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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,

Plaintiffs,

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

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: May 5, 2023

Time: 8:30 a.m.

Judge: Hon. Keri Katz

Dept.: C-74

1 I, Jean-Claude Lapuyade, Esq., declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently
3 testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner
4 of the law firm of JCL LAW FIRM, APC (hereinafter "Class Counsel"). I am co-counsel of record for
5 Plaintiff LUCAS DELACRUZ (hereafter "Plaintiff") in this wage and hour class action filed against
6 WAL-MART ASSOCIATES, INC. and BONOBOBOS, INC. (hereinafter "Defendants").

7 2. This declaration is being submitted in support of Plaintiff's motion for Preliminary
8 Approval of Class Action Settlement.

9 **I. EXHIBITS**

10 3. Attached hereto as **Exhibit "1"** is a true and correct copy of the fully executed Stipulation
11 of Settlement of Class and PAGA Action Claims and Release of Claims ("Agreement" or "Settlement
12 Agreement"). Attached as **Exhibit "A"** to the Agreement is a true and correct copy of the proposed
13 Class Notice.

14 4. Attached hereto as **Exhibit "2"** is a true and correct copy of the proof of filing with the
15 Labor and Workforce Development Agency notice of this settlement with the Settlement Agreement
16 and Motion for Preliminary Approval of Class Action and PAGA Action Settlement evidencing Class
17 Counsel's compliance with California Labor Code Section 2699(l)(2).

18 **II. INTRODUCTION**

19 5. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of
20 the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length.
21 The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement
22 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
23 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will
24 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
25 denied or of Defendant prevailing at trial. Given that there are approximately 291 Settlement Class
26 Members, **the average gross recovery is approximately \$833.33** (Net Settlement Amount divided by
27 Settlement Class Members.)

6. As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Settlement Share to the Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement.

III. FACTS AND PROCEDURE

A. Overview of the Litigation

7. Defendant Bonobos operates an e-commerce clothing retailer, throughout California, including San Diego County where Plaintiff worked. Walmart bought Bonobos before this Action was filed. This action asserts claims on behalf of all current and former non-exempt California employees who worked at Defendant Bonobos stores, including Walmart employees who worked at Bonobos stores, at any time during the period beginning November 1, 2017, through March 6, 2023. At all times during his employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout his employment, Plaintiff was subject to Defendants' written policies and procedures contained in, among other documents, the "Rest Breaks, Meal Periods and Days of Rest Policy" and "Associate Pay Policy."

8. On June 18, 2020, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq ("PAGA").

9. On January 20, 2021, Plaintiff filed a class action complaint in the San Diego Superior Court, Case Number 37-2021-00002597-CU-OE-CTL ("Class Action"). The Class Action alleged eleven causes of action against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of California

1 Labor Code §§ 510 *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code
2 §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7
3 and 512; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code
4 §226; (7) Failure to Reimburse Employees for Required Expenses; (8) Failure to Provide Wages When
5 Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (9) Failure to Timely Pay Earned Wages
6 in Violation §204(a); (10) Wrongful Termination in Violation of Public Policy; and (11) Violation of
7 the Private Attorneys General Act [Labor Code §§ 2698, *et seq.*] (“Class Claims”).

8 10. On December 27, 2021, Plaintiff filed the operative First Amended Complaint, which
9 dismissed the causes of action for failure to pay sick pay at the correct rate (Labor Code § 246) and
10 failure to provide wages when due in violation of California Labor Code §§ 201, 202, 203, and 204.

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

14 12. On March 21, 2023, Plaintiff filed a stipulation for leave to file a Third Amended
15 Compliant to readd the claims for Defendants’ failure to provide wages when due in violation of Labor
16 Code §§ 201, 202, and 203, and to add additional allegations regarding off-the-clock Covid-19
17 screenings.¹

18 13. Generally, Plaintiff claims that Defendant failed to pay overtime at the regular rate of
19 pay, failed to provide meal breaks and rest breaks, failed to reimburse for required business expenses,
20 failed to pay minimum wages, and failed to issue accurate itemized wage statements. Defendant
21 forcefully denies liability for each of Plaintiff’s claims. Further, Defendant asserts that it fully complied
22 with all applicable employment laws and raised several other significant defenses to Plaintiff’s claims,
23 including but not limited to, facially compliant meal and rest period policies, payment of minimum
24 wages, payment of overtime at the correct rate, reimbursed its employees for business expenses,
25 compliant wage statements, and timely paid all wages due upon separation of employment.

