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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SANTA CLARA**
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14 TINA TALMOUD, individually, and on
15 behalf of other members of the general public
16 similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;

17 **Plaintiff,**

18 **vs.**

19 RETAIL GROUP OF AMERICA LLC, an
20 unknown business entity; and DOES 1
through 100, inclusive,

21 **Defendants.**
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Case No.: 20CV362101

Honorable Patricia M. Lucas
Department 3

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

Complaint Filed: January 22, 2020
Trial Date: None Set

1 **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

2 This Joint Stipulation of Class Action and PAGA Settlement is entered into by and
3 between Plaintiff Tina Talmoud, individually and on behalf of the Class and Defendant Retail
4 Group of America LLC.

5 **DEFINITIONS**

6 1. “Agreement” or “Settlement Agreement” means this Joint Stipulation of Class
7 Action and PAGA Settlement.

8 2. “Action” represents all causes of action, claims, and allegations in the First
9 Amended Complaint filed in *Talmoud v. Retail Group of America LLC*, Case No. 20CV362101,
10 pending before the Santa Clara County Superior Court.

11 3. “Class Counsel” means Protection Law Group, LLP and Lawyers *for* Justice, PC.

12 4. “Class Counsel’s Fees and Costs” means attorneys’ fees for Class Counsel’s
13 litigation and resolution of this Action and their expenses and costs incurred in connection with
14 the Action, which shall be paid from the Total Settlement Amount. Class Counsel will request
15 attorneys’ fees not to exceed thirty-five percent (35%) of the Total Settlement Amount
16 (\$122,500.00) and the reimbursement of any costs and expenses associated with Class
17 Counsel’s litigation and settlement of the Action, not to exceed Twenty Thousand Dollars
18 (\$20,000.00), subject to the Court’s approval. Defendant has agreed not to oppose Class
19 Counsel’s request for fees and reimbursement of costs and expenses in the amounts set forth
20 above.

21 5. “Class List” means a complete list of all Class Members that Defendant will
22 diligently and in good faith compile from its records and provide to the Settlement
23 Administrator within fourteen (14) calendar days after Preliminary Approval of this Settlement.
24 The Class List will be formatted in a readable Microsoft Office Excel spreadsheet containing
25 the following information for each Class Member: (1) full name; (2) last known home address;
26 (3) last known telephone number; (4) social security number; (5) start and end dates of active
27 employment as an hourly-paid or non-exempt employee of Defendant in the State of California;
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1 and (6) any other information required by the Settlement Administrator in order to effectuate the
2 terms of the Settlement.

3 6. "Class" or "Class Members" means all current and former hourly-paid or non-
4 exempt individuals employed by Defendant within the State of California at any time during the
5 Class Period.

6 7. "Class Period" means the period from January 22, 2016 until to June 8, 2021.

7 8. "Class Representative" means Plaintiff Tina Talmoud in her capacity as a
8 representative of the Participating Class Members.

9 9. "Class Representative Incentive Payment" means the amount that the Court
10 authorizes to be paid to Plaintiff Talmoud, in addition to her Individual Settlement Payment, in
11 recognition of the efforts and risks she has taken in assisting with the prosecution of the Action
12 and in exchange for the General Release of her claims as provided herein.

13 10. "Court" means the Superior Court of the State of California for the County of
14 Santa Clara.

15 11. "Defendant" means Retail Group of America LLC.

16 12. "Effective Date" means the later of: (a) if no timely objections are filed or if all
17 objections are withdrawn, 30 days after the filing of a Notice of Entry of Judgment; (b) if an
18 objection is filed and not withdrawn, the date for filing an appeal and no such appeal being filed
19 (61 days) after the service of a Notice of Entry of Judgment; (c) if any timely appeals are filed,
20 the date of the resolution (or withdrawal) of any such appeal in a way that does not alter the
21 terms of the Settlement and when the Settlement is no longer subject to review, whether by
22 appeal, petitions for rehearing, petitions for review, or petitions for writ of certiorari, or
23 otherwise .

24 13. "Final Approval" means the Court entering an order granting final approval of
25 the Settlement Agreement.

26 14. "Total Settlement Amount" means the sum of Three Hundred Fifty Thousand
27 Dollars (\$350,000.00). The Total Settlement Amount is non-reversionary; no portion of the
28 Total Settlement Amount will return to Defendant.

1 15. "Individual Settlement Payment" means the amount payable from the Net
2 Settlement Amount to each Participating Class Member and any payment a PAGA Member is
3 eligible to receive from the employee portion of the PAGA Payment. Individual Settlement
4 Payments shall be paid by a settlement check made payable to Participating Class Members
5 and/or PAGA Members.

6 16. "Net Settlement Amount" means the funds available for payments to the Class,
7 which shall be the amount remaining after the following amounts are deducted from the Total
8 Settlement Amount: (1) Class Counsel's fees, (2) Class Counsel's costs, (3) Settlement
9 Administration Costs, (4) Class Representative Incentive Payment to Plaintiff, and (5) the
10 PAGA Payment.

11 17. "Class Notice" means the Notice of Proposed Class Action Settlement in a form
12 substantially similar to the form attached hereto as Exhibit A, in both English and Spanish, that
13 will be mailed to Class Members' last known addresses and which will provide Class Members
14 with information regarding the Action and information regarding the settlement of the Action.

15 18. "PAGA" means the California Labor Code Private Attorneys General Act of
16 2004 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA").

