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19 **UNITED STATES DISTRICT COURT**
 20 **NORTHERN DISTRICT OF CALIFORNIA**

21 SER LAO, as an individual and on behalf
 22 of all others similarly situated,

23 Plaintiffs,

24 vs.

25 H & M HENNES & MAURITZ, L.P., a
 26 New York limited partnership; and DOES
 1 through 50, inclusive,

27 Defendants.
 28

Case No. 5:16-cv-333 EJD

**JOINT STIPULATION OF CLASS ACTION
 SETTLEMENT AND RELEASE**

Complaint Filed: December 11, 2015

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JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE

1 Subject to preliminary and final approval by the Court, Plaintiff Ser Lao (“Plaintiff”) by
2 and through his attorneys of record, and Defendant H & M Hennes & Mauritz, L.P. (“Defendant”
3 or “H&M”), by and through its attorneys of record, respectively, (collectively, the “Parties”) agree
4 to the following binding terms (the “Agreement”) for the settlement of the class action entitled
5 *SER LAO, as an individual and on behalf of all others similarly situated, Plaintiffs, vs. H & M*
6 *HENNES & MAURITZ, L.P., a New York limited partnership; and DOES 1 through 50, inclusive,*
7 pending before the United States District Court for the Northern District of California, Case 5:16-
8 cv-333 EJD (“Action”):

9
10 **I. RECITALS**

11 1. **WHEREAS**, on or about October 9, 2015 and October 13, 2015, Plaintiff’s
12 Counsel sent a letter to the California Labor and Workforce Development Agency (“LWDA”)
13 pursuant to California Labor Code § 2699.3 seeking to exhaust Plaintiff’s administrative remedies
14 under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.* Plaintiff’s
15 PAGA letter specifically identified violations of Labor Code §§ 201-204, 212, 213, 226(a), 226.7,
16 510, 512, 558, 1194, 1197, and 1197.1.

17 2. **WHEREAS**, on or about December 11, 2015, Plaintiff commenced this Action in
18 the Santa Clara Superior Court for the State of California, alleging the following causes of action:
19 (1) violation of Labor Code § 226(a) for failure to provide accurate wage statements; (2) violation
20 of Labor Code §§ 558, 1194, 1197, and 1197.1 for failure to pay minimum wages; (3) violation of
21 Labor Code §§ 510, 558, 1194, and 1197.1 for failure to pay overtime wages; (4) violation of
22 Labor Code §§ 226.7 and 512 for failure to provide proper meal breaks; (5) violation of Labor
23 Code § 226.7 for failure to provide proper rest breaks; (6) violation of Labor Code §§ 201-203 for
24 failure to pay earned and unpaid wages at the time of separation; (7) violation of the PAGA
25 predicated on the above-stated Labor Code violations; and (8) violation of the California Business
26 & Professions Code § 17200, *et seq.* for unfair business practices.

27 3. **WHEREAS**, on January 21, 2016, Defendant filed a Notice of Removal of Civil
28 Action to United States District Court for the Northern District of California pursuant to the Class

1 Action Fairness Act of 2005.

2 4. **WHEREAS**, Plaintiff contends that he and the class he seeks to represent are
3 entitled to unpaid wages, damages, statutory and civil penalties, and other remedies as a result of
4 Defendant’s alleged misconduct, specifically based on Defendant’s company-wide policies and
5 practices for (1) requiring employees to undergo off-the-clock security checks and visual
6 inspection checks before leaving retail stores at the end of their shifts, and (2) automatically issuing
7 Money Network Paycards to pay final wages to separating employees without obtaining each
8 separating employee’s authorization.

9 5. **WHEREAS**, Defendant denies that it has engaged in any alleged unlawful conduct,
10 denies that it has violated any statute, principle of common law or equity, rule or regulation, and
11 maintains that it has complied at all times with California law by, including, but not limited to,
12 compensating employees for all wages earned, including that its security checks do not fail to
13 compensate employees for time worked, and that its use of pay cards to issue final wages does not
14 deny employees access to all wages earned in a timely manner.

15 6. **WHEREAS**, Plaintiff filed his Motion for Class Certification on or about
16 December 13, 2017, which was heard before Judge Edward J. Davila on May 17, 2018.

17 7. **WHEREAS**, on or about July 26, 2018, the California Supreme Court issued its
18 opinion in *Troester v. Starbucks Corp.*, Cal. Case No. S234969, 2018 WL 3582702 (Cal. July 26,
19 2018), holding that the *de minimis* doctrine does not apply to California Labor Code claims. Thus,
20 the Parties subsequently filed Notices of New Authority addressing the Supreme Court’s decision.
21 On August 8, 2018, the Court granted class certification, in part.

22 8. **WHEREAS**, based on the Court’s class certification ruling, the Parties thus
23 continued to litigate only the certified class claims. With respect to the certified security check
24 claims, both Parties moved for partial summary judgment on liability over the security check
25 policy. On August 29, 2019, Plaintiff filed his motion for partial summary judgment, arguing that
26 Defendant exercised “control” over class members by requiring all class members to undergo off-
27 the-clock security checks and visual inspections at the end of their shift or when closing a retail
28 store. Thus, Plaintiff believes that this constitutes compensated paid time pursuant to *Morillion v.*

1 *Royal Packing Co.*, 22 Cal. 4th 575 (2000) and *Troester v. Starbucks Corp.*, 5 Cal. 5th 829 (2018).
2 Defendant filed its cross-motion for partial summary judgment on September 26, 2019, arguing
3 that it is entitled to summary judgment because it only requires employees who bring a bag to
4 undergo security checks prior to leaving the store. Thus, pursuant to *Frlekin v. Apple Inc.*, 2015
5 WL 6851424 (N.D. Cal. Nov. 7, 2015), Defendant argues that class members have a choice as to
6 whether to bring a bag to work, and thus are not necessarily under the “control” of Defendant. On
7 November 25, 2019, the Court denied both Parties’ summary judgment motions, finding that
8 whether Defendant mandated security checks for all retail stores or only employees with bags was
9 a disputed question of material fact.

10 9. **WHEREAS**, on November 7, 2019, Defendant moved to decertify the class with
11 respect to Plaintiff’s certified security check claims. Defendant did not challenge the Money
12 Network Paycard Subclass. On December 30, 2019, the Court denied Defendant’s motion to
13 decertify the class.

14 10. **WHEREAS**, this proposed settlement is the result of extensive arm’s length
15 settlement negotiations that have taken place between the Parties. In January 2019, the Parties
16 previously attended a full day of private mediation with wage and hour class action mediator, Mark
17 S. Rudy, but was unsuccessful in resolving the matter at that time. Further, the Parties engaged in
18 continued settlement negotiations with Mr. Rudy over the span of one year to no avail. Then, on
19 January 10, 2020, the Parties subsequently participated in a Settlement Conference before
20 Magistrate Judge Nathanael M. Cousins, during which the Parties ultimately agreed to enter into
21 this proposed settlement.

22 11. **WHEREAS**, after extensive discovery conducted in this matter, including
23 depositions of Plaintiff, FRCP 30(b)(6) witnesses, class members, production of class data and
24 expert discovery, extensive litigation of this Action, and after considering the briefing, hearing,
25 and various rulings in this matter, including class certification and summary judgment, as well as
26 the merits and the applicable law, Plaintiff and his counsel have concluded that: (i) it is in the best
27 interests of the Settlement Class (defined below) to enter into the settlement described herein in
28 order to avoid the risk and uncertainties involved with proceeding with trial and to assure benefits

1 to the Settlement Class Members (defined below); and (ii) the terms and conditions of this
2 Agreement, and the settlement contemplated hereby, are fair, reasonable and adequate and in the
3 best interests of all of the Class Members.

