

CLASS ACTION AND PAGA SETTLEMENT AND RELEASE AGREEMENT

This Class Action and Private Attorneys General Act of 2004 (“PAGA”) Settlement Agreement and Release (“Agreement”) is made by and between Plaintiff Rosalinda Marchbanks-Powell (“Plaintiff”), individually, on behalf of all others similarly situated, and acting as private attorney general on behalf of other Aggrieved Employees (as defined below), on the one hand, and Defendants Destination XL Group, Inc. and Casual Male Store, LLC (together, “Defendants”), on the other hand. The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as a “Party.”

RECITALS

WHEREAS, on June 13, 2024, Plaintiff served a letter on Defendants and the California Labor and Workforce Development Agency (“LWDA”) providing notice of certain purported Labor Code violations pursuant to Labor Code section 2699.3, subd. (a).

WHEREAS, on August 19, 2024, Plaintiff filed a putative Class Action and Representative Action Complaint for Damages and Penalties against Defendants in the Superior Court of California for the County of San Diego, entitled *Rosalinda Marchbanks-Powell v. Destination XL Group, Inc. et al.*, Case No. 24CU006636C, asserting causes of action for (1) violation of Labor Code sections 226.7 and 512, (2) violation of Labor Code sections 1194 and 510, (3) violation of Labor Code section 226, (4) violation of Labor Code sections 201–204, (5) penalties under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698, and (6) Business and Professions Code section 17200 *et seq.*;

WHEREAS, on September 27, 2024, Defendants removed Plaintiff’s action to the United States District Court for the Southern District of California, Case No. 3:24-cv-01733-L-VET;

WHEREAS, on January 22, 2025, the parties attended a full-day mediation session with Michael Mandel, Esq., an experienced mediator of wage and hour class and PAGA actions, and, while no settlement was reached that day, the parties subsequently accepted a mediator’s proposal for resolution of this dispute;

WHEREAS, the Parties have conducted significant investigation of the relevant facts and law while this action has been pending, both prior to and after their mediation, including the exchange of informal discovery between the Parties, including the production of documents by Defendants, such as employment policies and procedures and comprehensive pay and time data for the putative class members and allegedly aggrieved employees, and Plaintiff’s counsel retained an expert to review such records and to assist in the preparation of a damage analysis for this litigation;

WHEREAS, Defendants do not admit any wrongdoing, but rather maintain that they fully complied with applicable law at all times and in all respects, and, regardless of whether this settlement is finally approved, neither this settlement, nor any terms, document, statement, proceeding, or conduct related to settlement, nor any related reports or accounts, shall in any event be (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose, including, but not limited to, evidence of a presumption, concession, indication, or admission by Defendants of any fault, wrongdoing, liability, and/or unlawful activity whatsoever,

or any effort to certify a class or collective action; or (b) disclosed, referred to, or offered or received in evidence, in any further proceeding in this action, or any other civil, criminal, or administrative action or proceeding, except for purposes of settling this action or enforcing this Agreement or the settlement, or as a defense to any claims released by the settlement; and

WHEREAS, recognizing and taking into account the necessary time and expense required to litigate this dispute through trial and through any possible appeals, the uncertainty and risk of the potential outcomes of further litigation, and the difficulties and delays inherent in such litigation, the burdens of proof necessary to establish liability for the claims asserted, both generally and in response to Defendants' defenses thereto, the extensive settlement negotiations conducted, and Defendants' agreement to enter into a settlement that confers substantial relief upon the Class Members and Aggrieved Employees, the Parties have determined that the settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members and Aggrieved Employees;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is hereby agreed by and between the Parties to compromise and settle this dispute, subject to the recitals set forth above, which by this reference become an integral part of this Agreement, on the following terms and conditions:

1. DEFINITIONS

- 1.1. "Action" means and refers to *Rosalinda Marchbanks-Powell v. Destination XL Group, Inc. et al.*, San Diego Superior Court Case No. 24CU006636C and U.S.D.C., S.D. Cal. Case No. 3:24-cv-01733-L-VET.
- 1.2. "Agreement" means and refers to this Class Action and PAGA Settlement Agreement and Release.
- 1.3. "Aggregate Workweek Number" means and refers to the sum of all of the Participating Class Members' Total Workweeks, which will be used to calculate the Individual Settlement Payments.
- 1.4. "Aggregate PAGA Pay Periods" means and refers to the sum of all of the PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period.
- 1.5. "Aggrieved Employee(s)" means and refers to all persons who worked for Defendants as non-exempt, hourly paid employees in California during the PAGA Period.
- 1.6. "Attorneys' Fees and Cost Award" means and refers to the amount to be requested of the Court to be paid to Class Counsel. As set forth below, Class Counsel shall request an award of attorneys' fees of Three Hundred Sixteen Thousand, Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$316,666.67), which is Thirty-Three and One-Third Percent (33 1/3%) of the Gross Fund Value, and a cost award of up to Twenty-Five Thousand Dollars (\$25,000.00). The Attorneys' Fees and Cost Award shall come out of the Gross Fund Value and will not increase the amount of the Gross Fund Value.
- 1.7. "Class" or "Class Member(s)" means and refers to all persons who worked for

Defendants as non-exempt, hourly paid employees in California during the Class Period.

- 1.8. “Class Counsel” means and refers to Kenneth H. Yoon and Stephanie E. Yasuda of Yoon Law, APC.
- 1.9. “Class and PAGA Member Data” means and refers to an electronic data file that identifies for each Class Member and Aggrieved Employee his/her full name, last known address, last known telephone number, Social Security Number, the number of Workweeks worked during the Class Period, and, if applicable, the number of PAGA Pay Periods worked during the PAGA Period. The Settlement Administrator will keep the Class and PAGA Member Data confidential and shall use it only for the purposes described herein, take adequate safeguards to protect confidential or private information, and return to Defendants or certify to Defendants the destruction of the information upon completion of the Administration process. For the avoidance of doubt, neither Class Counsel nor the Named Plaintiff shall be permitted to review or receive a copy of Class and PAGA Member Data.
- 1.10. “Class Period” means and refers to the period between April 6, 2020 and either May 31, 2025, or an earlier date as outlined in Paragraph 2.1.1 herein.
- 1.11. “Court” means and refers to the Superior Court of California, County of San Diego, the United States District Court for the Southern District of California, or whatever court in which the Action is then pending.
- 1.12. “Defendants” means and refers to Destination XL Group, Inc. and Casual Male Store, LLC.
- 1.13. “Defendants’ Counsel” or “Defense Counsel” means and refers to Ronald J. Holland, Ryan C. Bykerk, and Jonathan A. Schaub of Greenberg Traurig, LLP.
- 1.14. “Effective Date” means and refers to the date the Settlement shall become effective which will be the later of the following: (a) the 61st day (unless the last such date is a weekend or holiday, in which case the next business day shall be used) after the Court enters an order granting Final Approval of the Settlement and entering judgment in the Action, provided that no timely appeal is taken of the order of final approval and the entering of judgment in the Action; or (b) if any timely appeals are filed, the date of the resolution and entry of remittitur (or withdrawal) of any such appeals in a way that does not alter the terms of the Settlement.
- 1.15. “Excluded Class Members” means and refers to all Class Members who timely and validly submit a written request to be excluded from the Class on or before the Objection/Exclusion Deadline.
- 1.16. “Final Approval,” “Final Approval Order,” and/or “Final Judgment” means and refers to the Court’s order granting final approval of the Settlement and entering judgment in the Action.

- 1.17. “Gross Fund Value” means and refers to the maximum non-reversionary amount that Defendants will be required to pay in connection with this Settlement, except as provided in Paragraph 2.1.1 below. The Gross Fund Value will be used to pay the Attorneys’ Fees and Costs Award, the Service Award, the Settlement Administration Costs, and the PAGA Allocation. As set forth below, the Gross Fund Value is equal to the gross sum of Nine Hundred Fifty Thousand Dollars (\$950,000.00). Defendants will have no obligation to pay any amount in connection with this Settlement apart from the Gross Fund Value (except as provided in paragraph 2.1.1) and Defendants’ employers’ portion of payroll taxes due on the portion of the Individual Settlement Payments allocated as wages. There will be no reversion.
- 1.18. “Individual Settlement Payment(s)” means and refers to the amount to be paid to each Participating Class Member from the Net Fund Value.
- 1.19. “Plaintiff” means and refers to Rosalinda Marchbanks-Powell.
- 1.20. “Net Fund Value” means and refers to the funds available to be distributed to Participating Class Members from the Gross Fund Value after the payment of any Attorneys’ Fees and Cost Award, Service Award, Settlement Administration Costs, and PAGA Allocation.
- 1.21. “Notice” or “Class Notice” means and refers to the Notice of Class Action and PAGA Settlement, in the form that the Court approves and directs to be sent by regular mail to all Class Members. The Class Notice is attached hereto as **Exhibit A**.
- 1.22. “Objection/Exclusion Deadline” means and refers to the date no later than sixty (60) calendar days after the date the Class Notices are mailed (judged by the postmark date) to Class Members by the Settlement Administrator, on or before which a Class Member may (1) validly submit a Notice of Objection, (2) submit a Request for Exclusion, or (3) challenge with documentary evidence his or her Total Workweeks.
- 1.23. “PAGA Allocation” means and refers to the total sum of Fifty Thousand Dollars (\$50,000.00) to be paid from the Gross Fund Value and that constitutes penalties pursuant to PAGA, which will be distributed as follows: Seventy-Five Percent (75%), which totals Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00), shall be paid to the LWDA; and the remaining Twenty-Five Percent (25%), which totals Twelve Thousand Five Hundred Dollars (\$12,500.00), shall be paid to the Aggrieved Employees on a proportionate basis based on the number of PAGA Pay Periods each worked during the PAGA Period (“Individual PAGA Payment(s)”).
- 1.24. “PAGA Notice” means and refers to Plaintiff’s June 13, 2024 letter to Defendants and the LWDA providing notice of certain purported Labor Code violations pursuant to Labor Code section 2699.3, subd. (a).
- 1.25. “PAGA Period” means and refers to the period between June 13, 2023 and either May 31, 2025, or an earlier date as outlined in Paragraph 2.1.1 herein.