26
27 ¹ As of the filing of this Motion, the stipulation for leave to file a Third Amended Complaint has not been granted by the
28 Court.

1 14. Plaintiff commenced written discovery in February 2022. Before answering Plaintiff's
2 written discovery, the Parties agreed to mediate the action. In anticipation of mediation, the Parties
3 agreed to stay formal discovery and continue deadlines for class certification.

4 15. To prepare for mediation, the Parties agreed to informally produce additional documents
5 and data points subject to the mediation privilege, including but not limited to, a sampling of the Class
6 Members' time and payroll data, and pertinent written wage and hour policies. As discussed *infra*,
7 Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze
8 Defendants' time and payroll data.

9 16. On March 6, 2023, the Parties participated in a full day mediation with Jeffery A. Ross,
10 Esq., an experienced mediator of class and PAGA actions. After arms-length negotiations and
11 bargaining, the Parties accepted a Mediator's proposal and signed a Memorandum of Understanding.
12 After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement
13 agreement, which is the subject of the instant motion.

14 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

15 17. Months before filing the Action, Class Counsel began its pre-filing investigation into the
16 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with
17 Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment,
18 including, among other things, copies of his wage statements and timekeeping policies. At the
19 conclusion of the interviews, Class Counsel determined that each Plaintiff's complaints justified further
20 inquiry.

21 18. Class Counsel subsequently requested Plaintiff's employee files from Defendants. In
22 response, Defendants produced several pages of documents, including but not limited, Plaintiff's
23 payroll and time records. Class Counsel reviewed and analyzed the documents and determined the
24 documents appeared to substantiate Plaintiff's claim that Defendants failed to, among other things, pay
25 for all time worked and to provide compliant meal and rest periods.

26 19. Considering the many anticipated factual disputes, the Parties agreed that it would be in
27 the best interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel
28

1 requested documents and data points to further evaluate Plaintiff's claims and Defendants' liability
2 exposure to the Class Members. In response to Class Counsel's request, Defendants produced a
3 sampling of Class Member time and payroll records, aggregate workweek and pay period data, and
4 copies of applicable policies, and agreements containing, *inter alia*, compensation, timekeeping and
5 meal and rest period policies. In total, Defendants produced over 200 pages of pertinent policy
6 documents and approximately 500,000 unique cells of time and payroll data for Class Counsel to
7 analyze.

8 20. Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
9 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
10 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
11 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
12 differently, the BCG is uniquely qualified to analyze Defendants' time and payroll data.

13 21. BCG analyzed Defendants' time and payroll data to assist in the development of various
14 damage models. Among other things, BCG determined the approximate number of work shifts,
15 workweeks, pay periods, average length of shift and average number of hours worked per week and pay
16 periods during the Class Period. BCG also estimated the number of missed, late or truncated meal and
17 rest periods, the amount of paid missed meal period premiums paid during the Class Period, the amount
18 of unreimbursed business expenses, the amount of unpaid wages owed, and the amount of off-the-clock
19 work performed by the Class Members during the Class Period.

20 22. In advance of mediation, Class Counsel created several damage models predicated on the
21 BCG analysis. Class Counsel's models calculated Defendants' potential liability exposure while
22 accounting for the uncertainties of continued litigation. These damage models informed and guided
23 Class Counsel during the mediated settlement discussions.

24 23. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)
25 determining Plaintiff's suitability as a putative class representative through interviews, background
26 investigations, and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims;
27 (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions,
28

and the type of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) holding phone interviews with hundreds of putative class members; (9) drafting the mediation brief; and (10) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed.