4 12. **WHEREAS**, Defendant has also conducted substantial investigation into the
5 allegations raised by Plaintiff in the Action and evaluated the information elicited through
6 discovery and extensive litigation and has concluded that, despite its good faith belief that it is not
7 liable for any of the claims asserted in the Action and that it has good defenses to those claims, it
8 will enter into this Agreement to obtain the conclusive and complete settlement of the Action and
9 avoid: (i) the further expense, inconvenience and burden involved with trial; (ii) the distraction
10 and diversion of its personnel and resources; and (iii) the risk and uncertainty of the outcome
11 inherent in any litigation;

12 13. **WHEREAS**, the Parties hereto agree that this Agreement shall not be deemed or
13 construed to be an admission or evidence of any violation of any statute, rule, regulation, or
14 principle of common law or equity, or of any liability or wrongdoing whatsoever by Defendant, or
15 the truth of any of the claims asserted in the Action;

16 14. **NOW THEREFORE**, in consideration of the mutual covenants, promises and
17 warranties set forth herein, Plaintiff, the Settlement Class (defined below) and Defendant agree,
18 subject to Court approval, that this Action, and any claims, damages, or causes of action arising
19 out of the facts and allegations set forth in the certified class claims, including, but not limited to,
20 failure to properly all minimum, regular and overtime wages from time spent undergoing security
21 checks and visual inspections; failure to pay final wages owed to separating employees in a timely
22 manner after termination, including due to the use of pay cards as a form of payment of wages;
23 and any derivative claims pursuant to PAGA and Business and Professions Code § 17200, *et seq.*..
24 The purpose of this Agreement is to memorialize the Parties' agreement reached pursuant to the
25 acceptance by both Parties of the settlement framework and amount following the January 10,
26 2020 Settlement Conference with Judge Nathanael M. Cousins and to settle and compromise all
27 claims by Plaintiff and the Settlement Class Members against Defendant, any of its past, present
28 and future parents, owners, subsidiaries, affiliates, successors-in-interest, assigns, auditors,

1 accountants, experts, contractors, partners, insurers, reinsurers, and other parties acting on their
2 behalf, officers, directors, shareholders, employees, agents, and representatives.

3 **II. REPRESENTATION OF THE PARTIES**

4 1. Counsel for the Settlement Class (referred to herein as “Class Counsel”) are Larry
5 W. Lee, Kristen M. Agnew, Nicholas Rosenthal, Max W. Gavron, and Kwanporn “Mai” Tulyathan
6 of Diversity Law Group, P.C., 515 S. Figueroa, Street, Suite 1250, Los Angeles, CA 90071;
7 William L. Marder of Polaris Law Group LLP, 501 San Benito Street, Suite 200, Hollister, CA
8 95023; and Dennis S. Hyun of Hyun Legal, APC, 515 S. Figueroa, Street, Suite 1250, Los Angeles,
9 CA 90071. Counsel for Defendant are Robert H. Platt, Andrew L. Satenberg, and Alma Pinan of
10 Manatt, Phelps & Phillips, LLP, 2049 Century Park East, Suite 1700, Los Angeles, CA 90067.

11 2. Class Counsel conducted an extensive investigation of the facts surrounding the
12 claims asserted in this Action prior to filing suit, including interviewing current and former
13 employees of Defendant, subpoenaing and taking depositions of approximately 40 current and
14 former employees of Defendant, reviewing various documents obtained from those employees,
15 and subpoenaing documents from the third party company that generates the ATM cards
16 distributed by Defendant to its separated employees. Class Counsel also propounded multiple
17 rounds of written discovery and requests for production of documents, and conducted the
18 depositions of Defendant’s FRCP 30(b)(6) Corporate Representatives regarding issues impacting
19 class certification and liability. Class Counsel also obtained class payroll data and retained an
20 expert to analyze damages and penalties in this matter. Defendant’s counsel likewise conducted a
21 thorough internal investigation surrounding Plaintiff’s claims, including analysis of time and
22 payroll records and related information. Defendant’s counsel also took the depositions of Plaintiff,
23 certain Class Members and Plaintiff’s expert. In addition, given that the Parties participated in
24 private mediation, Defendant also produced information regarding the size and scope of the
25 putative class and the pending claims, which Class Counsel thoroughly reviewed and analyzed.

26 3. The Parties participated in full-day mediation before Mark S. Rudy, Esq. in San
27 Francisco on January 9, 2019. Mr. Rudy is an experienced class action mediator in California.
28 Despite subsequent discussions and negotiations, the Parties were not able to reach an agreement

1 on that day.

2 4. At the Court’s direction, the Parties participated in a Settlement Conference with
3 Magistrate Judge Nathanael M. Cousins on January 10, 2020. After arm’s length negotiations, the
4 settlement conference resulted in a settlement framework and gross settlement amount that was
5 accepted by both Parties. The Parties further agreed to enter into this Agreement to memorialize
6 the settlement of this Action.

7 **III. TERMS OF SETTLEMENT**

8 **A. Settlement Parties**

9 1. **“Settlement Class Period” or “Class Period”**. The members of the
10 Settlement Class include all non-exempt retail store employees who were employed by Defendant
11 in the State of California at any time from January 8, 2013, through the October 31, 2019
12 (“Settlement Class Period” or “Class Period”).

13 2. **“Class and Class Member(s)” of “Settlement Class” Definition**. All
14 non-exempt retail store employees who were employed by Defendant in the State of California at
15 any time during the Settlement Class Period. Defendant represents that through October 31, 2019,
16 the Settlement Class will not exceed 13,500 individuals. Should the number of Class Members
17 exceed 13,500 individuals, Plaintiff shall have the option to terminate this Settlement. Any such
18 request to terminate the Settlement must be made within five (5) business days of when Class
19 Counsel learns of the actual number of Class Members.

20 3. **“Plaintiff” or “Class Representative” Definition**. Plaintiff Ser Lao.
21 Plaintiff worked for Defendant for approximately eighteen (18) months prior to his termination of
22 employment. Plaintiff has no conflicts with the Settlement Class and has agreed to represent the
23 Settlement Class. Class Counsel believes that Plaintiff is an adequate class representative.

24 4. **“Released Claims” Definition**. Plaintiff and members of the Settlement
25 Class release any of the Released Parties from the following claims that arose at any time during
26 the Settlement Class Period:

27 a. Any claims, damages, or causes of action for any alleged failure to
28 pay all wages and penalties owed at the time of separation of employment due to the use of pay

1 cards as a form of payment of wages, pursuant to California Labor Code §§ 201-203, 212-213, and
2 PAGA, California Labor Code § 2698, *et seq.*; and

3 b. Any claims, damages, or causes of action for unpaid wages and
4 penalties due to time spent undergoing security checks and visual inspections, including, but not
5 limited to, claims for unpaid minimum, regular and overtime wages and penalties pursuant to
6 California Labor Code §§ 201-203, 226, 558, 1194, 1197, 1197.1, PAGA, California Labor Code
7 § 2698, *et seq.*, and Business and Professions Code § 17200, *et seq.*

8 5. **“Released Party” Definition.** Defendant H & M Hennes & Mauritz, L.P.,
9 including its past, present and future parents, owners, subsidiaries, affiliates, successors-in-
10 interest, assigns, auditors, accountants, experts, contractors, partners, insurers, reinsurers, and
11 other parties acting on their behalf, officers, directors, shareholders, employees, agents, attorneys,
12 and representatives.