- 1.26. “PAGA Pay Periods” means and refers to Defendants’ two-week payroll cycle in which an Aggrieved Employee worked one or more days for Defendants during the PAGA Period.
- 1.27. “Participating Class Member” means and refers to all Class Members who are not Excluded Class Members.
- 1.28. “Preliminary Approval Order” and “Preliminary Approval” mean and refer to an order issued by the Court preliminarily approving the terms of the Settlement.
- 1.29. “Qualified Settlement Fund” means and refers to the fund to be established by the Settlement Administrator pursuant to Internal Revenue Code section 1.468B-1.
- 1.30. “Released Class Claims” means the claims being released and discharged by Plaintiff and the Participating Class Members, which includes all causes of action, claims, and theories pled in the Action and the PAGA Notice, as well as any causes of action, claims, or theories that could have been asserted in the Action and PAGA Notice based on the facts or circumstances alleged by Plaintiff in the Action and PAGA Notice, including, without limitation, all claims for failure to pay for all hours worked, unpaid wages (including minimum wage, straight time, overtime, and double time), meal period violations (including meal premiums), rest break violations (including rest premiums), failure to timely pay wages during employment, failure to pay final wages, failure to provide accurate wage statements, unlawful business practices under the California Labor Code and/or the California Business and Professions Code, all claims for restitution or equitable relief, statutory penalties of any nature whatsoever, and attorneys’ fees and costs. The Released Class Claims include claims as described above under any and all applicable statutes, including, without limitation, California Labor Code sections 201, 202, 203, 204, 210, 216, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, and 1199; California unfair competition law based on the preceding claims, California Business and Professions Code sections 17200 *et seq.*; and California regulations that could have been asserted based on the facts or circumstances alleged, Industrial Welfare Commission Wage Order 7-2001.
- 1.31. “Released PAGA Claims” means the claims being released and discharged by Plaintiff and the Aggrieved Employees, which includes all causes of action, claims, and theories pled in the Action and the PAGA Notice, as well as any causes of action, claims, or theories that could have been asserted in the Action and PAGA Notice based on the facts or circumstances alleged by Plaintiff in the Action and PAGA Notice, including, without limitation, all claims for failure to pay for all hours worked, unpaid wages (including minimum wage, straight time, overtime, and double time), meal period violations (including meal premiums), rest break violations (including rest premiums), failure to timely pay wages during employment, failure to pay final wages, failure to provide accurate wage statements, civil penalties under PAGA, California Labor sections 2699 *et seq.*, and attorneys’ fees and costs. The Released PAGA Claims include claims as described above under any and all applicable statutes, including, without limitation, California Labor Code sections 201, 202, 203, 204, 210, 216, 218.6,

225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1187.2, 1198, 11989 and 2698 *et seq.*; and California regulations that could have been asserted based on the facts or circumstances alleged, Industrial Welfare Commission Wage Order 7-2001.

- 1.32. “Released Parties” means and refers to Defendants and each of their respective former and present parent companies, subsidiaries, divisions, related or affiliated companies, directors, officers, shareholders, owners, members, employees, agents, principals, representatives, attorneys, insurers, predecessors, successors, and assigns, and any individual or entity that could be liable for any of the Released Class Claims or Released PAGA Claims, and Defendants’ Counsel in the Action.
- 1.33. “Service Award” means and refers to the amount that the Court authorized to be paid to Plaintiff over and above her Individual Settlement Payment, in recognition for Plaintiff’s efforts in assisting with the prosecution of the Action on behalf of the Class Members and Aggrieved Employees. Plaintiff will request a Service Award of up to Twenty Thousand Dollars (\$20,000.00).
- 1.34. “Settlement” means the disposition of the Action effected by this Agreement.
- 1.35. “Settlement Administrator” means and refers to Phoenix Class Action Administration Solutions.
- 1.36. “Settlement Administration Costs” means and refers to the amount that will be paid to the Settlement Administrator for its services and includes all costs incurred in administering the Settlement, which will be paid from the Gross Fund Value. The Settlement Administration Costs are not to exceed Eight Thousand Five Hundred Dollars (\$8,500.00), except for a showing of good cause and as approved by the Court. The Parties agree to work in good faith to minimize the Settlement Administration Costs as much as possible. Defendants will not object to an application for approval of the Settlement Administration Costs, provided the Settlement Administration Costs are paid out of the Gross Fund Value and will not increase the Gross Fund Value.
- 1.37. “Settlement Member(s)” means and refers to all Participating Class Members, all Aggrieved Employees, and, for the avoidance of doubt, Plaintiff.
- 1.38. “Total Workweeks” means and refers to the sum of all of the Workweeks a Class Member was employed during the Class Period.
- 1.39. “Workweek(s)” means and refers to any calendar week during the Class Period in which a Class Member was employed by and performed work for Defendants for at least one shift, no matter the duration. To clarify the foregoing, Workweeks are integers.

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2. SETTLEMENT TERMS

2.1. Gross Fund Value. Except as otherwise provided herein, Defendants promise to pay Nine Hundred Fifty Thousand Dollars (\$950,000.00), and no more, as the Gross Fund Value, which includes the maximum amounts of payments Plaintiff will request the Court to award pursuant to this Agreement. Under no circumstances will Defendants pay more than the Gross Settlement Fund except as expressly set forth in this Agreement. Defendants have no obligation whatsoever to pay the Gross Fund Value prior to the deadline stated in Paragraph 6.2 of this Agreement. None of the Gross Fund Value will revert to Defendants.

2.1.1. Escalation Clause. Defendants represent that Class Members worked approximately 23,395 Workweeks through September 2024. If the number of Workweeks during the Class Period (i.e. through May 31, 2025) exceeds 27,950, the amount Defendants will be required to pay into the Gross Settlement Fund shall be increased on a *pro rata* basis. In other words, if the number of Workweeks during the Class Period is 28,509 (a 2% increase over 27,950), the Gross Settlement Fund would be increased by 2% to \$969,000. In the alternative, in the event the number of Workweeks exceeds 27,950, Defendants (and not Plaintiff) may elect to shorten the Class Period and releases herein to a date earlier than May 31, 2025 (i.e. the date on which the Class Members worked no more than 27,950 Workweeks), and avoid paying any additional amounts to the Gross Settlement Fund.

2.2. Payments from Gross Settlement Fund. As set forth in this Agreement, the Administrator will make and deduct the following payments from the Gross Settlement Fund:

2.2.1. Attorneys' Fees and Cost Award. Class Counsel will file an application or motion for attorneys' fees, not to exceed Thirty-Three and One-Third Percent (33 1/3%) of the Gross Fund Value, i.e. Three Hundred Sixteen Thousand, Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$316,666.67). Class Counsel will also file an application or motion for the reimbursement of any actual costs associated with Class Counsel's prosecution of the Action, not to exceed Twenty Five Thousand Dollars (\$25,000.00). Class Counsel will provide verification of the cost amounts sought. The Parties agree that a decision by the Court to award an Attorneys' Fees and Cost Award in an amount less than the amount stated in this Settlement shall not be a basis for the Plaintiff to void this Agreement. In the event the amount of the Attorneys' Fees and Cost Award approved by the Court is less than the requested amount, the amounts not paid to Class Counsel will remain in the Net Fund Value to be paid out to Participating Class Members and Aggrieved Employees. Class Counsel shall be paid any Court-approved Attorneys' Fees and Cost Award no later than ten (10) business days after Defendants deliver the Gross Fund Value to the Settlement Administrator for deposit into the Qualified Settlement Fund. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made to Class Counsel. Class Counsel shall provide the Settlement Administrator a completed IRS Form W-9 prior to the Effective Date, and the Settlement Administrator will provide Class Counsel an

IRS Form 1099 for the amounts paid. Class Counsel assumes full responsibility and liability for taxes owed on the Attorneys' Fees and Cost Award, holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of such payment(s).

- 2.2.2. Service Award. Subject to Court approval, Plaintiff shall be paid a Service Award of up to a total of Twenty Thousand Dollars (\$20,000.00), or such other lower distribution or amount as the Court may order. The Service Award shall be paid from the Gross Fund Value and shall not increase the Gross Fund Value. The Service Award shall be paid to Plaintiff by the Settlement Administrator no less than ten (10) business days after Defendants deliver the Gross Fund Value to the Settlement Administrator for deposit into the Qualified Settlement Fund. The Parties agree that a decision by the Court to award Plaintiff an amount less than the maximum amount stated above shall not be a basis for Plaintiff to void this Agreement. The Settlement Administrator shall issue Plaintiff an IRS Form 1099 for the Service Award. For the avoidance of doubt, in the event the amount of the Service Award approved by the Court is less than the requested amount, the amounts not paid to Plaintiff will remain in the Net Fund Value to be paid out to Participating Class Members and Aggrieved Employees. The Service Award shall be paid to Plaintiff in addition to her Individual Settlement Payment. Plaintiff assumes full responsibility and liability for employee taxes owed on the Service Award.
- 2.2.3. Settlement Administration Costs. Subject to Court approval, the Settlement Administrator shall be paid for the reasonable costs of administration of the Settlement out of the Gross Fund Value as deposited in the Qualified Settlement Fund. The Settlement Administration Costs are not to exceed Eight Thousand Five Hundred Dollars (\$8,500.00), except for a showing of good cause and as approved by the Court. In the event the amount of the Settlement Administration Costs approved by the Court is less than the requested amount, the amounts not paid to the Settlement Administrator will remain in the Net Fund Value to be paid out to Participating Class Members and Aggrieved Employees.
- 2.2.4. PAGA Allocation. The PAGA Allocation will be paid from the Gross Fund Value as follows: Seventy-Five Percent (75%), which totals Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00), shall be paid to the LWDA; and the remaining Twenty-Five Percent (25%), which totals Twelve Thousand Five Hundred Dollars (\$12,500.00), shall be paid to the Aggrieved Employees as the Individual PAGA Payments. The PAGA Allocation is subject to Court approval and may change on this basis; however, the Gross Fund Value shall not be increased or otherwise impacted by the Court's approval or rejection of the PAGA Allocation. The Parties agree that a decision by the Court to reject the PAGA Allocation shall not be a basis for Plaintiff to void this Agreement. Each Individual PAGA Payment shall be treated as non-wage income and the Settlement Administrator will report the Individual PAGA Payments on IRS Form 1099.

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2.2.5. Individual Settlement Payments. The remainder of the Gross Fund Value after the foregoing payments (i.e. the Net Fund Value) will be paid out in its entirety as the Individual Settlement Payments, pursuant to the procedures and conditions set forth herein. Each Individual Settlement Payment shall be allocated 20% as wages and 80% as interest and penalties. The Settlement Administrator will report the portions allocated to wages on an IRS Form W-2 and the portions allocated to interest and penalties on an IRS Form 1099.

