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Attorneys for Plaintiff LUCAS DELACRUZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

LUCAS DELACRUZ, an individual, on behalf
of himself, and on behalf of all persons
similarly situated,

Plaintiff,

vs.

WAL-MART ASSOCIATES, INC., a
Delaware Corporation; BONOBO, INC., a
Delaware Corporation; and DOES 1 through
50, Inclusive,

Defendants.

Case No. 37-2021-00046421-CU-OE-CTL

**[PROPOSED] ORDER AND JUDGMENT
GRANTING FINAL APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT,
APPROVAL OF CLASS COUNSEL AWARD,
AND CLASS REPRESENTATIVE SERVICE
AWARD**

Date: October 20, 2023

Time: 8:30 a.m.

Judge: Hon. Keri Katz

Dept.: C-74

1 This matter came on for hearing on October 20, 2023, at 8:30 a.m., in front of the Hon. Keri Katz,
2 presiding, Plaintiff's unopposed Motion for Order Granting Final Approval of Class and PAGA Action
3 Settlement and Entering Judgment pursuant to California Rule of Court 3.769, with the attorneys from
4 the JCL LAW FIRM, APC, and ZAKAY LAW GROUP, APLC, as counsel for plaintiff LUCAS
5 DELACRUZ (hereinafter "Plaintiff") and counsel from OGLETREE, DEAKINS, NASH, SMOAK &
6 STEWART, P.C., appearing as counsel for defendants Bonobos, Inc., and Wal-Mart Associates, Inc.
7 (hereinafter "Defendants").

8 The Court, having received and carefully considering the Stipulation of Settlement of Class and
9 PAGA Action Claims and Release of Claims filed on September 14, 2023, ("Agreement"), a true and
10 correct copy of which is attached hereto as Exhibit A, the supporting papers filed by the Parties, the
11 evidence and argument received by the Court in conjunction with the unopposed Motion for Preliminary
12 Approval of Class Action Settlement heard on May 5, 2023, the instant Motion for Order Granting Final
13 Approval of Class and PAGA Action Settlement, the Court grants final approval of the Settlement and
14 HEREBY ORDERS, ADJUDICATES and DECREES THE FOLLOWING:

15 1. All capitalized terms used herein shall have the same meaning as defined in the
16 Agreement.

17 2. Pursuant to the Order Granting Preliminary Approval, the Class Notice was sent to each
18 Class Member via U.S. First Class Mail. The Class Notice informed the Class Members of the terms of
19 the Settlement, and of (a) their right to receive an Individual Settlement Payments, (b) their right to
20 comment on or object to the Settlement, (c) their right to request exclusion from the Settlement and
21 pursue their own remedies, and (d) their right to appear in person or by counsel at the final approval
22 hearing and to be heard regarding approval of the Settlement. Adequate periods of time were provided
23 by each of these procedures.

24 3. Following the conclusion of the response deadline, the Administrator reports that it
25 received *zero (0) written objections* to the Settlement and *zero (0) written requests for exclusion* from
26 the Settlement.

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1 4. The Court finds and determines that the notice procedure afforded adequate protections to
2 the Class and provides the basis for the Court to make an informed decision regarding approval of the
3 Settlement based on the responses of the Class. The Court finds and determines that the notice provided
4 in this case was the best notice practicable, which satisfied the requirements of law and due process.

5 5. With respect to the Class and for purposes of approving this Settlement only, this Court
6 finds and concludes that: (a) the members of the Class are ascertainable and so numerous that joinder of
7 all members is impracticable; (b) there are questions of law or fact common to the Class, and there is a
8 well-defined community of interest among the Class with respect to the subject matter of the Action; (c)
9 the claims of Class Representative LUCAS DELACRUZ are typical of the claims of the Class; (d) the
10 Class Representative has fairly and adequately protected the interests of the Class; (e) a class action is
11 superior to other available methods for an efficient adjudication of this controversy; and (f) the counsel
12 of record for the Class Representative, i.e., Jean-Claude Lapuyade, Esq. of the JCL Law Firm, APC,
13 Shani Zakay, Esq. of the Zaky Law Group, APLC, (hereinafter “Class Counsel”), are qualified to serve
14 as counsel for the Class Representative and the Class.

15 6. The Court has certified the Class, as that term is defined in and by the terms of the
16 Agreement as follows:

17 All current and former non-exempt California employees who worked at
18 Defendants Bonobos stores, including Walmart employees who worked at
19 Bonobos stores, at any time during the period beginning November 1, 2017,
20 through March 6, 2023 (“Class Period”).

21 7. The Court deems the definition of Class sufficient for purposes of California Rule of Court
22 3.765(a).

23 8. The Court hereby confirms Jean-Claude Lapuyade, Esq. of the JCL Law Firm, APC, and
24 Shani Zakay, Esq. of the Zakay Law Group, APLC as Class Counsel for the Class Representative in this
25 Action.

26 9. The Court hereby confirms plaintiff LUCAS DELACRUZ as the Class Representative in
27 this Action.

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1 10. The Court finds and determines that the terms set forth in the Agreement are fair,
2 reasonable, and adequate and directs the Parties to effectuate the Settlement according to its terms having
3 found that the Settlement was reached as a result of informed and non-collusive arms' length
4 negotiations facilitated by a neutral mediator. The Court further finds that the Parties conducted
5 extensive investigation, research, and discovery and that their attorneys were able to reasonably evaluate
6 their respective positions. The Court also finds that Settlement will enable the Parties to avoid additional
7 and potentially substantial litigation costs, as well as delay and risks if the Parties were to continue to
8 litigate the case. The Court has reviewed the monetary recovery provided as part of the Settlement and
9 recognizes the significant value accorded to the Class.

10 11. The Court further finds and determines that the terms of the Settlement, including the
11 Gross Settlement Amount of Four Hundred Fifty Thousand Dollars and Zero Cents (\$450,000.00), are
12 fair, reasonable and adequate to the Class and to each member of the Class and that the Settlement is
13 ordered finally approved, and that all terms and provisions of the Settlement should be and hereby are
14 ordered to be consummated.

15 12. The Court further finds and determines that Class Counsel satisfied California Labor Code
16 § 2699(l)(2) by giving the LWDA notice of the proposed Settlement of claims arising under the Private
17 Attorney General Act ("PAGA") on April 13, 2023 and again on September 14, 2023.

18 13. The Court finds and determines that the Individual Settlement Payments to be paid to
19 participating members of the Class as provided for by the Settlement are fair and reasonable. The Court
20 hereby gives final approval to and orders the payment of those amounts be made to the participating
21 Class Members in accordance with the Agreement.

22 14. The Court finds and determines that the LWDA Payment (75% of the PAGA Settlement)
23 of \$18,750.00 and the Aggrieved Employee Payment (25% of the PAGA Settlement) of \$6,250.00 in
24 this case are fair, reasonable, and appropriate. The Court hereby gives final approval to and orders that
25 the payment of those amounts be paid in accordance with the Agreement.