13 **B. Settlement Amount and Terms**

14 1. **Class Settlement Amount.** The Class Settlement Amount that Defendant
15 will be obligated to pay in connection with the Settlement shall be Three Million Eight Hundred
16 Thousand Dollars and Zero Cents (\$3,800,000.00), to be paid by Defendant in full satisfaction of
17 all claims arising from the Action, which includes, but is not limited to, attorneys’ fees, costs, and
18 expenses directly related to the Action, which includes all such fees, costs, and expenses incurred
19 to date, as well as all such fees, costs, and expenses incurred in documenting the Settlement,
20 securing the Court approval of the Settlement, administering the Settlement (including the Claims
21 Administrator’s fees and expenses), the PAGA payment to the California Labor and Workforce
22 Development Agency and the enhancement payment to the Class Representative, as approved by
23 the Court. This settlement is non-reversionary, such that no portion of the monies shall revert back
24 to Defendant.

25 2. **Payment by Defendant.** Defendant shall make a transfer of all moneys
26 owed under the Agreement to a Qualified Settlement Fund (“QSF”) established by the Claims
27 Administrator at the time prescribed herein, and the Claim Administrator will distribute all
28 settlement proceeds payable after the Effective Date in accordance with the terms set forth in this

1 Agreement.

2 3. **Responsibility for Employer Taxes.** To the extent that any portion of Class
3 Members' settlement proceeds constitute wages, Defendant will be separately responsible for the
4 employer-paid portion of any taxes, including the employer-paid portion of FICA, Medicare,
5 FUTA, and SDI contribution, which shall not be paid from the Class Settlement Amount. These
6 funds, however, will be sent to, and distributed from, the QSF. Class Members' portion of taxes
7 will be deducted by the Claims Administrator and remitted as required by law.

8 4. **Class Representative Enhancement Payment.** Defendant will not oppose
9 Plaintiff's application to the Court for a Class Representative Enhancement Payment in the amount
10 of Fifteen Thousand Dollars and Zero Cents (\$15,000.00) to Plaintiff Ser Lao to be paid out of the
11 Class Settlement Amount, in addition to Plaintiff's Individual Settlement Payment, in recognition
12 of his efforts and work in prosecuting the Action on behalf of the Settlement Class Members,
13 which included preparing and sitting for his deposition, meeting with his counsel, attending the
14 settlement conference, and reviewing the pleadings and documents in this case, as well as for his
15 general release of claims. The enhancement shall be independent of any other benefits to which
16 Plaintiff may be entitled as a Class Member pursuant to this Agreement. Claims Administrator will
17 issue an IRS Form 1099 for the Class Representative Enhancement Payment and Plaintiff Ser Lao
18 will be responsible for correctly characterizing this payment for tax purposes and to pay any taxes
19 owing on said amount. A reduction by the Court of this Enhancement is not grounds to void this
20 Agreement.

21 5. **Attorneys' Fees and Costs.** Class Counsel may apply to the Court for
22 attorneys' fees in the amount of up to one-third (1/3) of the Class Settlement Amount, equal to One
23 Million Two Hundred Sixty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents
24 (\$1,266,666.67), and up to Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00)
25 for reimbursement of litigation costs, both subject to Court approval. Defendant has agreed not to
26 oppose Class Counsel's request for fees and reimbursement of costs and expenses as set forth
27 herein, which remains within the discretion of the Court. Claims Administrator shall issue an IRS
28 Form 1099 to Class Counsel reflecting the awarded attorneys' fees, costs and expenses. Should

1 Plaintiff and/or Class Counsel request a lesser amount for attorneys' fees and/or the Court approve
2 a lesser amount, the difference between the lesser amount and the maximum attorneys' fees
3 permitted to be sought by the terms of this Paragraph will be added to the Net Settlement Proceeds.
4 In consideration of their awarded attorneys' fees and expenses, Class Counsel waives all claims to
5 any further attorneys' fees, costs and expenses in connection with the Action. Class Counsel,
6 however, reserves the right to appeal an Order reducing the fees requested by Class Counsel,
7 though they waive any right to seek fees in connection with that appeal, and Defendant waives any
8 right to oppose said appeal. A reduction by the Court of Class Counsel attorneys' fees, or the
9 rejection of any appeal, is not grounds to void this Agreement.

10 6. **Claims Administration Expenses.** The Parties agree to pay a Claims
11 Administrator, which is agreed to as Phoenix Settlement Administrators, an independent third
12 party, which was mutually chosen by Class Counsel and Defendant's counsel, for its fees and
13 expenses related to services rendered on this case in an amount up to Forty One Thousand Seven
14 Hundred and Fifty Dollars and Zero Cents (\$41,750.00) payable from the Class Settlement
15 Amount. However, the Parties hereby acknowledge that the Claims Administration Expenses may
16 increase above the current estimate of Forty One Thousand Seven Hundred and Fifty Dollars and
17 Zero Cents (\$41,750.00) and that any such additional Claims Administration Expenses that are
18 approved by counsel for the Parties shall be taken out of the Class Settlement Amount. The Parties
19 each represent that they do not have any financial interest in the Claims Administrator or otherwise
20 have a relationship with the Claims Administrator that could create a conflict of interest.

21 7. **PAGA Settlement Amount.** This shall be the amount that the Parties have
22 agreed to pay the Labor and Workforce Development Agency ("LWDA") in connection with the
23 PAGA claim. Subject to Court approval, the Parties agree that the amount of One Hundred
24 Thousand Dollars and Zero Cents (\$100,000.00) from the Class Settlement Amount will be
25 designated for satisfaction of Plaintiff's and Class Members' PAGA claims ("PAGA Settlement
26 Amount"). Pursuant to PAGA, seventy-five percent (75%), or Seventy-Five Thousand Dollars
27 and Zero Cents (\$75,000.00), of the PAGA Settlement Amount will be paid to the LWDA, and
28 twenty-five percent (25%), or Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) of the

1 PAGA Settlement Amount, will become part of the Net Settlement Proceeds. Pursuant to the July
2 1, 2016 amendments to PAGA, this settlement will be forwarded to the LWDA by Class Counsel
3 or the Claims Administrator and any reallocation of settlement proceeds to increase the PAGA
4 payment will not constitute grounds by either party to void this Agreement, so long as the Class
5 Settlement Amount remains the same.

6 8. **Net Settlement Proceeds.** After deducting the Class Representative
7 Enhancement Payment, Class Counsel’s awarded attorneys’ fees and costs, the PAGA Settlement
8 Amount apportioned to the LWDA, and the Claims Administration Expenses, the balance of the
9 Class Settlement Amount will constitute the “Net Settlement Proceeds.” The portion of the Net
10 Settlement Proceeds attributed to Settlement Class Members shall be distributed on a pro-rata basis
11 as follows:

12 a. For each Settlement Class Member, Defendant will provide the
13 Claims Administrator with the name, most recent address, telephone number, Social Security
14 number, dates of employment during Class Period, and any other relevant information needed to
15 calculate settlement payments (collectively “Settlement Class List and Data”) within twenty-one
16 (21) calendar days following the Preliminary Approval of the Settlement;

17 b. The Claims Administrator will calculate each Settlement Class
18 Member’s estimated settlement amount (“Estimated Individual Settlement Payment”) based upon
19 each Settlement Class Member’s number of Workweeks (“Workweek Points”), as follows:

20 (1) Each Settlement Class Member will be assigned one (1)
21 Workweek Point for every seven (7) days employed during the Settlement Class Period;

22 (2) The Workweek Points of all Settlement Class Members for
23 the Settlement Class Period will be totaled (“Total Workweek Points”);

24 (3) The Settlement Class portion of the Net Settlement Proceeds
25 will be divided by the Total Workweek Points, and the resulting number will be the “Workweek
26 Point Value”;

27 (4) Each Settlement Class Member’s Workweek Points will be
28 multiplied by the Workweek Point Value, and the resulting number will equal each Settlement

1 Class Member’s Estimated Individual Settlement Payment.

2 c. The Claims Administrator shall be responsible for applying the
3 formula set forth here to determine the Estimated Individual Settlement Payment of each
4 Settlement Class Member, subject to Defendant providing the Claims Administrator with the
5 necessary data and the Estimated Individual Settlement Payment will be stated on the Notice sent
6 to each Settlement Class Member.

