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9 Attorneys for Plaintiff and the Certified Class

10 *[ADDITIONAL COUNSEL ON THE NEXT PAGE]*

11  
 12 **UNITED STATES DISTRICT COURT**  
 13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 ISAAC RODRIGUEZ, as an individual  
 15 and on behalf of all others similarly  
 16 situated,  
 Plaintiff,  
 17  
 v.  
 18 NIKE RETAIL SERVICES, INC., an  
 19 Oregon corporation; and DOES 1 through  
 20 50, inclusive,  
 Defendants.

Case No.: 5:14-CV-1508 BLF

**DECLARATION OF LARRY W. LEE IN  
 SUPPORT OF PLAINTIFF’S MOTION FOR  
 PRELIMINARY APPROVAL OF CLASS  
 ACTION SETTLEMENT**

Date: September 30, 2021  
 Time: 9:00 a.m.  
 Courtroom: 3, 5<sup>th</sup> Floor

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13 Attorneys for Plaintiff and the Certified Class  
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**DECLARATION OF LARRY W. LEE**

I, LARRY W. LEE, hereby declare and state as follows:

1. I am an attorney at law duly admitted to practice before all courts in the State of California and am a member of the law firm of the Diversity Law Group, P.C., one of the attorneys of record for Plaintiff Isaac Rodriguez (“Plaintiff”), in the above entitled action.

2. I have personal knowledge of the matters set forth herein, and if called upon as a witness to testify thereto, I could and would competently do so.

**INVESTIGATION AND DISCOVERY**

3. Plaintiff’s counsel conducted a very extensive investigation of the facts surrounding the claims in this action before filing suit, as well as conducted extensive discovery during the course of litigating and prosecuting this case. The Parties propounded and responded to multiple rounds of written discovery, including interrogatories and requests for production of documents. In connection with written discovery, Plaintiff also obtained and reviewed Defendant’s document production, including policy documents; class time and payroll records; work schedules; retail store information, pictures, and videos; and class contact information. Further, to obtain proper discovery responses, Plaintiff was forced to file letter briefs with the Magistrate and oppose Defendant’s request for this Court to review the Magistrate’s discovery orders.

4. In addition to written discovery, the Parties took numerous depositions. Plaintiff’s counsel defended Plaintiff’s deposition and took the depositions of Defendant’s FRCP 30(b)(6) Corporate Representatives on various topics that impacted class certification and liability. Additionally, over the course of litigation, Plaintiff also took over 25 depositions, including the depositions of Defendant’s managerial employees and Defendant’s experts and statistical analysts who Defendant engaged to perform video observations and in-person observations in connection with its time and motion study. The Parties have also conducted expert discovery, including deposing Plaintiff’s expert—Dr. Brian Kriegler, Ph.D.

5. Additionally, Plaintiff’s counsel extensively researched and litigated the substantive issues in this case at class certification, summary judgment, and on appeal with the Ninth Circuit, and to further ready the case for trial.



1           11.     On August 19, 2016, the Court granted Plaintiff's Motion for Class Certification  
2 and certified the following class: "All current and former non-exempt retail store employees of  
3 Defendant who worked in California during the period from February 25, 2010 to the present."  
4 As Defendant changed its security check policy to have security inspections performed on the  
5 clock effective November 15, 2019, to the Parties agreed to cut off class membership as of that  
6 date. Following remand from the Ninth Circuit, the Parties stipulated to amend the class  
7 certification order to expand class membership to November 15, 2019. Thus, pursuant to the  
8 Parties' stipulation, the certified class was expanded to include "all current and former non-  
9 exempt retail store employees of Defendant who worked in California during the period from  
10 February 25, 2010 to November 15, 2019."

11           12.     The Settlement Class include all current and former non-exempt/hourly retail store  
12 employees of Defendant who worked in California at any time from February 25, 2010 through  
13 and including November 15, 2019, which is the same class this Court has already certified. Based  
14 upon Defendant's records, the estimated number of unique Settlement Class Members is  
15 approximately 16,658. Thus, the Settlement Class is ascertainable based on Defendant's payroll  
16 records.

17           13.     Pursuant to the terms of the Settlement Agreement, the Net Settlement Amount  
18 (after deduction of attorneys' fees in the amount of up to Two Million Seven Hundred Fifty  
19 Thousand Dollars (\$2,750,000.00), costs up to Two Hundred Fifty Thousand Dollars  
20 (\$250,000.00), the Service Award in the amount of up to Fifteen Thousand Dollars (\$15,000.00),  
21 and costs of settlement administration in the amount of approximately Sixty-Nine Thousand  
22 Seven Hundred Fifty Dollars (\$69,750.00)) is approximately \$5,165,250.00.

23           14.     Based on the approximate 16,658 Settlement Class Members, each Settlement  
24 Class Member will receive a raw average of approximately \$320.07, after deduction for  
25 attorneys' fees, class representative enhancement payment, settlement administration costs, and  
26 litigation costs. The Settlement Agreement contemplates a base payment of \$10.00 to all  
27 Settlement Class Members who do not opt out, plus a *pro rata* share calculated based on the  
28 number of Shifts Worked (the total number of shifts a Settlement Class Member worked for  
Defendant as a non-exempt employee during February 25, 2010 through and including November

1 15, 2019). Thus, the raw average of \$320.07 includes this \$10.00 base payment.

2 15. The amounts that each individual could receive could be more or less than the raw  
3 average of \$320.07, depending on each respective class member's number of Shifts Worked, and  
4 the number of opt-outs received. Moreover, the remaining monies from uncashed checks will be  
5 redistributed to those Settlement Class Members who cashed their checks from the first  
6 distribution, and any remaining funds thereafter shall be paid to the *cy pres* beneficiary of the  
7 Settlement, Legal Aid at Work. The approximate amount each person will be entitled to will not  
8 be known until the class data is transferred to the Settlement Administrator for processing.

9 16. Legal Aid at Work is a non-profit legal services organization that provides legal  
10 assistance to low-income individuals for issues related to employment, including any wage and  
11 hour issues, like those presented in this case. Plaintiff's counsel does not have any relationship  
12 with Legal Aid at Work.

13 17. The settlement fund is non-reversionary, such that 100 percent of the Net  
14 Settlement Amount will be available for distribution to Settlement Class Members who do not  
15 opt-out. Moreover, the settlement does not require claim forms, and thus Settlement Class  
16 Members who do not opt-out will automatically receive a check.

17 18. The total settlement amount of \$8,250,000 would account for approximately **16.6**  
18 **percent** of the total maximum class-wide exposure of \$49,696,603.20.

19 19. Although Plaintiff's counsel believes that the certified claims are meritorious, they  
20 are experienced and realistic, and understand that the outcome of a trial, and the outcome of any  
21 appeals that would inevitably follow if the class prevailed at trial, are inherently uncertain in  
22 terms of both outcome and duration. Furthermore, Plaintiff's counsel is aware of the risks  
23 presented in litigating the *de minimis* defense. Plaintiff previously received an adverse ruling on  
24 summary judgment in this Court based on the *de minimis* doctrine and there is a risk that the  
25 Court would make a similar ruling against Plaintiff at trial. In light of the risks, the fact that the  
26 Court has not yet ruled on liability, and the uncertainty of damages to be recovered for the class,  
27 Plaintiff submits that this settlement is fair, adequate and reasonable,

28 20. Based on my own independent investigation and evaluation, I am of the opinion  
that settlement for the consideration and on the terms set forth in their Settlement Agreement is

1 fair, reasonable, and adequate, and is in the best interests of the class and Defendant in light of all  
2 known facts and circumstances and the expenses and risks inherent in litigation.

3 **SETTLEMENT ADMINISTRATION**

4 21. My office obtained three quotes for settlement administration from (1) Phoenix  
5 Settlement Administrators, (2) Rust Consulting, and (3) ILYM Group, Inc. Administration. The  
6 quotes included notice distribution in English and Spanish, mailing and re-mailing of notices, no  
7 claim forms, establishing a toll free number for class members, maintenance of a website to  
8 access documents, processing opt-outs and objections, calculation of disbursements and  
9 distribution of checks to Settlement Class Members, Class Counsel, and *cy pres* beneficiary, and  
10 re-distribution of uncashed checks. Given that Phoenix Settlement Administrators provided the  
11 lowest quote, the Parties subsequently agreed to use Phoenix Settlement Administrators. Further,  
12 notice by U.S. mail along with the National Change of Address search and skip trace for  
13 undeliverable mail has been approved by numerous courts and, therefore, the Parties agreed to  
14 notice by U.S. mail.

15 22. Pursuant to the quote Plaintiff's counsel received from Phoenix Settlement  
16 Administrators, settlement administration costs are estimated not to exceed \$69,750. Plaintiff's  
17 counsel believes that this amount is reasonable in relation to the value of the settlement, as the  
18 administration costs account for only 0.85% of the Class Settlement Amount.

19 23. A list of the ten most recent cases over the last two years in which Phoenix  
20 Settlement Administrators was appointed as the settlement administrator in cases involving my  
21 firm are as follows:

- 22 A. *Chavez v. Converse, Inc.*, Case No. 15:cv:03746-NC (United States District  
23 Court for the Northern District of California)
- 24 B. *Mendez v. Falcon Trading Company*, Case No. 19CV004512 (Monterey  
25 County Superior Court)
- 26 C. *Khan v. Amy's Kitchen*, Case No. SCV-266127, Sonoma County Superior  
27 Court
- 28 D. *Cardona v. Heart Hospital of BK, LLC*, Case No. BCV-19-102449-TSC,  
Kern County Superior Court
- E. *Ser Lao v. H & M Hennes & Mauritz, L.P.*, Case No. 5:16-cv-333 EJD  
(United States District Court for the Northern District of California)
- F. *Javier Mendoza v. National Vision, Inc.* Case No. 19-cv-01485-SVK  
United States District Court for the Northern District of California)

- 1 G. *Sarahi Lopez v. King Taco Restaurant, Inc.*, Case No. BC664175 (Los Angeles County)
- 2 H. *Estella Hughes v. Lincare Inc.*, Case No. M124764 (Monterey County)
- 3 I. *Peterson v. Redwood Memorial Hospital of Fortuna, et al.*, Case No. DR170615 (Humboldt county)
- 4 J. *Servando Perez v. Standard Drywall Inc.*, Case No. RG15761142 (Alameda County)

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6 **ATTORNEY QUALIFICATIONS AND EXPERIENCE**

7 24. Plaintiff and Plaintiff’s counsel are adequate representatives in that they have no  
8 conflicts with the class and will adequately represent the class.

9 25. I am one of the primary attorneys on this matter. My qualifications are as follows:  
10 I received my JD from Arizona State University College of Law in 2003. During law school, I  
11 was a summer associate at the law firm of Brobeck, Phleger & Harrison. I graduated cum laude  
12 from Arizona State University College of Law in the top 10% of my class. While I was in law  
13 school, I was the Associate Managing Editor of the Arizona State University College of Law,  
14 Law Journal.

15 26. For more than one and one half years I practiced law as an associate at the Los  
16 Angeles County offices of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., a national  
17 employment defense law firm that represents a significant number of Fortune 50 companies,  
18 including may actions involving wage and hour matters.

19 27. My primary practice is employment law. I have handled a number of class actions  
20 and individual actions, on both plaintiff and defense sides. I have a practice that encompasses  
21 cases in the Los Angeles Superior courts, the Orange County Superior Courts, the Los Angeles  
22 County Superior Courts, the San Diego County Superior courts, and the United States District  
23 Courts for the Central, Northern and Eastern Districts of California.

24 28. I have been approved as Class Counsel in a number of class actions, including but  
25 not limited to *Chan-Lanier v. Citibank* (Case No. CGC-050445143); *Hernandez v. CVS*  
26 *Pharmacy, Inc.* (Judicial Council Coordination Proceeding No. 4539), *Tse v. Best Buy Co, Inc.*  
27 (Case Number BC 393717), *Orgeta v. AIG, Inc* (Case Number CV 06—196-RSWL (PJWx)), and  
28 *Castro v. UPS Freight, Inc.* (Case Number CV 08-4898 ODW (CWx)) and by this Court in



1 *Chavez v. PVH* (Case No. C 13-01797 LHK).

2 29. In addition, I was certified as class counsel by the United States District Court,  
 3 Central District of California in the case of *Abdullah v. U.S. Security* (Case Number CV 09-09554  
 4 GHK), *Avilez v. Pinkerton Government Services, Inc.* (Case Number SACV 11-0493-DOC),  
 5 *Dynabursky v. Allied Barton Security Services* (Case Number SACV 12-02210 JST); and *Pace v.*  
 6 *Petsmart, Inc.* (Case Number SACV 13-500-DOC); by the Northern District of California in the  
 7 cases of *Harris v. Vector Marketing Corp.*, (Case Number CV 08 5198 EMC), and *Lemus et al. v.*  
 8 *H&R Block Enterprises, LLC* (Case Number CV-09-03179-SI); and by the Superior Court of  
 9 California, Orange County in the cases of *De la Cruz v. Abercrombie & Fitch Co. et al.* (Case  
 10 Number 30-2007-00036240) and *Wu v. General Nutrition Corporation* (Case Number 30-2012-  
 11 00593759), all as part of the Courts' orders granting class certification pursuant to Rule 23 of the  
 12 FRCP and California Code of Civil Procedure § 382.

13 30. On December 1, 2020, I was granted final approval as class counsel by the United  
 14 States District Court, Northern District of California in a comparable class action settlement, *Ser*  
 15 *Lao v. H & M Hennes & Mauritz, L.P.* (Case Number 5:16-cv-333 EJD). The *Lao* settlement  
 16 similarly involved issues relating to time spent waiting and undergoing security checks that were  
 17 conducted off-the-clock, as well as issues relating to the defendant's issuance of final wages via  
 18 pay cards. Similarly, the *Lao* settlement was also non-reversionary and did not require the use of  
 19 any claim forms. The following chart details the information regarding the *Lao* settlement:

• Total settlement fund	\$3.8 million
• Total number of class members	13,472
• Method of notice distribution	First Class U.S. mail, postage prepaid
• Estimated Average recovery per class member	\$164.17
• Administrative costs	\$41,750.00
• Attorneys' fees	\$1,266,666.67

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• Costs	\$190,437.10
• Class representative enhancement	\$15,000

31. To date, Class Counsel estimates that they have incurred over 3,500 hours in the prosecution of this matter, with an average hourly rate of approximately \$650.00 per hour.

32. To date, Class Counsel has incurred costs in the approximate amount of \$180,000.00. These costs are all litigation-related costs, which include filing fees, deposition costs, mediation costs, class notice costs, expert fees, and travel expenses.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 23, 2021, at Los Angeles, California.

/s/ Larry W. Lee  
Larry W. Lee

# EXHIBIT A

1 ROBERT G. HULTENG, Bar No. 071293  
 2 [rhulteng@littler.com](mailto:rhulteng@littler.com)  
 3 MEL M.C. COLE, Bar No. 293265  
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11 Attorneys for Defendant  
 NIKE RETAIL SERVICES, INC.

12 ***[ADDITIONAL COUNSEL ON NEXT PAGE]***

13 **UNITED STATES DISTRICT COURT**  
 14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16 ISAAC RODRIGUEZ, as an individual  
 17 and on behalf of all others similarly  
 situated,

18 Plaintiff,

19 v.