26 15. The Court finds and determines that the fees and expenses in administrating the Settlement
27 incurred by Apex Class Action LLC in the amount of \$18,500 are fair and reasonable. The Court hereby
28 gives final approval to and orders that the payment of that amount in accordance with the Settlement.

1 16. The Court finds and determines the Class Representative Service Award in the amount of
2 \$10,000.00 to the Class Representative, LUCAS DELACRUZ, is fair and reasonable. The Court hereby
3 orders the Administrator to make this payment to the Class Representative in accordance with the terms
4 of the Agreement.

5 17. Pursuant to the terms of the Settlement, and the authorities, evidence and arguments
6 submitted by Class Counsel, the Court hereby awards a payment of a Class Counsel Award in the total
7 sum of **\$165,000.00**. The payment of the Class Counsel Award is comprised of two components. First,
8 \$150,000.00 as attorneys' fees which represents one-third of the Gross Settlement Amount. The
9 attorneys' fee portion of the payment for Class Counsel Award shall be allocated as follows: 50% to the
10 JCL Law Firm, APC, 50% to the Zakay Law Group, APLC. Second, \$15,000 for actually incurred
11 litigation expenses as evidenced by Class Counsels' billing records. The Administrator shall allocate
12 the expenses award according to Class Counsels' actually incurred litigation expenses as stated and
13 supported in their respective declarations filed in support of this motion. The Court finds such amounts
14 to be fair and reasonable. The Court hereby orders the Administrator to make these payments in
15 accordance with the terms of the Agreement.

16 18. Without affecting the finality of this order or the entry of judgment in any way, the Court
17 retains jurisdiction of all matters relating to the interpretation, administration, implementation,
18 effectuation, and enforcement of this order and the Settlement.

19 19. Neither Defendants nor any related persons or entities shall have any further liability for
20 costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability, except as provided
21 for by the Agreement.

22 20. Neither the making of the Agreement nor the entry into the Agreement constitutes an
23 admission by Defendants, nor is this Order a finding of the validity of any claims in the Action or of any
24 other wrongdoing. Further, the Agreement is not a concession, and shall not be used as an admission of
25 any wrongdoing, fault, or omission of any entity or persons; nor may any action taken to carry out the
26 terms of the Agreement be construed as an admission or concession by or against Defendants or any
27 related person or entity.

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21. Nothing in this order shall preclude any action to enforce the Parties' obligations under the Settlement or under this order, including the requirement that Defendant make payments to the participating Class Members in accordance with the Settlement.

22. The Court hereby enters final judgment in accordance with the terms of the Agreement, the Order Granting Preliminary Approval of Class and PAGA Action Settlement granted on May 30, 2023, and this order.

23. The Parties will bear their own costs and attorneys' fees except as otherwise provided by this Court's Order awarding the payment of attorneys' fees and costs.

24. Upon completion of administration of the Settlement, the Settlement Administrator will provide written certification of such completion to the Court and counsel for the Parties which shall be filed with the Court five (5) court days before the non-appearance compliance hearing set for (), 2023 at () a.m., in Dept. C-74.

25. Accordingly, the motions for Final Approval of Class and PAGA Action Settlement and, Motion for Final Approval of the payment of the Class Counsel Award, and the Class Representative Service Award are GRANTED.

IT IS SO ORDERED, ADJUDICATED AND DECREED

Date: _____, 2023

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

LUCAS DELACRUZ, an individual, on behalf
of himself, and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

WAL-MART ASSOCIATES, INC., a
Delaware Corporation; BONOBO, INC., a
Delaware Corporation; and DOES 1 through
50, Inclusive.

Defendants.

Case No.: 36-2021-00046421

[Action Filed November 1, 2021]

**STIPULATION OF SETTLEMENT OF
CLASS AND PAGA ACTION CLAIMS
AND RELEASE OF CLAIMS**

This Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims is entered into by and between Plaintiff LUCAS DELACRUZ (hereinafter "Plaintiff"), an individual, on behalf of the Settlement Class, and in his representative capacity on behalf of the State of California and the Aggrieved Employees, and Defendants BONOBOs, INC. ("Bonobos"), and WAL-MART ASSOCIATES, INC. ("Walmart") (collectively, "Defendants"):

I. DEFINITIONS

- A. "Action" shall mean the putative class and representative action lawsuit designated *Delacruz v. Wal-Mart Associates, Inc., et al.*, San Diego County Superior Court, Case No. 36-2021-00046421, filed November 1, 2021.
- B. "Administration Costs" shall mean the amount paid to the Settlement Administrator from the Gross Settlement Amount for administering the Settlement pursuant to this Agreement currently estimated not to exceed \$7,500.00.
- C. "Aggrieved Employees" means all current and former non-exempt employees who worked at Defendants' Bonobos stores, including Walmart employees who worked at Bonobos stores, at any time during the PAGA Period.
- D. "Agreement" or "Settlement Agreement" means this Stipulation of Settlement of Class and PAGA Action and Release of Claims.
- E. "Attorneys' Expenses" means the award of expenses that the Court authorizes to be paid to Class Counsel for the expenses they have incurred of up to \$15,000.00.
- F. "Attorneys' Fees" means the award of fees that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the Settlement Class in the Action, currently not to exceed one-third of the Gross Settlement Amount currently estimated to be \$150,000.00 out of \$450,000.00. Attorneys' fees will be divided between Class Counsel as follows (50% to JCL Law Firm, APC, and 50% to Zakay Law Group, APLC).
- G. "Class" or the "Class Members" means all current and former non-exempt employees who worked at Defendants Bonobos stores, including Walmart employees that worked at Bonobos stores, at any time during the Class Period.

- 1 H. "Class Counsel" shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC, and
2 Shani O. Zakay, Esq. of Zakay Law Group, APLC.
- 3 I. "Class Data" means information regarding Class Members that Defendants will in
4 good faith compile from its records and provide to the Settlement Administrator. It
5 shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class
6 Member's full name; last known address; Social Security Number; start dates and end
7 dates of employment.
- 8 J. "Class Period" means the period beginning November 1, 2017, through March 6,
9 2023.
- 10 K. "Class Representative" shall mean plaintiff Lucas Delacruz.
- 11 L. "Court" means the Superior Court for the State of California, County of San Diego
12 currently presiding over the Action.
- 13 M. "Defendants" shall mean Bonobos, Inc., and Wal-Mart Associates, Inc.
- 14 N. "Effective Date" means the earliest date, following entry by the Court (or Courts) of
15 an Order (or Orders) and judgment finally approving this Settlement, upon which one
16 of the following have occurred: (i) if no objection is filed to the settlement and no
17 objector appears at the hearing on final approval, the date of the Court's entry of the
18 order granting final approval, (ii) if an objection is filed to the settlement and/or an
19 objector appears at the hearing on final approval, then the earlier of the following: (a)
20 the expiration of all potential appeal periods without a filing of a notice of appeal of
21 the final approval order or judgment, i.e., sixty (60) days after the entry of the final
22 approval order and judgment; (b) final affirmance of the final approval order and
23 judgment by an appellate court as a result of any appeal(s), or (c) final dismissal or
24 denial of all such appeals (including any petition for review, rehearing, certiorari, etc.)
25 such that the final approval order and judgment concerning the Actions is no longer
26 subject to further judicial review. If this settlement is approved through motions in
27 both Courts, then Effective Date shall mean the latter of both approvals.
- 28