2.3. Individual Tax Liability. Defendants make no representations as to the tax treatment or legal effect of the payments called for in this Agreement, and Plaintiff and Settlement Members are not relying on any statement or representation by Defendants in this regard. Plaintiff and Settlement Members understand and agree that except for Defendants' payment of the employer's portion of any payroll taxes, Plaintiff and Settlement Members will be solely and exclusively responsible for the payment of any and all taxes or penalties assessed on the payments described herein.

3. RELEASES

3.1. Release as to All Participating Class Members. Effective on the date when Defendants fund the Gross Fund Value and funds employers' portion of payroll taxes due on the portion of the Individual Settlement Payments allocated as wages ("Funding Date") , the Participating Class Members, including Plaintiff, release and discharge the Released Parties as to the Released Class Claims for the Class Period.

3.2. Release as to All Aggrieved Employees. Upon the Funding Date, the Aggrieved Employees, including Plaintiff, release and discharge the Released Parties for the Released PAGA Claims for the PAGA Period.

3.2.1. The Parties agree that there is no statutory right for any Aggrieved Employee to opt out or otherwise exclude himself or herself from the Settlement and the release and discharge of the Released PAGA Claims for the PAGA Period as specified in this Agreement.

3.3. Plaintiff's Release. Upon the Funding Date, in addition to the Released Class Claims and the Released PAGA Claims, Plaintiff and her respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns further release and discharge Defendants and the Released Parties from: (a) all claims that were, or reasonably could have been, alleged in the Action, based on the facts and circumstances alleged in the Action and PAGA Notice; (b) all PAGA claims that were, or reasonably could have been, alleged in the Action based on the facts and circumstances alleged in the Action and PAGA Notice; and (c) any and all known or unknown liabilities, claims, demands for damages, costs, indemnification, contribution, or any other thing for which Plaintiffs has or may have, including known or unknown causes of action, claims, or demands for damages, costs, indemnification, or contribution, whether certain or speculative, which may have come into existence at any time prior to the time of execution of this Agreement, or that may be brought in the future in connection with any acts or omissions that have arisen at any time prior to

execution of this Agreement, including, but not limited to, any and all claims that Plaintiff has actually alleged or could have alleged to date, any and all claims arising out of Plaintiff's work for Defendants and/or employment status, any claims related to FMLA or CFRA leave, any claims that Plaintiff was wrongfully terminated or has been discriminated against or retaliated against in any way, or that Plaintiff's privacy rights have been violated in any way, any and all claims arising under a "whistleblower" statute (including any claims arising under Labor Code §§ 6310, 1102.5), any and all claims for wage and hour violations, any and all claims for tortious conduct resulting in personal injuries or intentional infliction of emotional distress, any and all claims for violations under the California Business and Professions Code section 17200, and any and all claims for or related to harassment, discrimination or retaliation on the basis of race, color, national origin, religion, gender, age, sexual orientation, ancestry, medical condition, marital status, pregnancy, physical or mental disability, associational disability, or other protected class, discharge in violation of public policy and/or violation of any state and federal laws, regulations, or constitutions, including without limitation, the *Age Discrimination in Employment Act* and its amendment, the *Older Workers Benefit Protection Act*, the *California Fair Employment and Housing Act*, the *Americans with Disabilities Act*, *Title VII of the Civil Rights Act of 1964*, as amended, Secs. 503 and 504 of the *Rehabilitation Act of 1973*, as amended, *The Fair Labor Standards Act*, as amended, *the National Labor Relations Act*, as amended, *the Labor – Management Relations Act*, as amended, *the Worker Adjustment and Retraining Notification Act of 1988*, as amended, *the Pregnancy Discrimination Act*, *the Employee Retirement Income Security Act of 1974*, as amended, *the Family Medical Leave Act of 1993*, as amended, *the California Family Rights Act*, as amended, and *the California Labor Code*, including divisible individual claims under the Private Attorneys General Act, Labor Code § 2698, et seq, and *the California Wage Orders* ("Plaintiff's Release").

Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period or PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them

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

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

Notwithstanding the provisions of California Civil Code section 1542, and for the purpose of implementing a full and complete release and discharge of Defendants and the Released Parties, Plaintiff and Class Counsel expressly acknowledge this Agreement is intended to include in its effect, without limitation, all claims that Plaintiff knows of, as well as all claims that she does not know or suspect to exist in Plaintiff's favor against Defendants or the Released Parties, or any of them, and that this Agreement contemplates the extinguishment of any such claims.

- 3.5. Release by Class Counsel: Upon the Funding Date, Class Counsel, on behalf of their present and former attorneys, employees, agents, successors, and assigns, release and discharge Defendants and the Released Parties from all claims for fees and costs incurred in connection with the Action, PAGA Notices, and all facts and circumstances underlying the Action and PAGA Notices.

4. PRELIMINARY APPROVAL OF SETTLEMENT

- 4.1. Interim Stay of Proceedings. The Parties agree to hold all proceedings in the Action in abeyance, including all discovery events and efforts, except such proceedings necessary to implement and complete the Settlement as outlined herein, pending the Preliminary Approval Hearing and Final Approval Hearing.
- 4.2. Remand to State Court for Settlement Purposes Only. The Parties agree to the stipulation or joint motion to remand the Action to San Diego Superior Court for settlement purposes only that is attached as **Exhibit B**. The Parties further stipulate and agree to remove the Action back to the Southern District of California for further proceedings as if the matter were never remanded for settlement purposes if the Court reviewing the proposed Settlement does not preliminarily and finally approve this Settlement. The Parties may waive this term, but only by mutual written agreement signed by the Parties or their counsel.
- 4.3. Preliminary Settlement Hearing/Alterations to this Agreement. As part of this Settlement, the Parties agree to the following procedures for obtaining preliminary Court approval of the Settlement.
 - 4.3.1. Within thirty (30) days of the Superior Court of California, County of San Diego, reasserting jurisdiction over the Action after the contemplated remand, Plaintiff shall file a Motion for Preliminary Approval and request a hearing before the Court to request preliminary approval of the Settlement and to request the entry of the Preliminary Approval Order.
 - 4.3.2. Simultaneous with and/or included in the filing of the Motion for Preliminary Approval, and solely for purposes of this Settlement, Plaintiff will request the Court enter a Preliminary Approval Order, preliminarily approving the proposed Settlement, conditionally certifying the Class, and setting a date for a Final Approval Hearing, which shall be set at least ninety (90) days after the Court grants preliminary approval.

4.3.3. In conjunction with the Motion for Preliminary Approval, Plaintiff will submit this Agreement and will include proposed forms of all notices and other documents as attached hereto necessary to implement the Settlement. The Order shall provide for Notice of the settlement to be sent to Class Members as specified herein.

4.3.4. In the event any provision of the Settlement is rejected by the Court, the Parties will work in good faith to negotiate alteration of the rejected term(s).

4.3.5. If, following the Parties' good faith efforts, the Parties cannot agree on alterations, or if ultimately the Court does not grant preliminary or final approval of the Settlement in its entirety, or if the Court's final approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. In such case, the Settlement shall not be used, referenced, or be admissible in any subsequent proceedings, either in this Action, in the Court, or in any other forum.

4.4. Class Certification for Settlement Purposes Only. As set forth above, in moving for preliminary approval of the Settlement, Plaintiff shall request certification of the Class. The certification of the Class is for settlement purposes only. Such certification—for settlement purposes only—shall not constitute, in this or any other proceeding, an admission of any kind by Defendants, including, without limitation, that certification of a class or collective action for trial purposes is appropriate or proper, that Plaintiff could establish any or all of the requisite elements for class or collective treatment of any of the claims in the Action, or that the PAGA claims asserted could properly proceed on a representative basis. In the event that the Settlement is not finally approved, or the Settlement is otherwise terminated or rendered null and void, the certification of the Class shall be automatically vacated and shall not constitute evidence or a binding determination that the requirements for certification of a class or collective action for trial purposes in this Action or in any other actions are satisfied. In such circumstances, Defendants expressly reserve all rights to challenge certification of the Class for any purpose other than for settlement purposes in this Action or in any other actions on all available grounds, as if the Class has not been certified for settlement purposes in this Action, and no reference to the prior certification of the Class or any documents related thereto shall be relied upon by Plaintiff or made available for any purpose. Additionally, the Parties stipulate that to further the certification for settlement purposes only, and for no other purpose or effect, and which stipulation shall not constitute evidence of a binding admission, Plaintiff is typical of other Class Members and can represent the Class.

4.5. The date on which the Court grants Plaintiff's motion for preliminary approval and enters a Preliminary Approval Order shall be the "Preliminary Approval Date."

5. PRELIMINARY SETTLEMENT ADMINISTRATION AND NOTICE

5.1. Selection of Settlement Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Settlement Administrator and verified that, as a condition of appointment, the Settlement Administrator agrees to be bound by this

Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Settlement Administration Costs. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Settlement Administrator other than a professional relationship arising out of prior experiences administering settlements. The Parties each represent that they do not have any financial interest in the Settlement Administrator that could create a conflict of interest.

- 5.1.1. Employer Identification Number. The Settlement Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities, if any.
 - 5.1.2. Settlement Administrator Duties. The Settlement Administrator has a duty to perform or observe all tasks to be performed or observed by the Settlement Administrator contained in this Agreement or otherwise.
 - 5.2. Delivery of Class and PAGA Member Data. Within fifteen (15) days of the Preliminary Approval Date, Defendants shall deliver the Class and PAGA Member Data to the Settlement Administrator. To protect Class Members' privacy rights, the Settlement Administrator must maintain the Class and PAGA Member Data in confidence, use the data only for purposes of this Settlement and for no other purpose, and restrict access to only those of its employees who need access in order to effect and perform under this Agreement, and shall, under no circumstances, share such information with Plaintiff or Class Counsel or anyone affiliated with them.
 - 5.2.1. All information (including copies and summaries) provided to Class Counsel pursuant to California Evidence Code section 1152 or Federal Rule of Evidence 408 in connection with the mediation, other settlement negotiations, or in connection with the Settlement, and all copies and summaries of the Class and PAGA Member Data provided to the Settlement Administrator by Defendants in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) days after the Administrator discharges its obligation to pay out of all Settlement funds hereunder, Defense Counsel may notify via email that Class Counsel and/or the Settlement Administrator is to destroy all paper and electronic versions of such information and the Class and PAGA Member Data received from Defendants, except as required to comply with law, and in any such event, the information must then be destroyed at the earliest opportunity.
 - 5.3. Calculation and Administration of the PAGA Allocation. The Individual PAGA Payments will be calculated for purposes of the Notice and prospective payment as follows:
 - 5.3.1. The Settlement Administrator shall allocate Thirty-Seven Thousand Five Hundred Dollars (\$37,500) (75% of the PAGA Allocation) for payment to the LWDA (the "LWDA PAGA Payment").