20 NIKE RETAIL SERVICES, INC., an  
 21 Oregon corporation; and DOES 1 through  
 22 50, inclusive,

23 Defendants.

Case No.: 5:14-CV-1508 BLF

**CLASS ACTION SETTLEMENT  
 AGREEMENT**

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16 Attorneys for Plaintiff and the Class  
ISAAC RODRIGUEZ  
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1 This Class Action Settlement Agreement and Release, including Exhibits A and B hereto  
2 (“Settlement Agreement” or “Agreement”), is made and entered into by, between, and among Plaintiff  
3 Isaac Rodriguez (“Plaintiff”) on behalf of himself and the Settlement Class (as defined below), on the one  
4 hand, and Defendant Nike Retail Services, Inc. (“Defendant”) on the other hand. Plaintiff and Defendant  
5 (collectively, the “Parties”) enter into this Agreement to effect a full and final settlement and preclusive  
6 judgment resolving all claims brought or that could have been brought against Defendant in *Issac*  
7 *Rodriguez v. Nike Retail Services, Inc.*, Case No. 5:14-cv-1508-BLF, filed in the United States District  
8 Court, Northern District of California Court on April 1, 2014, all amended complaints filed thereafter (the  
9 “Action”), and all claims based on or reasonably related thereto. This Agreement is intended to fully and  
10 finally compromise, resolve, discharge, and settle the Released Claims, as defined and on the terms set  
11 forth below, and to the full extent reflected herein, subject to the approval of the Court.

## 12 I. RECITALS

13 This Agreement is made in consideration of the following facts:

14 1.1 WHEREAS, on February 25, 2014, Plaintiff Issac Rodriguez filed a class action complaint  
15 against Defendant in the Superior Court of California for the County of Santa Clara, on behalf of himself  
16 and a proposed class consisting of “all current and former non-exempt retail store employees of  
17 Defendants who worked in California during the period from February 25, 2010 to the present.” On April  
18 1, 2014, the Action was removed to the United States District Court for the Northern District of California,  
19 Case No. 5:14-cv-1508-BLF. Plaintiff subsequently filed a First Amended Complaint on December 8,  
20 2014, alleging the following three wage-related causes of action: (1) violation of Cal. Labor Code §§ 1194,  
21 1197 (unpaid minimum wages); (2) violation of Cal. Labor Code §§ 510 and 1194 (unpaid overtime  
22 wages); and (3) violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* (unfair business practices). Plaintiff  
23 also sought waiting time penalties under Cal. Labor Code § 203 as part of his prayer for relief. On August  
24 19, 2016, the Court granted Plaintiff’s motion for class certification. Defendant subsequently moved for  
25 summary judgment against the certified class based on the *de minimis* doctrine. On September 12, 2017,  
26 the District Court granted Defendant’s motion summary judgment as to all of Plaintiff’s causes of action.  
27 Plaintiff appealed, and on June 28, 2019, the U.S. Court of Appeals for the Ninth Circuit reversed and  
28 remanded the District Court’s decision. On July 9, 2020, the Court granted a stipulation by the Parties to

1 amend the class certification order to include the following class: “All current and former non-exempt  
2 retail store employees of Defendant who worked in California during the period from February 25, 2010  
3 to November 15, 2019.”

4 1.2 WHEREAS, Defendant denies the allegations in the Action; denies that it has engaged in  
5 any wrongdoing; denies that Plaintiff’s allegations constitute valid claims; and states that it is entering  
6 into this Settlement Agreement solely to eliminate the burden, expense, and delay of further litigation, and  
7 on the express conditions that (a) if for any reason the Settlement is not finalized according to the terms  
8 of this Agreement, the Settlement and the documents generated as a result of the Settlement shall not be  
9 usable for any purpose in the Action, and (b) this Settlement and the documents generated as a result of  
10 the Settlement are not admissible or usable in any other civil or administrative proceeding or any  
11 arbitration, except to the extent necessary to enforce this Settlement and the orders, judgment and  
12 agreements arising from this Settlement;

13 1.3 WHEREAS, a *bona fide* dispute exists as to whether any amount of wages or penalties are  
14 due from Defendant to the Plaintiff or any Settlement Class Member;

15 1.4 WHEREAS, while litigating the Action, the Parties engaged in substantial discovery,  
16 including depositions of Plaintiff, Defendant’s FRCP 30(b)(6) witnesses, numerous class members, expert  
17 depositions, expert discovery, document requests, and interrogatories propounded by both Plaintiff and  
18 Defendant, and to which both responded and produced documents, and all parties provided testimony;

19 1.5 WHEREAS, while litigating the Action, the Parties engaged in substantial motion practice,  
20 including class certification, dispositive motions for summary judgment and/or adjudication and appellate  
21 briefings and oral argument by both Plaintiff and Defendant, and to which both responded;

22 1.6 WHEREAS, in preparation for mediation, the Parties also engaged in informal discovery,  
23 exchanging information, and reviewing and analyzing extensive data made available by Defendant, which  
24 enabled Plaintiff, his expert, and the mediator to thoroughly evaluate Plaintiff’s claims and the claims of  
25 the putative class, and the likely outcomes, risks and expense of pursuing litigation;

26 1.7 WHEREAS, the Parties attended a virtual, face-to-face mediation session with experienced  
27 professional mediator Michael Loeb, Esq., where the Parties discussed settlement terms at length with the  
28

1 mediator and continued discussions directly with the mediator for some time after, before agreeing to the  
2 terms of this arm's-length Settlement;

3       1.8     WHEREAS, as a result of the mediation and discussions thereafter, Plaintiff and Class  
4 Counsel believe that the Settlement provides a favorable recovery for the Settlement Class, based on the  
5 claims asserted, the evidence developed, and the damages that might be proven against Defendant in the  
6 Action. Plaintiff and Class Counsel further recognize and acknowledge the expense and length of  
7 continued proceedings necessary to prosecute the Action against Defendant through trial and appeals.  
8 They also have considered the uncertain outcome and the risk of any litigation, especially in complex  
9 litigation such as the Action, as well as the difficulties and delays inherent in any such litigation. They  
10 are also mindful of the inherent challenges of proof and the strength of the defenses to the alleged claims,  
11 and therefore believe that it is desirable that the Released Claims be fully and finally compromised, settled,  
12 and resolved with prejudice as set forth herein, subject to the approval of the Court;

13       1.9     WHEREAS, Plaintiff and Class Counsel, based on their own independent investigations  
14 and evaluations, have examined the benefits to be obtained under the terms of this Settlement Agreement,  
15 have considered the claims of Plaintiff, the claims of the average Settlement Class Member, the risks  
16 associated with the continued prosecution of the Action, and the likelihood of success on the merits of the  
17 Action, and believe that, after considering all the circumstances, including the uncertainties surrounding  
18 the risk of further litigation and the defenses that Defendant has asserted and could assert, the proposed  
19 Settlement set forth in this Agreement is fair, reasonable, adequate, in the best interests of Plaintiff and  
20 the Settlement Class, and confers substantial benefits upon the Settlement Class;

21       1.10    WHEREAS, Plaintiff warrants and represents that he is effecting this Settlement and  
22 executing this Agreement after having received full legal advice as to his rights and has had the  
23 opportunity to obtain independent counsel to review this Agreement;

24       1.11    WHEREAS, the Parties further agree that the Agreement, the fact of this Settlement, and  
25 any of the terms of this Agreement, and any documents filed in connection with the Settlement shall not  
26 constitute, or be offered, received, claimed, construed, or deemed as, an admission, finding, or evidence  
27 of: (i) any wrongdoing, (ii) any violation of any statute or law, (iii) any liability on the claims or allegations  
28 in the Action on the part of any Released Parties, or (iv) the propriety of certifying a litigation class in the



1 Action or any other proceeding; and shall not be used by any person for any purpose whatsoever in any  
2 legal proceeding, including but not limited to arbitrations, and/or other civil and/or administrative  
3 proceedings, other than a proceeding to enforce the terms of the Agreement;

4 1.12 WHEREAS, the Parties desire to compromise and settle all issues and claims that have  
5 been, could have been, or should have been brought against Defendant or related persons in the operative  
6 First Amended Complaint;

7 1.13 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND  
8 AGREED, by Plaintiff for himself and on behalf of the Settlement Class, and by Defendant that, subject  
9 to the approval of the Court, the Action shall be settled, compromised, and dismissed, on the merits and  
10 with prejudice, and the Released Claims shall be finally and fully compromised, settled and dismissed as  
11 to the Released Parties, in the manner and upon the terms and conditions hereafter set forth in this  
12 Agreement.

## 13 **II. DEFINITIONS**

14 Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings  
15 set forth below:

16 2.1 “Class Counsel” means Diversity Law Group, A Professional Corporation, Polaris Law  
17 Group LLP, and Hyun Legal, APC.

18 2.2 “Class Counsel Award” means (i) the attorneys’ fees for Class Counsel’s litigation and  
19 resolution of the Action, and all claims resolved by this Settlement, as awarded by the Court, which will  
20 be paid exclusively from the Total Settlement Amount, and may not exceed one-third (1/3) of the Total  
21 Settlement Amount (equaling \$2,750,000), and (ii) all expenses and costs incurred by Class Counsel in  
22 litigation and resolution of the Action, and all claims resolved by this Settlement, not to exceed \$250,000,  
23 which will be paid exclusively from the Total Settlement Amount.

24 2.3 “Class Information” means information regarding Settlement Class Members that  
25 Defendant will in good faith compile from its records and provide to the Settlement Administrator. Class  
26 Information shall be provided in a Microsoft Excel spreadsheet and shall include, if possible, for each  
27 Settlement Class Member: full name, last known mailing address, last four digits of the social security  
28 number, and Shifts Worked. Because Settlement Class Members’ private information is included in the

1 Class Information, Class Counsel and the Settlement Administrator shall maintain any Class Information  
2 received in confidence and shall use and disclose Class Information only for purposes of this Settlement  
3 and for no other purpose, and pursuant to the restrictions as described in Paragraph 5.4. Further, within  
4 the Settlement Administrator's operations, access shall be limited to those personnel with a need to use  
5 the Class Information as part of the administration of the Settlement.

6 2.4 "Class Notice" means the notice of class action settlement to be provided to Settlement  
7 Class Members, without material variation from the relevant portion of Exhibit A.

8 2.5 "Court" means United States District Court, Northern District of California.

9 2.6 "Effective Date" means one (1) day after which both of the following events have occurred:  
10 (i) the Court's Final Approval order has been entered and (ii) the Court's Final Approval order and  
11 Judgment have become Final.

12 2.7 "Exclusion/Written Objection Deadline" means the final date by which a Settlement Class  
13 Member may either (i) submit a written objection to any aspect of the Settlement, or (ii) submit a written  
14 request to be excluded from the Settlement. The Exclusion/Written Objection Deadline shall be forty-five  
15 (45) days after the Notice Date, and shall be specifically identified and set forth in the Preliminary  
16 Approval Order and the Class Notice.

17 2.8 "Final" when referring to a judgment or order, means that (i) the judgment is a final,  
18 appealable judgment; and (ii) either (a) no appeal has been taken from the judgment as of the date on  
19 which all times to appeal therefrom have expired, or (b) an appeal or other review proceeding of the  
20 judgment having been commenced, such appeal or other review is finally concluded and no longer is  
21 subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for re-  
22 hearing en banc, petitions for writ of certiorari, or otherwise, and such appeal or other review has been  
23 finally resolved in such manner that affirms the judgment order in its entirety, and remittitur has been  
24 issued.

25 2.9 "Final Approval" means the Court's entry of a Final Approval order finally approving this  
26 Settlement.

27 2.10 "Final Approval Hearing" means the hearing at or after which the Court will make a final  
28 decision as to whether the Settlement is fair, reasonable, and adequate, and therefore, finally approved by

1 the Court.

2           2.11 “Individual Settlement Payment” means the amount payable to each Settlement Class  
3 Member from the Total Settlement Amount. In the case of Settlement Class Members who do not opt out,  
4 ten percent (10%) of their Individual Settlement Payment shall be issued as wages, less applicable  
5 withholdings and for which an IRS Form W-2 shall issue if required, and ten percent (10%) of their  
6 Individual Settlement Payment shall be issued as interest, for which an IRS Form 1099-INT shall issue if  
7 required, and eighty percent (80%) of their Individual Settlement Payment shall be issued as penalties, for  
8 which an IRS Form 1099-MISC shall issue if required. The Individual Settlement Payment(s) shall be  
9 calculated pursuant to Section V herein.

10           2.12 “Judgment” means the judgment to be entered in the Action on Final Approval of this  
11 Settlement.

12           2.13 “Legally Authorized Representatives” means an administrator/administratrix, personal  
13 representative, or executor/executrix of a deceased Settlement Class Member’s estate; a guardian,  
14 conservator, or next friend of an incapacitated Settlement Class Member; or any other legally appointed  
15 person responsible for handling the business affairs of a Settlement Class Member.

16           2.14 “Named Plaintiff’s General Released Claims” means any and all past, present, and future  
17 claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of any  
18 nature and description whatsoever, known or unknown, existing or potential, recognized now or hereafter,  
19 expected or unexpected, pursuant to any theory of recovery (including but not limited to those based in  
20 contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or regulation), and  
21 for claims for compensatory, consequential, punitive or exemplary damages, statutory damages, penalties,  
22 interest, attorneys’ fees, costs or disbursements, against the Released Parties, including unknown claims  
23 covered by California Civil Code section 1542, as quoted below in Paragraph 9.4, by Plaintiff, arising  
24 during the period from the beginning of the Plaintiff’s first interaction with any defendant to the date on  
25 which the Court enters the order of Final Approval of this Settlement, for any type of relief that can be  
26 released as a matter of law, including, without limitation, claims for wages, damages, unpaid costs,  
27 penalties (including civil and waiting time penalties), liquidated damages, punitive damages, interest,  
28 attorneys’ fees, litigation costs, restitution, or injunctive, declaratory or equitable relief, with the exception

1 of any claims which cannot be released as a matter of law. Plaintiff will generally release all known and  
2 unknown claims against the Released Parties, and waive the application of section 1542 of the California  
3 Civil Code. The claims released pursuant to this paragraph include but are not limited to the Settlement  
4 Class Members' Released Claims, as well as any other claims under any provision of the Fair Labor  
5 Standards Act, the California Labor Code, the California Code of Regulations, or any applicable California  
6 Industrial Welfare Commission Wage Order(s), and claims under state or federal discrimination statutes,  
7 including, without limitation the California Fair Employment and Housing Act, California Government  
8 Code section 12940 *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42  
9 U.S.C. § 2000 *et seq.*; the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; the Age  
10 Discrimination in Employment Act of 1967, as amended; the Employee Retirement Income Security Act  
11 of 1974, 29 U.S.C. § 1001 *et seq.*; and all of their implementing regulations and interpretive guidelines.

12 2.15 "Notice Date" means the date of the initial distribution of the Class Notice to Settlement  
13 Class Members, as set forth in Section VI.

14 2.16 "Opt Out List" means the Court-approved list of all persons who timely and properly  
15 request exclusion from the Settlement Class.

16 2.17 "Plaintiff" means Isaac Rodriguez.

17 2.18 "Plan of Allocation" means the plan for allocating the Total Settlement Amount between  
18 and among Settlement Class Members as approved by the Court.

19 2.19 "Preliminary Approval Date" means the date that the Court enters the Preliminary  
20 Approval Order and thus: (i) preliminarily approves the Settlement, and the exhibits thereto, and (ii) enters  
21 an order providing for notice to the Settlement Class, an opportunity to opt out of the Settlement Class, an  
22 opportunity to submit timely and proper objections to the Settlement, and setting a hearing on the fairness  
23 of the terms of Settlement, including approval of the Class Counsel Award.

24 2.20 "Preliminary Approval Order" means the order that Plaintiff and Defendant will seek from  
25 the Court, without material variation from Exhibit B. Entry of the Preliminary Approval Order shall  
26 constitute preliminary approval of the Settlement Agreement.