7 9. **Actual Individual Settlement Payments.** Once all requests for
8 exclusion(s) have been submitted, the Claims Administrator will allocate the Net Settlement
9 Proceeds to Settlement Class Members who have not submitted timely and valid requests for
10 exclusion or requests for exclusion otherwise accepted by the Claims Administrator.

11 10. **Classification of Settlement Payments.** Eighty percent (80%) of
12 settlement payments made to each Settlement Class Member pursuant to this Agreement are
13 considered compensation for statutory penalties and interest and are not subject to withholdings.
14 Twenty percent (20%) of the settlement payment made to each Settlement Class Member are
15 considered wages and will be subject to all applicable withholdings, including FICA, FUTA, SDI
16 and Medicare. Class Counsel and Defendant’s Counsel do not purport this communication to
17 constitute legal advice. To the extent that this Agreement, or any of its attachments, is interpreted
18 to contain or constitute advice regarding any U.S. Federal tax issue, such advice is not intended or
19 written to be used, and cannot be used, by any person for the purpose of avoiding penalties under
20 the Internal Revenue Code.

21 11. **Circular 230 Disclaimer.** EACH PARTY TO THIS AGREEMENT (FOR
22 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
23 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
24 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
25 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
26 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
27 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
28 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE

1 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 C.F.R.
2 PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
3 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
4 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
5 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
6 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
7 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
8 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
9 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
10 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
11 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
12 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
13 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
14 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
15 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
16 AGREEMENT.

17 12. **No Effect On Benefits.** The Individual Settlement Payments paid to
18 Settlement Class Members and the Class Representative Enhancement Payment paid to Plaintiff
19 shall be deemed not to be “pensionable” earnings and shall not have any effect on the eligibility
20 for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans,
21 etc.) of Settlement Class Members or Plaintiff. The Parties agree that any Individual Settlement
22 Payments or the Class Representative Enhancement Payment paid to Settlement Class Members
23 or Plaintiff under the terms of this Agreement do not represent any modification of Settlement
24 Class Members’ or Plaintiff’s previously credited hours of service or other eligibility criteria under
25 any employee pension benefit plan, employee welfare benefit plan, or any other plan or program,
26 sponsored by Defendant. Further, any Individual Settlement Payments or the Class Representative
27 Enhancement Payment paid hereunder shall not be considered “compensation” in any year for
28 purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan,

1 employee welfare benefit plan, or any other plan or program sponsored by Defendant.

2 **C. Process for Approval of Settlement**

3 1. **Preliminary Approval.** Class Counsel will move the Court for preliminary
4 approval of the Settlement as soon as practicable as permitted by the Court. Defendant will not
5 oppose said motion brought in accordance with the terms of this Agreement. Class Counsel shall
6 apply for a Preliminary Approval Order that contains the following provisions:

- 7 a. Conditionally certifying the Class for settlement purposes only;
- 8 b. Preliminarily approving the Agreement under the legal standards
9 relating to the preliminary approval of class action settlements;
- 10 c. Approving the form of the Notice Packet (as defined below in
11 Paragraph (C)(3)), and finding that the proposed method of disseminating the Class Notice is the
12 best notice practicable under the circumstances;
- 13 d. Approving Phoenix Settlement Administrators as the Claims
14 Administrator;
- 15 e. Establishing the procedures and the deadline by which Class
16 Members may assert objections to, or request exclusion from, the Settlement;
- 17 f. Setting a date for the Final Approval Hearing; and
- 18 g. Setting a date that is approximately seven (7) days before the date
19 of the Final Approval Hearing by which the Parties must file their respective responses to any
20 objections to the Settlement that were filed by Class Members on or before the Objection Deadline.

21 2. **Claims Administrator.** The Parties agree that the Claims Administrator
22 shall have the authority to mail the Class Notice, create and administer the Class Settlement
23 Amount, process any Request(s) for Exclusion, and disburse sums from the Class Settlement
24 Amount. The Claims Administrator must have adequate security to protect the privacy rights of
25 the employees about whom it is receiving information, and to protect the QSF, and must
26 memorialize this in a contract that meets with the approval of the Parties.

27 3. **Notice Packet.** The Parties will jointly draft a Notice of Class Action
28 Settlement (“Notice Packet”) and submit it to the Court for approval. Settlement Class Members

1 will not be required to submit a claims form to participate in the Settlement. The Notice Packet
2 will include, non-exclusively, information regarding the nature of the Action, a summary of the
3 substance of the Settlement, the Class definition, the time period for objecting or seeking
4 exclusion, the date for the final approval hearing, and the formula used for the Individual
5 Settlement Payments. The Notice Packet shall include the time period during which the Settlement
6 Class Members were employed during the applicable Settlement Class Period and each Member's
7 Estimated Individual Settlement Payment. If the employment dates listed on the Notice Packet is
8 disputed, the Settlement Class Member disputing the information may produce evidence to the
9 Claims Administrator showing such employment dates he or she contends should be shown on the
10 Notice Packet, through the dispute process described in Paragraph III(E), below.

11 4. **Provision of Class Member Names to Claims Administrator.** Subject to
12 the Claims Administrator providing adequate assurances with respect to confidentiality and data
13 security, which restricts the Claims Administrator's use of personal information provided by
14 Defendant to actions necessary to implement this Settlement, and which indemnifies Defendant
15 against any data security breaches resulting from the intentional or negligent acts of the Claims
16 Administrator and its employees and agents, within twenty-one (21) calendar days after
17 Preliminary Approval of the Settlement, Defendant shall provide the Claims Administrator with
18 the Settlement Class List and Data. Defendant's sole responsibility with regard to administration
19 is to provide the Settlement Class List and Data in an electronic form that is useable and agreed
20 upon by the Claims Administrator.

21 5. **Mailing of Notice.** Within ten (10) calendar days of receipt of the
22 Settlement Class List and Data, the Claims Administrator shall mail the Notice Packet to the
23 Settlement Class Members via first-class regular U.S. Mail. Settlement Class Members will have
24 forty-five (45) days from the mailing of the Notice Packet to file objections or Requests for
25 Exclusion.

26 6. **Class List and Data Confirmation Checks.** Prior to mailing, the Claims
27 Administrator will perform a search based on the National Change of Address Database
28 information to update and correct for any known or identifiable address changes. If a new address

1 is obtained by way of a returned Notice Packet, then the Claims Administrator shall promptly
2 forward the original Notice Packet to the updated address via first-class regular U.S. Mail
3 indicating on the original Notice Packet the date of such re-mailing. Where a Notice Packet is
4 returned as undeliverable, without a forwarding address, the Claims Administrator will perform a
5 computer/SSN and “skip trace” search via U.S. Postal Service records to obtain an updated address
6 and will perform a single re-mailing. The Parties agree to cooperate with the Claims Administrator
7 to locate a more recent address for Class Members, where necessary.