C. The Parties Settled at Mediation

24. On September 8, 2021, the Parties conducted a full day of mediation with Hon. Steven Denton (Ret), a respected jurist and a highly regarded wage and hour mediator. Judge Denton helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge Denton's assistance. Namely, the Parties exchanged information regarding their respective claims and defense, including their respective evaluation of the damages. After nearly eight hours of arm's length and adversarial negotiations, the mediation concluded with a settlement. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue.

25. At all times, the Parties' negotiations were at an arm's length, adversarial and non-collusive. Only after a full day of mediated negotiations, the Parties reached a settlement. The matter resolved only when Mediator Ross issued a mediator's proposal that the Parties accepted. Mediator Ross only arrived at his proposal after hearing arguments, reviewing evidence, and evaluating the Parties' respective claims and defenses.

26. Once the Parties agreed to the Mediator's proposal, the Parties engaged in protracted negotiations regarding the written terms of the class action and PAGA settlement. The Parties maintained the arm's length, non-collusive and adversarial negotiations while arriving at the final terms

of the Settlement. The Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue.

IV. ARGUMENT

A. The Court Should Preliminarily Approve the Settlement

27. The Gross Settlement Amount of \$315,000 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring Defendants' potential liability exposure with respect to the Class and PAGA claims. The damage models were informed by Class Counsel's investigation, including the analysis of the time and payroll data Defendants produced. Class Counsel projected Defendants' maxim *class* liability exposure was \$2,747,655 (excluding PAGA Penalties), comprised of \$1,714,128 for damages and \$1,033,527 for penalties, i.e., waiting time and wage statement penalties. Additionally, BCG separately estimated Defendants' PAGA exposure at \$1,536,700. Combined, BCG projected Defendants' maxim liability exposure at the time of mediation at \$4,284,355. The Gross Settlement Amount of \$450,000.00 represents approximately 10.5% of Defendants' maxim liability exposure and 16.3% of the projected class *damages*.

(1) Estimated Damages for Regular Rate Violations

28. Plaintiff alleges that Defendants failed to include certain non-discretionary bonuses and commissions when calculating the regular rate of pay when paying overtime wages, meal period premiums, and redeemed sick pay. Specifically, Defendants paid Class Members non-discretionary incentive compensation in the form of "HO Incentive" and "Bonobos VIP" payments, and had in place the non-discretionary incentive programs, which were not properly calculated into the regular rate of pay for purposes of overtime, meal period premiums, and redeemed sick pay.

29. Conversely, Defendants denied liability and asserted it paid retro payments to Class Members that trued up the correct rate of pay for purposes of overtime wages, meal period premiums, and sick pay. Plaintiff estimated the range of outcomes for this claim was between \$0 and \$10,184 dollars.

30. Plaintiff also alleged that Defendants failed to provide compliant meal periods. Specifically, Plaintiff alleges that due to Defendants' understaffing, Plaintiff was often scheduled for single-staffed shifts. As a result, Plaintiff and the Class Members were expected to remain on the premises and on-duty during their meal periods.

31. Defendants contend that they fully complied with California meal period laws and maintained compliant policies and practices. Similarly, Defendants argued any divergence from these written policies were not systematic and, if they existed at all, were location specific. Courts have found that where an employer's meal period policies are compliant, individualized issues exist as to the reasons for missed, late, or truncated meal periods. *See e.g. Lampe v. Queen of the Valley Medical Center*, 19 Cal.App.5th 832, 851 (2018) (holding that although only 11.1% of the employees' time punches for meal periods were within the first 5 hours, the claim was not certifiable because individualized issues existed as to the reasons for the late meal periods). Plaintiff estimated the range of outcomes for this claim was between \$0 and approximately \$86,886 dollars.

(3) Estimated Damages for Rest Period Violations

32. Plaintiff further alleged that Defendants failed to provide compliant rest periods. Similar to the meal period claims, Plaintiff alleges that due to Defendants' understaffing, Plaintiff was often scheduled for single-staffed shifts. As a result, Plaintiff and Class Members were not able to take timely and duty-free rest periods and/or that they were expected to remain on the premises and on duty during their rest breaks.