27 2.21 "Released Claims" means (i) Settlement Class Members' Released Claims and (ii) Named  
28 Plaintiff's General Released Claims.

1           2.22 “Released Parties” means Defendant and its past, present and future divisions, affiliates,  
2 predecessors, successors, assigns, shareholders, owners, officers, directors, employees, agents, trustees,  
3 attorneys, representatives, administrators, fiduciaries, beneficiaries, subrogees, executors, partners,  
4 parents, subsidiaries, and privies.

5           2.23 “Release Period” means the period from which the Settlement Class Members’ Released  
6 Claims are released: from February 25, 2010 through and including December 31, 2019 (the “Release  
7 Period”). The Release Period is deliberately extended beyond the potential dates of employment for  
8 Settlement Class Members.

9           2.24 “Service Award” means the amounts approved by the Court to be paid to Plaintiff, in  
10 addition to Plaintiff’s Individual Settlement Payment, in recognition of his efforts in coming forward as  
11 named Plaintiff, sitting for his deposition, communicating with Class Counsel regarding the claims in this  
12 Lawsuit, being involved in the litigation of this Lawsuit, including reviewing and signing pleadings and  
13 discovery responses, and as consideration for a full, general, and comprehensive release of the Named  
14 Plaintiff’s General Released Claims. The Service Award amount payable to Plaintiff shall come  
15 exclusively from the Total Settlement Amount and is not to exceed \$15,000.

16           2.25 “Settlement” means the settlement of the Action between Plaintiff and Defendant, as set  
17 forth in this Settlement Agreement.

18           2.26 “Settlement Administrator” means Phoenix Settlement Administrators.

19           2.27 “Settlement Administrator Expenses” means the amount to be paid to the Settlement  
20 Administrator exclusively from the Total Settlement Amount, including the total costs, expenses, and fees  
21 of the Settlement Administrator. The amount is not to exceed \$69,750.

22           2.28 “Settlement Class” means all current and former non-exempt/hourly retail store employees  
23 of Defendant who worked in California at any time from February 25, 2010 through and including  
24 November 15, 2019. Defendant represents that the Settlement Class is comprised of approximately 16,658  
25 unique individuals.

26           2.29 “Settlement Class Member” means any member of the Settlement Class.

27           2.30 “Settlement Class Members’ Released Claims” means any and all claims under the wage  
28 and hour laws and regulations of the state of California that were or could have been asserted based on

1 the facts pleaded in the Lawsuit or any amendments thereto, including but not limited to, all statutes  
2 mentioned in the Lawsuit and corresponding provisions of the relevant California Wage Order, including  
3 but not limited to California Labor Code sections 201, 202, 203, 204, 510, 1194, 1197, 1197.1, the and  
4 California Business and Professions Code sections 17200, *et seq.*, as related to claims for: overtime;  
5 minimum wage; waiting time penalties; restitution; statutory penalties; interest; injunctive relief; and  
6 attorneys' fees, costs, and expenses. The Parties note that Private Attorney General Act (PAGA) claims  
7 and meal and rest break claims under Labor Code Sections 226.7 and 512 are not part of the Lawsuit or  
8 this Settlement. The "Settlement Class Members' Released Claims" are released from February 25, 2010  
9 through and including December 31, 2019 (the "Release Period").

10 2.31 "Shifts Worked" means the best approximation of the total number of shifts a Settlement  
11 Class Member worked for Defendant as a non-exempt/hourly employee from February 25, 2010 through  
12 and including November 15, 2019, based on the records and data maintained by Defendant.

13 2.32 "Total Settlement Amount" means Eight Million Two Hundred Fifty Thousand Dollars  
14 (\$8,250,000), for payment of all claims, which is the maximum amount that Defendant is obligated to pay  
15 under this Settlement Agreement under any circumstances in order to resolve and settle the Action, subject  
16 to Court approval, with the sole exceptions of (1) the employer-side employment taxes for the wage  
17 portion of the settlement, which shall be paid by Defendant in addition to the Total Settlement Amount,  
18 and (2) if the number of Settlement Class Members exceeds 16,658 by more than 5% (17,491), in which  
19 case Defendant shall contribute a pro rata percentage<sup>1</sup> to the Total Settlement Amount. The Total  
20 Settlement Amount includes all costs and fees, including, but not limited to, the Class Counsel Award,  
21 Settlement Administrator Expenses, escrow costs and expenses, Service Awards, interest, and taxes and  
22 tax expenses (except employer-side employment taxes).

23 2.33 "Void Date" means the date by which any checks issued to Settlement Class Members shall  
24 become void, *i.e.* on the 181st day after mailing.

25  
26  
27 <sup>1</sup> In other words, if the total number of Settlement Class Members is 18,323 – 10% more than 16,658 –  
28 then Defendant must contribute an additional \$825,000 – 10% of \$8,250,000 – to the Total Settlement  
Amount.



1 **III. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT FOR**  
2 **PRELIMINARY AND FINAL APPROVAL**

3 3.1 Upon execution of this Settlement Agreement, Plaintiff shall submit to the Court a motion  
4 for preliminary approval of the Settlement. The motion for preliminary approval shall include a proposed  
5 plan for sending of the Class Notice to Settlement Class Members within forty-five (45) days after the  
6 Preliminary Approval Date (the Notice Date), and establishing a period of forty-five (45) days from the  
7 Notice Date within which any Settlement Class Member may (i) request exclusion from the Settlement  
8 Class, (ii) object to the proposed Settlement, or (iii) object to Class Counsel's request for the Class Counsel  
9 Award and for the Service Award to the Plaintiff (the Exclusion/Written Objection Deadline).

10 3.2 On August 19, 2016, the Court entered an Order certifying a class of all current and former  
11 non-exempt retail store employees of Defendant who worked in California during the period of February  
12 25, 2010 to the present. On July 9, 2020, the Court granted a stipulation by the Parties to amend the class  
13 certification order to encompass the following class: "All current and former non-exempt retail store  
14 employees of Defendant who worked in California during the period from February 25, 2010 to November  
15 15, 2019."

16 3.3 Class Counsel agrees to keep any and all data and other employment and personal  
17 information related to the Settlement Class in the strictest confidence, and shall not disclose that data.  
18 Any such data provided to Class Counsel shall be treated as privileged mediation communications under  
19 Federal Rule of Evidence 408 and designated "Confidential—Attorneys' Eyes Only," except to the extent  
20 absolutely necessary (as agreed between the Parties) for approval of the Settlement. Class Counsel agrees  
21 to submit such necessary data and information to the Court under seal to the extent appropriate under  
22 governing law. Nevertheless, should the Court not grant final approval of this settlement, the Parties  
23 understand and agree that they will meet and confer regarding use of the data in litigation, including for  
24 purposes of trial.

25 3.4 The Parties stipulate to the form of, and agree to submit to the Court for its consideration  
26 this Settlement Agreement, and the following Exhibits to this Settlement Agreement: Class Notice (the  
27 relevant portion of Exhibit A); and [Proposed] Preliminary Approval Order (Exhibit B).  
28

1           3.5     Solely for purposes of implementing this Agreement and effectuating the proposed  
2 Settlement, the Parties agree and stipulate that:

3           3.5.1   The Court may enter the Preliminary Approval Order, without material variation  
4 from Exhibit B, preliminarily approving the Settlement and this Agreement. Among other things, the  
5 Preliminary Approval Order shall approve the Plaintiff as the class representative of the Settlement Class,  
6 appoint Class Counsel to represent the Settlement Class, and appoint the Settlement Administrator;  
7 approve the Class Notice, and the class notice plan embodied in the Settlement Agreement, and approve  
8 them as consistent with Federal Rule of Civil Procedure 23(c)(2) and due process; and set out the  
9 requirements for disputing the information upon which Settlement Class Members' share of the Settlement  
10 will be calculated, objecting to the Settlement, excluding Settlement Class Members who timely and  
11 properly request to be excluded from the Settlement Class, all as provided in this Agreement.

12           3.6     Within 10 days of the Preliminary Approval Date, Defendant will provide Class Action  
13 Fairness Act ("CAFA") notices to the appropriate federal officials and state officials in each of the states  
14 in which each Settlement Class Member resides, pursuant to 28 U.S.C. § 1715.

15           3.7     At the Final Approval Hearing, Plaintiff shall request entry of a Final Approval order and  
16 a Judgment, to be agreed upon by the Parties, the entry of which is a material condition of this Settlement  
17 and that, among other things:

18           3.7.1   Finally approves the Settlement as fair, reasonable, and adequate and directs its  
19 consummation pursuant to the terms of the Settlement Agreement;

20           3.7.2   Finds that Class Counsel and Plaintiff adequately represented the Settlement Class  
21 for the purpose of entering into and implementing the Agreement;

22           3.7.3   Re-confirms the appointment of the Settlement Administrator and finds that the  
23 Settlement Administrator has fulfilled its duties under the Settlement to date;

24           3.7.4   Finds that the Class Notice (i) constituted the best practicable notice; (ii) constituted  
25 notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of  
26 the pendency of the Action, and their right to exclude themselves from or object to the proposed settlement  
27 and to appear at the Final Approval Hearing; (iii) was reasonable and constituted due, adequate, and  
28



1 sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of Federal  
2 Rule of Civil Procedure 23(c)(2), due process, and any other applicable rules or law;

3 3.7.5 Approves the Opt-Out List and determines that the Opt-Out List is a complete list  
4 of all Settlement Class Members who have timely and properly requested exclusion from the Settlement  
5 Class and, accordingly, shall neither share in nor be bound by the Final Approval order and Judgment;

6 3.7.6 Directs that the Final Approval order and Judgment of dismissal shall be final and  
7 entered forthwith;

8 3.7.7 Without affecting the finality of the Final Approval order and Judgment, directs  
9 that the Court retains continuing jurisdiction over Plaintiff, the Settlement Class, and Defendant as to all  
10 matters concerning the administration, consummation, and enforcement of this Settlement Agreement;

11 3.7.8 Adjudges that, as of the Final Approval Date, Plaintiff, and all Settlement Class  
12 Members who have not been excluded from the Settlement Class as provided in the Opt-Out List approved  
13 by the Court, and their Legally Authorized Representatives, heirs, estates, trustees, executors,  
14 administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone  
15 claiming through them or acting or purporting to act for them or on their behalf, regardless of whether  
16 they have received actual notice of the proposed Settlement, have conclusively compromised, settled,  
17 discharged, and released the Named Plaintiff's General Released Claims (in the case of Plaintiff) and  
18 Settlement Class Members' Released Claims (in the case of the Settlement Class Members) against  
19 Defendant and the Released Parties, and are bound by the provisions of this Agreement;

20 3.7.9 Declares this Agreement and the Final Approval order and Judgment to be binding  
21 on, and have res judicata and preclusive effect as to all pending and future lawsuits or other proceedings:  
22 (i) that encompass the Named Plaintiff's General Released Claims and that are maintained by or on behalf  
23 of Plaintiff and/or his Legally Authorized Representatives, heirs, estates, trustees, executors,  
24 administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone  
25 claiming through them or acting or purporting to act for them or on their behalf, and (ii) that encompass  
26 the Settlement Class Members' Released Claims and that are maintained by or on behalf of any Settlement  
27 Class Member who has not been excluded from the Settlement Class as provided in the Opt-Out List  
28 approved by the Court and/or their Legally Authorized Representatives, heirs, estates, trustees, executors,

1 administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone  
2 claiming through them or acting or purporting to act for them or on their behalf, regardless of whether the  
3 Settlement Class Member previously initiated or subsequently initiates individual litigation or other  
4 proceedings encompassed by the Settlement Class Members' Released Claims, and even if such  
5 Settlement Class Member never received actual notice of the Action or this proposed Settlement;

6 3.7.10 Determines that the Agreement and the Settlement provided for herein, and any  
7 proceedings taken pursuant thereto, are not, and should not in any event be offered, received, or construed  
8 as evidence of, a presumption, concession, or an admission by any Party of liability or non-liability or of  
9 the certifiability or non-certifiability of a litigation class, or of any misrepresentation or omission in any  
10 statement or written document approved or made by any Party; provided, however, that reference may be  
11 made to this Agreement and the Settlement provided for herein in such proceedings as may be necessary  
12 to effectuate the provisions of this Agreement, as further set forth in this Agreement;

13 3.7.11 Orders that the preliminary and final approval of the Settlement, and all actions  
14 associated with them, are undertaken on the condition that they shall be vacated if the Settlement  
15 Agreement is terminated or disapproved in whole or in part by the Court, or by any appellate court and/or  
16 other court of review, in which event the Agreement and the fact that it was entered into shall not be  
17 offered, received, or construed as an admission or as evidence for any purpose, including but not limited  
18 to an admission by any Party of liability or non-liability or of any misrepresentation or omission in any  
19 statement or written document approved or made by any Party, or of the certifiability of a litigation class,  
20 as further provided in this Settlement Agreement;

21 3.7.12 Authorizes the Parties, without further approval from the Court, to mutually agree  
22 to and adopt such amendments, modifications, and expansions of this Agreement, including all Exhibits  
23 hereto, as (i) shall be consistent in all material respects with the Final Approval order and (ii) do not limit  
24 the rights of Settlement Class Members; and

25 3.7.13 Contains such other and further provisions consistent with the terms of this  
26 Settlement Agreement to which the Parties expressly consent in writing.

27 3.8 At the Final Approval Hearing and as a part of the final approval of this Settlement, Class  
28 Counsel will also request approval of the Plan of Allocation set forth in Section V. Any modification to

1 the Plan of Allocation by the Court shall not (i) affect the enforceability of the Settlement Agreement, (ii)  
2 provide any of the Parties with the right to terminate the Settlement Agreement, or (iii) impose any  
3 obligation on the Defendant or any Released Party to increase the consideration paid in connection with  
4 the Settlement.

5         3.9 At the Final Approval Hearing, Class Counsel may also request entry of an Order  
6 approving the Class Counsel Award and the Service Award to the Plaintiff, which shall be paid exclusively  
7 from the Total Settlement Amount and in accordance with the distribution plan described in Section V.  
8 In no event shall any Released Party otherwise be obligated to pay for any attorneys' fees and expenses  
9 or any Service Award. The disposition of Class Counsel's application for a Class Counsel Award, and  
10 for the Service Award, is within the sound discretion of the Court and is not a material term of this  
11 Settlement Agreement, and it is not a condition of this Settlement Agreement that such application be  
12 granted. Any disapproval or modification of such application by the Court shall not (i) affect the  
13 enforceability of the Settlement Agreement, (ii) provide any of the Parties with the right to terminate the  
14 Settlement Agreement, or (iii) increase the consideration Defendant or any Released Party pays in  
15 connection with the Settlement. If the Court modifies the amount of the Class Counsel Award to be lower  
16 than the maximum allocated to the Class Counsel Award in the Agreement, then the difference shall be  
17 allocated to the Individual Settlement Payments, as set forth in the Plan of Allocation. Released Parties  
18 shall have no liability to Class Counsel arising from any claim regarding the division of the Class Counsel  
19 Award between and among Class Counsel or any other counsel representing Plaintiff or the Settlement  
20 Class Members.

21         3.10 In no event shall Defendant or any Released Party be obligated to pay Settlement  
22 Administrator Expenses beyond those provided for in this Agreement.