8 7. **Requests for Exclusions.** The Notice Packet shall state that Class Members
9 who do not want to participate in the settlement may exclude themselves by timely submitting a
10 written request seeking exclusion from the settlement (“Request for Exclusion”). Any such
11 Requests for Exclusion must be made in accordance with the terms set forth in the Notice Packet
12 and will be deemed timely only if postmarked on or before forty-five (45) days following the initial
13 date of mailing of the Notice Packet by the Claims Administrator (“Exclusion Deadline”). Such
14 Requests for Exclusion must: (a) contain the full name, address and telephone number, and the last
15 four digits of the Social Security number of the person requesting exclusion, (b) be signed by the
16 person requesting exclusion, (c) reference the Action by its name and case number, and (d) contain
17 a statement clearly indicating that the person submitting the request seeks to be excluded from the
18 settlement. The Request for Exclusion must be returned by mail to the Claims Administrator at
19 the specified address indicated in the Notice Packet, and must be postmarked on or before the
20 Exclusion Deadline. The date of the postmark on the return mailing envelope shall be the exclusive
21 means used to determine whether a Request for Exclusion has been timely submitted. If the
22 Request for Exclusion does not contain the information listed in (a)-(d) or is not submitted to the
23 Claims Administrator by the Exclusion Deadline, it will not be deemed timely and/or valid. Any
24 Class Member who opts out of the Settlement Class by submitting a timely and valid Request for
25 Exclusion will not be entitled to any recovery under the Agreement and will not be bound by the
26 Agreement or have any right to object or file an appeal. Settlement Class Members who do not
27 submit a valid and timely Request for Exclusion shall be bound by all the terms of the Agreement
28 and any final judgment or order in this Action. Upon request, the Claims Administrator shall

1 provide counsel for the Parties with a complete list of all members who have timely submitted
2 valid Requests for Exclusion, along with the names and Estimated Individual Settlement Payments
3 of individuals who did not exclude themselves from the Settlement. The Parties agree that they
4 will not encourage any Class Member to seek exclusion. In the event that more than 5% of the
5 Class Members request exclusion from the Settlement, Defendant shall have the right to terminate
6 the Settlement. Any such request to terminate the Settlement must be made within five (5) business
7 days of when Defendant learns that more than 5% of the Class members have requested exclusion
8 from the Settlement. To the extent Defendant exercises its right to terminate the Settlement
9 pursuant to this provision, Defendant shall be responsible for all settlement administration costs
10 incurred by the Claims Administrator.

11 8. **Objections.** To object to the Settlement, a Class Member must file a written
12 objection with the Court no later than forty-five (45) calendar days after the Notice of the
13 Settlement is first mailed as part of the Notice Packet. If a Class Member excludes himself/herself
14 from the Class, he/she will have no standing to object to the Settlement. To be timely, all
15 objections must be postmarked no later than forty-five (45) days after the Notice Date (“Objection
16 Deadline”). A written objection must: (a) contain the objecting person’s full name, current address
17 and signature; (b) clearly identify this Action by case name and number; (c) state whether the
18 objection applies only to the objector, a specific subset of the class, or to the entire class; and (d)
19 state with specificity the grounds for any objections. The objector may include any supporting
20 papers if an objector chooses to file such (including, without limitations, all briefs, written
21 evidence, and declarations). Any Class Member who wishes to object to the Settlement must mail
22 their written objection to the Court (the location and address of the Court will be specified in the
23 Notice Packet), or file the written objection in person at the United States District Court for the
24 Northern District of California. Class Members will be notified that any Class Member who
25 desires to object but who fails to comply with the objection procedure set forth herein or files a
26 written objection beyond the Objection Deadline may have his/her objection rejected by the Court.
27 Any Class Member who files a timely written objection with the Court may appear at the Final
28 Approval Hearing and present his or her objection to the Court orally; the objecting Class Member

1 is not required to attend. Any Class Member who files an objection remains eligible to participate
2 as a Class Member in the Settlement and receive monetary compensation from the Settlement.
3 Defendant shall not be responsible for fees, costs or expenses incurred by the Class related to Class
4 Members who submit objections to the Agreement or any appeals arising from the Action for
5 attorneys' fees, costs or expenses of any kind. The Parties agree that they will not encourage any
6 Class Member to object to the terms of the Settlement.

7 **9. Certification Reports.** The Claims Administrator will provide
8 Defendant's counsel and Class Counsel a weekly report which certifies: (a) the number of
9 members of the Settlement Class who have opted out by submitting timely and valid Requests for
10 Exclusion; and (b) whether any Class Member has submitted a challenge to his/her Individual
11 Settlement Payment or his/her personal information contained in his/her Notice Packet..
12 Additionally, the Claims Administrator will provide to counsel for both Parties any updated reports
13 regarding the administration of the Agreement as needed or requested.

14 **10. Declaration from Claims Administrator.** Fourteen (14) days before the
15 Motion for Final Approval is to be filed, the Claims Administrator shall provide to all Parties a
16 declaration under penalty of perjury concerning the following:

17 a. Confirmation that the Notice Packets were mailed and, if applicable,
18 re-mailed pursuant to the terms of this Agreement; and

19 b. The number of all Class Members who properly and timely
20 submitted valid Requests for Exclusion;

21 c. Any additional information requested by the Court.

22 The Claims Administrator will provide an updated declaration containing the same
23 information five (5) days before the Final Approval Hearing.

24 **D. Final Approval**

25 1. A motion for final approval of the Settlement will be filed by Class Counsel,
26 which will include a request for an award of the Class Representative Enhancement Payment and
27 Class Counsel's attorneys' fees, costs and expenses, as provided herein. Plaintiff's Motion, filed
28 in accordance with the terms set forth herein, which Defendant shall not oppose, shall request that

1 the Court enter a Final Approval Order and Judgment as follows:

2 a. Finding that the dissemination of the Notice Packet in the form and
3 manner ordered by the Court was accomplished as directed, met the requirements of due process,
4 was the best notice practicable under the circumstances, and constituted due and sufficient notice
5 to all parties entitled thereto;

6 b. Finding that Plaintiff and Class Counsel herein have fairly and
7 adequately represented and protected the interests of the Class at all times in the Action;

8 c. Finally approving the Agreement and the Settlement terms as fair,
9 reasonable and adequate and directing consummation of the Agreement in accordance with its
10 terms and provisions;

11 d. Entering judgment directing the Parties to implement the terms of
12 the Agreement, including, without limitation, the provisions regarding the payment of the
13 Individual Settlement Payments to each Class Member as set forth in this Agreement;

14 e. Entering judgment defining the Class;

15 f. Awarding reasonable attorneys' fees, costs and expenses to Class
16 Counsel as provided in paragraph III.B.5, and subject to the limitations set forth therein or
17 reserving jurisdiction with respect thereto;

18 g. Awarding the Class Representative Enhancement Payment to
19 Plaintiff as provided herein, and subject to the limitations set forth therein, or reserving jurisdiction
20 with respect thereto; and

21 h. Reserving continuing and exclusive jurisdiction over all matters
22 related to the administration and consummation of the terms of this Agreement, over the
23 enforcement, construction and interpretation of the Judgment, including, but not limited to, the
24 provisions therein enjoining any further litigation of Released Claims as provided below, and over
25 Plaintiff and all Class Members (and their attorneys) in connection therewith.

26 2. If the Court does not grant final approval of the Settlement, or if the Court's
27 final approval of the Settlement is reversed or materially modified on appeal, then the Settlement
28 will become null and void and of no further force and effect, and all negotiations, proceedings and

1 statements relating thereto shall be without prejudice as to the rights of any and all parties, and
2 their respective predecessors and successors shall be deemed to have reverted to their respective
3 positions in this Action as of the date and time immediately prior to the execution of this
4 Agreement, and except as otherwise expressly provided, the effect shall be the same as if the
5 Agreement was terminated pursuant to paragraph 5 below.

6 3. The Parties, including Counsel, will use their best efforts to obtain
7 preliminary and final approval as quickly as possible, and will not encourage any Class Member
8 to opt-out or object to the terms of this Agreement or preliminary and final approval.

9 4. In the event that any provision of the Settlement is rejected by the Court,
10 the Parties will work in good faith to negotiate alteration of the rejected term.