17 19. "PAGA Payment" means the amount that the Parties have agreed to allocate in
18 order to settle claims arising under the Private Attorneys General Act of 2004 (Cal. Lab. Code
19 §§ 2698, *et seq.*). The Parties have agreed that Fifty Thousand Dollars (\$50,000.00) of the Total
20 Settlement Amount will be allocated to the resolution of Plaintiff's PAGA claims. Seventy-five
21 percent (75%) of the PAGA Payment (i.e., \$37,500.00) will be paid to the LWDA in accordance
22 with Labor Code §§ 2698 *et seq.* The remaining twenty-five percent (25%) of the PAGA
23 Payment (i.e., \$12,500.00), will be distributed to PAGA Members. PAGA Members will
24 receive payment from the employee portion of the PAGA Payment regardless of their decision
25 to participate in the class action if the PAGA Payment is approved by the Court.

26 20. "PAGA Period" means the period from February 25, 2019 to June 8, 2021.
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1 21. "PAGA Members" means all current and former hourly-paid or non-exempt
2 individuals who were employed by Defendant within the State of California at any time during
3 the PAGA Period.

4 22. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean
5 either Plaintiff or Defendant, individually.

6 23. "Participating Class Members" means all Class Members who do not submit a
7 valid and timely Request for Exclusion.

8 24. "Plaintiff" means Tina Talmoud.

9 25. "Preliminary Approval" means the Court order granting preliminary approval of
10 the Settlement Agreement.

11 26. "Objection" means a Class Member's valid and timely written objection to the
12 Settlement Agreement. For an Objection to be valid, it must include: (a) the objector's full
13 name, address, telephone number, last four digits of the employee's social security number or
14 employee ID number and (b) a written statement of all grounds for the objection accompanied
15 by legal support, if any, for such objection.

16 27. "Released Claims" means any and all claims that are alleged, or reasonably
17 could have been alleged based on the facts and claims asserted in the operative complaint in the
18 Action including the following claims: (i) unpaid overtime; (ii) unpaid meal period premiums;
19 (iii) unpaid rest period premiums; (iv) unpaid minimum wages; (v) final wages not timely paid;
20 (vi) wages not timely paid during employment; (vii) non-compliant wage statements; (viii)
21 failure to keep requisite payroll records; (ix) unreimbursed business expenses; (x) unfair
22 business practices under Business and Professions Code § 17200 based on the aforementioned
23 alleged Labor Code violations; and (xi) all claims under the California Labor Code Private
24 Attorneys General Act of 2004 based on the aforementioned Labor Code violations.

25 28. "Released Parties" means Defendant Retail Group of America LLC as named by
26 Plaintiff in the operative complaint, and its past, present and/or future, direct and/or indirect,
27 officers, directors, members, managers, employees, agents, representatives, attorneys, insurers,
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1 partners, investors, shareholders, administrators, parent companies, sister companies,
2 subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

3 29. "Request for Exclusion" means a valid and timely written statement submitted
4 by a Class Member requesting to be excluded from the Action. To be effective, the Request for
5 Exclusion must contain (a) the Class Member's name, address, telephone number, and the last
6 four digits of the Class Member's Social Security number and/or the Employee ID number and
7 (b) a clear statement requesting to be excluded from the settlement of the class claims similar to
8 the following: "I wish to exclude myself from the class settlement reached in the matter of
9 *Talmoud v. Retail Group of America LLC*. I understand that by excluding myself, I will not
10 receive money from the settlement of my individual claims." To be effective, the Request for
11 Exclusion must be post-marked by the Response Deadline and received by the Settlement
12 Administrator.

13 30. "Response Deadline" means the date sixty (60) days after the Settlement
14 Administrator mails the Class Notice to Class Members and the last date on which Class
15 Members may submit Requests for Exclusion, written objections to the Settlement, or
16 workweek disputes. In the event the 60th day falls on a Sunday or Federal holiday, the
17 Response Deadline will be extended to the next day on which the U.S. Postal Service is open.
18 The Response Deadline for Requests for Exclusion or Objections will be extended fifteen (15)
19 calendar days for any Class Member who is re-mailed a Class Notice by the Settlement
20 Administrator, unless the 15th day falls on a Sunday or Federal holiday, in which case the
21 Response Deadline will be extended to the next day on which the U.S. Postal Service is open.
22 The Response Deadline may also be extended by express agreement between Class Counsel and
23 Defendant. Under no circumstances, however, will the Settlement Administrator have the
24 authority to unilaterally extend the deadline for Class Members to submit a Request for
25 Exclusion or Objection to the settlement.

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

27 32. "Settlement Administrator" means Phoenix Settlement Administrators. The
28 Parties each represent that they do not have any financial interest in the Settlement

1 Administrator or otherwise have a relationship with the Settlement Administrator that could
2 create a conflict of interest.

3 33. "Settlement Administration Costs" means the costs payable from the Total
4 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
5 but not limited to, printing, distributing, and tracking documents for this Settlement,
6 calculating/confirming the Class Members' Workweeks from the information contained in the
7 Class List, calculating each Participating Class Member's Individual Settlement Payment, tax
8 reporting, distributing the Total Settlement Amount, providing necessary reports and
9 declarations, and other duties and responsibilities set forth herein to process this Settlement, and
10 as requested by the Parties or the Court. Settlement Administration Costs shall not exceed Ten
11 Thousand Dollars (\$10,000.00).

12 34. "Workweek" shall mean any calendar week (i.e. a week beginning on Sunday
13 and ending on Saturday) in which a Class Member or PAGA Member performed work for
14 Defendant at least one day.

15 TERMS OF AGREEMENT

16 35. Settlement Consideration. Defendant shall fully fund the Total Settlement
17 Amount following Final Approval by the Court and the occurrence of the Effective Date. The
18 following will be paid out of the Total Settlement Amount: the sum of the Individual Settlement
19 Payments, the Class Representative Incentive Payment, Class Counsel's Fees and Costs, the
20 PAGA Payment, and the Settlement Administration Costs, as specified in this Agreement.
21 Except for any employer-side payroll taxes due on the Individual Settlement Payments, or as a
22 result of an increase in the number of workweeks as set forth below, Defendant shall not be
23 required to pay more than the Total Settlement Amount. The Total Settlement Amount is non-
24 reversionary; no portion of the Total Settlement Amount will revert to Defendant.

