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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES COUNTY

Heather Cortez, an individual, and on behalf of all
others similar situated,

Plaintiffs,

vs.

Greg Busby d/b/a Pet Envy, and Does 1 through 50,
inclusive,

Defendants.

Case Number: VCU284381

**DECLARATION OF
BENJAMIN D. WEISENBERG**

1 I, Benjamin D. Weisenberg, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California. I am an attorney
3 at the Weisenberg Firm, PLLC attorneys of record in the matter titled *Heather Cortez, an*
4 *individual, and on behalf of all others similar situated, v. Greg Busby d/b/a Pet Envy, and Does 1*
5 *through 50, inclusive*, Case No. VCU284381. I have personal knowledge of all matters set forth
6 in this declaration, except if stated on information and belief, and if called to testify to the facts set
7 forth in this declaration, I could and would competently testify to them.

8
9 2. Attached hereto as **Exhibit A** is a true and correct copy of the parties' Settlement
10 Agreement.

11
12 3. Attached hereto as **Exhibit B** is a true and correct copy of the Weisenberg Firm,
13 PLLC's hours expended in this matter.

14 4. Attached hereto as **Exhibit C** is Defendants' Statement of Non-opposition.

15 5. On October 27, 2021, concurrently with the filing of Plaintiff's Motion for
16 Settlement Approval, our offices caused a copy of the Motion and all supporting papers to be sent
17 to the LWDA through USPS Certified Mail.

18
19 6. I was admitted to practice in the State of Washington in 2011, in the State of New
20 York in 2014, in the District of Columbia in 2015, and in the State of California in 2018. I am
21 admitted to all four Federal District Courts in the State of New York, the Federal District Court
22 for the Western District of Washington State, and the Northern and Central Districts of
23 California. I have been engaged full time in the practice of law since my first admission in 2011. I
24 am the founding attorney of Weisenberg Firm, PLLC, which opened in January 2019. Prior to
25 opening Weisenberg Firm, PLLC I was the managing associate at the Ottinger Firm, P.C. – a
26 leading national employment law firm. Prior to joining the Ottinger Firm, I worked at the general
27
28

1 civil and criminal litigation law firm in Queens, New York, from 2012 to 2015. I have appeared
2 as lead counsel for plaintiffs and defendants in state and federal court on a regular basis since my
3 first admission in 2011. I have experience representing plaintiffs and defendants in employment
4 law matters, including, but not limited to serving as lead counsel in the prosecution and defense of
5 FLSA and NYLL class and collective actions. In addition to representing FLSA Plaintiffs, I
6 maintain a practice of representing professionals and executives in employment law related matters
7 where I charge an hourly rate of \$550 an hour. My hourly rate of \$550 an hour has been reviewed
8 and approved in other California Labor Code cases, NYLL Class cases, and FLSA Collective
9 Actions.
10

11
12 7. The Parties respectfully request the Court grant the Motion for Settlement Approval.
13 The Parties have never asked for the above requested relief before this Motion.
14

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

17 Dated: October 27, 2021

18 Columbus, Ohio



Benjamin D. Weisenberg, Esq.

Exhibit A

CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS

This Confidential Settlement Agreement and General Release of All Claims (“Settlement Agreement”) is entered into by and between Heather Cortez (“Plaintiff”) and Greg Busby d/b/a Pet Envy (“Busby/Pet Envy”) (“Defendant”). The term “Party” as used herein shall refer to Plaintiff or Defendant, as appropriate, and the term “Parties” shall refer to Plaintiff and Defendant.

1. **Recitals.** This Settlement Agreement is made with reference to the following facts:

(a) Plaintiff is a former employee of Defendant. Plaintiff was employed by Defendant from April 27, 2020, through May 12, 2020;

(b) On May 29, 2020, pursuant to the Private Attorneys General Act (“PAGA”), Plaintiff filed a claim notice with the California Labor and Workforce Development Agency (“LWDA”), Case No. LWDA-CM-791742-20 (“PAGA Claim Notice”), naming Defendant as the employer/responsible party;

(c) On September 17, 2020, Plaintiff brought an action arising out of Plaintiff’s employment with Defendant and the termination of that employment, which is pending as *Heather Cortez, an individual, and on behalf of all others similarly situated v. Greg Busby d/b/a Pet Envy, and DOES 1-50 inclusive*, Tulare Superior Court Case No. VCU284381 (the “Action”). In the Action, Plaintiff asserts claims for (1) failure to pay minimum and overtimes wages; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to maintain accurate employment records; (5) failure to provide accurate wage statements; (6) unfair competition; (7) failure to pay commission wages; and (8) Private Attorneys General Act. Plaintiff prays for special, general, liquidated, and punitive damages, penalties, attorneys’ fees, interest, and costs;

(d) After stipulating to a detailed Protective Order, signed by the Court, the parties engaged in informal exchange of extensive documents and information relating to Plaintiff’s claims in the Action and damages analyses related to same. These documents and information demonstrated Defendant’s dire financial condition, including significant tax liability to the Internal Revenue Service, and that Defendant was on the verge of bankruptcy. The documents evidenced that Defendant lacked financial capacity either to defend a class action and/or representative PAGA claims or to pay out a settlement of any amount on the class allegations and/or representative PAGA claims. The documents further showed that Plaintiff’s individual claims and damages were of limited value. In light of all of these facts, after several months of settlement negotiations, the Parties ultimately agreed to settle Plaintiff’s individual claims **only** (including Plaintiff’s individual claim for PAGA penalties) on the terms set forth herein, to dismiss **with** prejudice of all of Plaintiff’s individual claims, and to dismiss **without** prejudice both the class allegations and the representative PAGA claim as to any other allegedly “aggrieved employee.”