- 1 O. "Service Award" means an award in the amount of \$10,000 or in an amount that the
2 Court authorizes to be paid to the Class Representative, in addition to his Individual
3 Settlement Payment and his individual Aggrieved Employee Payment, in recognition
4 of his efforts and risks in assisting with the prosecution of the Action.
- 5 P. "Funding Date" shall mean the date by which Defendants have paid the entire Gross
6 Settlement Amount to the Claims Administrator in accord with the terms of this
7 Agreement. Defendants will pay the Gross Settlement Amount to the Claims
8 Administrator thirty (30) calendar days after the Effective Date.
- 9 Q. "Gross Settlement Amount" means Four Hundred and Fifty Thousand Dollars
10 (\$450,000.00) that Defendants must pay into the QSF in connection with this
11 Settlement, inclusive of the sum of Individual Settlement Payments, Administration
12 Costs, Attorneys' Fees and Attorneys' Expenses, Service Award, and the PAGA
13 Penalties and *exclusive* of the employer's share of payroll tax, if any, triggered by any
14 payment under this Settlement.
- 15 R. "Individual Settlement Payments" means the amount payable from the Net Settlement
16 Amount to each Settlement Class Member and excludes any amounts distributed to
17 Aggrieved Employees pursuant to PAGA.
- 18 S. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less
19 Attorneys' Fees and Attorneys' Expenses, Service Award, PAGA Penalties, and
20 Administration Costs.
- 21 T. "Notice Packet" means the Class Notice to be provided to the Class Members by the
22 Settlement Administrator in the form set forth as **Exhibit A** to this Agreement (other
23 than formatting changes to facilitate printing by the Settlement Administrator).
- 24 U. "Operative Complaint" shall mean the Third Amended Complaint on file in the
25 Action filed on March 21, 2023.
- 26 V. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
27 Labor Code § 2698 *et seq.*
28

- 1 W. "PAGA Payment Ratio" means the respective Pay Periods during the PAGA Period
2 for each Aggrieved Employee divided by the sum total of the Pay Periods for all
3 Aggrieved Employees during the PAGA Period.
- 4 X. "PAGA Pay Periods," for purposes of calculating the distribution of the Aggrieved
5 Employee Payment, as defined herein, means the number of pay periods of
6 employment during the PAGA Period that each Aggrieved Employee worked in
7 California.
- 8 Y. "PAGA Period" means the period beginning August 27, 2020, through March 6,
9 2023.
- 10 Z. "PAGA Penalties" shall mean Twenty-Five Thousand Dollars (\$25,000) to be
11 allocated from the Gross Settlement Amount, with 25% of the payment going to the
12 Aggrieved Employees ("Aggrieved Employee Payment") and 75% of the payment
13 going to the Labor and Workforce Development Agency ("LWDA Payment"). The
14 amount of the PAGA Penalties is subject to Court approval pursuant to California
15 Labor Code section 2699(l). Any reallocation of the Gross Settlement Amount to
16 increase the PAGA Penalties will not constitute grounds by either party to void this
17 Agreement, so long as the Gross Settlement Amount remains the same.
- 18 AA. "Parties" means Plaintiff and Defendants, collectively, and "Party" shall mean either
19 Plaintiff or Defendants, individually.
- 20 BB. "Payment Ratio" means the respective Workweeks for each Class Member divided
21 by the sum total Workweeks for all Class Members.
- 22 CC. "Plaintiff" shall mean Lucas Delacruz.
- 23 DD. "QSF" means the Qualified Settlement Fund established, designated, and maintained
24 by the Settlement Administrator to fund the Gross Settlement Amount.
- 25 EE. "Released Class Claims" shall mean the release from the Class Members of all class
26 claims alleged in the operative Third Amended Complaint, or which could have been
27 alleged in the operative complaint based on the facts alleged, which occurred during
28 the Class Period, and expressly excluding all other claims, including claims for vested

benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period.

FF. "Released PAGA Claims" shall mean the release from the Aggrieved Employees of all PAGA claims alleged in the operative Third Amended Complaint and Plaintiff's PAGA notices to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period.

GG. "Released Parties" shall mean Defendants Bonobos, Inc., and Wal-Mart Associates, Inc., along with each of its current and former subsidiaries, parent corporations, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, employers, attorneys, personal representatives, executors, and shareholders, including their respective pension, profit, sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries, as well as the personal representatives or executors of any such persons.

HH. "Response Deadline" means the date forty-five (45) calendar days after the Settlement Administrator mails Notice Packets to Class Members and the last date on which Class Members may submit requests for exclusion or objections to the Settlement.

II. "Settlement" means the disposition of the Action pursuant to this Agreement.

JJ. "Settlement Administrator" means Apex Class Action LLC, located at 20371 Irvine Avenue, Newport Beach, CA 92660; Tel: (800) 355-0700. The Settlement Administrator establishes, designates and maintains, as a QSF under Internal Revenue Code section 468B and Treasury Regulation section 1.468B-1, into which the amount of the Gross Settlement Amount is deposited for the purpose of resolving the claims of Settlement Class Members. The Settlement Administrator shall maintain the funds until distribution in an account(s) segregated from the assets of Defendants and any

person related to Defendants. *All accrued interest shall be paid and distributed to the Settlement Class Members as part of their respective Individual Settlement Payment.*

KK. “Settlement Class Members” or “Settlement Class” means all Class Members who have not submitted a timely and valid request for exclusion as provided in this Agreement.

LL. “Workweeks,” for purposes of calculating the distribution of the Net Settlement Amount, means the number of weeks of employment during the Class Period that each Class Member was employed by Defendants in California.

II. RECITALS

A. On August 27, 2021, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendants.

B. On November 1, 2021, Plaintiff filed the Action, alleging claims for:

1. Unfair competition (Bus. & Prof. Code §§ 17200 *et seq.*);
2. Failure to pay overtime wages (Labor Code §§ 510 *et seq.*);
3. Minimum wage violations (Labor Code §§ 1194, 1197 and 1197.1)
4. Meal period violations (Labor Code §§ 226.7, 512 and the applicable Wage Order);
5. Rest period violations (Labor Code §§ 226.7, 516 and the applicable wage order);
6. Failure to reimburse employees for required expenses (Labor Code § 2802);
7. Wage statement violations (Labor Code § 226 and 226.2 *et seq.*);
8. Failure to Pay Sick Pay at the Correct Rate (Labor Code § 246);
9. Failure to provide wages when due (Labor Code §§ 201, 202, 203; 204);
10. Violation of the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*);

C. On December 27, 2021, Plaintiff filed a First Amended Complaint dismissing cause of action number 8, Failure to Pay Sick Pay at the Correct Rate (Labor Code § 246),

1 and cause of action number 9, Failure to provide wages when due (Labor Code §§
2 201, 202, 203; 204).

