

AMENDED CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This amended Class Action Settlement Agreement (“Agreement”) is made by and between plaintiff Janelle Basich-Mustafa (“Plaintiff”), on behalf of herself and on behalf of the State of California, all similarly-situated individuals, and all allegedly aggrieved employees, and defendant Designer Fragrances and Cosmetics Company (“Defendant”), subject to the approval of the Court, that the Settlement of the Action (as defined below) shall be effectuated upon and subject to the following terms and conditions to be filed for approval by the Court. Plaintiff and Defendant collectively are referred to in this Agreement as the “Parties.”

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Action” means the Class Action and PAGA Complaint filed in California state court and any amendments thereto, which are captioned *Janelle Basich-Mustafa v. Designer Fragrances & Cosmetics Company*, Case No. 20STCV16314, pending in Superior Court of the State of California, County of Los Angeles.
- B. “Aggrieved Employees” means all employees of Defendant who were classified as non-exempt and worked within the State of California during the PAGA Period. Defendant represents there were approximately 686 Aggrieved Employees as of November 11, 2021.
- C. “Class” means all employees of Defendant who were classified as non-exempt and worked within the State of California during the Class Period. Defendant represents there were approximately 1,587 Class Members as of November 11, 2021.
- D. “Class Counsel” means Paul K. Haines, Fletcher W. Schmidt, and Alexandra R. McIntosh of Haines Law Group, APC and Joseph Tojarieh of Tojarieh Law Firm, PC.
- E. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.
- F. “Class Data” means, for each Class Member, his or her name; last-known mailing address; Social Security number; his or her personal email address (if known); and his or her dates of employment and/or number of workweeks worked during the Class Period as a Class Member and as an Aggrieved Employee.
- G. “Class Member” is a member of the Class.
- H. “Class Notice” or “Class Notice Packet” means the Notice of Proposed Settlement of Class Action and Hearing Date and the Opt Out Form to be provided to the Class

Members by the Settlement Administrator in the forms set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).

- I. “Class Period” means the period of time from April 28, 2016 through the date of Preliminary Approval of the Settlement, unless shortened at Defendant’s option pursuant to Paragraph III.C.5, *infra*.
- J. “Class Representative Service Payment” means the service payment made to Plaintiff in her capacity as Class Representative in order to compensate her for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses in the event Plaintiff was unsuccessful in the prosecution of the Action, and as consideration for the general release of all claims by the Plaintiff.
- K. “Court” means the Superior Court of California, County of Los Angeles.
- L. “Defendant” means Designer Fragrances & Cosmetics Company.
- M. “Defendant’s Counsel” means Angela J. Rafoth and Emily A. Mertes of Littler Mendelson, P.C.
- N. “Effective Date” means the date by which all of the following have occurred:
 - 1. This Agreement and the contemplated settlement receive final approval from the Court; and
 - 2. The Judgment becomes Final as defined in Section I.P of this Agreement.
- O. “Election Not to Participate in Settlement” means the completed Opt Out Form submitted by a Class Member to exclude himself or herself from the Class Settlement submitted in accordance with the instructions in the Class Notice. Such a written request will have no affect on one’s inclusion in the PAGA Settlement.
- P. “Final” means the last of the following dates, as applicable:
 - 1. The first business day following the last date on which a notice of appeal from the Judgment may be filed and none is filed.
 - 2. If Judgment is entered and a timely appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal.
- Q. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- R. “Gross Settlement Amount” means One Million Seven Hundred Fifty Thousand Dollars and No Cents (\$1,750,000.00) to be paid by Defendant as provided by this Agreement. This amount is an all-in amount without any reversion to Defendant or any of the Released Parties and shall be inclusive of all payments of Settlement Shares to the Participating Class Members, Settlement Administration Expenses,

Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the PAGA Payment contemplated in this resolution in this Agreement, and excluding any employer payroll taxes, if any, due on the portion of the Settlement Shares allocated to wages which shall not be paid from the Gross Settlement Amount and shall be the separate additional obligation of Defendant.