25 36. Potential Increase to the Total Settlement Amount. Defendant has represented
26 there are approximately 9,500 Workweeks within the Class Period. Should the actual number of
27 Workweeks increase by more than ten percent (10%) (i.e. increase by more than 950
28 Workweeks), the Total Settlement Amount shall increase on a pro-rata basis equal to the

1 percentage increase in the number of Workweeks worked by the Class Members above 10%.
2 For example, if the number of Workweeks increases by 11%, the Total Settlement Amount will
3 increase by 1%.

4 37. Representation of Financial Distress. The Total Settlement Amount is further
5 based on Defendant's representation regarding its financial condition and inability to fund a
6 larger judgment and remain operational. Defendant shall provide a declaration to Class Counsel
7 in support of its claims of financial distress, and shall provide financial documents if requested
8 by the Court.

9 38. Funding of the Total Settlement Amount. Funding of the Total Settlement
10 Amount shall occur in 13 separate payments. Within three (3) business days after Preliminary
11 Approval of the Settlement or December 10, 2021 (whichever date occurs later)(the "Initial
12 Funding Date"), Defendant will deposit an initial payment of Two Hundred Thousand Dollars
13 (\$200,000.00) into a Qualified Settlement Fund ("QSF") to be established by the Settlement
14 Administrator. Defendant will deposit the remaining One Hundred Fifty Thousand Dollars
15 (\$150,000.00) in 12 monthly installments (i.e. \$12,500 per month for 12 months), with the first
16 payment being made within one month after the initial funding date. Defendant shall provide all
17 information necessary for the Settlement Administrator to calculate necessary payroll taxes
18 including its official name, 8 digit state unemployment insurance tax ID number, and other
19 information requested by the Settlement Administrator, no later than seven (7) calendar days
20 after the Effective Date.

21 39. Distribution of the Total Settlement Amount. Following the Effective Date, and
22 within fourteen (14) calendar days of the complete funding of the Settlement, the Settlement
23 Administrator will issue payments for: (a) Individual Settlement Payments; (b) the PAGA
24 Payment to the LWDA; (c) the Class Representative Incentive Payment; (d) Class Counsel's
25 Fees and Costs and (e) Settlement Administration Costs.

26 40. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any
27 application or motion by Class Counsel for attorneys' fees of up to thirty-five percent (35%) of
28 the Total Settlement Amount (\$122,500.00) plus the reimbursement of costs and expenses

1 associated with Class Counsel's litigation and settlement of the Action, in an amount not to
2 exceed Twenty Thousand Dollars (\$20,000.00), both of which will be paid from the Total
3 Settlement Amount. In the event that the Court reduces or does not approve the requested
4 attorney's fees and costs, the Settlement Agreement remains in full force and effect, Plaintiff
5 shall not have the right to revoke the settlement for that reason, it shall remain binding, and any
6 portion of the requested fees or costs that is not awarded by the Court to Class Counsel shall be
7 reallocated to the Net Settlement Amount and distributed to Participating Class Members as
8 provided in this Agreement. Class Counsel agree that such an award of attorney's fees and costs
9 shall compensate them for all legal work in the Action up to including the Effective Date, as
10 well as for all legal work and costs that may be incurred in the Action after the Effective Date,
11 including any distribution and compliance proceedings as ordered by the Court.

12 41. Class Representative Incentive Payment. Defendant agrees not to oppose or
13 object to any application or motion by Plaintiff for a Class Representative Incentive Payment of
14 Six Thousand Five Hundred Dollars (\$6,500.00). The Class Representative Incentive Payment
15 is in exchange for the General Release of the Plaintiff's individual claims, and for her time,
16 effort and risk in bringing and prosecuting the Action. Any adjustments made by the Court to
17 the requested Class Representative Incentive Payment shall not be deemed a material
18 modification of this Agreement. In the event that the Court reduces or does not approve the
19 requested Class Representative Incentive Payment, the Settlement Agreement remains in full
20 force and effect, Plaintiff shall not have the right to revoke the settlement for that reason, it shall
21 remain binding, and any portion of the requested Class Representative Incentive Payment that is
22 not awarded by the Court to the Class Representative shall be reallocated to the Net Settlement
23 Amount and distributed to Participating Class Members as provided in this Agreement.

24 42. Settlement Administration Costs. The Settlement Administrator will be paid for
25 the reasonable costs of administration of the Settlement and distribution of payments from the
26 Total Settlement Amount as further set forth in this Agreement. Settlement Administration
27 Costs shall not exceed Ten Thousand Dollars (\$10,000.00).
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43. PAGA Payment. Fifty Thousand Dollars (\$50,000.00) of the Total Settlement Amount shall be allocated from the Total Settlement Amount for settlement of claims for civil penalties under the PAGA. The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment, or Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00), to the LWDA. The remaining twenty-five percent (25%) of the PAGA Payment, or Twelve Thousand Five Hundred Dollars (\$12,500.00), will be distributed to PAGA Members on a *pro rata* basis based on the total number of Workweeks worked by each PAGA Member during the PAGA Period. PAGA Members shall receive their portion of the PAGA Payment regardless of their decision to opt-out of the class settlement.