33. Defendants denied liability and asserted that it maintained legally compliant rest period policies and practices throughout the Class Period. Plaintiff contended that this claim was potentially worth approximately \$1,237,330, but it would have mainly relied on Class Member testimony, making it a riskier claim at class certification and liability stages.

34. Accordingly, the rest break claim was heavily discounted in Plaintiff's valuation of the case.

(4) Exposure for Estimated Exposure for Unreimbursed Business Expenses

35. Plaintiff alleged that Defendants required the Settlement Class Members to use their personal cell phone as a result of and in furtherance of their job duties as employees for Defendants but were not reimbursed or indemnified by Defendants for the cost associated with their cell phone use.

36. Again, Defendants vigorously denied any liability for this claim. Specifically, Defendants argued that any cell phone use was voluntary, never mandatory, and contrary to written policies. Plaintiff estimated Defendants' exposure for this claim ranged between \$0 and \$178,600 dollars.

(5) Exposure for Unpaid Minimum Wages (Off-the-Clock)

37. Plaintiff further alleges that Defendants failed to pay for all hours worked at the minimum wage as he and other Class Members were required to work off-the-clock and were not compensated for that time. Defendants vigorously denied liability for this claim. Collectively, Defendants asserted, among other things, that its written policies and procedures directed its employees to perform work only while on-the-clock. Defendants asserted that any deviation from these written policies was location and individual-specific and thus, created individualized issues of liability unsuitable for class treatment.

38. Based on Defendants' practices requiring employees to work off-the-clock, Plaintiff assumed ten (10) minutes of unpaid compensable time per workweek by the Class Members during the Class Period. Plaintiff estimated Defendants' exposure for this claim ranged between approximately \$0 and \$201,128 dollars.

(6) Exposure for Wage Statement Violations and Waiting Time Penalties

39. Plaintiff alleges that Defendants' violations resulted in derivative violations of Labor Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties and weighed the potential recoveries against probable defenses.

40. Specifically, Defendants could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, Defendants could argue that Plaintiff could not show that Class Members suffered an "injury" because of wage statement violations, as required by Labor Code section 226. Plaintiff would have to overcome precedent to prove the Class deserved the penalties. See, e.g., Howard v. CVS Caremark Corp., 2014 U.S. Dist. LEXIS

1 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v.*
2 *Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad
3 faith or actual injury). Plaintiff could not give the penalty claims great weight given that they depended
4 on proving the underlying claims, which had their own risks. Plaintiff estimated Defendants' exposure
5 for this claim to be between \$0 and approximately \$1,033,527 dollars.

6 (7) Defendant's PAGA Exposure

7 41. Class Counsel's damage models also estimate Defendants' exposure for PAGA penalties
8 arising from the aforementioned violations. At the time of mediation, Plaintiff estimate Defendants'
9 PAGA exposure at approximately \$1,536,700 dollars.

10 42. Here, the Parties negotiated a good faith PAGA Penalties in the amount of \$25,000 which
11 is 5.5% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA
12 Penalties. Seventy-Five percent (75%) of the PAGA Penalties (\$18,750.00) will be paid to the LWDA
13 ("LWDA PAGA Payment") with the remaining twenty-five percent (25%) of the PAGA Penalties
14 (\$6,250.00) will be distributed to the Aggrieved Employees, which is within the range of PAGA
15 penalties approved by courts and should be approved.

16 43. For the aforementioned reasons, the PAGA allocation of the Gross Settlement Amount is
17 fair, just, and reasonable.

18 **B. Litigation Risks**

19 44. With respect to the most immediate challenge, i.e., class certification, the risks attendant
20 to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*
21 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded
22 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed
23 the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies,*
24 *Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
25 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
26 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
27 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly
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individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement.

45. Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668, the risk of an appeal and subsequent reversal is real.

46. In this matter, Class Counsel negotiated a Gross Settlement Amount of \$450,000.00 that is roughly 16.3% Defendants’ liability exposure for class damages. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.

B. Proposed Notice Informs the Class About the Case and Settlement

47. The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the procedure and time period within which to requests for exclusions or objections to the Settlement, the

1 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
2 and scope of the Released Class Claims. Agreement at § III(K)(2)(a). This method was negotiated by
3 the Parties to ensure delivering the most reasonable method of notice to the Class Members while
4 ensuring cost effective administration of the Settlement.