#### 23 **IV. SETTLEMENT CONSIDERATION**

24         4.1 The total consideration for the Settlement from Defendant is the Total Settlement Amount  
25 (\$8,250,000). The Total Settlement Amount is an "all in" number that includes, without limitation, all  
26 monetary benefits and payments to the Settlement Class, Service Award, Class Counsel Award,  
27 Settlement Administrator Expenses, and all claims for interest, fees, and costs, with the sole exceptions  
28 being (1) the employer-side employment taxes for the wage portion of the settlement; and (2) if the number

1 of Settlement Class Members exceeds 16,658 by more than 5% (17,491), in which case Defendant shall  
2 contribute a pro rata percentage<sup>2</sup> to the Total Settlement Amount. Under no circumstances shall Defendant  
3 be required to pay anything more than the Total Settlement Amount. In no event shall Defendant be liable  
4 for making any payments under this Settlement, or for providing any relief to Settlement Class Members,  
5 before the deadlines set forth in this Agreement.

6 4.2 Plaintiff and all Settlement Class Members who do not request exclusion and receive an  
7 Individual Settlement Payment from the Total Settlement Amount expressly acknowledge that ten percent  
8 (10%) shall be issued as wages, less applicable withholdings and for which an IRS Form W-2 shall issue  
9 if required, ten percent (10%) shall be issued as interest, and eighty percent (80%) of which shall be issued  
10 as penalties, for both of which an IRS Form 1099 shall issue if required. In the case of Plaintiff, the  
11 Service Award shall be considered entirely non-wages, and shall be included in Plaintiff's IRS Form 1099.  
12 Plaintiff and all Settlement Class Members who receive a payment of any kind from the Total Settlement  
13 Amount agree to timely pay in full all of the federal, state, and municipal income taxes owed on such  
14 payments, with the sole exception of the employer-side employment taxes for the wage portion of the  
15 settlement, which shall be paid by Defendant.

16 4.3 Defendant agrees not to oppose a request for the Service Award for Plaintiff, as awarded  
17 by the Court, up to a maximum of \$15,000. Plaintiff and Class Counsel agree not to seek any Service  
18 Award in excess of the above amount.

19 4.4 Class Counsel agrees not to seek an award from the Court in excess of one-third (1/3) of  
20 the Total Settlement Amount in attorneys' fees (equal to \$2,750,000), nor in excess of \$250,000 in costs  
21 and expenses. Defendant agrees not to oppose a request for attorneys' fees, costs and expenses so long as  
22 it does not exceed the amounts set forth above. Any amount awarded as the Class Counsel Award shall  
23 be inclusive of any and all amounts due to or claimed by any and all counsel representing Plaintiff.  
24 Released Parties and Settlement Class Members shall have no obligation regarding, or liability for,  
25 allocation or payment of the Class Counsel Award. Class Counsel shall file any request for attorneys' fees,  
26

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27 <sup>2</sup> In other words, if the total number of Settlement Class Members is 18,323 – 10% more than 16,658 –  
28 then Defendant must contribute an additional \$825,000 – 10% of \$8,250,000 – to the Total Settlement  
Amount.

1 costs and expenses and any request for Plaintiff's Service Award no later than 35 calendar days before the  
2 Final Approval Hearing.

3 4.5 The Settlement Administrator shall pay the Class Counsel Award from the Total Settlement  
4 Amount pursuant to the instructions of Class Counsel. Class Counsel shall provide the Settlement  
5 Administrator notice of receipt of the Class Counsel Award. Released Parties shall have no liability to  
6 Class Counsel or any other counsel for Plaintiff or any Settlement Class Member arising from any claim  
7 regarding the division of the Class Counsel Award.

## 8 **V. FUNDING AND ALLOCATION OF THE SETTLEMENT**

9 5.1 Within twenty (20) calendar days of the Effective Date, Defendant shall provide the Total  
10 Settlement Amount to the Settlement Administrator.

11 5.2 Subject to Court approval, the Total Settlement Amount shall be allocated to pay the  
12 Settlement Administrator Expenses (not to exceed \$69,750); Plaintiff's Service Award (not to exceed  
13 \$15,000); the Class Counsel Award (up to, but not to exceed, \$2,750,000 in fees and up to \$250,000 in  
14 costs) as ordered by the Court; and all remaining funds allocated to the Individual Settlement Payments  
15 ("Net Settlement Amount").

16 5.3 Settlement Class Members are not eligible to receive any compensation from the  
17 Settlement other than the Individual Settlement Payment(s), and the Individual Settlement Payment shall  
18 total no less than \$10.00.

19 5.4 Settlement Class Members who request exclusion shall not receive any amount. Each  
20 Settlement Class Member who does not request exclusion (Remaining Settlement Class Members) shall  
21 be paid a base payment of \$10.00, plus an amount calculated in direct proportion to Defendant's best  
22 estimate of the Settlement Class Member's Shifts Worked, as determined from the Class Information  
23 provided to the Settlement Administrator by Defendant. To calculate the amount to be paid in proportion  
24 to Shifts Worked, the number of Remaining Settlement Class Members shall be multiplied by \$10.00 and  
25 the resulting amount shall be subtracted from the Net Settlement Amount, after which the remaining  
26 amount shall be deemed as the "Shifts Worked Settlement Amount." Then, the Shifts Worked of all  
27 Remaining Settlement Class Members will be totaled ("Total Shifts Worked"). Each Remaining  
28 Settlement Class Member's Shifts Worked will be divided by the Total Shifts Worked and multiplied

1 against the Shifts Worked Settlement Amount. Finally, the resulting amount shall be added to the base  
2 payment of \$10.00 to reach each Settlement Class Member's Individual Settlement Payment. Class  
3 Counsel will be permitted to review and approve the calculation of settlement funds to be distributed,  
4 provided that the information shared with Class Counsel contain solely a unique identifying number for  
5 each individual and their Shifts Worked, but not contain any Settlement Class Member's name, last four  
6 digits of the social security number, nor last known address nor any other identifying information.

7 5.5 At no point shall any amount from the Total Settlement Amount revert back to Defendant.

8 5.6 The Settlement Administrator shall issue the Individual Settlement Payments from the  
9 Total Settlement Amount to each Settlement Class Member. Of those Individual Settlement Payments to  
10 the Remaining Settlement Class Members, ten percent (10%) of shall be reported by the Settlement  
11 Administrator to the applicable governmental authorities on IRS Form W-2s (allocated to wages), ten  
12 percent (10%) shall be reported by the Settlement Administrator to the applicable governmental authorities  
13 on IRS Form 1099-INT (allocated to interest), if required, and eighty percent (80%) shall be reported by  
14 the Settlement Administrator to the applicable governmental authorities on IRS Form 1099-MISC  
15 (allocated to penalties) if required. In the case of Plaintiff, the Service Award shall be considered entirely  
16 non-wages, and shall be included in Plaintiff's IRS Form 1099. The Settlement Administrator shall be  
17 responsible for issuing respective copies of IRS Form 1099s and W-2s for the Plaintiff and Settlement  
18 Class Members who received and cashed their respective Individual Settlement Payments.

## 19 **VI. CLASS NOTICE & CLAIM PROCEDURES**

20 6.1 No more than fourteen (14) calendar days after entry of the Preliminary Approval Order,  
21 Defendant shall provide the Settlement Administrator with the Class Information for purposes of sending  
22 the Class Notice to Settlement Class Members.

23 6.2 The Class Notice will include a statement to each Settlement Class Member containing  
24 their Shifts Worked being used to calculate the amount of their Settlement Payment as described in  
25 Paragraph 5.4, and inform Settlement Class Members of their right to request exclusion from the  
26 Settlement, their right to object to the Settlement, their right to dispute the information upon which their  
27 share of the Settlement will be calculated, and the claims to be released.  
28



1           6.3     As set forth in the Class Notice, Settlement Class Members will be provided ten (10) days  
2 after receiving the Class Notice and accompanying statement to disagree with Defendant's calculation of  
3 their total Shifts Worked by providing documentation to the Settlement Administrator. The Settlement  
4 Administrator shall review any documentation submitted by a Settlement Class Member and consult with  
5 the Parties to determine whether an adjustment is warranted. There will be a presumption that Defendant's  
6 records are correct, absent evidence produced by a Settlement Class Member to the contrary. The  
7 Settlement Administrator's determination of the amount of any Settlement Class Member's Shifts Worked  
8 shall be binding upon the Settlement Class Member and the Parties, and a Settlement Class Member's  
9 Individual Settlement Payment will be calculated according to the Settlement Administrator's  
10 determination.

11           6.4     No more than thirty (30) calendar days after entry of the Preliminary Approval Order,  
12 provided Defendant timely complied with its obligation in Paragraph 6.1, the Settlement Administrator  
13 shall send a copy of the Class Notice by U.S. mail to each potential Settlement Class Member (the Notice  
14 Date). Before the initial mailing of the Class Notice, the Settlement Administrator shall make a good-  
15 faith attempt to obtain the most-current names and postal mail addresses for all potential Settlement Class  
16 Members to receive such postal mail, including (1) cross-checking the names and/or postal mail addresses  
17 it received from Defendant, and (2) reviewing the addresses with the National Change of Address  
18 Database.

19           6.5     If any Class Notice sent via U.S. mail to any potential Settlement Class Member is returned  
20 to the Settlement Administrator with a forwarding address, the Settlement Administrator shall forward the  
21 postal mailing to that address. If the Settlement Administrator is not provided a forwarding address, the  
22 Settlement Administrator shall attempt to locate a current mailing address for the Class Member by skip  
23 tracing using the Class Member's SSN and will mail the Class Notice to the updated address identified.  
24 In the event that any Class Notice is returned as undeliverable a second time, no further efforts shall be  
25 required. The Settlement Administrator shall maintain a log detailing the instances Class Notices are  
26 returned as undeliverable.

27           6.6     All Settlement Class Members' names and postal mail addresses obtained through these  
28 sources shall be protected as confidential and not used for purposes other than the notice and

1 administration of this Settlement. The address determined by the Settlement Administrator as the current  
2 mailing address through this process shall be presumed to be the best mailing address for the applicable  
3 Settlement Class Member.

4 6.7 The Parties agree that the procedures set forth in this Section constitute reasonable and the  
5 best practicable notice under the circumstances and an appropriate and sufficient effort to locate current  
6 addresses for Settlement Class Members such that no additional efforts to do so shall be required.

7 6.8 At least twenty-one (21) days before the Final Approval Hearing, the Settlement  
8 Administrator shall prepare a declaration of due diligence and proof of dissemination with regard to the  
9 mailing of the Class Notice, and any attempts by the Settlement Administrator to locate Settlement Class  
10 Members, its receipt of valid requests for exclusion, and its inability to deliver the Class Notice to  
11 Settlement Class Members due to invalid addresses (“Due Diligence Declaration”), to Class Counsel and  
12 counsel for Defendant for presentation to the Court. Class Counsel shall be responsible for filing the Due  
13 Diligence Declaration with the Court.

14 6.9 If any individual whose name does not appear in the Class Information that Defendant  
15 provides the Settlement Administrator (and who has not previously opted out of the Settlement Class),  
16 believes that they are a Settlement Class Member, they shall have the opportunity to dispute their exclusion  
17 from the Settlement Class, prior to the Void Date. If an individual believes they are a Settlement Class  
18 Member, they must notify the Settlement Administrator and submit documentation to the Settlement  
19 Administrator showing that they are a Settlement Class Member prior to the Exclusion/Written Objection  
20 Deadline. The Parties will meet and confer regarding any such individuals in an attempt to reach an  
21 agreement as to whether any such individual should be regarded as a Settlement Class Member. If the  
22 Parties so agree, the Settlement Administrator will provide a Class Notice to the individual, and treat the  
23 individual as a Settlement Class Member for all other purposes. Such an individual will have all of the  
24 same rights as any other Settlement Class Member under this Agreement.

## 25 **VII. PROCEDURES FOR REQUESTS FOR EXCLUSION**

26 7.1 Settlement Class Members (with the exception of Plaintiff) may opt out of the Settlement.  
27 Those who wish to exclude themselves (or “opt out”) from the Settlement Class must submit timely,  
28 written requests for exclusion. To be effective, such a request must include the Settlement Class Member’s



1 name, address, and telephone number; a clear and unequivocal statement that the Settlement Class  
2 Member wishes to be excluded from the Settlement Class; and the signature of the Settlement Class  
3 Member. The request must be mailed to the Settlement Administrator at the address provided in the Class  
4 Notice and must be postmarked no later than the Exclusion/Written Objection Deadline. The date of the  
5 postmark shall be the exclusive means used to determine whether a request for exclusion has been timely  
6 submitted. Requests for exclusion must be exercised individually by the Settlement Class Member.  
7 Attempted collective group, class, or subclass requests for exclusions shall be ineffective and disregarded  
8 by the Settlement Administrator.

9           7.2     The Settlement Administrator shall promptly log each request for exclusion that it receives  
10 and provide copies of the log and all such requests for exclusion to counsel for Defendant. Class Counsel  
11 shall be permitted access to the log if, and only if, necessary to resolve disputes arising from the  
12 administration of the Settlement.

13           7.3     The Settlement Administrator shall prepare a list of all persons who timely and properly  
14 requested exclusion from the Settlement Class (the Opt-Out List) and shall, before the Final Approval  
15 Hearing, submit an affidavit to the Court attesting to the accuracy of the list.

16           7.4     All Settlement Class Members who are not included in the Opt-Out List approved by the  
17 Court shall be bound by this Agreement, and all their claims shall be dismissed with prejudice and released  
18 as provided for herein, even if they never received actual notice of the Action or this proposed Settlement.

19           7.5     The Settlement Administrator, in its sole discretion, shall determine whether a request for  
20 exclusion was timely and properly submitted. The Settlement Administrator's decision shall be final,  
21 binding, and nonappealable.

22           7.6     Plaintiff agrees not to request exclusion from the Settlement Class.

23           7.7     Settlement Class Members may object to or opt out of the Settlement, but may not do both.  
24 Any Settlement Class Member who submits a timely and proper request for exclusion may not file an  
25 objection to the Settlement or receive a Settlement Payment, and shall be deemed to have waived any  
26 rights or benefits under the Settlement Agreement. If a Settlement Class Member files both an objection  
27 and a valid and timely request for exclusion, the request for exclusion will override the objection, and the  
28 objection shall therefore be ignored. In addition, should this Settlement not be approved for any reason,

1 any exclusion from the Settlement Class shall not have any impact or effect upon the respective  
2 individual's membership in the class as previously certified by the Court on August 19, 2016 (Dkt. No.  
3 69), and further amended on July 9, 2020 (Dkt. No. 136).

#### 4 **VIII. PROCEDURES FOR OBJECTIONS**

5 8.1 Any Settlement Class Member that wishes to object to the fairness, reasonableness, or  
6 adequacy of this Agreement or the proposed Settlement must submit to the Court a written objection  
7 according to the procedures set forth below.

8 8.2 To be timely, a written objection must be submitted to the Court either by mailing them to  
9 the Class Action Clerk, United States District Court for the Northern District of California, San Jose  
10 Courthouse, Courtroom 3 – 5th Floor, 280 South 1st Street, San Jose, CA 95113, or by filing them in  
11 person at any location of the United States District Court for the Northern District of California, no later  
12 than the Exclusion/Written Objection Deadline. The date of the postmark on the return-mailing envelope  
13 or the filing date (respective of the method used) shall be the exclusive means used to determine whether  
14 an objection has been timely submitted.

15 8.3 A written objection must contain at least the following: (i) the objector's full name, address,  
16 telephone, and signature; (ii) a clear reference to the Action; (iii) a statement of the specific legal and  
17 factual basis for each objection argument; and (iv) a statement whether the objecting person or entity  
18 intends to appear at the Final Approval Hearing, either in person or through counsel and, if through  
19 counsel, a statement identifying that counsel by name, bar number, address, and telephone number. All  
20 objections shall be signed by the objecting Settlement Class Member, even if the Settlement Class Member  
21 is represented by counsel.