3 D. On August 31, 2022, Plaintiff filed a Second Amended Complaint for the purpose of
4 incorporating the claims and factual allegations for an alleged failure to provide
5 seating claim pursuant to Cal. Code of Reg., Title 8, Section 1 1070(14).

6 E. On March 21, 2023, Plaintiff filed the operative Third Amended Complaint adding
7 the claims for Defendants' alleged failure to pay wages when due in violation of Labor
8 Code §§ 201, 202, and 203, and to add additional allegations regarding off-the-clock
9 Covid-19 screenings.

10 F. On March 21, 2023, Plaintiff sent an amended PAGA notice to the LWDA adding
11 claims for Defendants' alleged failure to pay wages when due in violation of Labor
12 Code §§ 201, 202, and 203, and to add additional allegations regarding off-the-clock
13 COVID-19 screenings.

14 G. The Class Representative believes he has claims based on alleged violations of the
15 California Labor Code, and the Industrial Welfare Commission Wage Orders, and
16 that class certification is appropriate because the prerequisites for class certification
17 can be satisfied in the Action, and this action is manageable as a PAGA representative
18 action.

19 H. Defendants deny any liability or wrongdoing of any kind associated with the claims
20 alleged in the Action, disputes any wages, damages and penalties claimed by the Class
21 Representative, alleged in the Operative Complaint, and/or alleged in the Class
22 Representative's PAGA notices to the LWDA are owed, and further contend that, for
23 any purpose other than settlement, the Action is not appropriate for class or
24 representative action treatment. Defendants contend, among other things, that at all
25 times they complied with the California Labor Code and the Industrial Welfare
26 Commission Wage Orders.

27 I. The Class Representative is represented by Class Counsel. Class Counsel investigated
28 the facts relevant to the Action, including conducting an independent investigation as

1 to the allegations, reviewing documents and information exchanged through informal
2 discovery, and reviewing documents and information provided by Defendants
3 pursuant to informal requests for information to prepare for mediation. Defendants
4 produced for the purpose of settlement negotiations certain employment data
5 concerning the Class, which Class Counsel reviewed and analyzed with the assistance
6 of an expert. Based on their own independent investigation and evaluation, Class
7 Counsel are of the opinion that the Settlement with Defendants is fair, reasonable, and
8 adequate, and is in the best interest of the Class considering all known facts and
9 circumstances, including the risks of significant delay, defenses asserted by
10 Defendants, uncertainties regarding class certification, and numerous potential
11 appellate issues. Although it denies any liability, Defendants are agreeing to this
12 Settlement solely to avoid the inconveniences and cost of further litigation. The
13 Parties and their counsel have agreed to settle the claims on the terms set forth in this
14 Agreement.

15 J. On March 6, 2023, the Parties participated in mediation presided over by Jeffrey A.
16 Ross, an experienced mediator of wage and hour class and PAGA actions. The Parties
17 accepted a Mediator's settlement proposal, which was subsequently memorialized in
18 the form of a Memorandum of Understanding.

19 K. This Agreement replaces and supersedes the Memorandum of Understanding and any
20 other agreements, understandings, or representations between the Parties. This
21 Agreement represents a compromise and settlement of highly disputed claims.
22 Nothing in this Agreement is intended or will be construed as an admission by
23 Defendants that the claims in the Action of Plaintiff or the Class Members have merit
24 or that Defendants bear any liability to Plaintiff or the Class on those claims or any
25 other claims, or as an admission by Plaintiff that Defendants' defenses in the Action
26 have merit.

27 L. The Parties believe that the Settlement is fair, reasonable, and adequate. The
28 Settlement was arrived at through arm's-length negotiations, taking into account all

relevant factors. The Parties recognize the uncertainty, risk, expense, and delay attendant to continuing the Action through trial and any appeal. Accordingly, the Parties desire to settle, compromise and discharge all disputes and claims arising from or relating to the Action fully, finally, and forever.

M. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendants reserve the right to contest certification of any class for any reason and reserve all available defenses to the claims in the Action. The Settlement, this Agreement, and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with any litigation.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. TERMS OF AGREEMENT

A. Settlement Consideration and Settlement Payments by Defendants.

1. Settlement Consideration. In full and complete settlement of the Action, and in exchange for the releases set forth below, Defendants will pay the sum of the Individual Settlement Payments, the Service Award, the Attorneys' Fees and Attorneys' Expenses, PAGA Penalties, and the Administration Costs, as specified in this Agreement, equal to the Gross Settlement Amount of Four Hundred and Fifty Thousand Dollars (\$450,000.00). The Parties agree that this is a non-reversionary Settlement and that no portion of the Gross Settlement Amount shall revert to Defendants. Other than the Defendants' share of employer payroll taxes and as provided in Section III.A.2 below, Defendants shall not be required to pay more than the Gross Settlement Amount.
2. Class Size. Defendants represent that the Class was comprised of approximately 291 individuals who collectively worked approximately 14,000 workweeks during the Class Period. Should the Workweeks increase beyond 5% of the Projected Workweeks (*i.e.*, more than 14,700 Workweeks),

Defendants shall notify Plaintiff that it will, at Defendants' sole discretion, either (i) increase the Gross Settlement Amount on a pro-rata basis equal to the percentage increase in the number of Workweeks worked by the Class members above five percent (5%) (*e.g.*, if the number of Workweeks increases by 6%, the Gross Settlement Amount will increase by one percent (1%)); or (ii) end the Class Period at any point before the Workweeks do not exceed 14,700.

3. Settlement Payment. Defendants shall deposit the Gross Settlement Amount into the QSF, through the Settlement Administrator on or before the Funding Date. Any interest accrued will be added to the NSA and distributed to the Settlement Class Members except that if final approval is reversed on appeal, then Defendants are entitled to prompt return of the principal and all interest accrued.

4. Defendants' Share of Payroll Taxes. Defendants' share of employer side payroll taxes is in addition to the Gross Settlement Amount and shall be paid together with the Gross Settlement Amount on the Funding Date.

B. Release by Settlement Class Members. As of the Funding Date, in exchange for the consideration set forth in this Agreement, Plaintiff and the Settlement Class Members release the Released Parties from the Released Class Claims for the Class Period.