- S. “Judgment” means the Final Approval Order and Judgment entered by the Court substantially in the forms attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- T. “LWDA Payment” means the 75% portion of the PAGA Payment payable to the California Labor and Workforce Development Agency (“LWDA”) as the LWDA’s share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA.
- U. “Net Settlement Amount” means the Gross Settlement Amount less the Court-approved amount for the Class Representative Service Payment, the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the LWDA Payment, and the Settlement Administration Expenses.
- V. “Non-Participating Class Member” means a Class Member who submits a valid and timely Election Not to Participate in Settlement.
- W. “PAGA Payment” means the portion of the Gross Settlement Amount, as described below in Section III.B.3., which shall be allocated 75% to the LWDA (the “LWDA Payment”) as the LWDA’s share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA and 25% to remain in the Net Settlement Amount for distribution to the Aggrieved Employees based upon their respective workweeks worked during the PAGA Period.
- X. “PAGA Period” means the period of time from April 28, 2019 through the date of Preliminary Approval of the Settlement.
- Y. “PAGA Share” means each Aggrieved Employee’s individual share of the 25% share of the PAGA Payment that is to remain in the Net Settlement Amount for distribution to Aggrieved Employees based on their respective workweeks worked during the PAGA Period, as provided by this Agreement, and described in Section III.B.3.
- Z. “Participating Class Member” means a Class Member who does not submit a valid and timely Election Not to Participate in Settlement.
- AA. “Preliminary Approval of the Settlement” means the Court’s Order Granting Preliminary Approval of the Settlement substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- BB. “Released Parties” means (1) Defendant Designer Fragrances & Cosmetics Company; (2) any predecessors and successors in interest, companies acquiring any or all of Defendant’s assets or capital stock, current or former officers, directors,

shareholders, agents, representatives, and employees of Defendant, any client companies of Defendant for which the Class Members serviced while employed by Defendant, any current or former parent corporations, subsidiary corporations, affiliates, and assigns, including but not limited to NYX Professional Makeup, Urban Decay Cosmetics, Luxury Beauty Store, Atelier Cologne, and Kiehl's since 1851; (3) current or former officers, directors, shareholders, agents, representatives, and employees of Defendant; and (4) insurers of any of the foregoing persons or entities.

- CC. "Settlement" means the disposition of the Action and all related claims effectuated by this Agreement.
- DD. "Settlement Administrator" means the administrator proposed by the Parties and appointed by the Court to administer the Settlement. The determination of the Settlement Administrator will be by a not to exceed bid and shall be agreed to by all counsel.
- EE. "Settlement Share" means each Participating Class Member's share of the Net Settlement Amount as provided by this Agreement.

II. RECITALS

- A. On April 28, 2020, Plaintiff filed a putative class action Complaint in Los Angeles Superior Court (Case No. 20STCV16314) on behalf of herself and all allegedly similarly situated individuals, asserting causes of action for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Breaks; (5) Failure to Provide Accurate Wage Statements; (6) Failure to Timely Pay Wages Upon Separation; and (7) Unfair Competition (the "Action");
- B. On or about May 6, 2020, Plaintiff notified the Labor Workforce Development Agency ("LWDA") of her intent to file actions under California's Private Attorneys General Act, California Labor Code § 2698 et seq. ("PAGA");
- C. On July 14, 2020, Plaintiff filed a First Amended Complaint adding an Eighth Cause of Action for alleged violation of the PAGA;
- D. During the course of the litigation of the Action, the Parties engaged in informal discovery, including Defendant producing hundreds of pages of policies and other relevant documents, pay and time data, and wage statements for Plaintiff and the putative Class Members.
- E. On August 16, 2021, the Parties participated in an all-day mediation with neutral Tripper Ortman, a respected mediator of wage and hour class actions, but failed to reach a resolution. Following the mediation, each side, represented by its respective counsel, continued to negotiate with the assistance of Mr. Ortman. Defendant subsequently engaged in further investigation of the claims asserted at mediation and disclosed the results of this investigation to Plaintiff and her counsel. On November 11, 2021, the Parties were able to agree to reach an agreement to settle the Action, which was memorialized in a Memorandum of Understanding. This

Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.