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(e) There has been no determination on the merits of the Action but, in order to avoid additional significant cost and the uncertainty of litigation, the Parties, and each of them, desire to resolve any and all claims, known and unknown, asserted and unasserted, which Plaintiff has or may have against the Released Parties (as defined in Section 7(a) below) as of the date of execution of this Settlement Agreement.

2. **No Admission of Wrongdoing.** The Parties, and each of them, agree that neither this Settlement Agreement nor the furnishing of the consideration for this Settlement Agreement shall be deemed or construed at any time for any purpose as an admission by Defendant and/or any of the Released Parties (as defined in Section 7(a) below) of wrongdoing or evidence of any liability or unlawful conduct of any kind.

3. **Consideration/Indemnification for Tax Consequences.**

(a) In consideration for signing this Settlement Agreement and complying with its terms, Plaintiff shall be paid the total gross sum of FIFTEEN THOUSAND DOLLARS AND ZERO CENTS (\$15,000.00), which will be paid on behalf of Defendant and the Released Parties as follows:

(1) as compensation for alleged lost and unpaid wages, the gross sum of FIFTEEN HUNDRED DOLLARS AND ZERO CENTS (\$1,500.00), less lawful deductions pursuant to a W-4 from Plaintiff, in a check made payable to "Heather Cortez," said amount to be reported by Defendant on an IRS Form W-2;

(2) as compensation for all of Plaintiff's other alleged claims and damages, the gross sum of SEVEN THOUSAND FOUR HUNDRED FORTY-FOUR DOLLARS AND FORTY-SEVEN CENTS (\$7,444.47), pursuant to a W-9 from Plaintiff, in a check made payable to "Heather Cortez," said amount to be reported by Defendant on an IRS Form 1099;

(3) the sum of SIX THOUSAND FIFTY-FIVE DOLLARS AND FIFTY-THREE CENTS (\$6,055.53), in a check made payable to "Weisenberg Firm, PLLC," pursuant to a W9 from Weisenberg Firm, PLLC, said amount to be reported on an IRS Form 1099, which is comprised of the following components:

i. as compensation for Plaintiff's individual PAGA claim, FIVE HUNDRED DOLLARS AND ZERO CENTS (\$500.00) ("PAGA Payment"), which, subject to Court approval, shall be allocated as follows: seventy-five percent (75%), or THREE HUNDRED SEVENTY-FIVE DOLLARS, AND ZERO CENTS (\$375.00), shall be paid to the LWDA for civil penalties pursuant to PAGA, and twenty-five percent (25%), or ONE HUNDRED TWENTY-FIVE DOLLARS AND ZERO CENTS (\$125.00), shall be paid to Plaintiff as penalties recovered for her individual PAGA claims.

ii. as compensation for Plaintiff's costs of \$1,590.00 and attorneys' fees of \$3,965.53, the remaining FIVE THOUSAND FIVE HUNDRED FIFTY-FIVE DOLLARS AND FIFTY-THREE CENTS (\$5,555.53).

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(b) The Parties, and each of them, acknowledge that there is a good faith dispute regarding Plaintiff's alleged entitlement to any unpaid wages and other damages, individual PAGA penalties, and attorneys' fees and costs, and that the consideration set forth in Section 3(a) above includes a good faith, reasonable compromise, and settlement regarding all such claims.

(c) Plaintiff agrees to indemnify and hold the Released Parties harmless for the amount of any taxes, penalties, or interest that may be assessed by any governmental tax authority against any of the Released Parties in connection with such governmental authority's determination that Defendant or any of the other Released Parties was required to, but failed to, withhold or report the correct amount of income or employment taxes from the payments made to Plaintiff or Plaintiff's Counsel pursuant to Section 3(a) of this Settlement Agreement. Plaintiff agrees that Plaintiff shall indemnify the Released Parties for the full amount of such liability within thirty (30) days after receipt of notice from Defendant or any of the other Released Parties of the assessment of such taxes, penalties, or interest.

4. **No Consideration Absent Execution of this Settlement Agreement.** Plaintiff understands and agrees that Plaintiff would not receive the consideration specified in Section 3(a) above, except for Plaintiff's execution of this Settlement Agreement and the fulfillment of the promises contained herein.

5. **Settlement Approval Procedure.**

(a) The Parties, and each of them, and their respective counsel shall take all necessary steps to implement this settlement, including any steps that may be requested by the Court relating to the approval of this settlement, and shall otherwise use their respective best efforts to obtain Court approval of this settlement and to implement this settlement.