C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of California release the Released Parties from the Released PAGA Claims for the PAGA Period. As a result of this release, the Aggrieved Employees shall be precluded from bringing claims against Defendants for the Released PAGA Claims.

D. Conditions Precedent: This Settlement will become final and effective only upon the occurrence of all of the following events:

1. The Court enters an order granting preliminary approval of the Settlement;

2. The Court enters an order granting final approval of the Settlement and a Final Judgment;
3. If an objector appears at the final approval hearing, the time for appeal of the Final Judgment and Order Granting Final Approval of Class Action Settlement expires; or, if an appeal is timely filed, there is a final resolution of any appeal from the Judgment and Order Granting Final Approval of Class Action Settlement; and
4. Defendants fully fund the Gross Settlement Amount.

E. Nullification of Settlement Agreement. If this Settlement Agreement is not preliminarily or finally approved by the Court, fails to become effective, or is reversed, withdrawn, or modified by the Court, or in any way prevents or prohibits Defendants from obtaining a complete resolution of the Released Class Claims and Released PAGA Claims, or if Defendants fail to fully fund the Gross Settlement Amount:

1. This Settlement Agreement shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;
2. The conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and
3. None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.

F. In the event that Defendants fail to fund the Gross Settlement Amount, Defendants shall bear the sole responsibility for any cost to issue or reissue any curative notice to the Settlement Class Members and all Settlement Administration Costs incurred to the date of nullification.

1 G. Certification of the Class. The Parties stipulate to conditional class certification of the
2 Class for the Class Period for purposes of settlement only. In the event that this
3 Settlement is not approved by the Court, fails to become effective, or is reversed,
4 withdrawn or modified by the Court, or in any way prevents or prohibits Defendants
5 from obtaining a complete resolution of the Released Class Claims and Released
6 PAGA Claims, the conditional class certification (obtained for any purpose) shall be
7 void *ab initio* and of no force or effect, and shall not be admissible in any judicial,
8 administrative or arbitral proceeding for any purpose or with respect to any issue,
9 substantive or procedural.

10 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
11 effect of the payments called for, and Class Members and/or Aggrieved Employees are
12 not relying on any statement or representation by the Parties in this regard. Class
13 Members and/or Aggrieved Employees understand and agree that they will be
14 responsible for the payment of any taxes and penalties assessed on the Individual
15 Settlement Payments and/or Aggrieved Employees' individual shares of the Aggrieved
16 Employee Payment described and will be solely responsible for any penalties or other
17 obligations resulting from their personal tax reporting of Individual Settlement
18 Payments and/or Aggrieved Employees' individual shares of the Aggrieved Employee
19 Payment. .

20 I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
21 the "acknowledging party" and each Party to this Agreement other than the
22 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision
23 of this Agreement, and no written communication or disclosure between or among the
24 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
25 such communication or disclosure constitute or be construed or be relied upon as, tax
26 advice within the meaning of United States Treasury Department circular 230 (31 CFR
27 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
28 her or its own, independent legal and tax counsel for advice (including tax advice) in

1 connection with this Agreement, (b) has not entered into this Agreement based upon
2 the recommendation of any other Party or any attorney or advisor to any other Party,
3 and (c) is not entitled to rely upon any communication or disclosure by any attorney
4 or adviser to any other party to avoid any tax penalty that may be imposed on the
5 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
6 any limitation that protects the confidentiality of any such attorney's or adviser's tax
7 strategies (regardless of whether such limitation is legally binding) upon disclosure by
8 the acknowledging party of the tax treatment or tax structure of any transaction,
9 including any transaction contemplated by this Agreement.

10 J. Preliminary Approval Motion. As soon thereafter as practicable after the execution of
11 this Agreement, Plaintiff shall file with the Court a Motion for Order Granting
12 Preliminary Approval and supporting papers, which shall include this Settlement
13 Agreement. Plaintiff will provide Defendants with a draft of the Motion at least three
14 (3) business days prior to the filing of the Motion to give Defendants an opportunity
15 to review and comment upon the Motion.

16 K. Settlement Administrator. The Settlement Administrator shall be responsible for:
17 establishing and administering the QSF; calculating, processing and mailing payments
18 to the Class Representative, Class Counsel, LWDA and Class Members; printing and
19 mailing the Notice Packets to the Class Members as directed by the Court; receiving
20 and reporting the objections and requests for exclusion; calculating, deducting and
21 remitting all legally required taxes from Individual Settlement Payments and
22 distributing tax forms for the Wage Portion, the Penalties Portion and the Interest
23 Portion of the Individual Settlement Payments and/or Aggrieved Employees'
24 individual shares of the Aggrieved Employee Payment; processing and mailing tax
25 payments to the appropriate state and federal taxing authorities; providing
26 declaration(s) as necessary in support of preliminary and/or final approval of this
27 Settlement; and other tasks as the Parties mutually agree or the Court orders the
28 Settlement Administrator to perform. The Settlement Administrator shall keep the

Parties timely apprised of the performance of all Settlement Administrator responsibilities by among other things, sending a weekly status report to the Parties' counsel stating the date of the mailing, the of number of Elections Not to Participate in Settlement it receives (including the numbers of valid and deficient), and number of objections received.

L. Notice Procedure.

1. Class Data. No later than ten (10) business days after the Preliminary Approval Date, Defendants shall provide the Settlement Administrator with the Class Data for purposes of preparing and mailing Notice Packets to the Class Members.

2. Notice Packets.

a) The Notice Packet shall contain the Notice of Class Action Settlement in a form substantially similar to the form attached as **Exhibit A**. The Notice of Class Action Settlement shall inform Class Members and Aggrieved Employees that they need not do anything in order to receive an Individual Settlement Payment and/or Aggrieved Employees' individual shares of the Aggrieved Employee Payment and to keep the Settlement Administrator apprised of their current mailing address, to which the Individual Settlement Payments and/or Aggrieved Employees' individual shares of the Aggrieved Employment Payment will be mailed following the Funding Date. The Notice of Class Action Settlement shall set forth the release to be given by all members of the Class who do not request to be excluded from the Settlement Class and/or Aggrieved Employees in exchange for an Individual Settlement Payment and/or Aggrieved Employees' individual shares of the Aggrieved Employment Payment, the number of Workweeks worked by each Class Member during the Class Period and PAGA Period, if any, and the estimated amount of their Individual

1 Settlement Payment if they do not request to be excluded from the
2 Settlement and each Aggrieved Employees' share of the Aggrieved
3 Employment Payment, if any. The Settlement Administrator shall use
4 the Class Data to determine Class Members' Workweeks and PAGA
5 Workweeks. The Notice will also advise the Aggrieved Employees
6 that they will release the Released PAGA Claims and will receive their
7 share of the Aggrieved Employee Payment regardless of whether they
8 request to be excluded from the Settlement.

9 b) The Notice Packet's mailing envelope shall include the following
10 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
11 ENTITLED TO PARTICIPATE IN A CLASS ACTION
12 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
13 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
14 NOTICE."