5 48. Accordingly, both the method of disseminating the Class Notice and content of the Class
6 Notice satisfy due process and the requirements of California law. (*See* C.R.C. 3.776(e)-(f); *State of*
7 *Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485 (the class notice must “fairly apprise the class members
8 of the terms of the proposed compromise and of the options open to dissenting class members.”).)

9 **C. The Court Should Preliminarily Approve the Enhancement Award**

10 49. Approximately 291 Class Members will share in the Net Settlement Amount due entirely
11 to the effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides
12 for a Service Award of \$10,000 for Plaintiff. The service award is fair and reasonable compensation
13 for the Plaintiff’s efforts bringing the action, assisting Class Counsel with the litigation and settlement,
14 regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the
15 claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief
16 for the Settlement Class.

17 50. Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service
18 Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the
19 above showing is sufficient for preliminary approval of the negotiated Service Award.

20 **D. The Court Should Preliminary Approve the Negotiated Class Counsel Award**

21 51. Class Counsel took this matter on a contingency fee basis and invested significant time
22 and expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average
23 Individual Settlement Share illustrates the demonstrably positive outcome for the Class Members. The
24 Agreement provides for a payment of Attorneys’ Fees and Attorneys’ Expenses and in the amount of
25 one-third of the Gross Settlement Amount (\$150,000.00) and reimbursable litigations costs in an
26 amount not to exceed \$15,000. Agreement § III(L)(10). Considering the positive outcome for the Class
27 Members, and in light of the supporting authority, the proposed Attorneys’ Fees and Attorneys’

Expenses are fair and reasonable. Plaintiff will file a formal motion for the negotiated Attorneys' Fees and Attorneys' Expenses once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees.

E. The Court Should Provisionally Certify the Settlement Class

52. For Settlement, Plaintiff contends, and Defendants do not dispute, that provisional certification of the Class is appropriate.

53. Because all Class Members are Defendant's current and former employees, the class is readily ascertainable from Defendant's regular business records, i.e., payroll records.

54. The California statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire Settlement Class. Factually, Defendants' policies and practices apply class-wide and Defendants' liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class.

55. Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement Class. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair.

56. A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication.

F. Class Counsel's Experience

57. Plaintiff, the Settlement Class Members and the Aggrieved Employees are represented by competent and experienced counsel to pursue their claims. I established the JCL Law Firm, APC (“Firm”), in 2010. The Firm is a boutique plaintiff firm representing aggrieved employees and consumers throughout California in wage and hour class actions, PAGA Actions and complex multi-party product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade, Esq. (Partner/Owner), Sydney Castillo-Johnson, Esq. (Associate Attorney), Monnett De La Torre, Esq. (Associate Attorney), Tesla Stone (Paralegal), Maria Watters (Paralegal), and Jennifer Hemming (Administrative Assistant), Sara Christensen (Legal Assistant), and Madelyn Uchiyama (Legal Assistant).

58. I am qualified to represent the Plaintiff, the State of California and the Aggrieved Employees. I have extensive experience with wage and hour class and representative actions litigation like this matter, and employment matters in general. Additionally, I have extensive complex mass tort litigation experience and complex construction product liability experience. I can, will and have adequately represented the interests of the Plaintiff, the State of California and the Aggrieved Employees throughout this action.

59. I have represented consumers and employees in California class actions, and complex multi-party product liability actions exclusively for more than 13 years. I have been in practice as a plaintiffs’ civil litigation attorney since April 2007.

60. I have significant class counsel and collective action counsel experience. I served as class and/or collective (PAGA) counsel in the following matters:

a. *Nunes v. Home Depot U.S.A., Inc.* San Joaquin Superior Court Case No. Case No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross appointed the Jean-Claude Lapuyade, Esq. as Class Counsel and approved a \$1.5 million dollar wage and hour class and PAGA action settlement for, among things, unpaid off-the-clock work.

b. *Munoz v. AMTCR, Inc.*, San Bernardino Superior Court Case No. CIVDS2001914 (August 24, 2021 – Hon. David Cohn approved a \$1.85 million dollar

1 wage and hour class and PAGA action for, among other things, inaccurate itemized wage
2 statements, and appointed the JCL Law Firm, APC as Class Counsel.)