(b) As soon as practicable after this Settlement Agreement has been executed by all Parties, Plaintiff shall submit a motion to the Court for approval of the settlement pursuant to Labor Code section 2699(1)(2). Defendant agrees to provide a Statement of Non-Opposition certifying that Defendant does not object to or contest any of the allocations in Section 3(a) above, including but not limited to the individual PAGA Payment, so long as each is consistent with this Settlement Agreement.

6. **Disbursal of Settlement Funds/Dismissal of Action.**

(a)

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(b) The checks described Sections 3(a)(1) and 3(a)(2), above, shall be delivered no later than ten (10) calendar days after receipt of the Court Order approving this Settlement, *provided that* Defendant has received all of the following: (i) this Settlement Agreement fully executed by Plaintiff; (ii) an updated Employee's Withholding Allowance Certificate (IRS Form W-4) for Plaintiff; (iii) a fully-executed Request for the Taxpayer Identification Number and Certification (IRS Form W-9) for Plaintiff; and (iv) a fully-executed Request for the Taxpayer Identification Number and Certification (IRS Form W-9) for Weisenberg Firm, PLLC.

(c) No more than five days after the checks described in Sections 3(a)(1) and 3(a)(2), above, have cleared Plaintiff's and Plaintiff's counsel's accounts, Plaintiff shall file with the Court (1) a fully executed Request for Dismissal **with prejudice** of the Action as to Plaintiff's individual claims, including her individual claim for PAGA penalties; and (2) a fully executed Request for Dismissal **without prejudice** as to Plaintiff's claim for PAGA penalties in her representative capacity on behalf of other allegedly aggrieved employees, as that term is defined in Labor Code section 2699(c). Plaintiff shall also, no more than five days after the checks described in Sections 3(a)(1) and 3(a)(2), above, have cleared Plaintiff's and Plaintiff's counsel's accounts, request dismissal with prejudice of her retaliation complaint, file number RCI-CM-786584, with the California Labor Commissioner's Retaliation Complaint Investigation Unit, and request closure of that matter and any other matters initiated by Plaintiff with the Labor Commissioner.

(d) No Party shall claim to be the prevailing party in the Action.

7. Release of Claims.

(a) **Claims Being Released.** Plaintiff, on behalf of herself individually and her agents, insurers, affiliates, attorneys, and assigns (the "Releasing Parties"), fully and forever releases Defendant, as well as its members, owners, employees, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns (the "Released Parties"), from any and all claims, lawsuits, liabilities, demands, and obligations, both known and unknown, arising from or in any way related to events, acts, or omissions occurring prior to the time Plaintiff signs this Settlement Agreement. This release includes, but is not limited to, the following: (i) all claims arising from or related to, directly or indirectly, Plaintiff's recruitment to, employment with, and/or termination from Defendant; (ii) all claims for wages, compensation, overtime, premium pay, reimbursements, or benefits owed by Defendant, including but not limited to claims for wages, back pay, overtime, missed meal period pay, missed rest period pay, bonuses, commissions, vacation pay, expense or loss reimbursements, severance pay, and fringe benefits; (iii) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (iv) all tort claims, including claims for fraud, defamation, emotional distress, invasion of privacy, and discharge in violation of public policy; (v) all federal, state, and local statutory claims, including but not limited to claims for fraud, discrimination, harassment, retaliation, and/or attorneys' fees; (vi) all other claims arising under any state, federal, or municipal law, statute, constitution, and/or regulation in effect in every jurisdiction in which Plaintiff was employed, as originally drafted and as amended, including but not limited to Title VII of the Civil Rights Act of 1964

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("Title VII"), the Civil Rights Act of 1991, the Americans with Disabilities Act ("ADA"), the federal Equal Pay Act, the Genetic Information Nondiscrimination Act ("GINA"), the Family and Medical Leave Act ("FMLA"), the Fair Labor Standards Act ("FLSA"), the California Fair Employment and Housing Act ("FEHA"), the California Family Rights Act ("CFRA"), the California Private Attorney General Act ("PAGA"), the California Equal Pay Act, the California Fair Pay Act, the California Labor Code, the Wage Orders of the California Department of Industrial Relations, the California Civil Code, the California Business & Professions Code, and the California Constitution; and (vii) all claims alleging violation of federal and/or state common law rights.

(b) **Claims Not Released.** Plaintiff is not waiving any rights she may have to: (i) Plaintiff's own vested accrued employee benefits (if any) under Defendant's health, welfare, or retirement benefits plans as of the date of execution of this Settlement Agreement; (ii) benefits or rights to seek benefits under applicable workers' compensation (except as to claims under Labor Code sections 132a and 4553) or unemployment insurance or indemnification statutes; (iii) pursue claims which by law cannot be waived by signing this Settlement Agreement; (iv) enforce this Settlement Agreement; or (v) challenge the validity of this Settlement Agreement.