22 8.4 The right to object to the proposed Settlement must be exercised individually by a  
23 Settlement Class Member. Attempted collective, group, class, or subclass objections shall be ineffective  
24 and disregarded.

25 8.5 Any Settlement Class Member who does not file a timely written objection in accordance  
26 with this Section shall waive the right to object or to be heard at the Final Approval Hearing and shall be  
27 forever barred from making any objection to the proposed Settlement, the Plan of Allocation, the Class  
28 Counsel Award and the Service Award. Settlement Class Members who object to the proposed Settlement

1 shall remain Settlement Class Members, and shall be deemed to have voluntarily waived their right to  
2 pursue an independent remedy against Defendant and the Released Parties.

3 8.6 To the extent any Settlement Class Member objects to the proposed Settlement, and such  
4 objection is overruled in whole or in part, such Settlement Class Member will be forever bound by the  
5 Final Approval order and Judgment.

6 8.7 It shall be Class Counsel's sole responsibility to respond to any objections made with  
7 respect to any application for the Class Counsel Award and Service Award.

## 8 **IX. RELEASES**

9 9.1 The Released Claims against each and all of the Released Parties shall be released and  
10 dismissed with prejudice and on the merits (without an award of costs to any party other than as provided  
11 in this Agreement) upon entry of the Final Approval order and Judgment.

12 9.2 As of the Final Approval Date, Plaintiff, and all Settlement Class Members who have not  
13 been excluded from the Settlement Class as provided in the Opt-Out List, individually and on behalf of  
14 their Legally Authorized Representatives, heirs, estates, trustees, executors, administrators,  
15 representatives, agents, successors, and assigns, and anyone claiming through them or acting or purporting  
16 to act on their behalf, agree to forever release, discharge, hold harmless, and covenant not to sue each and  
17 all of the Released Parties from each and all of the Named Plaintiff's General Released Claims (in the  
18 case of the Plaintiff) and the Settlement Class Members' Released Claims (in the case of the Settlement  
19 Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out List),  
20 and by operation of the Final Judgment shall have fully and finally released, relinquished, and discharged  
21 all such claims against each and all of the Released Parties; and they further agree that they shall not now  
22 or hereafter initiate, maintain, or assert any Named Plaintiff's General Released Claims (in the case of  
23 Plaintiff) and any Settlement Class Members' Released Claims (in the case of the Settlement Class  
24 Members who have not been excluded from the Settlement Class as provided in the Opt-Out List), against  
25 the Released Parties in any other court action or before any administrative body, tribunal, arbitration panel,  
26 or other adjudicating body. Without in any way limiting the scope of the releases described in Paragraphs  
27 2.14, 2.22, and 2.30, as well as the remainder of this Section, this release covers, without limitation, any  
28 and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or any other counsel

1 representing Plaintiff or Settlement Class Members, or by Plaintiff or Settlement Class Members, or any  
2 of them, in connection with or related in any manner to the Action, the Settlement of the Action, the  
3 administration of such Settlement, and/or the Released Claims, except to the extent otherwise specified in  
4 the Agreement.

5 9.3 As of the Final Approval Date, Plaintiff and all Settlement Class Members who have not  
6 been excluded from the Settlement Class as provided in the Opt-Out List shall be permanently barred and  
7 enjoined from initiating, asserting, or prosecuting against the Released Parties in any federal or state court  
8 or tribunal any and all Named Plaintiff's General Released Claims (in the case of Plaintiff) and any  
9 Settlement Class Members' Released Claims (in the case of the Settlement Class Members who have not  
10 been excluded from the Settlement Class as provided in the Opt-Out List,) arising during the Release  
11 Period, as further provided in Paragraphs 2.14, 2.22, and 2.30, as well as this Section.

12 9.4 Plaintiff expressly acknowledge that he is familiar with principles of law such as Section  
13 1542 of the California Civil Code, which provides:

14 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**  
15 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**  
16 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**  
17 **RELEASE, AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE**  
18 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR**  
19 **OR RELEASED PARTY.**

20 9.5 With respect to the Named Plaintiff's General Released Claims, as described in Paragraph  
21 2.14, Plaintiff shall be deemed to have expressly, knowingly, and voluntarily waived and relinquished, to  
22 the fullest extent permitted by law, the provisions, rights, and benefits they may otherwise have had  
23 pursuant to Section 1542 of the California Civil Code and all similar federal or state laws, rights, rules, or  
24 legal principles of any other jurisdiction that may be applicable herein. In connection with the release,  
25 Plaintiff acknowledges that he is aware that he may hereafter discover claims presently unknown and  
26 unsuspected or facts in addition to or different from those which he now knows or believes to be true with  
27 respect to matters released herein. Nevertheless, Plaintiff acknowledges that a portion of the consideration  
28 received herein is for a release with respect to unknown damages and complaints, whether resulting from  
known injuries and consequences or from unknown injuries or unknown consequences of known or  
unknown injuries, and state that it is the intention of Plaintiff in agreeing to this release to fully, finally,

1 and forever to settle and release all matters and all claims that exist, hereafter may exist, or might have  
2 existed (whether or not previously or currently asserted in any action), constituting Named Plaintiff's  
3 General Released Claims.

4 9.6 Plaintiff further acknowledges, agrees, and understands that: (i) he has read and  
5 understands the terms of this Agreement; (ii) he has been advised in writing to consult with an attorney  
6 before executing this Agreement; and (iii) he has obtained and considered such legal counsel as he deems  
7 necessary.

8 9.7 Subject to Court approval, the Plaintiff, and all Settlement Class Members to the extent  
9 they have not been excluded from the Settlement Class as provided in the Opt-Out List, shall be bound by  
10 this Settlement Agreement, and all of their claims shall be dismissed with prejudice and released, even if  
11 they never received actual notice of the Action or this Settlement

## 12 **X. ADMINISTRATION OF THE SETTLEMENT FUND**

13 10.1 The Settlement Administrator or its authorized agents in consultation with the Parties and  
14 subject to the supervision, direction, and approval of the Court, shall calculate the allocation of and oversee  
15 the distribution of the Total Settlement Amount.

16 10.2 The Total Settlement Amount shall be applied as follows:

17 10.2.1 To pay the total costs, expenses, and fees of the Settlement Administrator incurred  
18 in connection with providing Class Notice to potential Settlement Class Members, and the management  
19 and distribution of the Total Settlement Amount to Settlement Class Members, not to exceed \$69,750;

20 10.2.2 Subject to the approval and further order(s) of the Court, to pay Plaintiff's Service  
21 Awards based on contributions and time expended assisting in the litigation, up to a maximum of \$15,000;

22 10.2.3 Subject to the approval and further order(s) of the Court, to pay the Class Counsel  
23 Award (up to, but not to exceed, one-third of the Total Settlement Amount and up to, but not to exceed,  
24 \$250,000 in costs, as ordered by the Court);

25 10.2.4 After the Effective Date and subject to the approval and further order(s) of the  
26 Court, to distribute the Individual Settlement Payments from the Total Settlement Amount for the benefit  
27 of the Settlement Class pursuant to Settlement Agreement, or as otherwise ordered by the Court.  
28

1           10.3    Within thirty-five (35) days of the Effective Date, the Class Counsel Award (Two Million  
2 Seven Hundred and Fifty Thousand Dollars, or \$2,750,000.00, in fees, and up to Two Hundred Thousand  
3 Dollars, or \$250,000, in costs), and the Service Award approved by the Court (up to Fifteen Thousand or  
4 \$15,000), and the Settlement Administrator Expenses (up to Sixty-Nine Thousand and Seven Hundred  
5 Fifty Dollars or \$69,750), shall be made by the Settlement Administrator from the amount provided to it  
6 by Defendant.

7           10.4    The Settlement Administrator shall use reasonable efforts to disburse the Individual  
8 Settlement Payments to Settlement Class Members within sixty (60) days after the Effective Date,  
9 pursuant to the Plan of Allocation.

10          10.5    If any portion included in the Individual Settlement Payments is not successfully  
11 distributed to Remaining Settlement Class Members after the initial Void Date (*i.e.* checks are not cashed  
12 or checks are returned as undeliverable after the initial distribution), then the Settlement Administrator  
13 shall void the check and shall direct such unclaimed funds to be redistributed to the those Remaining  
14 Settlement Class Members who received and cashed their Individual Settlement Payment check. If any  
15 portion of the Total Settlement Amount is not successfully redistributed to Remaining Settlement Class  
16 Members (*i.e.* checks are not cashed or checks are returned as undeliverable after the second distribution),  
17 then after the Void Date for the redistributed checks, the Settlement Administrator shall void the checks  
18 and shall direct such unclaimed funds to be paid to the *cy pres* beneficiary of the Settlement, Legal Aid  
19 At Work.

20          10.6    Settlement Class Members who are not on the Opt-Out List approved by the Court shall be  
21 subject to and bound by the provisions of the Settlement Agreement, the releases contained herein, and  
22 the Judgment with respect to all Settlement Class Members' Released Claims, regardless of whether they  
23 obtained any distribution from the Total Settlement Amount.

24          10.7    Payment from the Total Settlement Amount made pursuant to and in the manner set forth  
25 herein shall be deemed conclusive of compliance with this Settlement Agreement as to all Settlement  
26 Class Members.

27          10.8    No Settlement Class Member shall have any claim against the Plaintiff, Class Counsel, or  
28 the Settlement Administrator based on distributions made substantially in accordance with this Settlement



1 Agreement and/or orders of the Court. No Settlement Class Member shall have any claim against any  
2 Released Party or its counsel relating to distributions made under this Settlement.

3 **XI. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**  
4 **SETTLEMENT AGREEMENT**

5 11.1 If the Court does not approve the Settlement as set forth in this Settlement Agreement, or  
6 does not enter the Final Approval order and Judgment on the terms described herein, or if the Court enters  
7 the Judgment and appellate review is sought, and on such review, the entry of Judgment is vacated,  
8 modified in any way, or reversed, or if the Final Approval order does not otherwise become Final, then  
9 this Settlement Agreement shall be cancelled and terminated, unless all Parties, in their sole discretion no  
10 later than thirty (30) days from the date such ruling becomes Final, provide written notice to all other  
11 Parties hereto of their intent to proceed with the Settlement under the terms of the Judgment as it may be  
12 modified by the Court or any appellate court.

13 11.2 No later than ten (10) business days after the Exclusion/Written Objection Deadline, the  
14 Settlement Administrator shall provide to counsel for Defendant the Opt-Out List together with copies of  
15 the opt-out requests. Notwithstanding any other provision of this Settlement Agreement, if more than ten  
16 percent (10%) of Settlement Class Members exercise their right to opt out of the Settlement, Defendant at  
17 its sole and absolute discretion may elect to rescind and revoke the entire Settlement Agreement by  
18 sending written notice that it revokes the Settlement pursuant to this Paragraph to Class Counsel within  
19 ten (10) business days following receipt of the Opt-Out List. Should Defendant exercise its rights under  
20 this Paragraph, Defendant shall bear all of the Settlement Administrator's costs incurred up to the point  
21 of the revocation.

22 11.3 In the event that: (i) the District Court denies, with prejudice, approval of the Settlement,  
23 (ii) the District Court's approval of the Settlement is overturned on appeal, (iii) the Judgment does not  
24 become Final, or (iv) this Settlement Agreement is terminated, cancelled, or fails to become effective for  
25 any reason, then: (a) the Parties stipulate and agree the Settlement, this Agreement, the Class Information,  
26 the Opt-Out List, and all documents exchanged and filed in connection with the Settlement shall be treated  
27 as privileged mediation communications under Cal. Evid. Code §§ 1115 *et seq.*; (b) the Settlement shall  
28 be without force and effect upon the rights of the Parties hereto, and none of its terms shall be effective or



1 enforceable, with the exception of this Paragraph, which shall remain effective and enforceable; (c) the  
2 parties shall be deemed to have reverted nunc pro tunc to their respective status prior to execution of this  
3 Agreement, including with respect to any Court-imposed deadlines; (d) all Orders entered in connection  
4 with the Settlement, shall be vacated without prejudice to any party's position on the issue of class  
5 certification, the issue of amending the complaint, or any other issue, in the Action or any other action,  
6 and the parties shall be restored to their litigation positions existing on the date of execution of this  
7 Agreement; and (e) the parties shall proceed in all respects as if the Settlement Agreement and related  
8 documentation and orders had not been executed, and without prejudice in any way from the negotiation  
9 or fact of the Settlement or the terms of the Settlement Agreement. The Settlement Agreement, the  
10 Settlement, all documents, orders, and evidence relating to the Settlement, the fact of their existence, any  
11 of their terms, any press release or other statement or report by the Parties or by others concerning the  
12 Settlement Agreement, the Settlement, their existence, or their terms, any negotiations, proceedings, acts  
13 performed, or documents executed pursuant to or in furtherance of the Settlement Agreement or the  
14 Settlement shall not be admissible in any proceeding, and shall not be offered, received, or construed as  
15 evidence of a presumption, concession, or an admission of liability, of the certifiability of a litigation class,  
16 or of any misrepresentation or omission in any statement or written document approved or made, or  
17 otherwise used by any person for any purpose whatsoever, in any trial of the Action or any other action  
18 or proceedings. Plaintiff, Class Counsel and the Settlement Administrator shall return to counsel for  
19 Defendant all copies of Class Information and Opt-Out Lists and shall not use or disclose the Class  
20 Information or Opt-Out List for any purpose or in any proceeding.

21 If this Settlement Agreement is terminated pursuant to its terms, or the Effective Date for any reason does  
22 not occur, the Action shall revert nunc pro tunc to the procedural status quo as of the date and time  
23 immediately before the execution of the Settlement Agreement, in accordance with this Settlement  
24 Agreement.

## 25 **XII. ADDITIONAL PROVISIONS**

26 12.1 Neither Plaintiff, Plaintiff's counsel, Defendant or Defendant's counsel shall engage in any  
27 publicity, including website or social media postings, of any type related to this lawsuit, settlement, or  
28 litigation against Defendant. The Parties understand and agree that this clause does not apply to any court

1 order requiring Plaintiff's counsel to publish and/or make case documents available to the public and/or  
2 prohibit Plaintiff and Plaintiff's counsel communicating with class members regarding this case and/or  
3 this settlement.

4 12.2 All of the Exhibits to this Agreement are an integral part of the Settlement and are  
5 incorporated by reference as though fully set forth herein.

6 12.3 Plaintiff and Class Counsel acknowledge that an adequate factual record has been  
7 established that supports the Settlement and hereby waive any right to conduct further discovery to assess  
8 or confirm the Settlement, except if required by Court Order.

9 12.4 Unless otherwise noted, all references to "days" in this Agreement shall be to calendar  
10 days. In the event any date or deadline set forth in this Agreement falls on a weekend or California court  
11 legal holiday, such date or deadline shall be on the first business day thereafter.

12 12.5 This Agreement constitutes the full and complete agreement of the Parties hereto, and  
13 supersedes all prior negotiations and agreements, whether oral, written or otherwise, and may be amended  
14 or modified only by a written instrument signed by counsel for all Parties or the Parties' successors-in-  
15 interest.

16 12.6 The Parties reserve the right, subject to the Court's approval, to make any reasonable  
17 extensions of time that might be necessary to carry out any of the provisions of this Agreement. Such  
18 extensions must be in writing to be enforceable.

19 12.7 The Settlement Agreement, the Settlement, the fact of the Settlement's existence, any of  
20 terms of the Settlement Agreement, any public statement concerning the Settlement Agreement or the  
21 Settlement, and any negotiations, proceedings, acts performed, or documents executed pursuant to or in  
22 furtherance of the Settlement Agreement or the Settlement may not be used as evidence of any waiver of,  
23 unenforceability of, or as a defense to any of Defendant's arbitration agreement.