15 3. Notice by First Class U.S. Mail. Upon receipt of the Class Data, the
16 Settlement Administrator will perform a search based on the National Change
17 of Address Database to update and correct any known or identifiable address
18 changes. No later than twenty-one (21) calendar days after preliminary
19 approval of the Settlement, the Settlement Administrator shall mail copies of
20 the Notice Packet to all Class Members via regular First-Class U.S. Mail and
21 electronic mail. The Settlement Administrator shall exercise its best judgment
22 to determine the current mailing address for each Class Member. The address
23 identified by the Settlement Administrator as the current mailing address shall
24 be presumed to be the best mailing address for each Class Member.

25 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
26 Administrator as non-delivered on or before the Response Deadline shall be
27 re-mailed to any forwarding address provided. If no forwarding address is
28 provided, the Settlement Administrator shall promptly attempt to determine a

1 correct address by lawful use of skip-tracing, or other search using the name,
2 address and/or Social Security number of the Class Member involved, and
3 shall then perform a re-mailing, if another mailing address is identified by the
4 Settlement Administrator. Class Members who received a re-mailed Notice
5 Packet shall have their Response Deadline extended fifteen (15) days from the
6 original Response Deadline.

7 5. Disputes Regarding Individual Settlement Payments. Class Members will
8 have the opportunity, should they disagree with Defendants' records regarding
9 the start and end dates of employment to provide documentation and/or an
10 explanation to show contrary dates. If there is a dispute, the Settlement
11 Administrator will consult with the Parties to determine whether an
12 adjustment is warranted. The Settlement Administrator shall determine the
13 eligibility for, and the amounts of, any Individual Settlement Payments under
14 the terms of this Agreement. The Settlement Administrator's determination
15 of the eligibility for and amount of any Individual Settlement Payment shall
16 be binding upon the Class Member and the Parties.

17 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
18 by the Settlement Administrator concerning the administration of the
19 Settlement will be resolved by the Court under the laws of the State of
20 California. Before any such involvement of the Court, counsel for the Parties
21 will confer in good faith to resolve the disputes without the necessity of
22 involving the Court.

23 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
24 Packet shall state that Class Members who wish to exclude themselves from
25 the Settlement must submit a signed copy of the Request for Exclusion form
26 to the Settlement Administrator by the Response Deadline. A Request for
27 Exclusion form will be mailed together with the Notice Packet to all Class
28 Members. The Request for Exclusion will not be valid if it is not timely

submitted, if it is not signed by the Class Member, or if it does not contain the name and address and last four digits of the Social Security number of the Class Member. The date of the postmark on the mailing envelope or fax stamp on the Request for Exclusion shall be the exclusive means used to determine whether the request for exclusion was timely submitted. Any Class Member who submits a timely Request for Exclusion shall be excluded from the Settlement Class will not be entitled to an Individual Settlement Payment and will not be otherwise bound by the terms of the Settlement or have any right to object, appeal or comment thereon. However, any Class Member that submits a timely Request for Exclusion that is also an Aggrieved Employee will still receive his/her pro rata share of the Aggrieved Employee Payment, as specified below, and in consideration, will be bound by the Release by the PAGA Class as set forth herein. Class Members who fail to submit a valid and timely Request for Exclusion on or before the Response Deadline 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. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a final list of the Class Members who have timely submitted timely Requests for Exclusion. Defendants retain the right, in the exercise of its sole discretion, to nullify the settlement within thirty (30) days after expiration of the exclusion period, if ten percent (10%) or more of Class Members exclude themselves from the Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of the Class to submit Requests for Exclusion from the Settlement.

8. Objections. The Notice of Class Action Settlement contained in the Notice Packet shall state that Class Members who wish to object to the Settlement may submit to the Settlement Administrator a written statement of objection (“Notice of Objection”) by the Response Deadline. The postmark date of

1 mailing shall be deemed the exclusive means for determining that a Notice of
2 Objection was served timely. The Notice of Objection, if in writing, must be
3 signed by the Settlement Class Member and state: (1) the case name and
4 number; (2) the name of the Settlement Class Member; (3) the address of the
5 Settlement Class Member; (4) the last four digits of the Settlement Class
6 Member's Social Security number; (5) the basis for the objection; and (6) if
7 the Settlement Class Member intends to appear at the Final
8 Approval/Settlement Fairness Hearing. Settlement Class Members who fail
9 to make objections in writing in the manner specified above may still make
10 their objections orally at the Final Approval/Settlement Fairness Hearing with
11 the Court's permission. Settlement Class Members will have a right to appear
12 at the Final Approval/Settlement Fairness Hearing to have their objections
13 heard by the Court regardless of whether they submitted a written objection.
14 At no time shall any of the Parties or their counsel seek to solicit or otherwise
15 encourage Class Members to file or serve written objections to the Settlement
16 or appeal from the Order and Final Judgment. Class Members who submit a
17 written request for exclusion may not object to the Settlement. Class Members
18 may not object to the PAGA Penalties.

19 M. Funding and Allocation of the Gross Settlement Amount. Defendants are required to
20 pay the Gross Settlement Amount plus any employer's share of payroll taxes as
21 mandated by law within the time specified hereinabove on the Funding Date.

22 1. Calculation of Individual Settlement Payments. Individual Settlement
23 Payments shall be paid from the Net Settlement Amount and shall be paid
24 pursuant to the formula set forth herein. Using the Class Data, the Settlement
25 Administrator shall add up the total number of Workweeks for all Class
26 Members. The respective Workweeks for each Class Member will be divided
27 by the total Workweeks for all Class Members, resulting in the Payment Ratio
28 for each Class Member. Each Class Member's Payment Ratio will then be

1 multiplied by the Net Settlement Amount to calculate each Class Member's
2 estimated Individual Settlement Payments. Each Individual Settlement
3 Payment will be reduced by any legally mandated employee tax withholdings
4 (e.g., employee payroll taxes, etc.). Individual Settlement Payments for Class
5 Members who submit valid and timely requests for exclusion will be
6 redistributed to Settlement Class Members who do not submit valid and timely
7 requests for exclusion on a pro rata basis based on their respective Payment
8 Ratios.

9 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
10 Class Data, the Settlement Administrator shall add up the total number of
11 PAGA Pay Periods for all Aggrieved Employees during the PAGA Period.
12 The respective PAGA Pay Periods for each Aggrieved Employees will be
13 divided by the total PAGA Pay Periods for all Aggrieved Employees, resulting
14 in the "PAGA Payment Ratio" for each Aggrieved Employee. Each
15 Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the
16 Aggrieved Employee Payment to calculate each Aggrieved Employee's
17 estimated share of the Aggrieved Employee Payment.