(c) **Government Agencies.** Nothing in this Settlement Agreement prohibits or prevents Plaintiff from participating, testifying, or assisting in any investigation, hearing, action, or other proceeding before any federal, state, or local government agency (*e.g.*, EEOC, DFEH, NLRB, SEC, *etc.*), nor does anything in this Settlement Agreement preclude, prohibit, or otherwise limit, in any way, Plaintiff's rights and abilities to contact, communicate with, report matters to, or otherwise participate in any whistleblower program administered by any such agencies. Moreover, nothing in this Settlement Agreement prohibits or prevents Plaintiff from testifying in any administrative, legislative, or judicial proceeding concerning alleged criminal conduct or sexual harassment on the part of Defendant or any agents or employees of Defendant, when Plaintiff has been required or requested to attend the proceeding pursuant to a court order, subpoena, or written request from an administrative agency or the Legislature. However, to the maximum extent permitted by law and expressly excluding Plaintiff's participation in any federal whistleblower programs, Plaintiff agrees that if such an administrative claim is made, Plaintiff shall not be entitled to recover any individual monetary relief or other individual remedies.

(d) **Collective/Class Action Waiver.** If any claim is not subject to release, to the extent permitted by law, Plaintiff waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective, or multi-party action or proceeding based on such a claim in which Defendant or any of the other Released Parties identified in this Settlement Agreement is a party.

8. **Waiver of California Civil Code section 1542.** To effectuate a full and complete general release as described above, Plaintiff expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the State of California, and does so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges that this Settlement Agreement is intended to include in its effect, without limitation, all claims that Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such claims. Plaintiff warrants that she has read this Settlement Agreement, including this waiver of California Civil Code section 1542, and that she has consulted with or had the opportunity to consult with counsel of her choosing about this Settlement Agreement and specifically about the waiver of section 1542, and that Plaintiff understands this Settlement Agreement and the section 1542 waiver, and so freely and knowingly enters into this Settlement Agreement. Plaintiff further acknowledges that she may later discover facts different from or in addition to those she now knows or believes to be true regarding the matters released or described in this Settlement Agreement, and even so, Plaintiff agrees that the releases and agreements contained in this Settlement Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes, or controversies released or described in this Settlement Agreement or with regard to any facts now unknown to Plaintiff relating thereto.

9. **No Pending Claims or Lawsuits.** Plaintiff represents and warrants that she has not initiated nor filed, nor is she currently talking to counsel or otherwise contemplating initiating or filing, any claim, complaint, charge, lawsuit, or arbitration against Defendant or any of the Released Parties other than the Action and the retaliation claim currently under investigation at the Labor Commissioner, both of which are being fully resolved and released and will be dismissed pursuant to the terms of this Settlement Agreement. Plaintiff further represents and warrants that she will not initiate or file any claim, complaint, charge, lawsuit, or arbitration that has been released pursuant to this Settlement Agreement.

10. **Acknowledgements and Affirmations.**

(a) Plaintiff affirms that Plaintiff has been paid or has received all compensation, wages, bonuses, commissions, and benefits which are due and payable as of the date of execution of this Settlement Agreement, except as alleged in the Action and which claims are expressly released in Section 7(a) above. Plaintiff also affirms that Plaintiff has been reimbursed for all expenses necessarily incurred by Plaintiff in following Defendant's directions or incurred in performing Plaintiff's duties during Plaintiff's employment with Defendant.

(b) Plaintiff further affirms that Plaintiff has no known workplace injuries or occupational diseases, and that Plaintiff has been granted or has not been denied any

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leave to which Plaintiff was entitled under the Family and Medical Leave Act, the California Family Rights Act, and/or any disability accommodation laws.

(c) Plaintiff also affirms that Plaintiff has not been retaliated against for reporting any allegations of wrongdoing by Defendant or any of its officers, directors, agents, or employees including, but not limited to, allegations of corporate fraud, except as alleged in the Action and/or in the Labor Commissioner complaint described in Section 6(b), above, all of which claims are expressly released in Section 7(a) above.

(d) Plaintiff further affirms that all of Defendant's decisions regarding Plaintiff's pay and benefits through the date Plaintiff's employment relationship with Defendant ended were not discriminatory based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental or physical disability, medical condition, age, pregnancy, denial of medical and family care leave, pregnancy disability leave, or any other classification protected by law.

(e) Plaintiff affirms that Medicare has no interest in the payment under this Settlement Agreement. Nonetheless, if the Centers for Medicare & Medicaid Services (the "CMS") (this term includes any related agency representing Medicare's interests) determines that Medicare has an interest in the payment to Plaintiff under this Settlement Agreement, Plaintiff agrees to indemnify, defend, and hold the Released Parties harmless from any action by the CMS relating to medical expenses of Plaintiff. Plaintiff agrees to reasonably cooperate with the Released Parties upon request with respect to (i) any information needed to satisfy the reporting requirements under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, and (ii) any claim the CMS may make and for which Plaintiff is required to indemnify the Released Parties under this Section. Furthermore, Plaintiff agrees to waive any and all future actions against the Released Parties for any private cause of action for damages pursuant to 42 U.S.C. § 1395y(b)(3)(A).