3 c. *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No.
4 CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and
5 PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed
6 the JCL Law Firm, APC as Class Counsel)

7 d. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court,
8 Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and
9 PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC
10 acted as class counsel for the settlement class and as representative PAGA counsel the
11 State of California and the Aggrieved Employees.)

12 e. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior
13 Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a
14 PAGA Settlement negotiated on behalf of the State of California and the aggrieved
15 employees by the JCL Law Firm, APC.)

16 f. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior
17 Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed
18 the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement
19 for, *inter alia*, missed meal and rest periods.)

20 g. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court,
21 Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA
22 Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC
23 acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)

24 h. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No.
25 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL
26 Law Firm as Class Counsel and granted final approval of wage and hour class action for,
27 *inter alia*, off-the-clock work.)

- i. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)
- j. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)
- k. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)
- l. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead counsel.)
- m. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)
- n. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)
- o. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as

class counsel and granted final approval of wage and hour class action for unpaid overtime.)

p. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No. 37-2018-00043601 (May 31, 2019 – Hon. Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)

q. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)

r. *Moschetto v. Pillow Global, Inc.* San Diego Superior Court, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)

s. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)

t. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);

u. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);

v. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)

w. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)

x. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);

y. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);

z. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);

aa. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);

61. Since 2010, my firm has successfully resolved more than sixty (65) cases and recovered in excess of \$75 million on behalf of the Firm's clients.

62. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a favorable verdict for the firm's clients.

63. Finally, I have published appellate experience in *William Blanchette et al., v. The Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

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EXHIBIT 1

JCL LAW FIRM, APC

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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,

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 [REDACTED].
- 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

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

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

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

10 **II. RECITALS**

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

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

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

26 C. On December 27, 2021, Plaintiff filed a First Amended Complaint dismissing cause
27 of action number 8, Failure to Pay Sick Pay at the Correct Rate (Labor Code § 246),
28

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

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

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

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

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

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

I. The Class Representative is represented by Class Counsel. Class Counsel investigated 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

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

2. Calculation of Individual Payments to the Aggrieved Employees. Using the Class Data, the Settlement Administrator shall add up the total number of PAGA Pay Periods for all Aggrieved Employees during the PAGA Period. The respective PAGA Pay Periods for each Aggrieved Employees will be divided by the total PAGA Pay Periods for all Aggrieved Employees, resulting in the "PAGA Payment Ratio" for each Aggrieved Employee. Each Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the Aggrieved Employee Payment to calculate each Aggrieved Employee's estimated share of the Aggrieved Employee Payment.
3. Allocation of Individual Settlement Payments. For tax purposes, Individual Settlement Payments shall be allocated and treated as 25% wages ("Wage Portion") and 55% penalties ("Penalties Portion"), and 20% pre-judgment interest ("Interest Portion"). The Wage Portion of the Individual Settlement Payments shall be reported on IRS Form W-2 and the Penalty Portion and Interest Portion of the Individual Settlement Payments shall be reported on IRS Form 1099 issued by the Settlement Agreement.
4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved Employee Settlement Payments shall be allocated and treated as 100% penalties and shall be reported on IRS Form 1099.

- 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: _____

WAL-MART ASSOCIATES, INC.
BONOBOS, INC.

Printed Name

Title

1
2
3 IT IS SO AGREED AS TO FORM BY COUNSEL:
4

5 DATED: April 12, 2023

JCL LAW FIRM, A.P.C.