- 5.3.2. The Settlement Administrator shall determine the number of Aggrieved Employees and the Total PAGA Pay Periods, which shall be presumed to be correct.
- 5.3.3. The Settlement Administrator shall divide Twelve Thousand Five Hundred Dollars (\$12,500.00) (25% of the PAGA Allocation) by the amount of Aggregate PAGA Pay Periods to obtain the amount to allocate to each PAGA Pay Period.
- 5.3.4. The Settlement Administrator shall calculate each Aggrieved Employee's Individual PAGA Payment by multiplying his or her PAGA Pay Periods by the amount allocated to each PAGA Pay Period. Each Aggrieved Employee's estimated Individual PAGA Payment will be indicated on their individual Notice.
- 5.3.5. The PAGA Allocation is subject to Court approval and may change on that basis (e.g. due to any adjustment of the PAGA Allocation).
- 5.4. Calculation and Administration of the Individual Settlement Payments. The Individual Settlement Payments will be calculated for purposes of the Notice and prospective payment as follows:
 - 5.4.1. The Settlement Administrator shall divide the Net Fund Value by the Aggregate Workweek Number to calculate the amount to allocate to each Workweek.
 - 5.4.2. The Settlement Administrator shall calculate each Class Members' Individual Settlement Payment by multiplying his or her Total Workweeks times the amount allocated to each Workweek. Each Class Member's estimated Individual Settlement Payment will be indicated on their individual Notice.
 - 5.4.3. The Individual Settlement Payment estimates indicated on the Notice are subject to change, depending on factors including: (i) how many Class Members become Excluded Class Members (resulting in their Total Workweeks being removed from the final Aggregate Workweek Number, thereby increasing the value assigned to each Workweek); (ii) any changes to the Total Workweeks resulting from challenges to Total Workweeks submitted by Class Members resulting in workweek adjustments, which may increase or decrease the final Aggregate Workweek Number and the value of each Workweek; and (iii) any increases or reductions in the Net Fund Value (e.g. resulting from changes to the amount of the PAGA Allocation and/or Settlement Administration Costs approved by the Court).
- 5.5. Notice to Class Members. Notice of the Settlement shall be provided to all Class Members by the Settlement Administrator using the following procedures.
 - 5.5.1. Notice by First-Class Mail. Within fourteen (14) days after receipt of the Class and PAGA Member Data, the Settlement Administrator shall mail the Class Notice, which has been mutually approved by counsel for the Parties, to the Class Members via first-class regular U.S. mail. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database information to update and correct for any known or identifiable address changes. If a new address is obtained by way of a returned Class Notice, then the Settlement

Administrator shall promptly forward the original Class Notice to the updated address via first-class regular U.S. mail indicating on the original Class Notice the date of such re-mailing.

- 5.5.2. No Claim Form Required. Class Members and Aggrieved Employees shall not be required to submit a claim form to receive an Individual Settlement Payment or Individual PAGA Payment.
- 5.5.3. Objection/Exclusion Deadline. Class Members will have sixty (60) calendar days from the mailing of the Class Notice to submit an objection and/or request for exclusion from the Settlement, or challenge the Total Workweeks indicated on their Class Notice (“Objection/Exclusion Deadline”). Class Members to whom Class Notices are re-sent after having been returned undeliverable to the Settlement Administrator per the paragraph below shall have an additional fifteen (15) calendar days beyond the initial Objection/Exclusion Deadline to submit such an objection, request, or challenge.
- 5.5.4. Procedure for Undeliverable Notices. Any Class Notices returned to the Settlement Administrator as undeliverable on or before the Objection/Exclusion Deadline shall be sent to any forwarding address affixed thereto within five (5) days. If no forwarding address is provided, then the Settlement Administrator shall promptly attempt to determine a correct address using a single skip-trace, computer, or other search using the name and address of the individual involved and shall then perform a single re-mailing within five (5) days. In the event the procedures in this paragraph are followed and the intended recipient of a Notice still does not receive the Notice, the Class Members shall be bound by all terms of the Settlement and any Final Judgment entered by the Court upon final approval of the Settlement by the Court.
- 5.5.5. No later than fourteen (14) days prior to the Final Approval Hearing, the Settlement Administrator shall provide Defendants’ Counsel the names and contact information of the Class Members requesting exclusion from the Settlement. Simultaneously therewith, the Settlement Administrator shall provide Defendants’ Counsel the estimated amounts owed to each Participating Class Member and each Aggrieved Employee, and to Class Counsel, a version of the same document with the names removed (i.e., anonymized).
- 5.6. Procedure for Objecting to or Requesting Exclusion from the Class Action Settlement or Challenging Total Workweeks. The Class Members shall submit objections to the Settlement and/or request exclusion from the Settlement and/or submit a challenge to their Total Workweeks using the following procedures:
 - 5.6.1. Objection Procedure. The Class Notice shall provide that those Class Members who wish to object to the Settlement shall mail a written statement of objection (“Notice of Objection”) to the Settlement Administrator, no later than the Objection/Exclusion Deadline. The postmark date of the mailing shall be deemed the exclusive means of determining if a Notice of Objection is timely. The Notice

of Objection must contain the Class Members' name, the last four digits of his/her/their Social Security Number, approximate dates of employment, current contact information, a statement providing the basis for the Class Member's objection, a statement advising if the objecting Class Member plans to address the Court at the Final Approval Hearing, and any legal briefs, papers, or memoranda the objecting Class Member proposed to submit to the Court. Class Members, regardless of whether they submit a written objection to the Settlement Administrator, will have the right to appear at the Final Approval Hearing in order to have their objections heard by the Court. The Settlement Administrator shall immediately upon receipt, forward copies of all Notice of Objections to Class Counsel and Defendants' Counsel. Class Counsel and Defendants' Counsel shall file any responses to any written objections submitted to the Court in accordance with this Agreement at least five (5) court days before the Final Approval Hearing.

5.6.2. Exclusion Procedure. The Notice shall provide that Class Members who wish to exclude themselves from the Class must submit a written request to be excluded ("Request for Exclusion") such that it is received or postmarked on or before the Objection/Exclusion Deadline. Such Request for Exclusion must: (1) contain the name, address, telephone number, and last four digits of the Social Security Number for the person requesting exclusion; (2) be signed by the person requesting exclusion; and (3) be returned to the Settlement Administrator. A copy of the Notice of Objection is attached hereto as **Exhibit C**. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted by mail. Any Class Member who requests an exclusion from the Class will not be bound by the Released Class Claims, have any right to object, appeal, or comment thereon, or be entitled to an Individual Settlement Payment. Class Members who fail to submit a valid and timely Request for Exclusion on or before the Objection/Exclusion Deadline shall be Participating Class Members and shall be bound by all terms of the Settlement and any Final Judgment entered in this Action if the Settlement is approved by the Court. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of the Settlement Class to submit a Request for Exclusion from the Settlement.

5.6.2.1. No Exclusion by Plaintiff. Plaintiff expressly agrees not to, and waives the right to, exclude herself from the Class. To the extent Plaintiff submits a Request for Exclusion, it shall be null and void and of no legal effect, and Plaintiff will remain a Participating Class Member for all purposes, including with respect to the Released Class Claims and Released PAGA Claims.

5.6.2.2. No PAGA Exclusion. The foregoing Requests for Exclusion do not apply to Aggrieved Employees. Upon Court approval, Aggrieved Employees will be bound by this Settlement and the PAGA Released Claims irrespective of whether they make a Request for Exclusion. For the avoidance of doubt, no Aggrieved Employee may opt out of the Settlement with respect to the PAGA Released Claims by law.

5.6.3. Dispute Procedure. Each Class Member will have the opportunity, should he or she disagree with Defendants' records regarding their Total Workweeks as presented in the Class Notice, to challenge their Total Workweeks. To do so, Class Members must contact the Settlement Administrator *and* provide the Settlement Administrator with a declaration and any applicable and necessary documentary evidence to support their dispute regarding Total Workweeks prior to the Objection/Exclusion Deadline. Moreover, an individual can only dispute his or her number of Total Workweeks if they do not exclude themselves from the Settlement. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether a Workweek adjustment is warranted. Class Counsel and Defendants' Counsel shall meet and confer to reach an agreement regarding whether a Workweek adjustment is warranted based on the documentary evidence submitted by the Class Member. If a Workweek adjustment is warranted, the additional amount owed to said Class Member, if any, shall be paid as part of that Participating Class Member's Individual Settlement Payment, and no such adjustment will result in an increase to the Gross Fund Value. If the dispute cannot be resolved by the Parties, the Settlement Administrator shall make a decision, which may be appealed to the Court at the Final Approval Hearing. The Settlement Administrator will notify the disputing Class Member(s) of the decision and their right to appeal to the Court.

5.7. No Solicitation of Settlement Objections. The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement or appeal from any Final Judgment.

5.8. The Settlement Administrator shall provide Defendants' Counsel and Class Counsel a weekly report showing the number of Class Members who have objected to or requested exclusion from the Settlement (if any).

6. FINAL APPROVAL, FUNDING, AND PAYMENTS

6.1. Final Approval Hearing and Entry of Final Judgment. Upon expiration of the Objection/Exclusion Deadline, with the Court's permission, a Final Approval Hearing shall be conducted to determine final approval of the Settlement along with the amount properly payable for (1) the Attorneys' Fees and Cost Award, (2) the Service Award, and (3) Settlement Administration Costs. The Final Approval Hearing shall not be held earlier than thirty (30) days from the Objection/Exclusion Deadline and not earlier than ninety (90) days from the date the Court grants preliminary approval. A copy of the proposed Final Approval Order Plaintiff shall submit to the Court in connection with the Final Approval Hearing is attached hereto as **Exhibit D**. A copy of the proposed judgment Plaintiff shall submit to the Court in connection with the Final Approval Hearing is attached hereto as **Exhibit E**.