11. Limited Disclosure.

(a) Plaintiff agrees that she will not publicize or disclose, or cause or knowingly permit or authorize the publicizing or disclosure of, the contents of this Settlement Agreement, including the amount paid in settlement, the contents of the negotiations leading up to this Settlement Agreement, and/or the basis for any claims or allegations which were or could have been made against Defendant and/or any of the Released Parties which concern and are within the scope of this Settlement Agreement, except as set forth in Sections 11(c) – 11(e) below, (hereafter collectively referred to as "Confidential Information") to any person, firm, organization, or entity of any and every type, public or private, for any reason, at any time, without the prior written consent of Defendant. The Parties acknowledge that the provisions of this Section 11 create no liability for disclosures made: (i) prior to Plaintiff's execution of this Settlement Agreement; (ii) by persons from public information released prior to Plaintiff's execution of this Settlement Agreement; (iii) pursuant to Sections 17(b) or 17(c) below to enforce the terms of this Settlement Agreement; (iv) in order to seek Court approval of the settlement pursuant to California Labor Code section 2699(l); (v) as otherwise compelled by valid subpoena, court order, or other operation of law; or (vi) pursuant to a modification to this

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Section 11 that has been agreed upon in writing and signed by all Parties. Plaintiff and Plaintiff's counsel, and each of them, acknowledge that no disclosures shall be made to any publication or reporting service regarding settlements and verdicts.

(b) The foregoing notwithstanding, Plaintiff acknowledges that confidentiality provisions of this Section 11 constitute a material inducement for Defendant to enter into this Settlement Agreement and represent that she has not directly or indirectly disclosed any Confidential Information to any third-party not authorized in Section 11(a) prior to her execution of this Settlement Agreement.

(c) Plaintiff is permitted to disclose Confidential Information to Plaintiff's immediate family members, significant other, health care providers, tax advisors, financial advisors, insurance carriers, and attorneys with whom Plaintiff chooses to consult regarding Plaintiff's consideration of this Settlement Agreement. However, each such person to whom Plaintiff discloses Confidential Information shall be bound to the confidentiality provisions hereof and any disclosure of Confidential Information by any such person so informed shall constitute a breach by Plaintiff of Section 11(a) above. Plaintiff also is permitted to disclose Confidential Information to any federal, state, or local government agency. In response to inquiries from any third party concerning the status of this dispute or which would require the disclosure of Confidential Information, Plaintiff only will state that the dispute has been resolved and that the terms are confidential.

(d) It is agreed that if Plaintiff breaches any of the provisions of this Section 11, it would be impractical or extremely difficult to fix actual damages to Defendant. Plaintiff therefore agrees that in the event of a breach, Defendant shall be paid as liquidated damages, and not as a penalty, the sum of ONE THOUSAND DOLLARS AND ZERO CENTS (\$1,000.00), in addition to any and all legal and equitable remedies available, including but not limited to injunctive relief.

(e) Any alleged violation of this Section 11 shall be presented to the Court to determine whether a breach has occurred and to assess any associated penalties, sanctions, costs, and attorneys' fees to the prevailing Party, but with the foregoing \$1,000.00 per violation as the agreed upon minimum. Any breach of this confidentiality provision, or the payment of liquidated damages, shall not affect the continuing validity or enforceability of this Settlement Agreement.

12. **Non-Disparagement.** Plaintiff agrees that Plaintiff (i) will not make any comment or statement to any person or entity that disparages Defendant or any of Defendant's past, current, or future officers, directors, employees, representatives, independent contractors, parent companies, subsidiaries, divisions, or affiliates, and (ii) will not advise or encourage any person or entity to bring a claim against Defendant or any of Defendant's officers, directors, employees, representatives, independent contractors, parent companies, subsidiaries, divisions, or affiliates, or any of their employees, provided, however, that nothing in this provision will prevent Plaintiff from testifying truthfully in response to legal process. For purposes of this Settlement Agreement, the term "disparage" shall mean written, electronic, or oral comments or

statements that adversely affect the employment, business, or reputation of Defendant and/or any of the Released Parties.

13. Company Property/Information.

(a) Plaintiff affirms that she has returned all of Defendant's documents and property, including, but without limitation, any and all files, records, cardkey passes, door and file keys, safe combinations, laptop computer, computer access codes, disks and instructional or personnel manuals, and other physical or personal property that Plaintiff received in connection with Plaintiff's employment with Defendant ("Company Property").