6 By:  _____

7 Attorneys for Plaintiff and the Settlement Class
8 Members
9

10
11 DATED: April 12, 2023

ZAKAY LAW GROUP, APLC

12 By:  _____

13 Attorneys for Plaintiff and the Settlement Class
14 Members
15

16 DATED: _____

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

18 By: _____

19 Paloma P. Peracchio, Esq.
20 Mitchell A. Wrosch, Esq.
21 Attorneys for Defendants
22
23
24
25
26
27
28

EXHIBIT A

**NOTICE OF PENDENCY OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT
AND FINAL HEARING DATE**

(Delacruz v. Walmart Associates Inc., et al., San Diego County Superior Court Case No. 37-2021-00046421)

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Individual Settlement Payment is: \$<<[REDACTED]>>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendants as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below.
Object	You may write to the Court about why you believe the settlement should not be approved. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of San Diego (the “Court”) has been reached between Plaintiff Lucas Delacruz (“Plaintiff”) and Defendants Bonobos, Inc. (“Bonobos”), and Wal-Mart Associates, Inc. (“Walmart”) (collectively, “Defendants”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All current and former non-exempt California employees who worked at Defendants’ Bonobos stores, including Walmart employees who worked at Bonobos stores, at any time during the period beginning November 1, 2017, through March 6, 2023.

The “Class Period” is the period of time beginning November 1, 2017, through March 6, 2023.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On November 1, 2021, Plaintiff filed a Complaint against Defendants in the Superior Court of the State of California, County of San Diego. Plaintiff asserted claims that Defendants: (1) Violated California Business and Professions Code § 17200 *et seq.*; (2) Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*; (3) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (4) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (5) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (6) Failed to reimburse for required business expenses in violation of California Labor Code § 2802; (7) Failed to provide accurate and complete itemized wage statements in violation of California Labor Code § 226; (8) Failed to pay sick pay at the correct rate in violation of California Labor Code § 246; (9) Failed to pay wages when due in violation of Cal. Lab. Code §§ 201, 202, 203, and 204; and (10) Violation of the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*). On December 27, 2021, Plaintiff filed a First Amended Complaint, which dismissed the eighth cause of action for failure to pay sick pay at the correct rate (Labor Code § 246) and the ninth cause of action for failure to provide wages when due in violation of California Labor Code §§ 201, 202, 203, and 204. On August 31, 2022, Plaintiff filed a Second Amended Complaint for the purpose of incorporating the claims and factual allegations for an alleged failure to provide seating claim pursuant to Cal. Code of Reg., Title 8, Section 1 1070(14). On _____, Plaintiff filed the operative Third Amended Complaint adding claims for Defendants' alleged failure to pay wages when due in violation of Cal. Lab. Code §§ 201-203 and to add allegations regarding off-the-clock COVID-19 screenings.

Defendants expressly deny any liability or wrongdoing of any kind associated with the claims alleged in the Action, dispute any wages, damages and penalties claimed by the Class Representative are owed, and further contend that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendants contend, among other things, that at all times they complied with the California Labor Code and the Industrial Welfare Commission Wage Orders.

On March 6, 2023, the Parties participated in an all-day mediation with Jeffrey A. Ross, an experienced mediator of wage and hour class and PAGA actions. The Parties accepted a Mediator's settlement proposal and reached an agreement for settlement. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC and Zakay Law Group, APLC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendants have agreed to pay an "all in" amount of Four Hundred and Fifty Thousand Dollars (\$450,000.00) (the "Gross Settlement Amount") to fund the settlement. The Gross Settlement Amount includes the payment of all Individual Settlement Payments, Administration Costs, Attorneys' Fees and Attorneys' Expenses, Service Award, and the PAGA Penalties.