11 5. If, following the Parties' good faith efforts and mediation, the Parties cannot
12 agree on alterations, or if ultimately (a) the Court declines to enter the Preliminary Approval Order
13 or to enter the Judgment or any part thereof as provided for therein, or the Parties hereto after good
14 faith efforts and mediation fail to consent to the entry of alternative forms of Judgment, in lieu
15 thereof, or after such consent the Court declines to enter such alternate form of Judgment; or (b)
16 any conditions to the Agreement are not satisfied; or (c) the Court disapproves this Agreement, or
17 any term contained in this Agreement, and such disapproval becomes final by reason of its
18 affirmance on appeal or lapse of time or otherwise; or (d) the Court approves this Agreement,
19 including any amendments hereto, but any such judgment and approval is finally reversed on
20 appeal, then in any such event, this Agreement shall be void and the Preliminary Approval Order
21 and the Final Approval Order and Judgment shall be vacated upon application to the Court. In such
22 event, (a) this Agreement and the Settlement (with the exception of this Paragraph III.D.5) shall
23 be terminated and become void and of no effect; (b) any actions taken or to be taken in connection
24 with this Agreement and the settlement terms shall become null and void and of no effect; (c) this
25 Agreement and the settlement terms and any hearings or proceedings thereunder shall not be
26 referred to or used as evidence for or against any party or Class Member in this or any other action
27 or proceedings; and (d) all proceedings, including discovery, shall resume thirty (30) days
28 thereafter as if this Agreement had not been proposed for approval of the Court.

1 **E. Class Member Workweek Disputes**

2 1. Disputes as to Calculation: If a Class Member disputes the employment
3 dates listed in the Notice Packet, the Class Member may produce evidence to the Claims
4 Administrator indicating the dates contended to have been worked during the applicable
5 Settlement Class Period. Any such workweek disputes will be deemed timely only if postmarked
6 on or before forty-five (45) days following the initial date of mailing of the Notice Packet by the
7 Claims Administrator. An individual can only dispute his/her employment dates if he/she does
8 not exclude himself/herself from the Settlement. Defendant’s records will be presumed
9 determinative absent evidence to rebut Defendant’s records. Class Counsel and Defense counsel
10 shall meet and confer in an attempt to reach an agreement regarding whether an adjustment is
11 warranted based on the documentary evidence submitted by the Class Member to challenge the
12 dates worked during the Settlement Class Period. If they cannot agree, the Claims Administrator
13 shall make the final determination if an adjustment is warranted as to which dates should be applied
14 based on the evidence submitted by the Class Member. All such disputes are to be resolved not
15 later than fourteen (14) calendar days after the Response Deadline.

16 2. **Expiration of Settlement Checks.** Any checks issued by the Claims
17 Administrator to Class Members shall be negotiable for not less than one hundred eighty (180)
18 days from issuance. Those funds represented by Settlement Checks remaining uncashed for more
19 than 180 days after issuance (collectively, “Voided Settlement Checks”) will be remitted as
20 follows: Fifty percent (50%) to Legal Aid At Work and fifty percent (50%) to the Ali Forney
21 Center.

22 **F. Distribution to Class Members, Plaintiff and Class Counsel**

23 1. **Effective Date.** “Effective Date” means the later of: (a) the day the Final
24 Approval Order and Judgment is entered if no objections are made to the settlement; (b) if any
25 objections are made to settlement, but no appeals are filed, the thirtieth (30th) day after the Court
26 enters an order granting final approval of the Joint Stipulation of Class Action Settlement and
27 Release; (c) if any timely appeals are filed, thirty (30) days after the resolution (or withdrawal) of
28 any such appeal in a way that does not materially alter the terms of the Settlement.

1 2. **Funding of the Qualified Settlement Fund**

2 a. Within seven (7) calendar days of the Effective Date, the Claims
3 Administrator will provide notice and direct Defendant to pay the Claims Administrator the total
4 funds required to fully fund the Class Settlement Amount to an escrow account set up by the
5 Claims Administrator and authorize the payments due to Plaintiff and the Settlement Class.
6 Defendant shall further provide its portion of any employer-paid payroll tax obligations as
7 calculated by the Claims Administrator that are to be paid by Defendant in addition to the Class
8 Settlement Amount, as set forth in Paragraph III.B.3 of this Agreement. Within fourteen (14)
9 calendar days of receiving that notice, Defendant will wire the funds required to fully fund the
10 Class Settlement Amount plus Defendant’s portion of any employer-paid payroll tax obligations
11 as calculated by the Claims Administrator into a QSF set up and controlled by the Claims
12 Administrator. Payments to the Settlement Class Members, the Class Representative Enhancement
13 Payment, attorney’s fees and costs to Class Counsel, PAGA Payment to the LWDA, and the
14 Claims Administrator’s Expenses shall be made from the QSF.

15 b. If the QSF is not funded in accordance with this provision and notice
16 is provided to Defendant’s counsel of the breach, and payment is not made within seven (7)
17 calendar days of notice of the breach, Class Counsel may seek reasonable attorneys’ fees and costs
18 incurred with any enforcement action taken thereafter.

19 c. The QSF shall be an interest-bearing account at a federally insured
20 bank that is mutually acceptable to the Parties and the Claims Administrator. The funds in the
21 QSF shall be invested either in short-term U.S. Treasury securities with maturity dates of less than
22 90 days at the time of deposit, or in an SEC-registered money market fund investing exclusively
23 in U.S. Treasury securities with average maturities of less than 90 days and rated AAA by Standard
24 & Poor’s. The Parties agree that the QSF is intended to be a “Qualified Settlement Fund” under
25 Section 468B of the Internal Revenue Code and Treas. Reg. § 1.468B-1, 26 C.F.R. § 1.468B-1, *et*
26 *seq.*, and will be administered by the Claims Administrator as such. With respect to the QSF, the
27 Claims Administrator shall: (1) open and administer the Settlement Account in such a manner as
28 to qualify and maintain the qualification of the QSF as a “Qualified Settlement Fund” under

1 Section 468B of the Internal Revenue Code and Treas. Reg. § 1.468B-1; (2) satisfy all federal,
2 state and local and income and other tax reporting, return, and filing requirements with respect to
3 the QSF and any interest or other income earned by the QSF, and (3) satisfy out of the QSF all (i)
4 taxes (including any estimated taxes, interest, or penalties) with respect to the interest or other
5 interest earned by the QSF, and (ii) fees, expenses and costs incurred in connection with the
6 opening and administration of the QSF and the performance of its duties and functions as described
7 in this Agreement. The aforementioned taxes, fees, costs and expenses shall be treated as and
8 included in the costs of administering the QSF and as Claims Administration Expenses. The Parties
9 and the Claims Administrator shall treat the QSF as coming into existence as a Qualified
10 Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1(j)(2)(i), and
11 such election statement shall be attached to the appropriate returns as required by 26 C.F.R. §
12 1.468B-1(j)(e)(ii). The Parties agree to cooperate with the Claims Administrator and one another
13 to the extent reasonably necessary to carry out the provisions of this Section.

14 d. Class Counsel and the Claims Administrator will be solely
15 responsible, under Court supervision, for distributing settlement proceeds including withholding
16 for payroll taxes and income taxes on W-2 wage payments made to Class Members for the amounts
17 to be paid as W-2 wages; complying with the reporting and payment obligations imposed by Treas.
18 Reg. §1.468B-2(l)(2) on the QSF (as well as reporting and payment obligations to state and local
19 tax authorities with respect to the Fund); and paying any tax imposed on the QSF pursuant to Treas.
20 Reg. §1.468B-2(a) and other applicable provisions of Federal, state or local law imposing tax on
21 the Fund. All Claims Administrator costs will be borne out of the Class Settlement Amount;
22 Defendant has no separate obligation to fund costs of administration. The Claims Administrator
23 shall furnish to Defendant all copies of all Forms W-2, 1099, or other tax reporting forms provided
24 by the QSF to any payee of the Class Settlement Amount within thirty (30) calendar days after
25 each such form has been furnished to the payee shown thereon.