- F. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Class have merit or that Defendant or any Related Entity bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant will pay under this Settlement is One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000). This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Settlement Shares allocated to wages which shall be separately paid by Defendant (or the Related Entities, as applicable) to the Settlement Administrator. All of the Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendant.
- B. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel's Litigation Expenses, the LWDA Payment, and the Settlement Administration Expenses. The remaining amount shall be known as the "Net Settlement Amount." The Settlement Administrator will make the following payments out of the Gross Settlement Amount:
1. **To Plaintiff:** In addition to the Settlement Share to be paid to Plaintiff, Plaintiff will apply to the Court for an award of not more than \$7,500 for the Class Representative Service Payment. The Settlement Administrator will pay the Class Representative Service Payment approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Representative Service Payment of less than \$7,500 for Plaintiff, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. To receive the payment, Plaintiff will agree to a 1542 waiver and a general release of all claims as set forth below. The Class Representative Service Payment is in settlement of claims for interest and for penalties allegedly due and shall not be subject to wage withholdings, and shall be reported on IRS Form 1099-MISC form. Plaintiff will be solely responsible for any tax payments associated with the Class Representative Service Payment.

2. **To Class Counsel:** Class Counsel will apply to the Court for an award of not more than One-Third of the Gross Settlement Amount, which is presently \$583,333.33, as their Class Counsel Fees Payment and an amount not more than \$35,000.00 for all expenses incurred as documented in Class Counsel's billing records as their Class Counsel Litigation Expenses Payment. The Settlement Administrator will pay the amounts approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses Payment of less than these amounts, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions, if any, will not be taken from the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment and instead one or more Forms 1099 will be issued to Haines Law Group, APC with respect to those payments. The Parties explicitly agree and recognize that Defendant incurs no obligation in this Settlement to ensure any particular allocation of these payments between Class Counsel and has no obligation other than to tender these amounts to the Settlement Administrator for distribution as part of the Gross Settlement Amount.
 3. **The PAGA Payment.** The Parties will seek approval from the Court for the PAGA Payment of \$50,000, which shall be allocated 75% (\$37,500) to the LWDA (the "LWDA Payment") as the LWDA's share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA, and taken out of the Gross Settlement Amount, and 25% (\$12,500) will remain in the Net Settlement Amount for distribution to the Aggrieved Employees based upon their respective workweeks worked during the PAGA Period ("PAGA Shares"). The portion of the PAGA Payment distributed to Aggrieved Employees shall not be subject to wage withholdings and shall be reported on IRS Form 1099. Each Aggrieved Employee will be bound by the PAGA portion of the release contemplated in this agreement and will receive their respective PAGA Share regardless of whether they exclude themselves from the class action settlement. If the Court approves a PAGA Payment of less than \$50,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Class Counsel shall notify the Labor and Workforce Development Agency of this Settlement as required by statute.
 4. **To the Settlement Administrator.** The Settlement Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses that are documented and approved by the Court in an amount not to exceed \$18,500 ("Settlement Administration Expenses"). To the extent the Settlement Administration Expenses that are documented and approved by the Court are less than \$18,500, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.
- C. **Payments From the Net Settlement Amount.** The Net Settlement Amount shall include the following payments after the deductions have been made from the Gross Settlement Amount as described in Paragraph III.B.. The Net Settlement Amount shall include the following:

1. **Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member. The submission of a claim form is not required to be paid.
2. **Calculation.** Settlement Shares will be determined and paid as follows:
 - a. From the Net Settlement Amount, the Settlement Administrator will calculate each Participating Settlement Class Member's Settlement Share based on the following formula:
 - i. Wage Statement Amount: 10% of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each Participating Settlement Class Member who was employed by Defendant at any time between April 28, 2019 to the end of the Class Period, shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
 - ii. Waiting Time Amount: 10% of the Net Settlement Amount shall be designated as the "Waiting Time Amount." The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class member who separated their employment from Defendant at any time from April 28, 2017 to the end of the Class Period.
 - iii. The remainder (80%) of the Net Settlement Amount will be distributed to each Participating Settlement Class Member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Participating Settlement Class member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all Participating Settlement Class members during the Class Period.
 - iv. Defendant's payroll records shall control, but Participating Class Members will have the right to challenge the number of workweeks. The Parties agree that for administrative purposes workweeks may, but need not, be determined by determining the number of days between an employee's hire and termination dates, dividing by 7, and rounding up to the nearest whole number.
3. **Withholding.**
 - a. Subject to approval by the Court, 33.4% of each Participating Class Member's Settlement Share is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2 and shall be paid for from the Gross Settlement Amount. Defendant (or

the Related Entities, as applicable) shall be separately responsible for the employer share of payroll taxes on the Wage Portion of each Settlement Share distributed to the Participating Class Members.