24 12.8 The Released Parties shall have the right to file the Settlement Agreement, the Final  
25 Approval order and Judgment, and any other documents or evidence relating to the Settlement in any  
26 action that may be brought against them in order to support a defense or counterclaim based on principles  
27 of res judicata, collateral estoppel, release, good-faith settlement, judgment bar, reduction, or any other  
28 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

1           12.9 The Parties to the Settlement Agreement agree that the Total Settlement Amount and the  
2 other terms of the Settlement were negotiated at arm's length and in good faith by the Parties, resulted  
3 from an arm's-length mediation session facilitated by Michael Loeb, Esq., and subsequent discussions  
4 between the Parties facilitated by the mediator, and reflect a settlement that was reached voluntarily based  
5 upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

6           12.10 Plaintiff and Class Counsel have concluded that the Settlement set forth herein constitutes  
7 a fair, reasonable, and adequate resolution of the claims that Plaintiff asserted against defendants,  
8 including the claims on behalf of the Settlement Class, and that it promotes the best interests of the  
9 Settlement Class.

10           12.11 To the extent permitted by law, all agreements made and orders entered during the course  
11 of the Action relating to the confidentiality of information shall survive this Settlement Agreement.

12           12.12 The Parties agree that Plaintiff and Class Counsel are not required to return any documents  
13 produced by Defendant until the final resolution of the Action. Within one year following the Effective  
14 Date, Class Counsel shall return to Defendant all documents produced in the Action, or confirm in writing  
15 that all such documents have been destroyed. Any documents retained after the Effective Date shall be  
16 for the sole purpose of Class Counsel's ethical obligations to keep a record of the work performed for their  
17 clients.

18           12.13 The waiver by one Party of any breach of this Settlement Agreement by any other Party  
19 shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

20           12.14 This Settlement Agreement constitutes the entire agreement among the Parties, and no  
21 representations, warranties, or inducements have been made to any Party concerning this Settlement  
22 Agreement, other than the representations, warranties, and covenants contained and memorialized in this  
23 Settlement Agreement.

24           12.15 This Settlement Agreement may be executed in one or more counterparts and by facsimile,  
25 PDF, electronic, and/or DocuSign signatures. If Plaintiff executes the Settlement Agreement by electronic  
26 signature, including DocuSign or any comparable service, Class Counsel makes the following  
27 representations: (a) the electronic signature system and processes used to obtain Plaintiff's signature  
28 comply with the federal EISGN Act and any state laws regarding the use or adoption of electronic

1 signatures, (b) Plaintiff consented to using electronic signatures for this purpose, as required under both  
2 the federal and state laws), (c) Class Counsel selected and implemented a method in their electronic  
3 signature system to authenticate Plaintiff to ensure the signature is Plaintiff's signature, (d) Class Counsel  
4 has and will maintain records of the system and the process used to present the agreement to Plaintiff and  
5 obtain and record Plaintiff's signature, and will maintain and provide such records to counsel for  
6 Defendant to allow counsel for Defendant to lay the foundation for the admission of the settlement  
7 agreement into evidence, (e) Plaintiff and Class Counsel waive any objections to the admission of the  
8 agreement in any later action to enforce the terms of the agreement based on the electronic signature  
9 process, and (f) Class Counsel agrees to indemnify and hold Defendant harmless from any loss, cost,  
10 damage or expense (including attorneys' fees) resulting from Defendant's inability to enforce the  
11 agreement and release against their client. All executed counterparts and copies thereof shall be deemed  
12 to be one and the same instrument.

13         12.16 The Parties hereto and their respective counsel agree that they will use their best efforts to  
14 obtain all necessary approvals of the Court required by this Settlement Agreement.

15         12.17 This Settlement Agreement shall be binding upon and shall inure to the benefit of the  
16 successors and assigns of the Parties hereto, including any and all Released Parties and any corporation,  
17 partnership, or other entity into or with which any Released Party hereto may merge, consolidate, or  
18 reorganize.

19         12.18 This Settlement Agreement shall not be construed more strictly against one Party than  
20 another merely because of the fact that it may have been prepared by counsel for one of the Parties, it  
21 being recognized that because of the arm's-length negotiations resulting in the Settlement Agreement, all  
22 Parties hereto have contributed substantially and materially to the preparation of the Settlement  
23 Agreement.

24         12.19 Except where this Settlement Agreement itself provides otherwise, all terms, conditions,  
25 and Exhibits are material and necessary to this Settlement Agreement and have been relied upon by the  
26 Parties in entering into this Settlement Agreement.

27         12.20 This Settlement Agreement shall be governed by California law. Any action based on this  
28 Settlement Agreement, or to enforce any of its terms, shall be venued in United States District Court,

1 Northern District of California, which shall retain jurisdiction over all such disputes. All Parties to this  
2 Settlement Agreement shall be subject to the jurisdiction of United States District Court, Northern District  
3 of California for all purposes related to this Settlement Agreement. This Paragraph relates solely to the  
4 law governing this Settlement Agreement and any action based thereon, and nothing in this Paragraph  
5 shall be construed as an admission or finding that California law applies to the Released Claims of any  
6 Plaintiff or Settlement Class Members who reside outside of the state.

7 12.21 The Court shall retain continuing and exclusive jurisdiction over the Parties to this  
8 Settlement Agreement for the purpose of the administration and enforcement of this Settlement  
9 Agreement. If an action is brought to enforce this Agreement, the prevailing party shall be entitled to  
10 its/his reasonable attorneys' fees and costs.

11 12.22 The headings used in this Settlement Agreement are for the convenience of the reader only,  
12 and shall not affect the meaning or interpretation of this Settlement Agreement.

13 12.23 In construing this Settlement Agreement, the use of the singular includes the plural (and  
14 vice-versa) and the use of the masculine includes the feminine (and vice-versa).

15 12.24 Each Party to this Settlement Agreement warrants that he, she, they, or it is acting upon  
16 independent judgment and upon the advice of counsel, and not in reliance upon any warranty or  
17 representation, express or implied, of any nature of any kind by any other Party, other than the warranties  
18 and representations expressly made in this Settlement Agreement.

19 12.25 Each counsel signing this Settlement Agreement on behalf of their clients who are unable  
20 to sign the Agreement on the date that it is executed by other Parties represents that such counsel is fully  
21 authorized to sign this Settlement Agreement on behalf of their clients; provided, however, that all Parties  
22 who have not executed this Agreement on the date that it is executed by the other Parties shall promptly  
23 thereafter execute this Agreement and in any event no later than one (1) week after the Agreement has  
24 been executed by counsel.

25  
26 **[SIGNATURES ON FOLLOWING PAGE]**  
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Dated: March <sup>31</sup> \_\_, 2021

DocuSigned by:  
*Isaac Rodriguez*  
690E5F753E094BF... JEZ  
PLAINTIFF


Dated: March \_\_, 2021

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
FOR NIKE RETAIL SERVICES, INC.  
DEFENDANT

Dated: March \_\_, 2021

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
FOR NIKE RETAIL SERVICES, INC.  
DEFENDANT

Dated: March 31, 2021

By:   
Larry W. Lee  
Attorneys for Plaintiff

4815-7986-6585.4 049435.1042

1 Dated: March \_\_, 2021

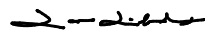
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ISAAC RODRIGUEZ  
PLAINTIFF

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Dated: Apr 2, 2021  
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By:   
\_\_\_\_\_ Robert Leinwand  
VP, Chief Litigation Counsel  
FOR NIKE RETAIL SERVICES, INC.  
DEFENDANT

Dated: Apr 5, 2021  
\_\_\_\_\_

By:   
\_\_\_\_\_ Lauren Thibodeaux  
VP, Employment Law & Employee  
Relations  
FOR NIKE RETAIL SERVICES, INC.  
DEFENDANT

Dated: March \_\_, 2021

By: \_\_\_\_\_  
Larry W. Lee  
Attorneys for Plaintiff

4815-7986-6585.4 049435.1042



# **EXHIBIT A**

## NOTICE OF CLASS ACTION SETTLEMENT

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ISAAC RODRIGUEZ, as an individual and on  
behalf of all others similarly situated,

Plaintiff,

v.

NIKE RETAIL SERVICES, INC., an Oregon  
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 5:14-CV-1508 BLF  
Hon. Beth Labson Freeman

**IMPORTANT LEGAL NOTICE –  
THIS LAWSUIT SETTLEMENT MAY  
AFFECT YOUR RIGHTS**

*A federal court authorized this notice. This is not a solicitation from a lawyer. This is not a lawsuit against you and you are not being sued. However, your legal rights are affected whether you act or don't act.*

**IMPORTANT: YOU ARE ENTITLED TO MONEY IF THE COURT APPROVES THE  
SETTLEMENT DESCRIBED HEREIN**

Dear **[Insert Full Name]**:

**THE RECORDS OF NIKE RETAIL SERVICES, INC. (“NIKE” OR “DEFENDANT”)  
SHOW YOU WERE EMPLOYED BY NIKE AS AN HOURLY-PAID EMPLOYEE IN  
CALIFORNIA AT SOME TIME BETWEEN FEBRUARY 25, 2010, AND NOVEMBER  
15, 2019, AND YOU ARE ELIGIBLE FOR A PAYMENT FROM A CLASS ACTION  
SETTLEMENT.**

**IT IS ESTIMATED THAT YOUR POTENTIAL PAYMENT UNDER THIS  
SETTLEMENT WOULD BE \$ [REDACTED].**

**IMPORTANT: YOU WILL BE BOUND BY THIS SETTLEMENT AND YOUR  
RIGHTS WILL BE AFFECTED BY THIS LITIGATION UNLESS YOU EXCLUDE  
YOURSELF FROM THE CLASS AS EXPLAINED BELOW.**

**PLEASE READ THIS NOTICE CAREFULLY.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>Do Nothing</b>	<b>You will receive a payment from the settlement.</b> If you do nothing, you continue your participation in this lawsuit, and you will receive a settlement payment. In exchange for this payment, you will <b>give up</b> any rights to sue Defendant separately for the same legal claims that were part of this settlement.
<b>Exclude Yourself</b> (Deadline: <span style="background-color: yellow;">                    </span> , 2020)	<b>If you ask to be excluded from the settlement, you will receive no payment for the settlement.</b> You will, however, retain any rights to sue Nike separately for the same legal claims made in this lawsuit. <b>Important: You cannot ask to be excluded <u>and</u> still get a settlement payment.</b>
<b>Object To The Settlement</b> (Deadline: <span style="background-color: yellow;">                    </span> , 2020)	If you believe that the settlement is unfair, you can send a written objection to the Court about why you believe that the settlement is unfair. If your objection is overruled by the Court, you will still be bound by the terms of the settlement and you will still receive a settlement payment. Objecting to the settlement will <b>not</b> exclude you from receiving a portion of the settlement.

**YOUR RIGHTS AND OPTIONS - AND THE DEADLINES TO EXERCISE THEM - ARE EXPLAINED IN THIS NOTICE.**

**WHY DID YOU RECEIVE THIS NOTICE?**

This notice explains the nature of this lawsuit, as well as a proposed settlement of this lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of a class on whose behalf this class action lawsuit has been brought. The Court has conditionally certified a Class for settlement purposes comprised of:

All current and former non-exempt/hourly retail store employees of Nike Retail Services, Inc. who worked in California at any time from February 25, 2010, through and including November 15, 2019.

The Court has appointed Diversity Law Group, PC, Polaris Law Group, LLP and Hyun Legal, APC to act as Class Counsel.

**WHAT IS THIS LAWSUIT ABOUT?**

This settlement is the result of a lawsuit filed by Plaintiff Isaac Rodriguez (“Plaintiff”). On February 25, 2014, Plaintiff filed a Class Action Complaint against Nike in the Superior Court of the State of California, County of Santa Clara (the “Lawsuit”). Nike subsequently removed the case to the United States District Court for the Northern District of California, where it was assigned Case. No. 5:14-cv-1508-BLF.

In the lawsuit, Plaintiff brings class claims for violation of the California Labor Code based on Nike's policy and practice of conducting security inspections of its employees after clocking out from their shifts and prior to leaving the store. Plaintiff's Lawsuit alleges that this policy and practice was not compliant with California law, and that Nike owes unpaid wages and various penalties to its employees for the time spent waiting and undergoing said security inspections off-the-clock. Based on these class claims, Plaintiff seeks on behalf of all similarly situated current and former hourly retail store employees of Nike all unpaid wages, restitution, and related statutory penalties under California law.

Nike denied the allegations in the Lawsuit, and continues to deny, that it failed to comply with California law and the California Labor Code. In this regard, Nike maintains that its security inspections conducted at retail stores were compliant with California law, such that it properly compensated employees for all wages earned.

THE COURT HAS NOT RULED ON THE MERITS OF PLAINTIFF'S CLAIMS, NIKE'S DEFENSES, OR THE SUBSTANTIVE CONTENTIONS OF THE PARTIES. NO INFERENCES REGARDING THE MERITS OF THE LITIGATION SHOULD BE DRAWN FROM THE SENDING OF THIS NOTICE. THIS NOTICE IS NOT MEANT TO IMPLY THAT THERE HAS BEEN ANY VIOLATION OF LAW OR WRONGDOING BY ANY PARTY OR THAT A RECOVERY AFTER TRIAL COULD BE HAD IF THE LITIGATION IS NOT SETTLED.

### **SUMMARY OF THE SETTLEMENT**

#### **A. Why is there a settlement?**

The Court did not decide in favor of Plaintiff or Nike. Plaintiff thinks he would have prevailed on the merits of his claims at trial. Nike does not think Plaintiff would have won anything from trial because it has asserted legal and factual defenses to the claims. But there was no trial. Instead, both parties agreed to a settlement of the Lawsuit. As a result, both sides can avoid the costs, risks, and uncertainty of proceeding with trial, and the people affected from the Lawsuit will get monetary compensation. Plaintiff and Class Counsel believe that the settlement is fair, reasonable, adequate, and in the best interests of all members of the Class.

#### **B. Who is in the Settlement Class?**

All current and former non-exempt/hourly retail store employees who worked for Defendant in California at any time from February 25, 2010, through and including November 15, 2019, and who do not opt out of the settlement as explained below would become part of the "Settlement Class" (also referred to as a "Settlement Class Member").

#### **C. Who are the attorneys representing the Class?**

<b><u>Class Counsel</u></b>	<b><u>Class Counsel (cont'd)</u></b>
-----------------------------	--------------------------------------

<p><b>DIVERSITY LAW GROUP, P.C.</b>  Larry W. Lee, State Bar No. 228175  lwlee@diversitylaw.com  Kristen M. Agnew, State Bar No. 247656  kagnew@diversitylaw.com  Nick Rosenthal, State Bar No. 268297  nrosenthal@diversitylaw.com  Max Gavron, State Bar No. 291697  mgavron@diversitylaw.com  Mai Tulyathan, State Bar No. 316704  ktulyathan@diversitylaw.com  515 S. Figueroa St., Suite 1250  Los Angeles, California 90071  Telephone: (213) 488-6555  Facsimile: (213) 488-6554</p>	<p><b>HYUN LEGAL, APC</b>  Dennis S. Hyun, State Bar No. 224240  dhyun@hyunlegal.com  515 S. Figueroa St., Suite 1250  Los Angeles, California 90071  Telephone: (213) 488-6555  Facsimile: (213) 488-6554</p>
<p><b><u>Class Counsel (cont'd)</u></b></p> <p><b>POLARIS LAW GROUP LLP</b>  William L. Marder, State Bar No. 170131  bill@polarislawgroup.com  501 San Benito Street, Suite 200  Hollister, California 95023  Telephone: (831) 531-4214  Facsimile: (831) 634-0333</p>	

**D. What does the settlement provide?**

The parties have agreed to settle the Lawsuit in exchange for the settlement amount of \$8,250,000.00 (“Total Settlement Amount”). This amount is inclusive of (1) individual settlement payments to the Settlement Class Members; (2) an enhancement payment of up to \$15,000.00 to Plaintiff for his efforts and work in prosecuting this Lawsuit on behalf of the class; (3) not more than \$2,750,000.00 in attorneys’ fees and not more than \$250,000.00 in litigation costs; and (4) claims administrator’s fees and expenses estimated to be \$69,750.00.