26 3. **Distribution to Class Counsel.** The total amount of attorneys' fees and
27 costs due to Class Counsel shall be due and payable no later than fourteen (14) calendar days after
28 receipt by the Claims Administrator of the QSF. In no event will the disposition of the attorneys'

1 fees and costs awarded to Class Counsel delay the administration or completion of the claims
2 administration process.

3 4. **Distribution of Class Representative Enhancement Payment.** Within
4 fourteen (14) calendar days after receipt by the Claims Administrator of the QSF, the Claims
5 Administrator shall pay to Plaintiff the amount of the court-approved Class Representative
6 Enhancement Payment from the QSF. Plaintiff shall also be eligible to receive an Individual
7 Settlement Payment as a Settlement Class Member pursuant to the claims procedures set forth in
8 this agreement, in addition to the enhancement fees he receives as Class Representative. The Class
9 Representative Enhancement Payment shall not be taxed as wages. The Claims Administrator will
10 issue a 1099 form to the Plaintiff in connection with the Class Representative Enhancement
11 Payment.

12 5. **Distribution to Settlement Class Members.** Within fourteen (14)
13 calendar days after receipt by the Claims Administrator of the QSF, the Claims Administrator will
14 make payments to Settlement Class Members out of the QSF as required by the final approval
15 Order, less any required payroll withholdings. The Claims Administrator will pay the withheld
16 funds over to the applicable governmental authorities, and the Claims Administrator will issue the
17 appropriate 1099s and W-2s. The Claims Administrator shall mail payments to Settlement Class
18 Members by first-class mail. The checks shall indicate on their face that they are void if not
19 negotiated within one hundred eighty (180) calendar days of issuance, and after such time the
20 Settlement Class Member's claim will be deemed void and of no further force and effect. The
21 Claims Administrator shall be required to indemnify Defendant and Class Counsel for any failure
22 to perform the foregoing duties.

23 **G. Release of Claims**

24 1. In consideration of the monetary sum provided by Defendant and upon final
25 approval of this Agreement by the Court, each of the Class Members, except those who timely
26 submit valid Requests for Exclusion accepted by the Claims Administrator, hereby cancel,
27 terminate, abrogate, discharge, waive, fully release and forever discharge the Released Parties
28 from the Released Claims that arose during the Settlement Class Period.

1 2. **Identity of Releasing Parties.** The Class Members, other than those who timely
2 submit valid Requests for Exclusion accepted by the Claims Administrator, shall be deemed to be
3 within the Class for all purposes under this Agreement, shall be bound by the terms and conditions
4 of this Agreement, including all orders issued pursuant thereto, and shall be deemed to have waived
5 all unstated objections and oppositions to the fairness, reasonableness, and adequacy of this
6 Agreement, and any of its terms and will pursuant to the terms of this Agreement release and
7 discharge the Released Parties.

8 3. **Release of Additional Claims & Rights by Plaintiff Ser Lao.** Upon the Effective
9 Date, and as a condition of receiving any portion of his Class Representative Enhancement
10 Payment, Plaintiff agrees to the additional following General Release: In consideration of
11 Defendant’s promises and agreements as set forth herein, Plaintiff hereby fully releases the
12 Released Parties from any and all Released Claims and also generally releases and discharges the
13 Released Parties from any and all claims, demands, obligations, causes of action, rights, or
14 liabilities of any kind which have been or could have been asserted against the Released Parties
15 arising out of or relating to Plaintiff’s employment by Defendant or termination thereof, including
16 but not limited to claims for wages, restitution, penalties, retaliation, defamation, discrimination,
17 harassment or wrongful termination of employment. This release specifically includes any and all
18 claims, demands, obligations and/or causes of action for damages, restitution, penalties, interest,
19 and attorneys’ fees and costs (except provided by this Agreement) relating to or in any way
20 connected with his employment with Released Parties and the matters referred to herein, whether
21 or not known or suspected to exist, and whether or not specifically or particularly described herein.
22 Specifically, Plaintiff waives all rights and benefits afforded by California Civil Code Section
23 1542, which provides:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
25 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
26 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
27 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
28 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
 WITH THE DEBTOR.

4. **No Admissions.** The Parties understand and agree that this Agreement is

1 the result of a good faith compromise settlement of disputed claims, and no part of this Agreement
2 or any conduct or written or oral statements made in connection with this Agreement, whether or
3 not the Agreement is finally approved and/or consummated, may be offered as or construed to be
4 an admission or concession of any kind by Defendant and the Released Parties. In particular, but
5 without limiting the generality of the foregoing, nothing about this Agreement shall be offered or
6 construed as an admission that Defendant's non-exempt California employees were denied wages,
7 or were not properly paid wages upon termination. Likewise, nothing about this Agreement shall
8 be offered or construed as an admission that Defendant engaged in any wrongdoing, impropriety,
9 breach of responsibility, or fault. Similarly, nothing about this Agreement shall be construed as
10 or deemed to be evidence of, or an admission or concession that the Plaintiff or any Class Member
11 has suffered any damage. In addition, this Agreement shall not be offered to be admissible in
12 evidence against Defendant or any Released Party, except in an action or proceeding brought by
13 or against Plaintiff, the Class, Class Members, or Defendant to enforce the Agreement's terms, or
14 by Defendant in defense of any claims brought by Plaintiff, the Class, Class Members or any
15 member of the general public.

16 **H. Additional Terms**

17 1. **Applicability of California Civil Procedure Code § 384 and Further**
18 **Distribution of Unclaimed Settlement Payments.** This is a non-reversionary settlement. All
19 Individual Settlement Payments to Class Members that remain un-cashed within one hundred
20 eighty (180) days of the mailing of Settlement Payment Checks by the Claims Administrator shall
21 be remitted as follows: Fifty percent (50%) to Legal Aid At Work and fifty percent (50%) to the
22 Ali Forney Center.

23 2. **Fair, Adequate, and Reasonable Settlement.** The Parties agree that the
24 Settlement is fair and reasonable and will so represent to the Court.

25 3. **Class Certification for Settlement Purposes Only.** On August 8, 2018,
26 the Court entered an Order certifying the following classes: (1) all current and former non-exempt
27 retail store employees employed by Defendant in California at any time from December 11, 2011,
28 through the present (limited to security checks conducted at the end of shifts or at closing); and (2)

1 all former employees employed by Defendant in California from December 11, 2012, through the
2 present, who during their employment received their normal payroll wages through check or direct
3 deposit, but upon their separation of employment received their terminating wages in the form a
4 Money Network ATM Paycard.

5 For settlement purposes only, the Parties agree that the motion for preliminary approval
6 seeks, *inter alia*, certification of a Settlement Class comprised of all non-exempt retail store
7 employees who were employed by Defendant in the State of California at any time from January
8 8, 2013, through the October 31, 2019.

9 4. **No Publicity.** Neither the Parties nor their counsel shall seek any publicity
10 in connection with this Settlement. Nevertheless, the Parties understand and agree that Plaintiff's
11 counsel may reference this case and settlement in connection with establishing their qualifications
12 for class certification and adequacy purposes, as well as for attorney fee applications.

13 5. **Extension of Time.** Without further order of the Court, the Parties hereto
14 may agree in writing to reasonable extensions of time to carry out any of the provisions of the
15 Agreement.