(b) Plaintiff acknowledges and agrees that in the course of Plaintiff's employment with Defendant Pet Envy, Plaintiff acquired: (i) confidential information including without limitation information received by Defendant from third-parties, under confidential conditions; (ii) other technical, product, business, financial, or development information from Defendant, the use or disclosure of which reasonably might be construed to be contrary to the interest of Defendant; or (iii) any other proprietary information or data, including but not limited to customer lists, which Plaintiff may have acquired during Plaintiff's employment (hereafter collectively referred to as "Company Information"). Plaintiff understands and agrees that such Company Information was disclosed to Plaintiff in confidence and for use only by Defendant. Plaintiff understands and agrees that Plaintiff: (i) will keep such Company Information confidential at all times, (ii) will not disclose or communicate Company Information to any third-party, and (iii) will not make use of Company Information on Plaintiff's own behalf, or on behalf of any third-party. In view of the nature of Plaintiff's employment and the nature of Company Information Plaintiff received during the course of Plaintiff's employment, Plaintiff agrees that any unauthorized disclosure to third-parties of Company Information or other violation, or threatened violation, of this Settlement Agreement would cause irreparable damage to the confidential or trade secret status of Company Information and to Defendant, and that therefore Defendant shall be entitled to an injunction prohibiting Plaintiff from any such disclosure, attempted disclosure, violation, or threatened violation.

(c) The undertakings set forth in this Section 13(b) shall survive the termination of this Settlement Agreement or other arrangements contained in this Settlement Agreement.

14. No Transfer/Assignment of Claims. Plaintiff warrants and represents that she has not assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim released under this Settlement Agreement.

15. Liens and Attorneys' Fees/Indemnification. Plaintiff agrees that she is solely responsible for the satisfaction of any assignment or lien to any lien holder in the present action and will indemnify and hold the Released Parties harmless against any liens, damages, penalties, fines, fees, assessments, taxes, or attorneys' fees that may be imposed against or incurred by any of the Released Parties as a result of the actions of any lien holder or any lien claimant or any taxing authority or any court in relation to any interest which any third-party may have in any claim which Plaintiff is releasing under this Settlement Agreement or any

interest in any of the proceeds paid to Plaintiff under this Settlement Agreement. Each Party solely is responsible for any fees and costs she/it has incurred including, but not limited to, fees for attorneys, consultants, and expert witnesses. Plaintiff acknowledges that none of the Released Parties are responsible for the payment of any fees incurred on behalf of Plaintiff in connection with the prosecution of the Action beyond the amount to be paid by Defendant in Section 3(a) above.

16. **Execution of Documents.** The Parties, and each of them, agree to act in good faith to prepare, execute, and file any documents or stipulations reasonably required to perform the covenants herein, to satisfy the conditions herein, or to give full force and effect to this Settlement Agreement, including any documents required to obtain Court approval of the settlement and dismissal of the PAGA and other claims.

17. **Governing Law and Interpretation.**

(a) This Settlement Agreement shall be governed and conformed in accordance with the laws of the State of California provided, however, that parol evidence shall not be admissible to alter, vary, or supplement the terms of this Settlement Agreement. Should any provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language, such provision immediately shall become null and void, leaving the remainder of this Settlement Agreement in full force and effect.

(b) In the event of a breach of any provision of this Settlement Agreement, any Party may institute an action specifically to enforce any term or terms of this Settlement Agreement or seek damages for breach. However, the Party instituting such an action must take steps to file this Settlement Agreement or any documents setting forth the terms of this Settlement Agreement with the court under seal. In an action to enforce any term or terms of this Settlement Agreement or to seek damages for breach of this Settlement Agreement, the prevailing party in that action shall be entitled to recover reasonable attorneys' fees.

(c) It is the intent of the Parties, and each of them, pursuant to Evidence Code sections 1122(a)(1) and 1123, that all of the terms of this Settlement Agreement shall be admissible and may be disclosed under seal to a court of law and shall be enforceable and binding upon them in a court of law.

18. **Continuing Jurisdiction.** Except as otherwise specifically provided for herein, the Court shall retain jurisdiction to construe, interpret and enforce this Settlement Agreement, to supervise all notices, the administration of the settlement, and to hear and adjudicate any dispute arising from or related to the settlement. The Parties, and each of them, agree that the Court has jurisdiction over the settlement and this Settlement Agreement pursuant to California Code of Civil Procedure, Section 664.6.

19. **Amendment.** This Settlement Agreement may not be modified, altered, or changed, except in writing and signed by the Parties, and each of them, wherein specific reference is made to this Settlement Agreement.

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20. **Miscellaneous.**

(a) This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. A signature made on a faxed or electronically mailed copy of the Settlement Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature.

(b) The section headings used in this Settlement Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify, or otherwise be used in the interpretation of any of the provisions hereof.

(c) This Settlement Agreement was the result of negotiations between the Parties, and each of them, and their respective counsel. In the event of vagueness, ambiguity, or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it, but shall be construed as if the Parties, and each of them, prepared it jointly.

(d) If any Party fails to enforce this Settlement Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement. The Settlement Agreement remains in full force and effect anyway.

21. **Entire Agreement.** This Settlement Agreement sets forth the entire agreement between the Parties, and fully supersedes any prior agreements or understandings between the Parties. Each Party acknowledges that she/it has not relied on any representations, promises, or agreements of any kind made in connection with her/its decision to accept this Settlement Agreement, except for those set forth in this Settlement Agreement.