After the Judgment becomes Final, Defendants will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. "Final" means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Administration Costs. Payment to the Settlement Administrator, estimated not to exceed \$7,500.00 for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
- Attorneys' Fees and Attorneys' Expenses. Payment to Class Counsel of an award of Attorneys' Fees of no more than 1/3 of the Gross Settlement Amount (currently \$150,000.00) and Attorneys' Expenses of not more than \$15,000 for all expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Class Representative Service Payment. Class Representative Service Payment of up to Ten Thousand Dollars (\$10,000) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Penalties. A payment of \$25,000.00 relating to Plaintiff's claim under the Private Attorneys General Act ("PAGA"), \$18,750.00 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining \$6,250.00 will be distributed to Aggrieved Employees as part of the PAGA Penalties.
- Calculation of Payments to Settlement Class Members. After all the above payments of the court-approved Attorneys' Fees, Attorneys' Expenses, the Class Representative Service Payment, the PAGA Penalties, and the Administration Costs are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Settlement Class Members"). The Individual Settlement Payment for each Settlement Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Settlement Class Members that occurred during the Class Period and multiplying the result by each individual Settlement Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as a normal seven-day week of work during the Class Period in which, according to Defendants' records, a member of the class worked at least one-day during any such workweek.
- Calculation of Aggrieved Employees Payments to Aggrieved Employees. The PAGA Penalties shall be distributed to Aggrieved Employees irrespective of whether they exclude themselves or opt-out. The PAGA Penalties will be divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period, and then taking that number and multiplying it by the number of pay periods worked by each respective Aggrieved Employee during the PAGA Period. "Aggrieved Employee" means all non-exempt employees who are or previously were employed by Defendants and performed work in California during the PAGA Period. The PAGA Period means the period of August 27, 2020, through March 6, 2023.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Individual Settlement Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to insure you receive your payment.

Tax Matters. Twenty-five percent (25%) of each Individual Settlement Payment is allocated to wages. Taxes are withheld from this amount, and each Settlement Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Fifty-five percent (55%) of each Individual Settlement Payment is allocated to penalties ("Penalty Portion"). Twenty percent (20%) of each Individual Settlement Payment is allocated to pre-judgment interest ("Interest Portion"). Each Settlement Class Member will be issued an Internal Revenue Service Form 1099 for Penalty Portion and Interest Portion of the Individual Settlement Payments. In addition, no taxes will be withheld from the PAGA Penalties paid to Aggrieved Employees, and each Aggrieved Employee will be issued

an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendants' counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

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

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendants, Plaintiff and the Settlement Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims means all class claims alleged in the operative Third Amended Complaint, or which could have been alleged in the operative complaint based on the facts alleged, which occurred during 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. The Released PAGA Claims shall be released as follows. As of the Effective Date and upon funding in full of the Gross Settlement Amount by Defendants, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the class settlement, and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" means 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.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendants' records reflect that you have <<____>> Workweeks worked during the Class Period November 1, 2017, through March 6, 2023).

Based on this information, your estimated Individual Settlement Payment is <<____>>.

Defendants' records reflect that you have <<____>> pay periods worked during the PAGA Period (August 27, 2020, through March 6, 2023).

Based on this information, your estimated Aggrieved Employee Payment is <<____>>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____ [forty-five (45) days after the Notice or fifteen (15) days after the re-mailed Notice].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: Apex Class Action LLC.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at www._____.com

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the PAGA Penalties.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____. The address for the Settlement Administrator is 20371 Irvine Avenue, Newport Beach, CA 92660; Tel: (800) 355-0700. The request for exclusion must state in substance that the Class Member has read the Class Notice and that he or she wishes to be excluded from the settlement of the class action lawsuit entitled *Delacruz v. Wal-Mart Associates, Inc., et al.*, currently pending in Superior Court of San Diego, Case No. 36-2021-00046421. The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which is *Delacruz v. Wal-Mart Associates, Inc., et al., San Diego County Superior Court, Case No. 36-2021-00046421*. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than _____. The address for the Settlement Administrator is 20371 Irvine Avenue, Newport Beach, CA 92660; Tel: (800) 355-0700.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.
JCL Law Firm, APC
5440 Morehouse Drive, Suite 3600
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Fax: (619) 599-2891
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F: (714) 754-1298
mitchell.wrosch@ogletree.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at **00:00 AM/PM on** _____, at the San Diego County Superior Court, Department 74, located at 330 W. Broadway San Diego, CA 92101 before Judge Keri Katz. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at 20371 Irvine Avenue, Newport Beach, CA 92660 or write to *Delacruz v. Wal-Mart Associates, Inc., et al., San Diego County Superior Court, Case No. 36-2021-00046421*, Settlement Administrator, c/o _____.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121 or by visiting the website listed in this notice. Please do not contact Defendants.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall transmit any uncashed checks to the California Controller's Unclaimed Property Fund in the name of the Class Member and/or Aggrieved Employee. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 2