44. Net Settlement Amount for Payment of Class Claims. The Net Settlement Amount will be used to satisfy the class portion of Participating Class Members' Individual Settlement Payments in accordance with the terms of this Agreement. The estimated Net Settlement Amount is as follows:

Total Settlement Amount	\$	350,000.00
Class Representative Incentive Payment:	\$	6,500.00
Class Counsel's Fees:	\$	122,500.00
Class Counsel's Costs:	\$	20,000.00
PAGA Payment:	\$	50,000.00 ¹
Settlement Administration Costs:	\$	10,000.00
Estimated Net Settlement Amount:	\$	141,000.00

45. Individual Settlement Payment Calculations. Individual Settlement Payments will be paid from the Net Settlement Amount and the 25% portion of the PAGA Payment for PAGA Members and shall be paid pursuant to the formulas set forth herein:

a) Calculation of Class Portion of Individual Settlement Payments. The Settlement Administrator will calculate the total Workweeks for all Participating Class Members by adding the number of workweeks worked by each Participating Class Member

¹ 75% distributed to the LWDA and 25% distributed to PAGA Members on a pro rata basis as set forth above.

1 during the Class Period. The amount that each Participating Class Member will be eligible to
2 receive will be calculated by dividing each Participating Class Member's individual Workweeks
3 by the total Workweeks of all Participating Class Members, and multiplying the resulting
4 fraction by the Net Settlement Amount.

5 b) Calculation of PAGA Portion of Individual Settlement Payments. The
6 Settlement Administrator will calculate the total Workweeks for all PAGA Members by adding
7 the number of workweeks worked by each PAGA Member during the PAGA Period. The
8 amount that each PAGA Member will receive will be calculated by dividing each participating
9 PAGA Member's individual Workweeks by the total Workweeks of all PAGA Members, and
10 multiplying the resulting fraction by the 25% share of the PAGA Payment designated for
11 distribution to aggrieved employees. PAGA Members shall receive this portion of their
12 Individual Settlement Payment regardless of whether they opt out of the participation regarding
13 the class claims.
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15 c) Allocation of Individual Settlement Payments. All Individual Settlement
16 Payments will be allocated as follows: twenty percent (20%) of each Individual Settlement
17 Payment will be allocated as wages, forty percent (40%) shall be allocated as interest, and forty
18 percent (40%) shall be allocated as penalties. The portion of the Individual Settlement Payment
19 allocated to wages will be reported by the Settlement Administrator on an IRS Form W-2. The
20 remaining non-wage payments will be reported on an IRS Form-1099 by the Settlement
21 Administrator.

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

3 47. Settlement Administration Process. The Parties agree to cooperate in the
4 administration of the Settlement and to make all reasonable efforts to control and minimize the
5 costs and expenses incurred in administration of the Settlement. The Settlement Administrator
6 will provide the following services:

- 7 a) Establish and maintain a Qualified Settlement Fund.
- 8 b) Calculate the Individual Settlement Payment each Participating Class Member is
9 eligible to receive and the portion of the PAGA Payment each PAGA Member
10 shall receive.
- 11 c) Translate the Class Notice from English to Spanish.
- 12 d) Print and mail the Class Notice in English and Spanish.
- 13 e) Perform address searches as detailed in Paragraph 50, including conduct
14 additional address searches and skip traces for mailed Class Notices that are
15 returned as undeliverable.
- 16 f) Process Requests for Exclusion, Objections, calculate Participating Class
17 Members' Individual Settlement Payment, field inquiries or disputes from Class
18 Members.
- 19 g) Print and issue Settlement Payment Checks, prepare any IRS W2 and 1099 Tax
20 Forms and any other filings required by any governmental taxing authority.
- 21 h) Provide declarations and/or other information to this Court as requested by the
22 Parties and/or the Court.
- 23 i) Provide weekly status reports to counsel for the Parties.
- 24 j) Posting a notice of final judgment, after entry of the judgment, online at the
25 Settlement Administrator's website for a period of sixty (60) days pursuant to
26 California Rule of Court 3.769.

27 48. Delivery of the Class List. Within fourteen (14) calendar days of Preliminary
28 Approval, Defendant will provide the Class List to the Settlement Administrator.

1 49. Class Notice by First-Class U.S. Mail. Within seven (7) calendar days after
2 receiving the Class List from Defendant, the Settlement Administrator will mail the Class
3 Notice to all Class Members via regular First-Class U.S. Mail, using the most current, known
4 mailing addresses identified in the Class List.

5 50. Confirmation of Contact Information in the Class List. Prior to mailing, the
6 Settlement Administrator will perform a search based on the National Change of Address
7 Database for information to update and correct for any known or identifiable address changes.
8 Any Class Notice returned to the Settlement Administrator as non-deliverable on or before the
9 Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
10 address affixed thereto and the Settlement Administrator will indicate the date of such re-
11 mailing on the Class Notice. If no forwarding address is provided, the Settlement Administrator
12 will promptly attempt to determine the correct address using a skip-trace, or other search using
13 the name, address and/or Social Security number of the Class Member involved, and will then
14 perform a single re-mailing. If any Class Notice sent to a Class Member by the Settlement
15 Administrator is returned as undeliverable to a current employee, then Defendant shall make all
16 reasonable efforts to obtain the current address from the Class Member and provide the same
17 within seven (7) calendar days of notice from the Settlement Administrator. Those Class
18 Members who receive a re-mailed Class Notice, whether by skip-trace or by request, will have
19 between the later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to
20 postmark a Request for Exclusion, or an Objection to the Settlement.

21 51. Class Notice. All Class Members will be mailed a Class Notice. Each Class
22 Notice will provide: (a) information regarding the nature of the Action; (b) a summary of the
23 Settlement's principal terms; (c) the Class definition; (d) the total number of Workweeks each
24 respective Class Member worked for Defendant during the Class Period; (e) each Class
25 Member's estimated Individual Settlement Payment and the formula for calculating Individual
26 Settlement Payments; (f) the dates which comprise the Class Period and PAGA Period; (g) the
27 deadlines by which the Class Member must postmark Requests for Exclusion, Objections to the
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1 Settlement, or workweek disputes; (h) the claims to be released, as set forth herein; and (j) the
2 date for the final approval hearing.