6.1.1. Continuing Jurisdiction. After entry of the Final Approval Order and Final Judgment, the Court shall have continuing jurisdiction solely for purposes of addressing: (1) the interpretation and enforcement of the terms of the Settlement;

(2) settlement administration matters; and (3) such post-final judgment matters as may be appropriate under courts rules or as set forth in this Agreement.

- 6.2. Creation and Funding of the Qualified Settlement Fund. Within five (5) business days of the Effective Date, the Settlement Administrator shall send Defendants' Counsel electronic wiring instructions to fund the Gross Fund Value and a fully-executed IRS W-9 form. Within thirty (30) days of the Effective Date, Defendants shall deliver the Gross Fund Value into the Qualified Settlement Fund created by the Settlement Administrator. Defendants shall also simultaneously deliver to the Settlement Administrator the employer's share of payroll taxes, including, but not limited to, FICA, FUTA, and SDI contributions.
- 6.3. Payments from the Gross Fund Value. Within fourteen (14) days after the Funding Date, the Settlement Administrator will mail checks for all Individual Settlement Payments, all Individual PAGA Payments, the Service Award, the LWDA PAGA Payment, the Settlement Administration Costs, and the Attorneys' Fees and Cost Award. Disbursement of the Attorneys' Fees and Cost Award shall not precede disbursement of the Individual Settlement Payments and Individual PAGA Payments.
 - 6.3.1. The Settlement Administrator will issue checks for the Individual Settlement Payments and the Individual PAGA Payments and send them to the Settlement Members via First Class U.S. Mail, postage prepaid. The checks shall be negotiable for one hundred eighty (180) calendar days, which shall be prominently stated on the face of each check. The Settlement Administrator may cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
 - 6.3.2. Those funds represented by checks returned as undeliverable and those checks remaining uncashed for more than one hundred eighty (180) days after issuance shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure section 1500 *et seq.*, for the benefit of those Settlement Members who did not receive or cash their checks until such time they claim their property. The Parties agree that this disposition results in no "unpaid" residue under California Code of Civil Procedure section 384, as the entire Net Fund Value and the PAGA Allocation attributable to the Aggrieved Employees will have been paid out to Settlement Members, whether or not each of them actually received or cashes their settlement checks.
 - 6.3.3. Although Settlement Members who do not timely cash the checks for their Individual Settlement Payments or Individual PAGA Payments will not immediately receive the monies from those checks, such persons shall nonetheless be and remain Settlement Members bound by all terms of the Settlement and Final Judgment entered in the Action, including the released of the Released Class Claims and Released PAGA Claims.

- 6.3.4. The checks received by the Settlement Members shall be accompanied by a Notice of Payment of Individual Settlement Payment and/or Notice of Payment of Individual PAGA Payment, copies of which are attached hereto as **Exhibit F**.
- 6.3.5. The payment of the Individual Settlement Payments and the Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the Participating Class Members or the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
- 6.4. Tax Forms and Tax Payments. The Settlement Administrator shall be responsible for issuing to Plaintiff, Settlement Members, the LWDA, the Settlement Administrator itself, and Class Counsel, any W-2, 1099, or other tax forms, as set forth herein and as may be required by law, for all amounts paid pursuant to this Settlement, and for forwarding all payroll taxes and penalties to the appropriate government authorities.
- 6.4.1. Each Aggrieved Employee's Individual PAGA Payment will be allocated as 100% penalties and shall be reported on an IRS Form-1099 by the Settlement Administrator.
- 6.4.2. Each Participating Class Member's Individual Settlement Payment will be allocated as follows: (a) 20% as wages; and (b) 80% as interest and penalties. The portion allocated to wages shall be reported on an IRS Form W-2, and the portion allocated to interest and penalties shall be reported on an IRS Form 1099 by the Settlement Administrator.
- 6.5. Certification by Settlement Administrator. Upon completion of administration of the distributions, the Settlement Administrator shall provide written certification of such completion to the Court and counsel for the Parties.
- 6.6. Discharge of Obligations. Defendants shall discharge their obligations to the Settlement Members through the remittance by the Settlement Administrator of the Individual Settlement Payments to the Participating Class Members and the Individual PAGA Payments to the Aggrieved Employees, regardless of whether these payments are actually received and/or negotiated by Settlement Members. Once Defendants have complied with their obligations set forth in this Settlement, they will be deemed to have satisfied all terms and conditions under this Settlement Agreement and shall have no further obligations under this Agreement regardless of what occurs with respect to those payments and sums.
- 6.7. Nullification of Settlement Agreement. In the event that (i) the Court does not finally approve the Settlement as provided herein; or (ii) the Court does not enter a Final Approval Order as provided herein, which becomes final as a result of the Effective Date, this Agreement and the Settlement shall be null and void and any order or judgment entered by the Court in further In such a case, the Parties and any funds to be awarded under this Settlement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and the Parties

shall proceed in all respects as if this Settlement Agreement had not been executed. In the event an appeal is filed from the Court's Final Judgment, or any other appellate review is sought prior to the Effective Date, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review, as well as any fees incurred by the Settlement Administrator prior to its being notified of the filing of an appeal from the Court's Final Judgment, or any other appellate review.

- 6.8. Right to Rescind Agreement. Defendants shall have, in their sole discretion, the right to void and withdraw from the Settlement, if, as of the Objection/Exclusion Deadline, five percent (5%) or more of the Class Members submit timely and valid Requests for Exclusion. Defendants must exercise this right of rescission, in writing, to Class Counsel within fifteen (15) days of receipt of the report from the Settlement Administrator. If the option to rescind is exercised, then Defendants will be solely responsible for all settlement administration costs incurred to that point.
- 6.9. Notice to the LWDA. Class Counsel shall be responsible for providing all notices to the LWDA and providing Defendants' Counsel with confirmation of same, including submission of the Settlement to the LWDA contemporaneously with the filing of the motion for preliminary approval, pursuant to California Labor Code section 2699(s)(2), and submission of any judgment within 10 days after entry of same, pursuant to California Labor Code section 2699(s)(3). Defendants may also choose, but are not obligated, to provide such notice to the LWDA.
- 6.10. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, the Parties and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or appeals. If any Class Member, Aggrieved Employee, or another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final.

7. ADDITIONAL PROVISIONS

- 7.1. Exhibits and Headings. The terms of this Agreement include the terms set forth in any attached exhibits which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- 7.2. Amendment or Modification. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.
- 7.3. Entire Agreement. This Agreement and any attached exhibits constitute the entire agreement among these Parties, and no oral or written representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or

its exhibits other than the representations, warranties, covenants, and inducements contained and memorialized in such documents.

- 7.4. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court and/or the mediator to resolve such disagreement. The persons signing this Agreement on behalf of Defendants represent and warrant that they are authorized to sign this Agreement on behalf of Defendants.
- 7.5. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 7.6. Waiver: The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.
- 7.7. Binding on Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and/or assigns of the Parties hereto.
- 7.8. California Law Governs. All terms of this Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of California.
- 7.9. No Publicity. Plaintiff and Class Counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about this case and/or the fact, amount or terms of the Settlement. In addition, Plaintiff and Class Counsel agree that they will not engage in any advertising or distribute any marketing materials relating to the Settlement, including but not limited to any postings on any websites maintained by Class Counsel. However, Class Counsel may list the case name, number, and a brief description of the claims in their declarations in support of qualifications as class counsel in future filings.
- 7.10. Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts.
- 7.11. Fair, Adequate, and Reasonable Settlement. The Parties believe the Settlement is a fair, adequate, and reasonable resolution of this Action and have arrived at the Settlement

after extensive arms-length negotiations, taking into account all relevant factors, present and potential.

- 7.12. Jurisdiction of the Court. The shall retain jurisdiction, pursuant to Code of Civil Procedure Section 664.6 or otherwise, with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith.
- 7.13. Cooperation and Drafting. Each of the Parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall not be construed against any of the Parties.
- 7.14. Notice. All notices, demands, or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by regular U.S. Mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff / Class:

Kenneth H. Yoon
Stephanie E. Yasuda
YOON LAW, APC
751 N. Fair Oaks Ave., Suite 102
Pasadena, California 91103
Telephone: (213) 612-0988
Facsimile: (213) 947-1211
Email: kyoonyoonlaw.com
syasuda@yoonyoonlaw.com

To Defendants:

Ronald J. Holland
Ryan C. Bykerk
Jonathan A. Schaub
GREENBERG TRAURIG, LLP
101 Second Street, Suite 2200
San Francisco, CA 94105
Telephone: (415) 655-1300
Facsimile: (415) 707-2010
Email: ron.holland@gtlaw.com
ryan.bykerk.@gtlaw.com
jonathan.schaub@gtlaw.com

IN WITNESS WHEREOF, the Parties and their counsel execute this Agreement as follows:

PLAINTIFF

Dated: _____

Rosalinda Marchbanks-Powell

DESTINATION XL GROUP, INC.

Dated: 05/16/2025

Signed by:
By: Peter H. Stratton, Jr.
CCB215E0C495479

Its: EVP, CFO and Treasurer

CASUAL MALE STORE, LLC

Dated: 05/17/2025

Signed by:
By: Peter H. Stratton, Jr.
CCB215F0C495479...

Its: EVP, CFO and Treasurer

Approved as to form:

GREENBERG TRAURIG, LLP

Dated: 05/16/2025



Ronald J. Holland
Ryan C. Bykerk
Jonathan A. Schaub

Approved as to form and as to Paragraph 3.5 only:

CLASS COUNSEL

Dated: _____

Yoon Law, APC

Kenneth H. Yoon
Stephanie E. Yasuda

PLAINTIFF

Dated: 05/15/2025 _____

Rosalinda Marchbanks-Powell (May 15, 2025 22:04 PDT)

Rosalinda Marchbanks-Powell

DESTINATION XL GROUP, INC.

Dated: _____

By: _____

Its: _____

CASUAL MALE STORE, LLC

Dated: _____

By: _____

Its: _____

Approved as to form:

GREENBERG TRAURIG, LLP

Dated: _____

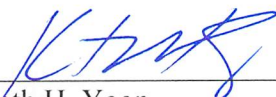
Ronald J. Holland
Ryan C. Bykerk
Jonathan A. Schaub

Approved as to form and as to Paragraph 3.5 only:

CLASS COUNSEL

Dated: 5/16/2025 _____

Yoon Law, APC



Kenneth H. Yoon
Stephanie E. Yasuda

EXHIBIT A
(Notice of Class and PAGA Action Settlement)

NOTICE OF CLASS AND PAGA ACTION SETTLEMENT

Rosalinda Marchbanks-Powell v. Destination XL Group, Inc., et al.
San Diego Superior Court, Case No. 24CU006636C
U.S.D.C., S.D. Cal., Case No. 3:24-cv-01733-L-VET

A proposed settlement has been reached in the above-referenced putative class and PAGA action currently pending in the Superior Court of California for the County of San Diego and the United States District Court, Southern District of California (the “Action”). **Because your rights may be affected by this settlement, it is important that you read this Notice carefully.**

This is a court approved notice. This is not an advertisement.