18 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
19 Settlement Payments shall be allocated and treated as 25% wages ("Wage
20 Portion") and 55% penalties ("Penalties Portion"), and 20% pre-judgment
21 interest ("Interest Portion"). The Wage Portion of the Individual Settlement
22 Payments shall be reported on IRS Form W-2 and the Penalty Portion and
23 Interest Portion of the Individual Settlement Payments shall be reported on
24 IRS Form 1099 issued by the Settlement Agreement.

25 4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved
26 Employee Settlement Payments shall be allocated and treated as 100%
27 penalties and shall be reported on IRS Form 1099.
28

1 5. No Credit Toward Benefit Plans. The Individual Settlement Payments and
2 individual shares of the PAGA Penalties made to Settlement Class Members
3 and/or Aggrieved Employees under this Settlement Agreement, as well as any
4 other payments made pursuant to this Settlement Agreement, will not be
5 utilized to calculate any additional benefits under any benefit plans to which
6 any Class Members may be eligible, including, but not limited to profit-
7 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,
8 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the
9 Parties' intention that this Settlement Agreement will not affect any rights,
10 contributions, or amounts to which any Class Members may be entitled under
11 any benefit plans.

12 6. All monies received by Settlement Class Members under the Settlement which
13 are attributable to wages shall constitute income to such Settlement Class
14 Members solely in the year in which such monies actually are received by the
15 Settlement Class Members. It is the intent of the Parties that Individual
16 Settlement Payments and individual shares of the PAGA Penalties provided for
17 in this Settlement agreement are the sole payments to be made by Defendants to
18 Settlement Class Members and/or Aggrieved Employees in connection with this
19 Settlement Agreement, with the exception of Plaintiff, and that the Settlement
20 Class Members and/or Aggrieved Employees are not entitled to any new or
21 additional compensation or benefits as a result of having received the Individual
22 Settlement Payments and/or their shares of the Aggrieved Employee Payment.

23 7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments
24 shall be mailed by regular First-Class U.S. Mail to Settlement Class Members'
25 and/or Aggrieved Employees' last known mailing address no later than thirty
26 (30) business days after the Funding Date.

27 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved
28 Employees shall remain valid and negotiable for one hundred and eighty (180)

1 days from the date of their issuance. If a Settlement Class Member and/or
2 Aggrieved Employees does not cash his or her settlement check within 90
3 days, the Settlement Administrator will send a letter to such persons, advising
4 that the check will expire after the 180th day, and invite that Settlement Class
5 Member and/or Aggrieved Employees to request reissuance in the event the
6 check was destroyed, lost or misplaced. In the event an Individual Settlement
7 Payment and/or Aggrieved Employees' individual share of the PAGA
8 Penalties check has not been cashed within one hundred and eighty (180) days,
9 all funds represented by such uncashed checks, plus any interest accrued
10 thereon, shall be transmitted to the California Controller's Unclaimed
11 Property Fund in the name of the Settlement Class Member and/or Aggrieved
12 Employee.

- 13 9. Service Award. In addition to the Individual Settlement Payment as a
14 Settlement Class Member and his individual share of the Aggrieved Employee
15 Payment, Plaintiff will apply to the Court for an award of not more than
16 \$10,000.00, as the Service Award. Defendants will not oppose a Service
17 Award of not more than \$10,000.00 for Plaintiff. The Settlement
18 Administrator shall pay the Service Award, either in the amount stated herein
19 if approved by the Court or some other amount as approved by the Court, to
20 Plaintiff from the Gross Settlement Amount no later than thirty (30) business
21 days after the Funding Date. Any portion of the requested Service Award that
22 is not awarded to the Class Representative shall be part of the Net Settlement
23 Amount and shall be distributed to Settlement Class Members as provided in
24 this Agreement. The Settlement Administrator shall issue an IRS Form 1099
25 — MISC to Plaintiff for his Service Award. Plaintiff shall be solely and
26 legally responsible to pay any and all applicable taxes on his Service Award
27 and shall hold harmless the Released Parties from any claim or liability for
28 taxes, penalties, or interest arising as a result of the Service Award. Approval

1 of this Settlement shall not be conditioned on Court approval of the requested
2 amount of the Service Award. If the Court reduces or does not approve the
3 requested Service Award, Plaintiff shall not have the right to revoke the
4 Settlement, and it will remain binding.

5 10. Attorneys' Fees and Attorneys' Expenses. Defendants understand Class
6 Counsel will file a motion for or Attorneys' Fees not to exceed one-third of
7 the Gross Settlement Amount currently estimated to be \$150,000 **and**
8 Attorneys' Expenses supported by declaration not to exceed Fifteen Thousand
9 Dollars (\$15,000.00). Any awarded Attorneys' Fees and Attorneys' Expenses
10 shall be paid from the Gross Settlement Amount. Any portion of the requested
11 Attorneys' Fees and/or Attorneys' Expenses that are not awarded to Class
12 Counsel shall be part of the Net Settlement Amount and shall be distributed
13 to Settlement Class Members as provided in this Agreement. The Settlement
14 Administrator shall allocate and pay the Attorneys' Fees to Class Counsel
15 from the Gross Settlement Amount no later than thirty (30) calendar days after
16 the Funding Date. Class Counsel shall be solely and legally responsible to
17 pay all applicable taxes on the payment made pursuant to this paragraph. The
18 Settlement Administrator shall issue an IRS Form 1099 — MISC to Class
19 Counsel for the payments made pursuant to this paragraph. In the event that
20 the Court reduces or does not approve the requested Attorneys' Fees, Plaintiff
21 and Class Counsel shall not have the right to revoke the Settlement, or to
22 appeal such order, and the Settlement will remain binding.

23 11. PAGA Penalties. Twenty-Five Thousand Dollars (\$25,000) shall be allocated
24 from the Gross Settlement Amount for settlement of claims for civil penalties
25 under the Private Attorneys General Act of 2004 ("PAGA Penalties"). The
26 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA
27 Penalties (\$18,750) to the California Labor and Workforce Development
28 Agency no later than thirty (30) business days after the Effective Date

(hereinafter "LWDA Payment"). Twenty-five percent (25%) of the PAGA Penalties (\$6,250) will be distributed to the Aggrieved Employees as described in this Agreement (hereinafter "Aggrieved Employee Payment"). For purposes of distributing the PAGA Penalties to the Aggrieved Employees, each Aggrieved Employee shall receive their pro-rata share of the Aggrieved Employee Payment using the PAGA Payment Ratio as defined above.

12. Administration Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Gross Settlement Amount. The estimate of the Administration Costs is \$7,500.00. The Settlement Administrator shall be paid the Administration Costs no later than thirty (30) business days after the Effective Date.

N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with the Court a Motion for Order Granting Final Approval and Entering Judgment, within twenty-eight (28) days following the expiration of the Response Deadline, which motion shall request final approval of the Settlement and a determination of the amounts payable for the Service Award, the Attorneys' Fees and Attorneys' Expenses, the PAGA Penalties, and the Administration Costs. Plaintiff will provide Defendants with a draft of the Motion at least 3 business days prior to the filing of the Motion to give Defendants an opportunity to propose changes or additions to the Motion.