After deducting the class representative enhancement payment, attorneys’ fees, costs, and the claims administrator’s fees and expenses, it is estimated that a total of approximately \$5,165,250.00 (“Net Settlement Amount”) will be available to be distributed to the Settlement Class. The Settlement Class Member’s share of the Net Settlement Amount will be distributed to each class member who does not request exclusion from the settlement (“Individual Settlement Payment”).

Each Settlement Class Member who does not request exclusion (“Remaining Settlement Class Member”) shall be paid a base payment of \$10.00, plus an amount calculated in direct proportion to Nike’s best estimate of the Settlement Class Member’s Shifts Worked, as determined from the Class Information provided to the Settlement Administrator by Nike. To calculate the amount to be paid in proportion to Shifts Worked, the number of Remaining Settlement Class Members shall be multiplied by \$10.00 and the resulting amount shall be subtracted from the Net Settlement Amount, after which the remaining amount shall be deemed as the “Shifts Worked Settlement

Amount.” Then, the Shifts Worked of all Remaining Settlement Class Members will be totaled (“Total Shifts Worked”). Each Remaining Settlement Class Member’s Shifts Worked will be divided by the Total Shifts Worked and multiplied against the Shifts Worked Settlement Amount. Finally, the resulting amount shall be added to the base payment of \$10.00 to each Remaining Settlement Class Member’s Individual Settlement Payment. The settlement amount you are estimated to receive is printed on the first page of this notice. It was calculated using this formula.

Settlement Class Members are **not** required to do anything to receive their Individual Settlement Payment. Thus, you do **not** need to submit any proof of a claim form. Instead, upon final approval of this settlement by the Court, your Individual Settlement Payment check will be mailed to you, unless you exclude yourself or opt out of the settlement according to the instructions below.


If any Remaining Settlement Class Member does not cash their settlement payment check within one hundred eighty (180) days after the settlement administrator mails the settlement payment check to the Remaining Settlement Class Member, all such uncashed amounts will be redistributed to those Remaining Settlement Class Members who received and cashed their Individual Settlement Payment check. Any portion of the settlement payments not cashed within one hundred eighty (180) days of the second distribution shall be paid to the *cy pres* beneficiary of the Settlement, Legal Aid At Work.

All Individual Settlement Payments paid to satisfy claims of those who do not request exclusion shall be allocated as follows: ten percent (10%) of which shall be issued as wages, less applicable withholdings and for which an IRS Form W-2 shall issue if required, ten percent (10%) of which shall be issued as interest and for which a IRS Form 1099-INT shall issue if required, and eighty percent (80%) of which shall be issued as penalties, for which an IRS Form 1099-MISC shall issue if required. Nike will be separately responsible for the employer-paid portion of any taxes arising from settlement payment amounts issued as wages, including the employer-paid portion of FICA, Medicare, FUTA, and SDI contribution, which shall not be paid from the Total Settlement Amount. Each Settlement Class Member shall be solely responsible for their share of taxes (federal, state, or local) owed as a result of any payments received under this settlement.

To ensure compliance with requirements imposed by the IRS, we inform you that any United States federal tax advice contained in this Notice was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. Class Counsel and Defendant’s Counsel do not purport this communication to constitute legal and/or tax advice.

**E. What will I get?**

The records of Nike indicate that, between February 25, 2010 through and including November 15, 2019, the total shifts you worked as a non-exempt/hourly employee is:

Shifts Worked  
--

Based on this, it is estimated that your Individual Settlement Payment will be approximately \$ [REDACTED].

If you dispute the shifts worked listed above, you must notify the settlement administrator in writing of this dispute within ten (10) days of your receipt of this Notice at the address listed below, and provide documents (*e.g.*, payroll records) evidencing your claim. You can only submit a dispute if you do not exclude or opt out of the settlement. The settlement administrator's determination of any dispute over the hours worked will be final and binding upon the Settlement Class Member.

**F. What is the payment to the Class Representative?**

Subject to Court approval, Plaintiff will be paid a "Service Award" in an amount up to fifteen thousand dollars (\$15,000.00) for his efforts and work in prosecuting this Lawsuit as the class representative, including providing valuable information and documents to Class Counsel, sitting for his deposition, providing Defendant with a general release of any claims he may have, as well as his willingness to accept the risk of paying Defendant's attorneys' fees and costs in the event of an unsuccessful outcome of this Lawsuit.

**G. How will Class Counsel be paid?**

Class Counsel will apply to the Court for an award of reasonable attorneys' fees in an amount up one-third (1/3) of the Total Settlement Amount (up to \$2,750,000.00), and reasonable litigation costs of this Lawsuit of up to two hundred and fifty thousand dollars (up to \$250,000.00) ("Class Counsel Award").

**H. What are you giving up to get a payment or stay in the Class?**

If you remain a part of this settlement, and if the Court grants final approval of the settlement, you will be deemed to have released or waived the claims listed below in **Section I** that arose any time during the period of February 25, 2010, through and including December 31, 2019 (referred to as the "Released Claims"). The release of claims set forth below in **Section I** which describes exactly the legal claims that you will give up if you do not exclude yourself from the Settlement Class, and will extend to Nike and its past, present and future divisions, affiliates, predecessors, successors, assigns, shareholders, owners, officers, directors, employees, agents, trustees, attorneys, representatives, administrators, fiduciaries, beneficiaries, subrogees, executors, partners, parents, subsidiaries, and privies (the "Released Parties").

If you do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into the release of claims below (Section I) and to have released your claims against the Released Parties. If the settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

**I. What are the Released Claims?**

In consideration of the monetary sum provided by Defendant and upon final approval of this settlement by the Court, Plaintiff and the Settlement Class Members who have not been excluded



from the Settlement Class, agree to forever release, discharge, hold harmless, and covenant not to sue each and all of the Released Parties from the following claims (“Released Claims”): any and all claims under the wage and hour laws and regulations of the state of California that were or could have been asserted based on the facts pleaded in the Lawsuit or any amendments thereto, including but not limited to, all statutes mentioned in the Lawsuit and corresponding provisions of the relevant California Wage Order, including but not limited to California Labor Code sections 201, 202, 203, 204, 510, 1194, 1197, 1197.1, and California Business and Professions Code sections 17200, *et seq.*, as related to claims for: overtime; minimum wage; waiting time penalties; restitution; statutory penalties; interest; injunctive relief; and attorneys’ fees, costs, and expenses. The Settlement Class Members Released Claims are released from February 25, 2010, through and including December 31, 2019.

If you currently have a case pending, or plan to file a case based on the above claims, you must exclude yourself from this class action in order to proceed on your own. You will be solely responsible for the costs of hiring your own attorney and proceeding on your own. If you wish instead to receive the benefits of this settlement, and waive your right to proceed on your own, you should participate in this settlement, meaning do **not** exclude yourself from the Settlement.

### **THE SETTLEMENT HEARING**

The Court will conduct a final fairness hearing regarding the proposed Settlement (the “Final Approval Hearing”) on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_m., in Courtroom \_\_\_\_\_ of United States District Court for the Northern District of California, San Jose Division, 280 South 1st Street, San Jose, CA 95113.

At the Final Approval Hearing, the Court will determine: (i) whether the Action should be finally certified as a class action solely and exclusively for settlement purposes; (ii) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members, and if so, whether to enter a judgment fully and finally resolving Plaintiff’s and Settlement Class Members’ claims against Defendant; (iii) whether the Settlement Class Members should be bound by the terms of the Settlement, including the release of claims; (iv) the amount of the attorneys’ fees and litigation costs to be awarded to Class Counsel; and (v) the amount that should be awarded to Plaintiff as the Service Award.

At the Final Approval Hearing, the Court will rule on any written objections filed by Class Members, as well as arguments for and against the proposed Settlement. Assuming you do not elect to exclude yourself from the Settlement, you have a right to attend this hearing, but you are not required to do so. The Court has reserved the right to adjourn the Final Approval Hearing to consider any issue, without further notice of any kind. Please contact the settlement administrator or Class Counsel to confirm that the Final Approval Hearing date has not been changed.

You also have the right to hire an attorney to represent you, or to enter an appearance on your behalf and represent you at the hearing.

**WHAT ARE YOUR OPTIONS?**

**OPTION 1 – REMAIN A SETTLEMENT CLASS MEMBER. IF YOU WISH TO REMAIN A SETTLEMENT CLASS MEMBER AND OBTAIN YOUR SHARE OF THE SETTLEMENT THAT YOU MAY BE ENTITLED TO RECEIVE, YOU DO NOT NEED TO DO ANYTHING OTHER THAN MAKE SURE THE SETTLEMENT ADMINISTRATOR HAS YOUR CURRENT ADDRESS. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE.** You will be bound by a judgment in this case, you will release your claims against Defendant, and you will not have the right to file your own lawsuit against Defendant for the same claims in a separate suit. If the Court approves the proposed settlement, you will automatically be mailed your Individual Settlement Payment. If the Court does not approve the settlement, the lawsuit will continue, and you may or may not be designated or redesignated as a Class Member at a later time. If your mailing address information is incorrect or you move, please provide your current address to the settlement administrator: **XXXXXX** at **XXXXXXXXXX**.

**OPTION 2 – EXCLUDE YOURSELF FROM THE CLASS. YOU HAVE A RIGHT TO EXCLUDE YOURSELF (“OPT OUT”) FROM THE CLASS, BUT IF YOU CHOOSE TO DO SO, YOU WILL NOT RECEIVE ANY BENEFITS FROM THE PROPOSED SETTLEMENT AND YOU WILL NOT HAVE STANDING TO OBJECT TO THE SETTLEMENT.** If you exclude yourself, you will not be bound by a judgment in this case, you will not release your claims against the Defendant, and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. If you want to exclude yourself from the Class, you must timely write to the settlement administrator to request that you be excluded from the settlement.

Your request for exclusion from the settlement must: (1) contain your full name, address and telephone number; (2) contain a clear statement that indicates that you want to be excluded from the settlement; (3) be signed by you; and (4) identify the case name and number (*RODRIGUEZ v. NIKE*, Case Number 5:14-CV-1508 BLF).

Your written request for exclusion must be mailed to the settlement administrator at: **XXXXXX**, Settlement Administrator, **XXXXXX**. In order for you to timely and validly opt out and exclude yourself, your written request for exclusion must contain the information listed above, and be postmarked on or before **\_\_\_\_\_**, **\_\_\_\_\_**. Any requests for exclusion post-marked after this date or not received by the settlement administrator will have no force and effect, meaning that you will still remain a part of the Settlement Class.

Any Class Member who files a timely and valid request for exclusion will no longer be a member of the Settlement Class, be barred from objecting to the settlement, and will receive no benefits or payment from the settlement. If you exclude yourself, you can, at your own expense, pursue any claims that you may have against Defendant. Please note that you **cannot** both exclude yourself and object to the settlement.

**OPTION 3 – REMAIN A CLASS MEMBER AND OBJECT TO THE SETTLEMENT.**

You can ask the Court to deny approval by filing a written objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object in writing.

Any objection to the proposed settlement must be in writing and must: (1) contain your full name, current address, telephone number and signature; (2) identify the case name and number (*Rodriguez v. Nike*, Case Number 5:14-CV-1508 BLF); (3) state with specificity the legal or factual grounds for your objection(s); and (4) state whether you intend to appear at the Final Approval Hearing, either in person or through your own attorney. You may include any supporting documents or papers, including without limitation, briefs, written evidence, and declarations, with your objection. Your written objection and/or supporting documents must be filed with the Court only, either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, Courtroom 3 – 5th Floor, 280 South 1st Street, San Jose, CA 95113, or by filing them in person at any location of the United States District Court for the Northern District of California.

To be valid and effective, all objections to the approval of the Settlement must be postmarked to the Court, or filed in person, on or before [REDACTED], [REDACTED]. DO NOT CONTACT THE COURT, except as provided here.

If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you choose to appear through your own attorney, you are responsible for hiring and paying that attorney. Any Class Member who fails to object to the proposed Settlement as described above will lose the right to object to it.

**ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?**

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement, approval papers, and other documents in this Lawsuit, by accessing [www.\[REDACTED\].com](http://www.[REDACTED].com), by contacting Class Counsel at their contact information above, by contacting the settlement administrator at [REDACTED], by accessing the Court docket in this case (for a fee) through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

**ALL INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO CLASS COUNSEL OR THE SETTLEMENT ADMINISTRATOR:**

[REDACTED]  
[REDACTED]  
[REDACTED]

**PLEASE DO NOT TELEPHONE THE COURT TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

# **EXHIBIT B**

1 Larry W. Lee (State Bar No. 228175)  
 lwlee@diversitylaw.com  
 2 Kristen Agnew (State Bar No. 247656)  
 kagnew@diversitylaw.com  
 3 Nicholas Rosenthal (State Bar No. 268297)  
 nrosenthal@diversitylaw.com  
 4 Max W. Gavron (State Bar No. 291697)  
 mgavron@diversitylaw.com  
 5 Kwanporn “Mai” Tulyathan (State Bar No. 316704)  
 ktulyathan@diversitylaw.com  
 6 **DIVERSITY LAW GROUP, A Professional Corporation**  
 515 S. Figueroa St., Suite 1250  
 7 Los Angeles, CA 90071  
 (213) 488-6555  
 8 (213) 488-6554 facsimile

9 Attorneys for Plaintiff and the Certified Class

10 *[ADDITIONAL COUNSEL ON THE NEXT PAGE]*

11  
 12 **UNITED STATES DISTRICT COURT**  
 13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 ISAAC RODRIGUEZ, as an individual  
 15 and on behalf of all others similarly  
 situated,

16 Plaintiff,

17 v.

18 NIKE RETAIL SERVICES, INC., an  
 19 Oregon corporation; and DOES 1 through  
 50, inclusive,

20 Defendants.  
 21  
 22

Case No.: 5:14-CV-1508 BLF

**[PROPOSED] ORDER GRANTING  
 PLAINTIFF’S MOTION FOR  
 PRELIMINARY APPROVAL OF CLASS  
 ACTION SETTLEMENT**

Date: \_\_\_\_\_, 2021  
 Time: 9:00 a.m.  
 Courtroom: 3, 5<sup>th</sup> Floor

1 William L. Marder (State Bar No. 170131)  
2 bill@polarislawgroup.com  
3 **Polaris Law Group**  
4 501 San Benito Street, Suite 200  
5 Hollister, CA 95023  
6 Tel: (831) 531-4214  
7 Fax: (831) 634-0333

8 Dennis S. Hyun (State Bar No. 224240)  
9 dhyun@hyunlegal.com  
10 **HYUN LEGAL, APC**  
11 515 S. Figueroa St., Suite 1250  
12 Los Angeles, CA 90071  
13 (213) 488-6555  
14 (213) 488-6554 facsimile

15 Attorneys for Plaintiff and the Certified Class  
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**[PROPOSED] ORDER**

1  
2 Plaintiff Isaac Rodriguez (“Plaintiff” or “Class Representative”), having made an  
3 application pursuant to Fed. R. Civ. P. Rule 23(e) for entry of an order (a) preliminarily  
4 approving the settlement of the litigation pursuant to the Joint Stipulation of Class Action  
5 Settlement and Release (the “Agreement”); (b) certifying the Settlement Class for purposes of  
6 proceedings in connection with the final approval of the Agreement; (c) approving the form of  
7 Notice of Class Action Settlement (“Class Notice”) and directing the manner of delivery thereof;  
8 (d) approving Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal, Max W. Gavron and Mai  
9 Tulyathan of Diversity Law Group, William L. Marder of Polaris Law Group, and Dennis S.  
10 Hyun of Hyun Legal as Class Counsel and Plaintiff as Class Representative.