You are not being sued. Your legal rights are affected whether you act or not.

WHAT IS IN THIS NOTICE

1.	Why Should You Read This Notice?.....	Page 1
2.	What Is the Case About?.....	Page 2
3.	What Does the Settlement Provide?	Page 2
4.	What Are My Rights? How Will My Rights Be Affected?	Page 3
5.	Who Are the Attorneys Representing the Parties?	Page 5
6.	How Will the Attorneys for the Class and Costs Be Paid?.....	Page 6

1. Why Should You Read This Notice?

On August 19, 2024, Plaintiff Rosalinda Marchbanks-Powell (“Plaintiff”) initiated a putative class action alleging violations of the California Labor Code and Unfair Competition Law, and to recover civil penalties on behalf of herself and other allegedly “Aggrieved Employees” pursuant to California’s Labor Code Private Attorneys General Act (“PAGA”) for various alleged violations of the California Labor Code purportedly committed by Destination XL Group, Inc. and Casual Male Store, LLC (“Defendants”) (the foregoing, Plaintiff’s “Action”). Plaintiff’s Action is pending before Department [REDACTED] of the Superior Court of California for the County of San Diego (“Court”).

This Notice describes the nature of Plaintiff’s Action and explains your rights in the settlement. You have received this Notice because records indicate that you are a Class Member and/or an Aggrieved Employee. “Class Member(s)” include all current and former non-exempt, hourly employees of Defendants employed in California from April 6, 2020 to [DATE] (“Class Period”). Those identified as Class Members will comprise the class Plaintiff will request the Court conditionally certify for settlement purposes only (“Class”). In addition, the “Aggrieved Employee(s)” include all current and former employees of Defendant employed in California from June 13, 2023, through [DATE] (“PAGA Period”).

On [DATE], the Plaintiff and Defendants (together, the “Parties”) executed a Class and PAGA Action Settlement (“Settlement”) as a compromise that resolves the class and PAGA claims asserted in the Action. The Settlement is subject to Court approval. On [DATE], the Court preliminarily approved the Settlement and conditionally certified the Class for settlement purposes only. The Court has ordered that this Notice be provided to you. ***The Court has not determined***

who is right or wrong is this lawsuit.

2. *What Is the Case About?*

Plaintiff asserted claims against Defendants on behalf of Class Members and Aggrieved Employees for: failure to provide meal periods; failure to provide rest breaks; failure to pay minimum wages; failure to pay overtime wages; failure to reimburse business expenses; failure to timely furnish accurate itemized wage statements; failure to maintain pay and timekeeping records; failure to pay wages at termination; failure to timely pay wages during employment; unfair business practices; and civil penalties pursuant to PAGA.

Defendants deny any and all wrongdoing and liability. Defendants contend they conducted business and compensated employees consistent with the laws of the State of California. Defendants contend they have no liability for any claims under any statute, wage order, common law, or equitable theory. The Court has not ruled on the merits of Plaintiff's claims.

3. *What Does the Settlement Provide?*

This Settlement is the result of good faith and arms-length negotiations between Plaintiff and Defendants. Each side agrees that given the risks and expense associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and is in the best interests of the Class Members and Aggrieved Employees. Please be advised that the Court has not ruled on the merits of Plaintiff's claims or Defendants' defenses (which means the Court has not made a determination of who is right or wrong, or that Plaintiff could establish any of the requisite elements for class or collective treatment of any of the class claims asserted, or that the PAGA claims alleged could proceed on a representative basis).

As part of the Settlement's terms, and in exchange for a release of the class and PAGA claims asserted by Plaintiff, Defendants will pay **\$950,000.00 ("Gross Fund Value")**, which includes payment for attorneys' fees and costs, third-party settlement administrator costs, the class representative service award, payment to the California Labor and Workforce Development Agency ("LWDA"), and payment to Class Members and Aggrieved Employees. None of the sums shall revert to Defendants.

Plaintiff will request from the Gross Fund Value: (1) up to \$316,666.67 for attorneys' fees; (2) up to \$25,000.00 in litigation costs; (3) up to \$8,500 for settlement administration costs to Phoenix Settlement Administrators; (4) up to \$20,000.00 as a service award to Plaintiff for her services as a class representative; and (5) a PAGA Payment of \$50,000.00, of which \$12,500.00 will be distributed to Aggrieved Employees and of which \$37,500.00 will be paid to the LWDA. After deducting all the preceding amounts from the Gross Fund Value, the remaining amount ("Net Fund Value") will be distributed as individual settlement payments to Class Members who do not exercise their right to opt out of the Settlement as provided in Section 4 below.

Each Class Members' individual settlement payment will be calculated by dividing the Net Fund Value by all the weeks worked by all Class Members during the relevant time period to determine a per workweek dollar figure. This figure will then be multiplied by each Class Members'

respective workweeks to determine the Class Member's pro rata portion of the Net Fund Value ("Individual Settlement Payment"). Defendants will provide the Settlement Administrator with each Class Members' total workweeks based on their records. Of each Individual Settlement Payment, 20% shall constitute the recovery of wages for which a W-2 will be issued, and the remaining 80% shall constitute the recovery of interest and penalties for which a Form 1099 will be issued.

Defendants' records indicate that you worked a total of [REDACTED] workweeks during the Class Period. Based on this estimate and Defendants' records, your estimated Individual Settlement Payment is \$ [REDACTED].

Because you [are / are not] an Aggrieved Employee who worked for Defendants during the PAGA Period, you have been credited with having worked ____ pay periods. Based on this estimate and Defendants' records, the pro rata share of the PAGA Payment you will receive under the Settlement is estimated to be \$ _____. If these amounts are blank, then you are not an Aggrieved Employee that worked for Defendant in California during the PAGA Period, and will therefore not be receiving a share of the PAGA Payment. Of each individual PAGA Payment, 100% shall constitute the recovery of penalties for which a Form 1099 will be issued.

You have the opportunity, should you disagree with Defendants' records regarding the number of workweeks and PAGA pay periods you worked reflected in this Notice, to challenge the figure, including by providing documentation to show contrary employment dates. To do so, you must contact the Settlement Administrator and provide all evidence to support your dispute prior to the Opt-Out/Objection Deadline outlined in Section 4 below. However, you cannot submit a dispute regarding the number of workweeks reflected in this Notice if you exercise the right to opt out of the Class and Settlement. **Subject to Court approval, you do not need to take any further action to receive money from this Settlement.**

4. *What Are My Rights? How Will My Rights Be Affected?*

Participating in the Settlement

Under the Settlement, you will **automatically** receive an Individual Settlement Payment unless you opt out of the Class by following the opt-out procedure set forth below. If approved by the Court, the Settlement and its releases will be binding on all Class Members who do not timely opt out of the Settlement.

If you are also an Aggrieved Employee, you will **automatically** receive a share of the PAGA Payment. You will receive this payment regardless of whether you exercise the right to opt out of the Class as described below.

Your decision about whether or not to participate in this Settlement will **not** affect your employment or potential for re-employment with Defendants.

Opting Out of the Settlement

If you wish to be excluded from participating in the Settlement, you must mail a written statement to the Settlement Administrator, at the address below, requesting to be excluded from the Settlement. To be considered valid, your request for exclusion must be in writing, signed by you, and contain your name, address, telephone number, and your Social Security Number. You may,

but are not required, to use the **Opt-Out/Request for Exclusion Form** that accompanies this Notice. Your request for exclusion must clearly indicate that you desire to be excluded from the Settlement. To be considered timely, your request for exclusion must be received or postmarked no later than [REDACTED] (“Opt-out/Objection Deadline”). The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted by mail.

If you file a timely and valid written request for exclusion, you will no longer be a Class Member, and you will not be eligible to receive an Individual Settlement Payment or object to the terms of the Settlement, and you will not be bound by the terms of the Settlement.

Aggrieved Employees, however, cannot opt-out or exclude themselves from the Settlement with respect to the released PAGA claims detailed below. Aggrieved Employees will be issued an Individual PAGA Payment even if they opt-out from the Class.

Objecting to the Settlement

If you wish to object to the Settlement, you may advise the Court of your objection stating why you object to the Settlement. Your objection must state your full name; your Social Security Number; approximate dates of employment; address; telephone number; a statement providing the basis for your objection; a statement advising if you plan to address the Court at the Final Approval Hearing; and any legal briefs, papers or memoranda you propose to submit to the Court. The objection must be delivered or mailed to the Settlement Administrator, at the address below, and if mailed, must be postmarked no later than the Opt-out/Objection Deadline.

You may also, if you wish, appear at the Final Approval Hearing on [date] at [time] in Dept. [REDACTED] of the San Diego County Superior Court to discuss your objections with the Court and the Parties regardless of whether or not you submitted a written objection to the Settlement Administrator. If you object to the Settlement, you may still receive an Individual Settlement Payment if the Court approves the Settlement despite objections.

WHAT AM I RELEASING UNDER THE SETTLEMENT?

If and when the Court grants final approval of the Settlement, upon the Effective Date and upon Defendants fully funding the settlement, all Class Members and/or Aggrieved Employees will release the following claims:

All Class Members who do not opt out of the Settlement will release and discharge Defendants and the Released Parties for the Class Period from all causes of action, claims, and theories pled in the Action and the PAGA Notice, as well as any causes of action, claims, or theories that could have been asserted in the Action and PAGA Notice based on the facts or circumstances alleged by Plaintiff in the Action and PAGA Notice, including, without limitation, all claims for failure to pay for all hours worked, unpaid wages (including minimum wage, straight time, overtime, and double time), meal period violations (including meal premiums), rest break violations (including rest premiums), failure to timely pay wages during employment, failure to pay final wages, failure to provide accurate wage statements, unlawful business practices under the California Labor Code and/or the California Business and Professions Code, all claims for restitution or equitable relief, statutory penalties of any nature whatsoever, and attorneys’ fees and costs. The Released Class Claims include claims as described above under any and all applicable statutes, including, without limitation, California Labor Code sections 201, 202, 203, 204, 210, 216, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, and 1199; California unfair competition law based on the preceding claims, California Business and Professions Code sections 17200 *et seq.*; as well as the Industrial Welfare Commission Wage

Orders, including, but not limited to, Wage Order 7-2001.