3 52. Disputed Information on Class Notice. Class Members will have an opportunity
4 to dispute the information provided in their Class Notice. To the extent Class Members dispute
5 the number of Workweeks with which they have been credited or the amount of their Individual
6 Settlement Payment, Class Members may produce evidence to the Settlement Administrator
7 showing that such information is inaccurate. Absent evidence rebutting Defendant's records,
8 Defendant's records will be presumed determinative. However, if a Class Member produces
9 evidence contrary to Defendant's records by the Response Deadline, the Settlement
10 Administrator shall notify Class Counsel, and Defendant's counsel to discuss and resolve the
11 dispute, including providing all available relevant information to all counsel. The Parties will
12 resolve all disputes jointly, which shall be final and binding on any Class Member disputes, and
13 shall thereafter instruct the Settlement Administrator how to proceed in processing the dispute.
14 If the Parties cannot reach an agreement, disputes shall be referred to the Settlement
15 Administrator for a determination and if the dispute remains unresolved after that, the dispute
16 shall be submitted to the Court for final determination. All such disputes are to be resolved or
17 submitted to the Court no later than fourteen (14) calendar days after the Response Deadline.

18 53. Defective Submissions. If a Class Member's Request for Exclusion is defective
19 as to the requirements listed herein, that Class Member will be given an opportunity to cure the
20 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three
21 (3) business days of receiving the defective submission to advise the Class Member that his or
22 her submission is defective and that the defect must be cured to render the Request for
23 Exclusion valid. The Class Member will have until the later of (a) the Response Deadline or (b)
24 fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark a
25 revised Request for Exclusion. If a Class Member responds to a cure letter by filing a defective
26 claim, then the Settlement Administrator will have no further obligation to give notice of a need
27 to cure. If the revised Request for Exclusion is not postmarked within that period, it will be
28 deemed untimely.

1 54. Request for Exclusion Procedures. Any Class Member wishing to opt-out from
2 the Action must sign and postmark a written Request for Exclusion to the Settlement
3 Administrator by the Response Deadline. The Request for Exclusion must include (a) the Class
4 Member's name, address, telephone number, and the last four digits of the Class Member's
5 Social Security number and/or the Employee ID number and (b) a clear statement requesting to
6 be excluded from the settlement of the class claims similar to the following: "I wish to exclude
7 myself from the class settlement reached in the matter of *Talmoud v. Retail Group of America*
8 *LLC*. I understand that by excluding myself, I will not receive money from the settlement of my
9 individual claims." The date of the postmark on the return mailing envelope receipt
10 confirmation will be the exclusive means to determine whether a Request for Exclusion has
11 been timely submitted. All Requests for Exclusion will be submitted to the Settlement
12 Administrator, who will certify jointly to Class Counsel and Defendant's Counsel the Requests
13 for Exclusion that were timely submitted. All Class Members who do not request exclusion
14 from the Action will be bound by all terms of the Settlement Agreement if the Settlement is
15 granted final approval by the Court.

16 55. Defendant's Right to Rescind. If ten percent (10%) or more of the Class
17 Members (rounded to the next whole number) elect not to participate in the Settlement,
18 Defendant may, at its sole discretion, rescind the Settlement Agreement and all actions taken in
19 furtherance of it will be thereby null and void. Defendant must meet and confer with Class
20 Counsel prior to exercising this right and must make clear its intent to rescind the Agreement
21 within fourteen (14) calendar days of the Settlement Administrator notifying the Parties of these
22 opt-outs. If Defendant exercises its right to rescind the Agreement, Defendant shall be
23 responsible for all Settlement Administration Costs incurred to the date of rescission.

24 56. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
25 Member who does not affirmatively opt-out of the Settlement by submitting a timely and valid
26 Request for Exclusion will be bound by all of its terms, including those pertaining to the
27 Released Claims, as well as any Judgment that may be entered by the Court if it grants final
28 approval to the Settlement. Class Members who opt-out of the Settlement shall not be bound by

1 such Judgment or release. The names of Class Members who have opted-out of the settlement
2 shall be disclosed to the Counsel for Plaintiff and Defendant and noted in the proposed
3 Judgment submitted to the Court.

4 57. Objection Procedures. To object to the Settlement, a Participating Class Member
5 must postmark a valid Objection to the Settlement Administrator on or before the Response
6 Deadline. The Objection must be signed by the Participating Class Member and contain all
7 information required by this Settlement Agreement including the Class Member's full name,
8 address, telephone number, the last four digits of their social security number and/or Employee
9 ID number, and the specific reason including any legal grounds for the Participating Class
10 Member's objection. The postmark date will be deemed the exclusive means for determining
11 that the Objection is timely. Participating Class Members who fail to object in the manner
12 specified above will be foreclosed from making a written objection, but shall still have a right to
13 appear at the Final Approval Hearing in order to have their objections heard by the Court. At no
14 time will any of the Parties or their counsel seek to solicit or otherwise encourage Participating
15 Class Members to submit written objections to the Settlement or appeal from the Order and
16 Judgment. Class Counsel will not represent any Participating Class Members with respect to
17 any objections to this Settlement.