11 IT IS HEREBY ORDERED THAT:

12 1. All defined terms contained herein shall have the same meaning as set forth in the  
13 Agreement executed by the Parties and filed with this Court.

14 2. The Agreement is hereby PRELIMINARILY APPROVED as appearing on its  
15 face to be fair, reasonable, and adequate and to have been the product of serious, informed, and  
16 extensive arm’s-length negotiations among the Plaintiff and Defendant Nike Retail Services, Inc.  
17 (“Defendant” or “Nike”) (Plaintiff and Defendant collectively referred to as the “Parties”). In  
18 making this preliminary finding, the Court considered the nature of the claims, the relative  
19 strength of Plaintiff’s claims, the amounts and kinds of benefits paid in settlement, the allocation  
20 of settlement proceeds among the class members, and the fact that a settlement represents a  
21 compromise of the Parties’ respective positions rather than the result of a finding of liability at  
22 trial. The Court further preliminarily finds that the terms of the Agreement have no obvious  
23 deficiencies and do not improperly grant preferential treatment to any individual class member.

24 3. Pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3), the Court  
25 conditionally certifies the Settlement Class defined as the following:

26 All current and former non-exempt/hourly retail store employees of  
27 Defendant who worked in California at any time from February 25,  
28 2010 through and including November 15, 2019.

The Court finds preliminarily, and for purposes of proceeding pursuant to Fed. R. Civ. P.

1 Rule 23(e), that the number of class members is sufficiently numerous, the class members are  
2 ascertainable based on the Defendant's records, the Plaintiff's claims are typical of those in the  
3 class, and that there is adequate and fair representation. Accordingly, the Settlement Class is  
4 hereby CERTIFIED for the purposes of the Settlement pursuant to Fed. R. Civ. P. 23(e).

5 4. Pursuant to Fed. R. Civ. P. 23(g), the Court hereby APPOINTS as Class Counsel  
6 for the Settlement Class Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal, Max W. Gavron  
7 and Mai Tulyathan of Diversity Law Group, William L. Marder of Polaris Law Group, and  
8 Dennis S. Hyun of Hyun Legal. The Court finds that Class Counsel collectively have extensive  
9 experience and expertise in prosecuting wage and hour class actions.

10 5. Plaintiff is approved as the class representative for the Settlement Class Members.

11 6. The Court finds on a preliminary basis that the proposed settlement described in  
12 the Agreement (including the monetary provisions, the plan of allocation, the release of claims,  
13 the proposed award of attorneys' fees and costs and the class representative enhancement  
14 payment) falls within the "range of reasonableness" and therefore grants preliminary approval of  
15 the Agreement. Based on a review of the papers submitted by the Parties, the Court finds that the  
16 Agreement is the result of extensive arm's-length negotiations conducted after Class Counsel had  
17 adequately investigated the claims and became familiar with the strengths and weaknesses of  
18 those claims. The assistance of an experienced neutral mediator during the settlement process  
19 supports the Court's conclusion that the Agreement is non-collusive.

20 7. The Court hereby APPROVES Phoenix Settlement Administrators as the  
21 Settlement Administrator for the purposes of this settlement.

22 8. A hearing (the "Final Approval and Fairness Hearing") is hereby SCHEDULED to  
23 be held before the Court on \_\_\_\_\_, 2021, at 9:00 a.m. for the following purposes:

- 24 a. to finally approve the Settlement as fair, reasonable, and adequate and  
25 direct its consummation pursuant to the terms of the Settlement Agreement;
- 26 b. to determine whether Class Counsel and Plaintiff adequately represented  
27 the Settlement Class for the purpose of entering into and implementing the  
28 Agreement;
- c. to re-confirm the appointment of the Settlement Administrator and find that

1 the Settlement Administrator has fulfilled its duties under the Settlement to date;

2 d. to determine whether the Class Notice (i) constituted the best practicable

3 notice; (ii) constituted notice that was reasonably calculated, under the

4 circumstances, to apprise Settlement Class Members of the pendency of the

5 Action, and their right to exclude themselves from or object to the proposed

6 settlement and to appear at the Final Approval Hearing; (iii) was reasonable and

7 constituted due, adequate, and sufficient notice to all persons entitled to receive

8 notice; and (iv) met all applicable requirements of Federal Rule of Civil Procedure

9 23(c)(2), due process, and any other applicable rules or law;

10 e. to approve the Opt-Out List and determine that the Opt-Out List is a

11 complete list of all Settlement Class Members who have timely and properly

12 requested exclusion from the Settlement Class and, accordingly, shall neither share

13 in nor be bound by the Final Approval order and Judgment;

14 f. to direct that the Final Approval order and Judgment of dismissal shall be

15 final and entered forthwith;

16 g. without affecting the finality of the Final Approval order and Judgment, to

17 direct that the Court retain continuing jurisdiction over Plaintiff, the Settlement

18 Class, and Defendant as to all matters concerning the administration,

19 consummation, and enforcement of this Settlement Agreement;

20 h. to adjudge that, as of the Final Approval Date, Plaintiff, and all Settlement

21 Class Members who have not been excluded from the Settlement Class as

22 provided in the Opt-Out List approved by the Court, and their Legally Authorized

23 Representatives, heirs, estates, trustees, executors, administrators, principals,

24 beneficiaries, representatives, agents, assigns, and successors, and/or anyone

25 claiming through them or acting or purporting to act for them or on their behalf,

26 regardless of whether they have received actual notice of the proposed Settlement,

27 have conclusively compromised, settled, discharged, and released the Named

28 Plaintiff's General Released Claims (in the case of Plaintiff) and Settlement Class

Members' Released Claims (in the case of the Settlement Class Members) against

1 Converse and the Released Parties, and are bound by the provisions of the  
2 Agreement;

3 i. to declare the Agreement and the Final Approval order and Judgment be  
4 binding on, and have res judicata and preclusive effect as to all pending and future  
5 lawsuits or other proceedings: (i) that encompass the Named Plaintiff's General  
6 Released Claims and that are maintained by or on behalf of Plaintiff and/or his  
7 Legally Authorized Representatives, heirs, estates, trustees, executors,  
8 administrators, principals, beneficiaries, representatives, agents, assigns, and  
9 successors, and/or anyone claiming through them or acting or purporting to act for  
10 them or on their behalf, and (ii) that encompass the Settlement Class Members'  
11 Released Claims and that are maintained by or on behalf of any Settlement Class  
12 Member who has not been excluded from the Settlement Class as provided in the  
13 Opt-Out List approved by the Court and/or their Legally Authorized  
14 Representatives, heirs, estates, trustees, executors, administrators, principals,  
15 beneficiaries, representatives, agents, assigns, and successors, and/or anyone  
16 claiming through them or acting or purporting to act for them or on their behalf,  
17 regardless of whether the Settlement Class Member previously initiated or  
18 subsequently initiates individual litigation or other proceedings encompassed by  
19 the Settlement Class Members' Released Claims, and even if such Settlement  
20 Class Member never received actual notice of the Action or of the Settlement;  
21 j. to determine that the Agreement and the Settlement provided for herein,  
22 and any proceedings taken pursuant thereto, are not, and should not in any event  
23 be offered, received, or construed as evidence of, a presumption, concession, or an  
24 admission by any Party of liability or non-liability or of the certifiability or non-  
25 certifiability of a litigation class, or of any misrepresentation or omission in any  
26 statement or written document approved or made by any Party; provided, however,  
27 that reference may be made to the Agreement and the Settlement provided for  
28 herein in such proceedings as may be necessary to effectuate the provisions of the  
Agreement, as further set forth in the Agreement;

1 k. to order the preliminary approval of the Settlement, certification of the  
2 Settlement Class and final approval of the proposed Settlement, and all actions  
3 associated with them, were undertaken on the condition that they shall be vacated  
4 if the Settlement Agreement is terminated or disapproved in whole or in part by  
5 the Court, or by any appellate court and/or other court of review, in which event  
6 the Agreement and the fact that it was entered into shall not be offered, received,  
7 or construed as an admission or as evidence for any purpose, including but not  
8 limited to an admission by any Party of liability or non-liability or of any  
9 misrepresentation or omission in any statement or written document approved or  
10 made by any Party, or of the certifiability of a litigation class, as further provided  
11 in this Settlement Agreement;

12 l. to authorize the Parties, without further approval from the Court, to  
13 mutually agree to and adopt such amendments, modifications, and expansions of  
14 this Agreement, including all Exhibits hereto, as (i) shall be consistent in all  
15 material respects with the Final Approval order and (ii) do not limit the rights of  
16 Settlement Class Members; and

17 m. to rule upon such other and further provisions consistent with the terms of  
18 the Agreement to which the Parties expressly consented in writing.

19 9. The form of Class Notice is hereby APPROVED. No later than fourteen (14)  
20 calendar days after the Preliminary Approval Date, Defendant shall provide the Settlement  
21 Administrator with the Class Information for purposes of preparing and mailing the Class Notice  
22 to Settlement Class Members. The Class Information shall be confidential. The Settlement  
23 Administrator shall not provide the Class Information to Class Counsel or Plaintiff or any third  
24 party, or use the Class Information or any information contained therein for any purpose other  
25 than to administer this Settlement. Specifically, for each Class Member, Defendant will provide  
26 the Settlement Administrator with data Microsoft Excel spreadsheet and shall include, if possible,  
27 for each Settlement Class Member: full name, last known mailing address, last four digits of the  
28 social security number, and Shifts Worked (“Shifts Worked” means the best approximation of the  
total number of shifts a Settlement Class Member worked for Defendant as a non-exempt/hourly

1 employee from February 25, 2010 through and including November 15, 2019, based on the  
2 records and data maintained by Defendant). No more than thirty (30) calendar days after entry of  
3 the Preliminary Approval Order, the Settlement Administrator shall send a copy of the Class  
4 Notice by U.S. mail to each Settlement Class Member. Before the initial mailing of the Class  
5 Notice, the Settlement Administrator shall make a good-faith attempt to obtain the most-current  
6 names and postal mail addresses for all potential Settlement Class Members to receive such postal  
7 mail, including (1) cross-checking the names and/or postal mail addresses it received from  
8 Defendant, and (2) reviewing the addresses with the National Change of Address Database. If  
9 any Class Notice sent via U.S. mail to any Settlement Class Member is returned to the Settlement  
10 Administrator with a forwarding address, the Settlement Administrator shall forward the postal  
11 mailing to that address. If the Settlement Administrator is not provided a forwarding address, the  
12 Settlement Administrator shall attempt to locate a current mailing address for the Class Member  
13 by skip tracing using the Class Member's social security number and will mail the Class Notice to  
14 the updated address identified. In the event that any Class Notice is returned as undeliverable a  
15 second time, no further efforts shall be required. The Settlement Administrator shall maintain a  
16 log detailing the instances Class Notices are returned as undeliverable.

17 9. The Court finds that the Class Notice constitute the best notice practicable under  
18 the circumstances and are in full compliance with the laws of the State of California, the United  
19 States Constitution, and the requirements of due process. The Court further finds that the notice  
20 fully and accurately inform the Settlement Class Members of all material elements of the  
21 proposed settlement, of the Settlement Class Members' right to dispute their share of the  
22 settlement, of the Settlement Class Members' right to be excluded from the Settlement Class, and  
23 of each Settlement Class Member's right and opportunity to object to the Settlement.

24 10. The Court hereby APPROVES the proposed Exclusion/Written Objection  
25 Deadline of forty-five (45) calendar days from the initial mailing of the Class Notice to  
26 Settlement Class Members.

27 11. The Court hereby APPROVES the proposed procedure for opting out of the  
28 Settlement Class. To be effective, such a request to opt out must include the Settlement Class  
Member's name, address, and telephone number; a clear and unequivocal statement that the

1 Settlement Class Member wishes to be excluded from the Settlement Class; and the signature of  
2 the Settlement Class Member. The date of the postmark on the return-mailing envelope to the  
3 Settlement Administrator shall be the exclusive means used to determine whether a request for  
4 exclusion has been timely submitted. Any member of the Settlement Class who requests  
5 exclusion from the settlement will not be entitled to any share of the settlement and will not be  
6 bound by the Agreement or have any right to object, appeal or comment thereon. Members of the  
7 Settlement Class who fail to submit a valid and timely request for exclusion shall be bound by all  
8 terms of the Agreement and the Order and Final Judgment, regardless of whether they otherwise  
9 have requested exclusion from the settlement.

10 12. All reasonable costs of settlement administration undertaken by the Settlement  
11 Administrator, including the mailing of Class Notice, shall be paid for as provided in the  
12 Agreement.

13 13. All written objections and supporting papers must be submitted to the Court either  
14 by mailing them to the Class Action Clerk, United States District Court for the Northern District  
15 of California, San Jose Courthouse, Courtroom 3 - 5th Floor, 280 South 1st Street, San Jose, CA  
16 95113, or by filing them in person at any location of the United States District Court for the  
17 Northern District of California, no later than the Exclusion/Written Objection Deadline. The date  
18 of the postmark on the return-mailing envelope or the filing date (respective of the method used)  
19 shall be the exclusive means used to determine whether an objection has been timely submitted.  
20 A written objection must contain at least the following: (i) the objector's full name, address,  
21 telephone number, and signature; (ii) a clear reference to the Action; (iii) a statement of the  
22 specific legal and factual basis for each objection argument; and (iv) a statement whether the  
23 objecting person or entity intends to appear at the Final Approval Hearing, either in person or  
24 through counsel and, if through counsel, a statement identifying that counsel by name, bar  
25 number, address, and telephone number. All objections shall be signed by the objecting  
26 Settlement Class Member, even if the Settlement Class Member is represented by counsel.  
27 Settlement Class Members who fail to make objections in the manner specified above shall be  
28 deemed to have waived any objections and shall be foreclosed from making any objections  
(whether by appeal or otherwise) to the Settlement. Any Settlement Class Member who submits

1 a timely written objection have the right to appear at the Final Approval/Settlement Fairness  
2 Hearing in order to present his or her objection to the Court orally, but is not required to attend.  
3 No Settlement Class Member may appear at the Final Approval/Settlement Fairness Hearing  
4 unless he or she has filed a written objection that complies with the procedures provided in this  
5 paragraph. Settlement Class Members who submit a request for exclusion are not entitled to  
6 object to the Settlement.

7 14. It is further ordered that pending further order of this Court, all proceedings in this  
8 matter except those contemplated herein and as part of the settlement are stayed.

9 15. All Parties are otherwise ordered to comply with the terms of the Agreement.

10 16. Jurisdiction is hereby retained over this Action and the Parties to the Action, and  
11 each of the Settlement Class Members for all matters relating to this Action, the Agreement,  
12 including (without limitation) all matters relating to the administration, interpretation,  
13 effectuation, and/or enforcement of the Agreement and this Order.

14 IT IS SO ORDERED.  
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16

17 Dated: \_\_\_\_\_ By: \_\_\_\_\_

18 Hon. Beth Labson Freeman  
19 UNITED STATES DISTRICT JUDGE  
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