16 6. **Construction.** This Agreement was entered into after extensive good faith,
17 arm's length negotiations between the Parties' Counsel. This Agreement is entered into freely and
18 voluntarily only after each party had carefully read and reviewed it with counsel, and it reflects the
19 conclusion of each party that this Agreement and the Judgment and the releases, waivers, and
20 covenants contemplated hereby are in the best interest of said party. This Agreement has been
21 entered into without any coercion and under no duress. The Parties acknowledge and agree that
22 all Parties had an equal hand in drafting this Agreement so that it shall not be deemed to have been
23 prepared or drafted by one party or another. All Parties waive the provisions of California Civil
24 Code § 1654, which provides, in pertinent part, that "the language of a contract should be
25 interpreted most strongly against the party who caused the uncertainty to exist." Except as
26 expressly provided herein, this Agreement is not intended to confer any rights or remedies upon
27 any person other than the Parties.

28 7. **Due Authority of Attorneys.** Each of the attorneys executing this

1 Agreement on behalf of one or more Parties hereto warrants and represents that he or she has been
2 duly authorized and empowered to execute this Agreement on behalf of each such respective party
3 and to bind them to the terms hereof.

4 8. **Entire Agreement.** This Agreement sets forth the entire agreement of the
5 Parties with respect to its subject matter and supersedes any and all other prior agreements and all
6 negotiations leading up to the execution of this Agreement whether oral or written, regarding the
7 subjects covered herein. The Parties acknowledge that no representations, inducements,
8 warranties, promises or statements relating to the subjects covered herein, oral or otherwise, have
9 been made by any of the Parties or by anyone acting on behalf of the Parties which are not
10 embodied or incorporated by reference herein, and further agree that no other agreement, covenant,
11 representation, inducement, promise or statement relating to the subjects covered herein not set
12 forth in writing in this Agreement, shall be valid or binding.

13 9. **Exhibits Incorporated by Reference.** The terms of this Settlement include
14 the terms set forth in any attached Exhibits, which are incorporated by this reference as though
15 fully set forth herein. Any Exhibits to this Settlement are an integral part of the Settlement.

16 10. **Modification or Amendment.** This Agreement may be amended or
17 modified only by a written instrument signed by counsel for all Parties or their successors-in-
18 interest.

19 11. **Deadlines Falling on Weekends or Holidays.** To the extent that any
20 deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline
21 shall be continued until the following business day.

22 12. **Successors.** This Agreement shall be binding upon and inure to the benefit
23 of the Parties hereto (including members of the Class) and their respective heirs, executors,
24 administrators, successors and assigns, and upon any corporation, partnership or other entity into
25 or with which any Party hereto may merge, combine or consolidate. As used in the preceding
26 sentence and elsewhere throughout this Agreement, “including” shall mean including without
27 limitation.

28 13. **Severability.** In the event that any one or more of the provisions contained

1 in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such
2 invalidity, illegality, or unenforceability shall in no way affect any other provision if Defendant
3 and Class Counsel, on behalf of the Parties and the Class, mutually elect in writing to proceed as
4 if such invalid, illegal or unenforceable provision had never been included in this Agreement.

5 14. **Counterparts.** This Agreement may be executed in counterparts, or by
6 DocuSign, each of which shall be deemed an original, and all of which together shall constitute
7 one and the same instrument. Facsimile or electronic transmission of the signatures of the Parties
8 or their representatives shall be binding on the Parties.

9 15. **Waivers.** The waiver by any party of any breach of this Agreement shall
10 not be deemed or construed as a waiver of any other breach, whether prior, subsequent or
11 contemporaneous of this Agreement.

12 16. **Governing Law.** This Agreement will in all respects be interpreted,
13 enforced and governed by and under the laws of the State of California, without regard to choice
14 of law principles, except to the extent that the law of the United States governs any matter set forth
15 herein, in which case such Federal law will govern.

16 17. **Continuing Jurisdiction.** The Court will have continuing jurisdiction over
17 the Action for the purposes of implementing the Agreement, the Final Approval of the Settlement,
18 entry of Judgment, and post-judgment issues, until all related matters are fully resolved. Except as
19 provided in Paragraph III(E), above, any dispute regarding the Parties' obligations pursuant to this
20 Agreement and/or interpretation of the terms of this Agreement will be presented by written
21 motion to, and resolved by, the Court. To the extent any such motion is filed, the prevailing party
22 to any such motion shall be entitled to recover its reasonable attorneys' fees and costs incurred in
23 connection with such motion.

24 18. **Regulation.** In the event that any provision in this Agreement shall be
25 affected by any rule, regulation, ordinance, order, directive or statute of any unit of government,
26 whether state, federal or local, such rule, regulation, ordinance, order, directive or statute shall
27 supersede and take precedence over any such provision of this Agreement to the contrary and in
28 no event shall Defendant be in violation of this Agreement nor shall this Agreement be in any way

1 affected should Defendant take any action or change any of its business practices to comply with
2 such state, federal or local rules, regulations, ordinances or statutes currently in force or enacted
3 in the future.

4 19. **Headings.** The headings contained in this Agreement are for convenience
5 and reference purposes only and shall not be given weight in its construction.

6 20. **Notices.** Any notices, requests, demands, or other communications
7 required or permitted to be given pursuant to this Agreement, other than notice to the Class or
8 Class Members, shall be in writing and, except as provided elsewhere in this Agreement or in any
9 communication to the Class, shall be delivered personally, via overnight delivery or via postage
10 pre-paid first class mail, as follows: (1) to Plaintiff, the Class, and Class Counsel to the attention
11 of Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal, Max W. Gavron, and Kwanporn “Mai”
12 Tulyathan of Diversity Law Group, P.C., 515 S. Figueroa, Street, Suite 1250, Los Angeles, CA
13 90071; William L. Marder of Polaris Law Group LLP, 501 San Benito Street, Suite 200, Hollister,
14 CA 95023; and Dennis S. Hyun of Hyun Legal, APC, 515 S. Figueroa, Street, Suite 1250, Los
15 Angeles, CA 90071; and (2) to Counsel for Defendant to the attention of Robert H. Platt, Andrew
16 L. Satenberg, and Alma Pinan of Manatt, Phelps & Phillips, LLP, 2049 Century Park East, Suite
17 1700, Los Angeles, CA 90067. By written notice given in accordance herewith, each party may
18 modify or change the addressee and/or address of any person identified above or pursuant hereto
19 as the person or persons to whom all future notices shall be sent.

20 21. **Signatures of Plaintiff and Counsel for the Parties.** Plaintiff and counsel
21 for the Parties indicate by signing below their approval of the form of this Agreement, and, in the
22 case of counsel for Plaintiff and the Class, their representation and warranty of authority to bind
23 the Class as certified and the Class described herein (subject to the final approval of the Court) and
24 their acceptance of the provisions regarding attorneys’ fees.

25 22. **Binding Agreement.** The Parties intend that this Stipulation of Settlement
26 shall be fully enforceable and binding on all Parties, and agree that it shall be admissible and
27 subject to disclosure in any proceeding to enforce its terms.

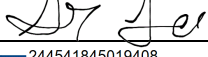
28 [SIGNATURES ON FOLLOWING PAGE]

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SIGNATURES

Dated: March 6, 2020

Plaintiff SER LAO

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Dated: March __, 2020

**Defendant H & M HENNES & MAURITZ,
L.P.**

Name
Title

Dated: March __, 2020

DIVERSITY LAW GROUP, P.C.

Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Max W. Gavron
Mai Tulyathan
Attorneys for Plaintiff SER LAO and the Class

Dated: March __, 2020

MANATT, PHELPS & PHILLIPS, LLP

Robert H. Platt
Andrew L. Satenberg
Alma Pinan
Attorneys for Defendant H & M HENNES &
MAURITZ, L.P.