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE CONSIDERATION SET FORTH IN SECTION 3(a) ABOVE, PLAINTIFF FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS SETTLEMENT AGREEMENT INTENDING TO WAIVE, SETTLE, AND RELEASE ALL CLAIMS PLAINTIFF HAS OR MIGHT HAVE AGAINST DEFENDANT AND THE RELEASED PARTIES AS OF THE DATE OF EXECUTION OF THIS SETTLEMENT AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date set forth below:

05 / 20 / 2021

Executed on _____, 2021

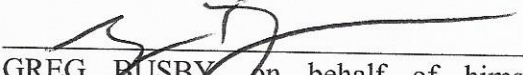


HEATHER CORTEZ

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND GENERAL RELEASE OF ALL CLAIMS**
Page 12

Executed on May 26, 2021

By:



GREG BUSBY, on behalf of himself
individually and d/b/a PET ENVY

Exhibit B

Activities Export

10/27/2021

10:27 PM

Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
10/22/2021		Drafting Motion Paperwork: Reviewing and updating Motion for Settlement Approval. Combining documents and exhibits, arranging for service, eFiling and other assorted tasks related to securing Approval.  Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Ben Weisenberg	2.33h	550.00	1,281.50	-
08/25/2021		Drafting Motion Paperwork: Drafting Indv. Paga Settlement Approval paperwork.  Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Ben Weisenberg	4.25h	550.00	2,337.50	-
05/19/2021		Settlement: Review proposed Settlement Agreement: Final review and suggestion of changes necessary to the Settlement Agreement.  Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Ben Weisenberg	1.17h	550.00	643.50	-
05/10/2021		Settlement: Review proposed Settlement Agreement: Reviewed initial draft of the proposed Settlement Agreement.  Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Ben Weisenberg	0.84h	550.00	462.00	-
04/09/2021		Communication with Opposing Counsel: Discussion with Defendants' attorneys re: Spreadsheet analyzing the wage/hour damages. Receive and review the spreadsheet. Due diligence review of the spreadsheet's alleged damages against the payroll data produced.	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Ben Weisenberg	4.19h	550.00	2,304.50	-
							\$15,804.50 31.37h	\$1,590.00 0.0h

Activities Export

10/27/2021

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		● Non-billable						
02/04/2021	⌚	Communication with Opposing Counsel: Emails with Defendants' attorney re: additional case filed by another Plaintiff / Firm. review attachments. ● Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Ben Weisenberg	0.19h	550.00	104.50	-
02/01/2021	⌚	Communication with Opposing Counsel: Emails with Defendant's counsel after they followed up with additional AEO documents in response to questions. Review documents attached. ● Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Ben Weisenberg	0.35h	550.00	192.50	-
01/29/2021	⌚	Discovery: Review Discovery Served by Defendants: Continued review of the Defendants' production of documents. Email questions to Defendants' in response to their checking in and after continued review. ● Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Ben Weisenberg	2.27h	550.00	1,248.50	-
01/25/2021	⌚	Discovery: Review Discovery Served by Defendants: Initial review of Defendant's production of payroll data. ● Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Ben Weisenberg	1.75h	550.00	962.50	-
01/13/2021	⌚	Communication with Client: Prepare for and conduct update phone call w/ Client re: status of settlement conversations and	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Ben Weisenberg	0.26h	550.00	143.00	-
							\$15,804.50 31.37h	\$1,590.00 0.0h

Activities Export

10/27/2021

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		general litigation. ● Non-billable						
01/07/2021	🕒	Communication with Opposing Counsel: Call re: Defendants' Update re: Case Status ● Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Ben Weisenberg	0.45h	550.00	247.50	-
12/30/2020	🕒	Communication with Opposing Counsel: Phone call w/ KP Re: docs re: inability to pay defense ● Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Ben Weisenberg	0.17h	550.00	93.50	-
10/21/2020	🕒	Communication with a Third Party: Participate in Dial-In Conference Call w/ Client and State Investigator. ● Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Ben Weisenberg	0.95h	550.00	522.50	-
10/21/2020	🕒	Communication with Opposing Counsel: Initial Phone call w/ Defendant's Counsel ● Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Ben Weisenberg	0.92h	550.00	506.00	-
10/19/2020	🕒	Communication with Opposing Counsel: Review and respond to initial email from Defendant's counsel. Update case file with Defendant's counsel's information. ● Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Ben Weisenberg	0.07h	550.00	38.50	-
10/06/2020	💰	Initial OneLegal Case Filing Fees. ● Unbilled	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Ben Weisenberg	1.00	1,590.00	-	1,590.00
							\$15,804.50 31.37h	\$1,590.00 0.0h

Activities Export

10/27/2021

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Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
09/16/2020		eFiling: Arrange document preparation for OneLegal eFiling of Complaint. eFile thru OneLegal.  Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Ben Weisenberg	0.20h	550.00	110.00	-
09/15/2020		Communication with Client: Phone call w/ Client re: Final Review of the Complaint. Client gave her approval to file the Complaint in Court.  Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Ben Weisenberg	0.39h	550.00	214.50	-
09/15/2020		1. Proofread complaint** 2. Perform due diligence on complaint  Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Kevin Crim	1.25h	250.00	312.50	-
09/14/2020		1. Proofread complaint** 2. Perform due diligence on complaint  Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Kevin Crim	0.83h	250.00	207.50	-
09/14/2020		Drafting Pleadings: Continuation: Review feedback and edits from KC re; Pleading documents v1. Incorporate feedback and edits into Pleadings for v2, and finalize Pleadings for Client's review and approval.  Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Ben Weisenberg	5.79h	550.00	3,184.50	-
08/31/2020		Damages: Drafting Damages Chart: Incorporate client information (responses via email) into damages analysis	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Kevin Crim	0.50h	250.00	125.00	-
							\$15,804.50 31.37h	\$1,590.00 0.0h