1. Declaration by Settlement Administrator. No later than seven (7) days after the Response Deadline, the Settlement Administrator shall submit a declaration in support of Plaintiff's motion for final approval of this Settlement detailing the number of Notice Packets mailed and re-mailed to Class Members, the number of undeliverable Notice Packets, the number of timely requests for exclusion, the number of objections received, the amount of the average Individual Settlement Payment and highest Individual Settlement Payment, the Administration Costs, and any other information as

1 the Parties mutually agree or the Court orders the Settlement Administrator to
2 provide.

3 2. Final Approval Order and Judgment. Class Counsel shall present an Order
4 Granting Final Approval of Class Action Settlement to the Court for its
5 approval, and Judgment thereon, at the time Class Counsel files the Motion
6 for Final Approval.

7 N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
8 an opportunity for Counsel for Defendants to review the Motions for Preliminary and
9 Final Approval, including the Order Granting Final Approval of Class Action
10 Settlement, and Judgment before filing with the Court. The Parties and their counsel
11 will cooperate with each other and use their best efforts to effect the Court's approval
12 of the Motions for Preliminary and Final Approval of the Settlement, and entry of
13 Judgment.

14 O. Cooperation. The Parties and their counsel will cooperate with each other and use
15 their best efforts to implement the Settlement.

16 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
17 except such proceedings necessary to implement and complete the Settlement, pending
18 the Final Approval/Settlement Fairness Hearing to be conducted by the Court.

19 Q. Amendment or Modification. This Agreement may be amended or modified only by
20 a written instrument signed by counsel for all Parties or their successors-in-interest.

21 R. Plaintiff's Individual Claims. In addition to this Agreement and the claims he is
22 releasing hereby, Plaintiff is entering into a separate individual settlement agreement,
23 which shall provide for a separate individual payment, and which shall provide for an
24 additional broad release, including a waiver of Civil Code Section 1542. That release,
25 waiver and discharge of all claims shall include, but will not be limited to, any and all
26 claims arising out of the Action, as well as additional claims described in the individual
27 settlement agreement, which are separate and different from the claims alleged in the
28 Action.

- 1 S. Entire Agreement. Except with respect to Plaintiff's individual settlement agreement,
2 described in paragraph "R" immediately above, this Agreement and any attached
3 Exhibit constitute the entire Agreement among these Parties, and no oral or written
4 representations, warranties or inducements have been made to any Party concerning
5 this Agreement or its Exhibit other than the representations, warranties and covenants
6 contained and memorialized in this Agreement and its Exhibit.
- 7 T. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
8 represent they are expressly authorized by the Parties whom they represent to negotiate
9 this Agreement and to take all appropriate Action required or permitted to be taken by
10 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
11 documents required to effectuate the terms of this Agreement. The persons signing
12 this Agreement on behalf of Defendants represents and warrants that he/she is
13 authorized to sign this Agreement on behalf of Defendants. Plaintiff represents and
14 warrants that he is authorized to sign this Agreement and that he has not assigned any
15 claim, or part of a claim, covered by this Settlement to a third-party.
- 16 U. No Public Comment: The Parties and their counsel agree that they will not issue any
17 press releases, initiate any contact with the press, respond to any press inquiry, or have
18 any communication with the press about the fact, amount, or terms of the Settlement
19 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
20 of its terms for any marketing or promotional purposes. Nothing herein will restrict
21 Class Counsel from including publicly available information regarding this settlement
22 in future judicial submissions regarding Class Counsel's qualifications and experience.
23 Further, Class Counsel will not include, reference or use the Settlement Agreement for
24 any marketing or promotional purposes, either before or after the Motion for
25 Preliminary Approval is filed.
- 26 V. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
27 to the benefit of, the successors or assigns of the Parties, as previously defined.
28

- 1 W. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
2 shall be governed by and interpreted according to the laws of the State of California.
- 3 X. Counterparts. This Agreement may be executed in one or more counterparts. All
4 executed counterparts and each of them shall be deemed to be one and the same
5 instrument provided that counsel for the Parties to this Agreement shall exchange
6 among themselves copies or originals of the signed counterparts.
- 7 Y. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
8 is a fair, adequate, and reasonable settlement of this Action and have arrived at this
9 Settlement after extensive arms-length negotiations, taking into account all relevant
10 factors, present and potential.
- 11 Z. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
12 respect to the interpretation, implementation and enforcement of the terms of this
13 Agreement and all orders and judgments entered in connection therewith, and the
14 Parties and their counsel submit to the jurisdiction of the Court for purposes of
15 interpreting, implementing and enforcing the settlement and all orders and judgments
16 entered in connection with this Agreement.
- 17 AA. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
18 the Court shall first attempt to construe the provisions valid to the fullest extent
19 possible consistent with applicable precedents so as to define all provisions of this
20 Agreement valid and enforceable.
- 21 BB. No Unalleged Claims. Except with respect to individual claims alleged by Plaintiff
22 and settled separately by an individual settlement agreement between the Parties
23 described in paragraph "R" above, Plaintiff and Class Counsel represent that they do
24 not currently intend to pursue any claims against the Released Parties, including, but
25 not limited to, any and all claims relating to or arising from Plaintiff's employment
26 with Defendants, regardless of whether Class Counsel is currently aware of any facts
27 or legal theories upon which any claims or causes of action could be brought against
28 Released Parties, including those facts or legal theories alleged in the operative

complaint in this Action. The Parties further acknowledge, understand and agree that this representation is essential to the Agreement and that this Agreement would not have been entered into were it not for this representation.

CC. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this settlement only.

DD. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the Released Class Claims and Released PAGA Claims have merit and give rise to liability on the part of Defendants. Defendants claim that the Released Class Claims and Released PAGA Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to and no action taken to carry out this Agreement may be construed or used as an admission by or against the Defendants or Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other than as may be specifically set forth herein, each Party shall be responsible for and shall bear its/his own attorney's fees and costs.

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: Apr 11, 2023

Luke Delacruz

Luke Delacruz (Apr 11, 2023 15:40 PDT)

LUCAS DELACRUZ

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

DATED: April 25, 2023 | 09:37 CDT

Chad Pekron

WAL-MART ASSOCIATES, INC.
BONOBOS, INC.

Chad Pekron

Printed Name

Vice President, Complex Commercial Litigation
Title

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: April 12, 2023

JCL LAW FIRM, A.P.C.

By: 

Attorneys for Plaintiff and the Settlement Class Members

DATED: April 12, 2023

ZAKAY LAW GROUP, APLC

By: 

Attorneys for Plaintiff and the Settlement Class Members

DATED: April 26, 2023

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By: 

Paloma P. Peracchio, Esq.
Mitchell A. Wrosch, Esq.
Attorneys for Defendants