All Aggrieved Employees will discharge Defendants and the Released Parties for the PAGA Period from all causes of action, claims, and theories pled in the Action and the PAGA Notice, as well as any causes of action, claims, or theories that could have been asserted in the Action and PAGA Notice based on the facts or circumstances alleged by Plaintiff in the Action and PAGA Notice, including, without limitation, all claims for failure to pay for all hours worked, unpaid wages (including minimum wage, straight time, overtime, and double time), meal period violations (including meal premiums), rest break violations (including rest premiums), failure to timely pay wages during employment, failure to pay final wages, failure to provide accurate wage statements, civil penalties under PAGA, California Labor sections 2699 *et seq.*, and attorneys' fees and costs. The Released PAGA Claims include claims as described above under any and all applicable statutes, including, without limitation, California Labor Code sections 201, 202, 203, 204, 210, 216, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1199, and 2699; as well as the Industrial Welfare Commission Wage Orders, including, but not limited to, Wage Order 7-2001.

The "Released Parties" means and refers to Defendants, and each of their respective former and present parent companies, subsidiaries, divisions, related or affiliated companies, directors, officers, shareholders, owners, members, employees, agents, principals, representatives, attorneys, insurers, predecessors, successors, and assigns, and any individual or entity that could be liable for any of the Released Class Claims or Released PAGA Claims, and Defendants' Counsel in the Action.

Uncashed Settlement Checks

Settlement checks returned as undeliverable or those Settlement checks remaining uncashed for more than 180 days after issuance shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law for the benefits of those Class Members and/or Aggrieved Employees and until they claim their property.

5. Who Are the Attorneys Representing the Parties?

Class Counsel, appointed and approved by the Court for settlement-purposes only, will represent you. However, you may choose to be represented by your own counsel at your own cost.

Attorneys for Plaintiff & the Class are:

Kenneth H. Yoon
Stephanie E. Yasuda
YOON LAW, APC
751 N. Fair Oaks Ave., Suite 102
Pasadena, California 91103
Telephone: (213) 612-0988

Attorneys for Defendant are:

Ronald J. Holland
Ryan C. Bykerk
Jonathan A. Schaub
GREENBERG TRAURIG, LLP
101 Second Street, Suite 2200
San Francisco, CA 94105
Telephone: (415) 655-1300

6. How Will the Attorneys for the Class and Costs Be Paid?

Class Counsel is seeking an award from the Court for attorneys' fees of up to \$316,666.67 and

documented litigation costs of up to \$25,000.00. Plaintiff is seeking a service award from the Court of up to \$20,000. The actual amounts awarded will be determined by the Court.

If you need more information or have any questions, you may contact the Settlement Administrator at the telephone number listed below.

Rosalinda Marchbanks-Powell v. Destination XL Group, Inc. et al., Settlement Claims Administration
c/o [Settlement Administrator]
[ADDRESS]
[PHONE]

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

**THIS NOTICE IS NOT A RECOMMENDATION BY THE COURT AS TO ANY
ACTION YOU SHOULD OR SHOULD NOT TAKE.**

*****THIS IS NOT AN ADVERTISEMENT FROM A LAWYER*****

EXHIBIT B
(Proposed Remand Order)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROSALINDA MARCHBANKS-
POWELL, on behalf of herself and other
current and former employees,

Plaintiff,

v.

DESTINATION XL GROUP, INC., a
Delaware corporation;
CASUAL MALE STORE, LLC, a
Delaware limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 3:24-cv-01733-L-VET

[Hon. M. James Lorenz, Courtroom 5B]

**[PROPOSED] ORDER
REMANDING THIS ACTION TO
THE SUPERIOR COURT OF SAN
DIEGO**

Date Removed: Sept. 27, 2024

ORDER

Upon consideration of the Parties’ Stipulation (Docket Entry __), it is hereby ordered that this action is REMANDED to the Superior Court of California, County of San Diego (“Superior Court”), for settlement purposes only.

IT IS SO ORDERED.

DATED: _____

The Hon. M. James Lorenz
United States District Court Judge

EXHIBIT C

(Opt-Out/Request for Exclusion Form)

Rosalinda Marchbanks-Powell v. Destination XL Group, Inc. et al., Settlement Claims Administration
c/o [Settlement Administrator]
[ADDRESS]

OPT-OUT/REQUEST FOR EXCLUSION FORM

Claim #
«First» «Last»
«c/o»
«Address 1» «Address2»
«City», «ST» «Zip» «Country»

Rosalinda Marchbanks-Powell v. Destination XL Group, Inc., et al., San Diego Superior Court Case No. 24CU006636C,
U.S.D.C., Southern District of California Case No. 3:24-cv-01733-L-VET (the “Action”)

SUBMIT THIS FORM NO LATER THAN [REDACTED], 2025 ONLY IF YOU WISH TO OPT OUT OF THE CLASS SETTLEMENT. DO NOT SUBMIT THIS EXCLUSION FORM IF YOU WISH TO RECEIVE MONEY FROM THE CLASS SETTLEMENT.

I have reviewed the Notice of Class and PAGA Action Settlement and understand that a person is a Class Member in the Action if he or she is a current or former non-exempt, hourly employee of Destination XL Group, Inc. or Casual Male Store, LLC employed in California between April 6, 2020 and [DATE]. I understand that this settlement is intended to compensate such Class Members.

I understand that I may exclude myself from, or “opt out” of, the class settlement of the Action. I understand that, in any separate lawsuit, I may receive nothing or less than I would have received if I had participated in the settlement. I understand that any separate lawsuit by me will be undertaken at my own expense and at my own risk. I understand that counsel for the class will not represent my interests if I opt out.

I understand that if I do not opt out, I will receive a payment if the class settlement of the Action is approved by the Court. ***I understand that, by requesting to be excluded from the class settlement, I will receive no money from the class settlement in accordance with the Class Action and PAGA Settlement and Release Agreement entered into by Plaintiff Rosalinda Marchbanks-Powell and the defendants in the Action.*** I understand that, to the extent I am an “Aggrieved Employee,” as explained in the Class Notice, my decision to opt out will not exclude me from the Settlement with respect to the released PAGA claims. No one has coerced or forced me to opt out; it is my own decision. **I opt out of the settlement.**

_____ Printed Name	_____ Signature	
_____ Date (mm/dd/yyyy)	_____ Telephone	
_____ Mailing Address		
_____ City	_____ State	_____ Zip Code
____ (Last Four Digits of Social Security Number)		

THIS FORM MUST BE POSTMARKED BY [REDACTED], 2025 AND DELIVERED TO THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING ADDRESS:

Rosalinda Marchbanks-Powell v. Destination XL Group, Inc., et al.
Settlement Claims Administration
c/o [Claims Administrator]
[ADDRESS]

YOU SHOULD KEEP A COPY OF THIS DOCUMENT FOR YOUR RECORDS. YOU MAY WISH TO MAIL IT RETURN RECEIPT REQUESTED.

EXHIBIT D
(Proposed Final Approval Order)

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

ROSALINDA MARCHBANKS-POWELL, on
behalf of herself and other current and former
employees,

Plaintiff,

v.

DESTINATION XL GROUP, INC., a
Delaware corporation; CASUAL MALE
STORE, LLC, a Delaware limited liability
company; and DOES 1 through 50, inclusive,

Defendants.

Case No. 24CU006636C

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

Final Approval Hearing
Date:
Time:
Dept.:

Action Filed: August 19, 2024
Trial Date: None Set

1 The Court granted preliminary approval of the parties' contemplated class action and California
2 Labor Code Private Attorneys General Act of 2004 ("PAGA") settlement (the "Settlement") and
3 conditionally certified a class for settlement purposes only on [DATE] (the "Settlement Class"). Due and
4 adequate notice having been given to the Class Members, and the Court having considered the Settlement,
5 all papers filed and proceedings herein, all oral and written comments regarding the Settlement, and having
6 reviewed the record in this litigation, and good cause appearing,

7 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

8 1. Unless otherwise provided, all terms used herein shall have the same meaning as those
9 provided in the Agreement.

10 2. The Court has jurisdiction over the subject matter of the litigation and over the Parties to
11 this litigation, including all Class Members and Aggrieved Employees.

12 3. The Court now finally certifies the Settlement Class for settlement purposes only:

13 **Settlement Class** means a member of the class conditionally certified for settlement
14 purposes only that consists of all current and former non-exempt, hourly employees of
15 Destination XL Group, Inc. and Casual Male Store, LLC employed in California during the
16 Class Period.

17 4. All persons who meet the foregoing definition are members of the Settlement Class, except
18 for those individuals who elected to opt out of the Settlement Class.

19 5. Consistent with the definition provided in the Agreement, the term "Aggrieved Employees"
20 shall mean the following: "All current or former employees of Destination XL Group, Inc. and Casual Male
21 Store, LLC employed in California during the PAGA Period."

22 6. The Court appoints Plaintiff Rosalinda Marchbanks-Powell as the Class Representative.

23 7. Kenneth H. Yoon and Stephanie E. Yasuda of Yoon Law, APC have shown they are
24 qualified to conduct the pending litigation and represent Plaintiff and the Settlement Class and are therefore
25 confirmed as Class Counsel.

26 8. The Court finds that the distribution of the Notice of Class and PAGA Action Settlement
27 ("Notice") has been completed in conformity with the Court's Preliminary Approval Order. The Court
28 finds that the Notice was the most practicable under the circumstances and provided due and adequate

1 notice of the proceedings and of the terms of the Settlement. The Court finds that the notice fully satisfied
2 the requirements of due process. The Court also finds that all Settlement Class Members were given a full
3 and fair opportunity to participate in the Final Approval Hearing, all Class Members wishing to be heard
4 have been heard, and all Class Members have had a full and fair opportunity to exclude themselves from
5 the Settlement Class.

6 9. The Court finds that [NUMBER] members of the Class requested exclusion from the
7 Settlement Class.

8 10. The Court finds that [NUMBER] members of the Settlement Class objected to the
9 Settlement.