Activities Export

10/27/2021

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		● Non-billable						
08/31/2020	🕒	Communication with Client: Respond to client e-mail ● Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Kevin Crim	0.03h	250.00	7.50	-
08/28/2020	🕒	Communication with Client: Introduce firm to client; request information needed to finalize complaint ● Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Kevin Crim	0.25h	250.00	62.50	-
08/28/2020	🕒	Drafting Pleadings: Revise complaint ● Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Kevin Crim	1.91h	250.00	477.50	-
08/28/2020	🕒	Internal Communications: Review complaint, plan next steps for complaint ● Non-billable	CORT2000076 Cortez v. Greg Busby d/b/a Pet Envy	Kevin Crim	0.06h	250.00	15.00	-
							\$15,804.50 31.37h	\$1,590.00 0.0h

Exhibit C

JEFFREY S. SLOAN, ESQ. (SBN 154487)
KATHLEEN M. PRATT, ESQ (SBN 146232)
MEGAN M. LEWIS, ESQ. (SBN 246052)
WORKPLACE LEGAL,
A PROFESSIONAL LAW CORPORATION
870 Market St., Suite 1152
San Francisco, CA 94102
Telephone: (415) 851-8900
Facsimile: (415) 655-3305
Email: jsloan@workplacelegalpc.com
Email: kpratt@workplacelegalpc.com
Email: mlewis@workplacelegalpc.com

Attorneys for Defendant
GREG BUSBY d/b/a PET ENVY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF TULARE
UNLIMITED JURISDICTION

HEATHER CORTEZ, an individual, and on
behalf of all others similar situated,

Plaintiffs,

v.

GREG BUSBY d/b/a PET ENVY, and Does 1
through 50, inclusive,

Defendants.

Case No. 284381

**STATEMENT OF NON-OPPOSITION BY
DEFENDANT GREG BUSBY D/B/A PET
ENVY TO PLAINTIFF'S MOTION
SEEKING COURT APPROVAL OF
PAGA SETTLEMENT**

Date: November 18, 2021

Time: 8:30 a.m.

Department: 1

Before the Honorable David C. Mathias

Defendant GREG BUSBY D/B/A PET ENVY ("Defendant") does not oppose Plaintiff's
Motion Seeking Court Approval of PAGA Settlement, which is set for hearing on November 18,
2021 at 8:30 a.m. Defendant continues to deny any and all liability for any of the claims alleged

1 in Plaintiff's Complaint in this action. Nonetheless, Defendant feels that the Parties' settlement
2 is in the best interests of Plaintiff, the State of California and the LWDA, and Defendant, and
3 that it is fair, reasonable, and adequate under the totality of the circumstances. Defendant
4 therefore requests that the Court grant Plaintiff's Motion Seeking Court Approval of PAGA
5 Settlement.
6

7
8 Dated: September 10, 2021

**WORKPLACE LEGAL,
A PROFESSIONAL LAW CORPORATION**

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10
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12 By: _____
Kathleen M. Pratt, Esq.

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14 ATTORNEYS FOR DEFENDANT
GREG BUSBY d/b/a PET ENVY
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PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)

I, the undersigned, maintain a business office and work in San Francisco County, San Francisco, State of California. I am over the age of 18 and not a party to the within action; am employed with the Weisenberg Firm, PLLC and my business address is 535 Mission Street, 14th Floor, San Francisco, CA 94105.

On October 27, 2021, I served the foregoing document entitled **DECLARATION OF BENJAMIN D. WEISENBERG G** on all the appearing and/or interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Kathleen M. Pratt
kpratt@workplacelegalpc.com

One Pacific Plaza
7755 Center Avenue, Suite 1100
Huntington Beach, CA 92647

☒ **[by MAIL]** - I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

☐ **[by FAX]** - I caused the aforementioned document(s) to be telefaxed to the aforementioned facsimile number(s). The machine printed a record of the transmission, and no error was reported by the machine.

☐ **[by FEDERAL EXPRESS]** - I am readily familiar with the firm's practice for collection and processing of correspondence for overnight delivery by Federal Express. Under that practice such correspondence will be deposited at a facility or pick-up box regularly maintained by Federal Express for receipt on the same day in the ordinary course of business with delivery fees paid or provided for in accordance with ordinary business practices.

☒ **[by ELECTRONIC SERVICE]** - Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification address listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed October 27, 2021, at Columbus, Ohio.

Benjamin D. Weisenberg

Print Name

By: 

Signature