18 58. Certification Reports Regarding Individual Settlement Payment Calculations.
19 The Settlement Administrator will provide Defendant's Counsel and Class Counsel a weekly
20 report which certifies: (a) the number of Class Members who have submitted Requests for
21 Exclusion; (b) the number of re-mailed and/or undeliverable Class Notices; and (c) whether any
22 Class Member has submitted a challenge to any information contained in the Class Notice.
23 Additionally, the Settlement Administrator will provide to counsel for all Parties any updated
24 reports regarding the administration of the Settlement Agreement as needed or requested. The
25 Settlement Administrator will provide a declaration to Class Counsel in advance of the hearing
26 on Final Approval of the settlement which Class Counsel shall be responsible for reviewing and
27 approving.
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1 59. Uncashed Settlement Checks. Any checks issued by the Settlement
2 Administrator to Participating Class Members and PAGA Members will be negotiable for at
3 least one hundred eighty (180) calendar days. If a Participating Class Member and/or PAGA
4 Member does not cash his or her settlement check within 180 days, the uncashed funds, subject
5 to Court approval, shall be distributed to Legal Aid At Work, pursuant to California Civil
6 Procedure Code section 384. The Individual Settlement Payments provided to Participating
7 Class Members and to PAGA Members shall prominently state the expiration date or a
8 statement that the settlement check will expire in one hundred eighty (180) days, or
9 alternatively, such a statement may be made in a letter accompanying the Individual Settlement
10 Payment. Expired Individual Settlement Payments will not be reissued, except for good cause
11 and as mutually agreed by the Parties in writing.

12 60. Administration of Taxes by the Settlement Administrator. The Settlement
13 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and
14 Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts
15 paid pursuant to this Settlement. The Settlement Administrator will also be responsible for
16 forwarding all payroll taxes and penalties to the appropriate government authorities.

17 61. Tax Liability. Defendant makes no representation as to the tax treatment or legal
18 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are
19 not relying on any statement, representation, or calculation by Defendant or by the Settlement
20 Administrator in this regard. Plaintiff and Participating Class Members understand and agree
21 that except for Defendant's payment of the employer's portion of any payroll taxes, they will be
22 solely responsible for the payment of any taxes and penalties assessed on the payments
23 described herein. Defendant's share of any employer-side payroll taxes and other required
24 employer withholdings due on the Individual Settlement Payments, including, but not limited
25 to, Defendant's FICA and FUTA contributions, shall be paid separate and apart from the Total
26 Settlement Amount.

27 62. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this
28 section, the "acknowledging party" and each Party to this Agreement other than the

1 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision of this
2 Agreement, and no written communication or disclosure between or among the Parties or their
3 attorneys and other advisers, is or was intended to be, nor shall any such communication or
4 disclosure constitute or be construed or be relied upon as, tax advice within the meaning of
5 United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the
6 acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and
7 tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not
8 entered into this Agreement based upon the recommendation of any other Party or any attorney
9 or advisor to any other Party, and (c) is not entitled to rely upon any communication or
10 disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be
11 imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has
12 imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax
13 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
14 acknowledging party of the tax treatment or tax structure of any transaction, including any
15 transaction contemplated by this Agreement.

16 63. No Prior Assignments. The Parties and their counsel represent, covenant, and
17 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
18 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
19 demand, action, cause of action or right herein released and discharged.

20 64. Release by Participating Class Members, PAGA Members, the LWDA and the
21 State of California. Upon the complete funding of the Total Settlement Amount and all
22 applicable employer-side payroll taxes by Defendant, Participating Class Members shall fully
23 release and discharge the Released Parties from any and all Released Claims for the Class
24 Period. This release shall be binding on all Participating Class Members. All PAGA Members,
25 the LWDA, and the State of California shall release claims under PAGA for the PAGA Period.
26 All PAGA Members shall release claims arising under PAGA regardless of their decision to
27 participate in the class settlement.
28

1 65. Release of Additional Claims & Rights by Plaintiff. Upon the complete funding
2 of the Total Settlement Amount, Plaintiff Talmoud agrees – on behalf of herself only – to the
3 additional following General Release: In consideration of Defendant’s promises and agreements
4 as set forth herein, Plaintiff hereby releases all claims related to her employment or alleged
5 employment with Defendant, including all claims alleged in the Action, and all claims known
6 and unknown, without exception, except as may be prohibited by law. Specifically, Plaintiff
7 waives all rights and benefits afforded by California Civil Code Section 1542, which provides:

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

13 This release specifically excludes claims for unemployment insurance, disability, social
14 security, and workers’ compensation (with the exception of claims arising pursuant to
15 California Labor Code Sections 132(a) and 4553).

16 66. Neutral Employment Reference. Defendant agrees that it will adopt a neutral
17 reporting policy regarding any future employment references related to Plaintiff. In the event
18 that any potential or future employers of Plaintiff request a reference regarding Defendant’s
19 employment of Plaintiff, Defendant shall only provide the Plaintiff’s dates of employment, job
20 titles during employment, and final rate of pay. Defendant shall not refer to the Action or this
21 Settlement.

22 67. Nullification of Settlement Agreement. In the event that: (a) the Court does not
23 finally approve the Settlement as provided herein; (b) the Court strikes or does not approve any
24 material term of this Settlement Agreement; or (c) the Settlement does not become final as
25 written and agreed to by the Parties for any other reason, then this Settlement Agreement, and
26 any documents generated to bring it into effect, will be null and void, all amounts deposited into
27 the QSF will be returned to Defendant, any Class shall be decertified, and the Parties shall be
28 returned to their original respective positions. Any order or judgment entered by the Court in

1 furtherance of this Settlement Agreement will likewise be treated as void from the beginning.
2 Pursuant to California Evidence Code § 1152, this Settlement Agreement is inadmissible in any
3 proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If
4 Final Approval does not occur, the Parties agree that this Settlement Agreement is void, and
5 remains protected by California Evidence Code § 1152. Should the Court fail to approve this
6 settlement for any reason, the Parties agree that they will return to and attend mediation with a
7 mutually agreed mediator in an effort to reach a settlement that may be approved by the Court.