10 11. The Court hereby grants final approval of the terms of the Settlement and finds that the
11 Settlement is, in all respects, fair, adequate, and reasonable, and directs the Parties to effectuate the
12 Settlement according to its terms. The Court finds that the Settlement has been reached as a result of
13 informed and non-collusive arms-length negotiations. The Court further finds that the Parties have
14 conducted extensive investigation and research, and their attorneys were able to reasonably evaluate their
15 respective positions.

16 12. The Court finds that the Settlement will avoid additional and potentially substantial
17 litigation costs, as well as delay and risks.

18 13. The Settlement is not an admission by Defendants, nor is this Judgment a finding of the
19 validity of any allegations or of any wrongdoing by Defendants. Neither this Judgment, the Settlement, nor
20 any document referred to herein, nor any action taken to carry out the Settlement, may be construed as, or
21 may be used as, an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by
22 or against Defendants.

23 14. By the deadline specified in the Parties' Class Action and PAGA Settlement and Release
24 Agreement ("Agreement"), Defendants shall deliver the Gross Fund Value into the Qualified Settlement
25 Fund to be established by the Settlement Administrator. Payments of Class Counsel's Attorneys' Fees and
26 Costs Award, Settlement Administration Costs, Service Award, and the portion of the PAGA Allocation
27 to be paid to the Labor Workforce Development Agency ("LWDA") shall be made from the Qualified
28 Settlement Fund by the deadline set forth in the Agreement.

1 15. The amount of the Individual Settlement Payment to be paid to each Participating Class
2 Member shall be calculated as specified in the Agreement and by the deadline specified in the Agreement
3 and in accordance with its other terms.

4 16. The amount of the Individual PAGA Payment to be paid to each Aggrieved Employee shall
5 be calculated as specified in the Agreement and by the deadline specified in the Agreement and in
6 accordance with its other terms.

7 17. Upon the Funding Date, the Participating Class Members shall be deemed to have fully
8 released and discharged the Released Parties from any and all Released Class Claims for the Class Period.

9 18. Upon the Funding Date, the Aggrieved Employees shall be deemed to have fully released
10 and discharged the Released Parties from any and all Released PAGA Claims for the PAGA Period.
11 Aggrieved Employees shall be bound by the Released PAGA Claims irrespective of whether they requested
12 exclusion from the Settlement Class.

13 19. The Released Class Claims and the Released PAGA Claims shall be merged into the Final
14 Judgment. All Participating Class Members, all Aggrieved Employees, and Plaintiff are permanently
15 barred and enjoined from instituting, commencing, asserting, or continuing any of the Released Class
16 Claims or Released PAGA Claims either directly, representatively, or in any other capacity or derivatively,
17 against the Released Parties in this or any other jurisdiction.

18 20. The Agreement, including, without limitation, its exhibits, and any and all negotiations,
19 documents, and discussions associated with it, shall not be deemed or construed to be an admission or
20 evidence of any violation of any statute, law, rule, regulation or principle of common law or equity, of any
21 liability or wrongdoing by Defendants, of the suitability of this case for class or representative treatment
22 in the absence of a settlement, or of the truth of any of the claims asserted by Plaintiff in the Action, and
23 evidence relating to the Agreement shall not be discoverable or used, directly or indirectly, in any way,
24 whether in the Action or in any other action or proceeding, except for the purposes of enforcing the terms
25 and conditions of the Agreement, the Preliminary Approval Order, this Final Approval Order, and the
26 contemplated Final Judgment, including in any pending or subsequent action against Defendants or the
27 Released Parties to support a defense of res judicata, collateral estoppel, release, or other theory of issue
28 preclusion or similar defense.

21. In the event that the Settlement does not become effective in accordance with the terms of the Agreement, then this Final Approval Order shall be rendered null and void, vacated, and the Agreement with all orders entered in connection therewith shall be rendered null and void (except as set forth in the Agreement).

22. The Court finds that the total requested attorneys' fees of [AMOUNT], representing [PERCENTAGE] of the \$950,000.00 Gross Fund Value, is reasonable based on the percentage of the recovery calculation and the lodestar crosscheck. The hourly rates of the attorneys are reasonable and in line with prevailing market rates, and the hours worked are also reasonable.

23. The Court further finds that the request for reimbursement of litigation costs in the amount of [AMOUNT] is reasonable based on the work necessary to achieve this settlement and is to be paid to Class Counsel from the Qualified Settlement Fund by the deadline specified in the Agreement.

24. The Court finds that Plaintiff assisted with the prosecution and litigation of the case. The Court therefore awards a Service Award in the amount of [AMOUNT] to be paid to Plaintiff by the deadline specified in the Agreement.

25. The Court approves payment of the Settlement Administration Costs of [AMOUNT] to be paid to the Settlement Administrator from the Qualified Settlement Fund by the deadline specified in the Agreement.

26. The Court approves the PAGA Allocation of \$50,000.00, which shall be distributed as follows: 75% (which totals \$37,500.00) shall be paid to the LWDA and the remaining 25% (which totals \$12,500.00) shall be paid to the Aggrieved Employees as specified in the Agreement and by the deadline provided therein.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: _____

Judge of the Superior Court

EXHIBIT E
(Proposed Judgment)

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

ROSALINDA MARCHBANKS-POWELL, on
behalf of herself and other current and former
employees,

Plaintiff,

v.

DESTINATION XL GROUP, INC., a
Delaware corporation; CASUAL MALE
STORE, LLC, a Delaware limited liability
company; and DOES 1 through 50, inclusive,

Defendants.

Case No. 24CU006636C

[PROPOSED] FINAL JUDGMENT

Final Approval Hearing
Date:
Time:
Dept.:

Action Filed: August 19, 2024
Trial Date: None Set

JUDGMENT

1. The Court hereby enters final judgment in this Action in accordance with the terms of the Class Action and PAGA Settlement Agreement (the “Agreement”), order granting preliminary approval of class action settlement (“Preliminary Approval Order”), and the final order approving class action settlement (“Final Approval”).

2. Upon full and final payment by Defendants Destination XL Group, Inc. and Casual Male Store, LLC (“Defendants”) of the Gross Fund Value and the employers’ portion of payroll taxes due on the portion of the Individual Settlement Payments allocated as wages, (i) the Participating Class Members, including Plaintiff, shall have, by operation of Final Approval and this Judgment, fully, finally and forever released, relinquished, and discharged the Released Parties as to the Released Claims for the Class Period, (ii) the Aggrieved Employees, including Plaintiff, shall have released, relinquished, and discharged the Released Parties for the Released PAGA Claims for the PAGA Period; and (iii) Plaintiff and her respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns shall have further release, relinquished, and discharged Defendants and the Released Parties pursuant to Plaintiff’s Release.

3. The following persons have not timely opted out from the Settlement and are thus the Participating Class Members for purposes of this Settlement: _____.

4. Without affecting the finality of the Final Order and/or this Judgment, pursuant to California Code of Civil Procedure Section 664.6 and Rule 3.769(h) of the California Rules of Court, the Court reserves exclusive and continuing jurisdiction over this Action, Plaintiff, Participating Class Members, and Defendants for the purposes of supervising the implementation, enforcement, construction, and interpretation of the Settlement, the Preliminary Approval Order, the Final Order, and the Judgment

Dated: _____
Judge of the Superior Court

EXHIBIT F

(Notices of Payment)

<Mailing Date>

NOTICE OF INDIVIDUAL PAGA PAYMENT

Re: *The Enclosed Check Re: Rosalinda Marchbanks-Powell v. Destination XL Group, Inc., et al.*
San Diego Superior Court Case No. 24CU006636C
U.S. District Court, Southern District of California Case No. 3:24-cv-01733-L-VET

ADMINISTRATOR ID

<Name>

<Address>

<City, State Zip>

Dear <Name>,

The enclosed payment is made to you because a Court has approved a settlement of claims for civil penalties brought by Plaintiff Rosalinda Marchbanks-Powell (“Plaintiff”) against Destination XL Group, Inc. and Casual Male Store, LLC (“Defendants”) pursuant to the Private Attorneys General Act of 2004 (“PAGA”) (the “Action”).

Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Action. The Court did not find that anyone did anything wrong and approved the settlement as a fair and reasonable resolution of disputed claims.

The enclosed check represents your portion of the recovery attributable to the settlement of claims for civil penalties pursuant to PAGA. You are responsible for paying any federal, state or local taxes owed as a result of this payment.

Under PAGA, aggrieved employees are entitled to share 25% of the civil penalties the Plaintiff recovered in this settlement on behalf of the State of California. Based on the number of pay periods you worked as an employee of Destination XL Group, Inc. or Casual Male Store, LLC in California between June 13, 2023 and [DATE], your share of the civil penalties the Plaintiff recovered in the settlement pursuant to PAGA is <\$XX.XX>.

The enclosed check is valid for 180 days from the date of issuance. If you do not cash it within 180 days, the funds from uncashed checks will be remitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law.

If you have any questions concerning this Settlement, you can contact **ADMINISTRATOR** at: 1 (XXX) XXX-XXXX. ***Do not call the Court about this Notice.***

<Mailing Date>

NOTICE OF INDIVIDUAL SETTLEMENT PAYMENT

Re: *The Enclosed Check Re: Rosalinda Marchbanks-Powell v. Destination XL Group, Inc., et al.*
San Diego Superior Court Case No. 24CU006636C
U.S. District Court, Southern District of California Case No. 3:24-cv-01733-L-VET

ADMINISTRATOR ID

<Name>

<Address>

<City, State Zip>

Dear <Name>,

The enclosed payment is made to you because a Court has approved a settlement of class action claims brought by Plaintiff Rosalinda Marchbanks-Powell (“Plaintiff”) against Destination XL Group, Inc. and Casual Male Store, LLC (“Defendants”) for various alleged violations of the California Labor Code and Unfair Competition Law (the “Action”).

Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Action. The Court did not find that anyone did anything wrong and approved the settlement as a fair and reasonable resolution of disputed claims.

The enclosed check represents your portion of the recovery attributable to the settlement of the class action claims alleged in the Action. You are responsible for paying any federal, state or local taxes owed as a result of this payment.

Based on the number of workweeks you were employed as a non-exempt, hourly employee of Destination XL Group, Inc. or Casual Male Store, LLC in California between April 6, 2020 and [DATE], your individual settlement payment is <\$XX.XX>.

The enclosed check is valid for 180 days from the date of issuance. If you do not cash it within 180 days, the funds from uncashed checks will be remitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law.

If you have any questions concerning this Settlement, you can contact ADMINISTRATOR at: 1 (XXX) XXX-XXXX. ***Do not call the Court about this Notice.***