDA, the Parties agree that no
27 Aggrieved Employee has the right to exclude himself or herself from the Settlement. Aggrieved
28 Employees will be bound by the terms of the Settlement Agreement, upon its approval by the Court,

1 regardless of whether he or she cashes any payment received as a result of this Settlement. The Parties also
2 agree that no Aggrieved Employee has the right to object to the terms of the Settlement Agreement.

3 29. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as referenced herein
4 will not be utilized to calculate any additional benefits under any benefit plans to which any Aggrieved
5 Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans,
6 stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is
7 the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts
8 to which any Aggrieved Employee may be entitled under any benefit plans.

9 30. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that
10 they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
11 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or
12 right herein released and discharged.

13 31. Nullification of Settlement Agreement. In the event that: (a) the Court does not approve
14 the Settlement as provided herein; or (b) the Settlement does not become final for any other reason, then
15 this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and
16 the Parties will be returned to their original respective positions.

17 32. Judgment and Continued Jurisdiction. After entry of the Order and Judgment, the Court
18 will have continuing jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement
19 of the terms of the Settlement, (b) settlement administration matters, and (c) such post-Judgment matters
20 as may be appropriate under court rules or as set forth in this Settlement.

21 33. Entire Agreement. This Settlement Agreement constitutes the entirety of the Parties'
22 settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding
23 on the Parties.

24 34. Amendment or Modification. This Settlement Agreement may be amended or modified
25 only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all
26 Parties, and approved by the Court.

27 35. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
28 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement

1 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to
2 this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate
3 the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and
4 use their best efforts to affect the implementation of the Settlement. If the Parties are unable to reach
5 agreement on the form or content of any document needed to implement the Settlement, or on any
6 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties
7 may seek the assistance of the Court to resolve such disagreement.

8 36. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
9 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

10 37. California Law Governs. All terms of this Settlement Agreement will be governed by and
11 interpreted according to the laws of the State of California.

12 38. Execution and Counterparts. This Settlement Agreement is subject only to the execution
13 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
14 executed counterparts and each of them, including electronic signatures (e.g., Docusign), facsimiles, and
15 scanned copies of the signature pages, will be deemed to be one and the same instrument.

16 39. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
17 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
18 Settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that
19 they are each represented by competent counsel and that they have had an opportunity to consult with their
20 counsel regarding the fairness and reasonableness of this Settlement.

21 40. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that
22 Plaintiffs may appeal any reduction to the Attorneys' Fees and Costs below the amount they request from
23 the Court, and either party may appeal any court order that materially alters the Settlement's terms.

24 41. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement
25 invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent
26 with applicable precedents so as to define all provisions of this Settlement Agreement valid and
27 enforceable.

28 42. Captions. The captions and section numbers in this Settlement Agreement are inserted for

the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Settlement Agreement.

43. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

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

45. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

46. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

47. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

48. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

49. Denial of Liability. The Parties expressly recognize that the making of this agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in

1 this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or
2 communications, nor any materials prepared, exchanged, issued or used during the pendency of the
3 Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be
4 admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or
5 proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation,
6 rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this
7 agreement may be used in any proceeding in the Court that has as its purpose the interpretation,
8 implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in
9 connection therewith.

10 **READ CAREFULLY BEFORE SIGNING**

11 **PLAINTIFF**

12
13 Dated: _____

Marcelino Ortuno

14
15 **PLAINTIFF**

16 Dated: _____

Jose Brian De La Rosa

17
18 **DEFENDANT**

19 Dated: _____

[Name of Authorized Signatory]
Dunn-Edwards Corporation

20
21
22 **APPROVED AS TO FORM**

23 **SULLIVAN & YAECKEL LAW GROUP, APC**

24
25 Dated: _____

Eric Yaeckel
Attorneys for Plaintiff Marcelino Ortuno

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PROTECTION LAW GROUP, LLP

Dated: _____

Heather Davis
Ryan T. Chuman
Attorneys for Plaintiff Jose Brian De La Rosa

JACKSON LEWIS P.C.

Dated: _____

Adam Y. Siegel
Attorneys for Defendant Dunn Edwards Corporation

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