8 68. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to
9 request Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary
10 Approval Order for: (a) conditional certification of the Class for settlement purposes only, (b)
11 Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for a Final
12 Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for the
13 Class Notice to be sent to all Class Members as specified herein. In conjunction with the
14 Preliminary Approval hearing, Plaintiff will submit this Agreement, which sets forth the terms
15 of the Settlement, and will include the proposed Class Notice attached as Exhibit A. Defendant
16 agrees that it will not oppose Plaintiff's motion for Preliminary Approval based on the terms of
17 the Agreement herein. Any failure by the Court to fully and completely approve the Agreement
18 as to the Action, or the entry of any Order by another Court with regard to any of the Action
19 which has the effect of preventing the full and complete approval of this Settlement Agreement
20 as written and agreed to by the Parties, will result in this Settlement Agreement and the
21 Memorandum of Understanding entered into by the Parties, and all obligations under this
22 Settlement Agreement and the Memorandum of Understanding being nullified and voided.

23 69. Final Settlement Approval Hearing and Entry of Judgment. Upon completion of
24 the Class Notice process, including the expiration of the deadlines to postmark Requests for
25 Exclusion or Objections to the Settlement Agreement, a Final Approval/Settlement Fairness
26 Hearing will be conducted to determine the Final Approval of the Settlement Agreement along
27 with the amounts properly payable for: (a) Individual Settlement Payments; (b) the PAGA
28 Payment to the LWDA; (c) Class Counsel's Attorneys' Fees and Costs; (d) the Class

1 Representative Incentive Payment; and (d) the Settlement Administration Costs. Class Counsel
2 will be responsible for drafting all documents necessary to obtain Final Approval. Any failure
3 by the Court to fully and completely approve the Settlement Agreement as to all of the Action,
4 or the entry of any Order by another Court with regard to any of the Action which has the effect
5 of modifying material terms of this Agreement or preventing the full and complete approval of
6 the Settlement Agreement as written and agreed to by the Parties, will result in this Agreement
7 and all obligations under this Agreement being null and void. Defendant agrees it shall not
8 oppose the granting of the Motion for Final Approval, provided Defendant has not exercised its
9 right to rescind pursuant to the terms of this Agreement.

10 70. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by
11 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
12 Judgment to the Court for its approval. After entry of the Judgment, the Court will have
13 continuing jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement
14 of the terms of the Settlement, (b) Settlement administration matters, and (c) such post-
15 Judgment matters as may be appropriate under court rules or as set forth in this Settlement.

16 71. Exhibits Incorporated by Reference. The terms of this Settlement include the
17 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully
18 set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement.

19 72. Entire Agreement. This Settlement Agreement and any attached Exhibits
20 constitute the entirety of the Parties' Settlement. No other prior or contemporaneous written or
21 oral agreements may be deemed binding on the Parties.

22 73. Amendment or Modification. This Settlement Agreement may be amended or
23 modified only by a written instrument signed by counsel for all Parties or their successors-in-
24 interest.

25 74. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
26 warrant and represent they are expressly authorized by the Parties whom they represent to
27 negotiate this Settlement Agreement and to take all appropriate action required or permitted to
28 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to

1 execute any other documents required to effectuate the terms of this Settlement Agreement. The
2 Parties and their counsel will cooperate with each other and use their best efforts to affect the
3 implementation of the Settlement. If the Parties are unable to reach agreement on the form or
4 content of any document needed to implement the Settlement, or on any supplemental
5 provisions that may become necessary to effectuate the terms of this Settlement, the Parties may
6 seek the assistance of the Court to resolve such disagreement.

7 75. Binding on Successors and Assigns. This Settlement Agreement will be binding
8 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
9 defined.

10 76. California Law Governs. All terms of this Settlement Agreement hereto will be
11 governed by and interpreted according to the laws of the State of California.

12 77. Execution and Counterparts. This Settlement Agreement is subject only to the
13 execution of all Parties. However, the Settlement Agreement may be executed in one or more
14 counterparts. All executed counterparts and each of them, including facsimile and scanned
15 copies of the signature page, will be deemed to be one and the same instrument provided that
16 counsel for the Parties will exchange among themselves original signed counterparts.

17 78. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
18 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action
19 and have arrived at this Settlement after arm's-length negotiations and in the context of
20 adversarial litigation, taking into account all relevant factors, present and potential. The Parties
21 further acknowledge that they are each represented by competent counsel and that they have had
22 an opportunity to consult with their counsel regarding the fairness and reasonableness of this
23 Settlement.

24 79. Invalidity of Any Provision. Before declaring any provision of this Agreement
25 invalid, the Court will first attempt to construe the provision as valid to the fullest extent
26 possible consistent with applicable precedents so as to define all provisions of this Agreement
27 valid and enforceable.

28 80. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to

1 class certification for purposes of this Settlement only; except, however, that either party may
2 appeal any court order that materially alters the Settlement Agreement's terms.

3 81. Class Action Certification for Settlement Purposes Only. The Parties agree to
4 stipulate to class action certification only for purposes of the Settlement. If, for any reason, the
5 Settlement is not approved, the stipulation to certification will be void. The Parties further agree
6 that certification for purposes of the Settlement is not an admission that class action certification
7 is proper under the standards applied to contested certification motions and that this Agreement
8 will not be admissible in this or any other proceeding as evidence that either: (a) a class action
9 should be certified or (b) Defendant is liable to Plaintiff or any Class Member, other than
10 according to the Settlement's terms.

11 82. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
12 dispute that has arisen between them and to avoid the burden, expense and risk of continued
13 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, it
14 has violated any federal, state, or local law; violated any regulations or guidelines promulgated
15 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached
16 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
17 engaged in any other unlawful conduct with respect to their employees. Neither this Agreement,
18 nor any of its terms or provisions, nor any of the negotiations connected with it, shall be
19 construed as an admission or concession by Defendant of any such violations or failures to
20 comply with any applicable law. Except as necessary in a proceeding to enforce the terms of
21 this Agreement, this Agreement and its terms and provisions shall not be offered or received as
22 evidence in any action or proceeding to establish any liability or admission on the part of
23 Defendant or to establish the existence of any condition constituting a violation of, or a non-
24 compliance with, federal, state, local or other applicable law.

25 83. Captions. The captions and section numbers in this Agreement are inserted for
26 the reader's convenience, and in no way define, limit, construe or describe the scope or intent of
27 the provisions of this Agreement.

28 84. Waiver. No waiver of any condition or covenant contained in this Settlement

1 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be
2 considered to imply or constitute a further waiver by such party of the same or any other
3 condition, covenant, right or remedy.

4 85. Mutual Preparation. The Parties have had a full opportunity to negotiate the
5 terms and conditions of this Agreement. Accordingly, this Agreement will not be construed
6 more strictly against one Party than another merely by virtue of the fact that it may have been
7 prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
8 negotiations between the Parties, all Parties have contributed to the preparation of this
9 Settlement Agreement.

10 86. Representation By Counsel. The Parties acknowledge that they have been
11 represented by counsel throughout all negotiations that preceded the execution of this
12 Agreement, and that this Agreement has been executed with the consent and advice of counsel
13 and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there are no
14 liens on the Agreement.

15 87. All Terms Subject to Final Court Approval. All amounts and procedures
16 described in this Settlement Agreement herein will be subject to final Court approval.

17 88. Cooperation and Execution of Necessary Documents. The Parties agree to
18 cooperate to promote participation in the Settlement, and in seeking court approval of the
19 Settlement. The Parties and their counsel agree not to take any action to encourage any Class
20 Members to opt out of and/or object to the Settlement. Defendant agrees not to obtain any
21 settlement agreement waivers, Pick Up Stix agreements or arbitration agreements from any
22 Class Member prior to the funding of the Total Settlement Amount concerning claims released
23 via this Agreement, or enter into any arbitration agreement with any Class Member that covers
24 the claims released via this Agreement during the Settlement approval process prior to the
25 funding of the Total Settlement Amount and that the Parties will work in good faith to reach an
26 agreement approved by the Court.

27 89. Enforcement and Continuing Jurisdiction of the Court. To the extent consistent
28 with class action procedure, this Settlement Agreement shall be enforceable by the Court

1 pursuant to California Code of Civil Procedure § 664.6. The Court shall retain continuing
2 jurisdiction over this Action and over all Parties and Class Members, to the fullest extent to
3 enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any
4 claimed breaches of this Settlement Agreement. The Court may award reasonable attorneys'
5 fees and costs to the prevailing party in any motion or action taken and based on an alleged
6 violation of any material term of the Settlement Agreement.

7 90. Voluntary Agreement. The Parties acknowledge that they have entered into this
8 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion,
9 duress, or undue influence of any Party, and not in reliance on any promises, representations, or
10 statements made by the other Parties other than those contained in this Settlement Agreement.
11 Each of the Parties hereto expressly waives any right she/it might ever have to claim that this
12 Settlement Agreement was in any way induced by fraud.

13 91. Confidentiality. The Parties and their counsel agree to keep the terms of the
14 Settlement confidential until the filing of Plaintiff's Motion for Preliminary Approval. Plaintiff,
15 Class Counsel, Defendant and its counsel agree that they will not issue any press releases,
16 initiate any contact with the press, respond to any press inquiry or have any communication
17 with the press about the fact, amount or terms of the Settlement Agreement. Notwithstanding
18 anything in this provision, Plaintiff's Counsel can discuss the Settlement with Plaintiff and with
19 Class Members and can include it in all necessary Court and ancillary documents supporting the
20 resolution of this Action.

21 92. Binding Agreement. The Parties warrant that they understand and have full
22 authority to enter into this Settlement, and further intend that this Settlement Agreement will be
23 fully enforceable and binding on all Parties, and agree that it will be admissible and subject to
24 disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality
25 provisions that otherwise might apply under federal or state law.

26 ///

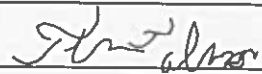
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1 APPROVED AS TO FORM AND CONTENT:

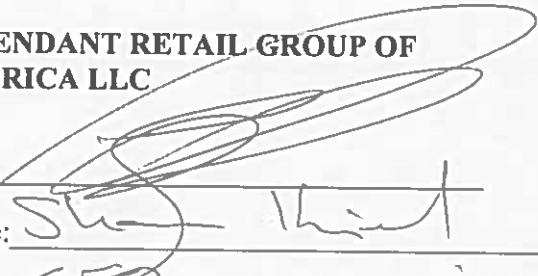
2 Dated: 06/15/2021

3 PLAINTIFF

4 By: 
5 Tina Talmoud

6
7 Dated: 06/21/2021


8 DEFENDANT RETAIL GROUP OF
9 AMERICA LLC

10 By: 
11 Name: Steve Thint
12 Title: CEO

13 APPROVED AS TO FORM ONLY:

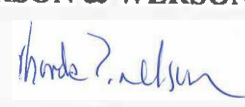
14
15 Dated: June 17, 2021

16 PROTECTION LAW GROUP, LLP

17 By: 
18 Heather Davis, Esq.
19 Amir Nayebdadash, Esq.
20 Attorneys for Plaintiff

21
22 Dated: June 21, 2021

23 SEVERSON & WERSON

24 By: 
25 Rhonda L. Nelson, Esq.
26 Attorneys for Defendant
27
28