- b. Subject to approval by the Court, 33.3% of each Participating Class Member's Settlement Share is in settlement of claims for interest and 33.3% of each Participating Class Member's Settlement Share is in settlement of claims for penalties allegedly due to employees (collectively the "Non-Wage Portion"). The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099.
4. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Settlement Share, and their Election Not to Participate in Settlement will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Their respective Settlement Shares will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to their Settlement Shares.
5. **Class Size Modification.** Defendant has represented that the class consists of an estimated total of 1,587 Class Members during the time period of April 28, 2016 through November 11, 2021 who collectively worked approximately 82,594 workweeks during that period. Defendant will verify the updated number of Class Members and workweeks covered by this Settlement based on the best data reasonably available to Defendant at the time of Preliminary Approval. If the verified number of workweeks exceeds 90,853 (110% of the estimated number), at the time of preliminary approval, Defendant, at its option, shall have the option to either (1) shorten the Class Period to reduce the number of workweeks below 90,853, or (2) pay a proportionate increase in the Gross Settlement Amount for workweeks in excess of 90,853 (110%). This election shall be made by Defendant prior to the class notice being delivered to the class, and in no event later than 10 days after the court grants preliminary approval.

For example, and to illustrate the intended operation of this Paragraph, if Defendant's verified workweek total covering the Class Period through February 30, 2022 (assuming preliminary approval is granted at a date thereafter) is 103,243, Defendant would have the option to either (1) add an additional \$262,500 (15%) to the Gross Settlement Fund; or (2) limit the end date of the Class Period to a date on which the total number of workweeks would not exceed 90,853.

- D. **Appointment of Settlement Administrator.** After obtaining a quote from mutually acceptable and qualified settlement administrators, the Parties have mutually agreed to ask the Court to appoint Phoenix Settlement Administrators as the qualified administrator, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all

Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validity completed Elections Not to Participate in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of completed Elections Not to Participate in Settlement; calculating Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the authority to resolve all disputes concerning the calculation of a Participating Class Member's Settlement Share, subject to the dollar limitations and calculations set forth in this Agreement. The Settlement Administration Expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount.

The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

E. Procedure for Approving Settlement.

1. Motion for Preliminary Approval of Settlement by the Court.

- a. After Execution of this Settlement Agreement, Plaintiff will file a Preliminary Approval Motion with the Court for an order giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the "Motion for Preliminary Approval"). Any disagreement among the Parties concerning the Class Notice, the proposed orders, or other documents necessary to implement the Settlement will be referred to the mediator for resolution.
- b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit an Order Granting Preliminary Approval of the Settlement substantially in the form evidenced by Exhibit B to this Agreement and incorporated by reference into this Agreement.
- c. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval.

2. **Notice to Class Members.** After the Court enters an Order Granting Preliminary Approval of the Settlement, every Class Member will be sent the Class Notice Packet (which will include the Class Notice completed to reflect the Order Granting Preliminary Approval of the Settlement and showing the Class Member's Settlement Share) as follows:
- a. No later than 20 business days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic database containing each Class Member's Class Data. If any or all of the Class Data is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be submitted to the Settlement Administrator. This information will otherwise remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, in order to carry out the reasonable efforts described in section III.E.2.c., or pursuant to Defendant's express written authorization or by order of the Court. All Class Data will be used for settlement notification and settlement administration and shall not be used for any other purpose by Class Counsel.
 - b. The Settlement Administrator shall update the Class Data using the National Change of Address database prior to mailing the Class Notice Packets. Using best efforts to mail it as soon as possible, and in no event later than 14 days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
 - c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not longer than fourteen (14) days from receipt of the returned packet, search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Data to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, Court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address using available email addresses, phone numbers, social security numbers, credit reports, LinkedIn, and Facebook; and promptly re-mailing to Class Members for whom new addresses are

found. If the Class Notice Packet is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendant's Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

- d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Elections Not to Participate in Settlement it receives (including the numbers of valid and deficient), and number of objections received.
- e. Not later than 10 days before the date by which Plaintiff files the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the Elections Not to Participate in Settlement it received (including the numbers of valid and deficient Elections) and objections received. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. **Objections to Settlement; Disputes as to Workweeks Allocated to Class Members; Elections Not to Participate in Settlement.** Participating Class Members may submit objections to the Settlement and/or objections to the Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment. Class Members may also submit disputes as to workweeks allocated to them and Elections Not to Participate in Settlement pursuant to the following procedures:

- a. **Objections to Settlement.** The Class Notice will provide that only Participating Class Members who wish to object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payment may object to the proposed Settlement, either in writing or orally at the Final Approval Hearing. Objections in writing must be submitted to the Settlement Administrator with copies to Class Counsel and Defendant's Counsel, postmarked not later than sixty (60) calendar days after the Settlement Administrator mails the Class Notice Packets. Written objections must set forth the grounds for the objection(s) and comply with the instructions in the Class Notice. Alternatively, Class Members shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) to orally object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payment. A Participating Class Member who does not submit an objection in the manner and by the deadline specified above and in the Class Notice will be deemed to have waived any objection and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement, Class

Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Non-Participating Class Members shall have no ability to comment on or object to the Settlement, except as provided in Paragraph III.E.3.c *infra* with regard to objections made to the PAGA portion of the Settlement.

- b. **Disputes as to Workweeks.** Each Class Member shall also have sixty (60) calendar days after the Settlement Administrator mails the Class Notice Packets in which to dispute the number of workweeks the Class Notice allocates to them during the Class Period. Any notice of dispute shall be directed to the Settlement Administrator. Any dispute as to this allocation shall be resolved by the Settlement Administrator, with input and assistance from Defendant's Counsel, where applicable.

- c. **Election Not to Participate in Settlement.** The Class Notice also will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator postmarked not later than sixty (60) calendar days after the Settlement Administrator mails the Class Notice Packets, a signed Election Not to Participate in Settlement. An Opt Out Form to effectuate the Election Not to Participate in Settlement will be included in the Class Notice Packet. To be valid, an Election Not to Participate in Settlement must be timely and must comply with the instructions in the Class Notice. If a question is raised about the authenticity of a signed Election Not to Participate in Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. The Parties acknowledge and agree that for purposes of the PAGA and Judgment, all Aggrieved Employees were allegedly aggrieved in the same manner pursuant to Labor Code § 2698, *et. seq.*, in that each Aggrieved Employee allegedly suffered at least one of the alleged Labor Code violations asserted in the Amended Complaint for which the PAGA provides an available remedy. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969, and *Cardenas v. McLane Foodservice, Inc.*, 2011 WL 379413 at *3 (C.D. Cal. Jan. 31, 2011), individuals otherwise meeting the definition of Aggrieved Employees who exclude themselves from the Class Settlement, nonetheless shall be bound by the Judgment of the PAGA claim and will receive their proportionate share of the PAGA Payment. A Non-Participating Class Member will otherwise not participate in or be bound by the Settlement and the Judgment. Defendant will remain free to contest any claim brought by any Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendant has or could assert against such a claim. A Class Member who does not complete and mail a timely Election Not to Participate in Settlement

in the manner and by the deadline specified above and in the Class Notice will automatically become a Participating Class Member and will be bound by all terms and conditions of the Settlement, including the Released Class Claims by the Class, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement. Persons who submit an Election Not to Participate in Settlement shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement except as to the right of any Aggrieved Employee, to the extent required by law, to object to the terms of the PAGA portion of this Settlement.

All Participating Class Members who do not submit a valid and timely Election Not to Participate in Settlement will receive a Settlement Share, without the need to file a claim form, and will be bound by all of the terms of the Settlement, including without limitation, the release of the Released Class Claims by the Participating Class Members set forth in this Agreement.

- d. **Report.** Not later than ten (10) calendar days after the deadline for submission of Elections Not to Participate in Settlement, the Settlement Administration will provide Class Counsel and Defendant's Counsel with a complete and accurate list of all Participating Class Members and all Non-Participating Class Members.
4. **Right of Defendant to Reject Settlement.** If more than five percent (5%) of the Class Members timely submit valid Elections Not to Participate in Settlement, Defendant will have the sole right, but not the obligation, to void the Settlement, in which case the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendant will be solely responsible for all Settlement Administration Expenses incurred as of the date that Defendant exercises the right to void the Settlement pursuant to this Paragraph. Defendant must notify Class Counsel and the Court whether it is exercising its right pursuant to this Paragraph not later than seven (7) calendar days after the Settlement Administrator notifies the Parties of the number of valid Elections Not to Participate in Settlement it has received.
 5. **No Solicitation.** The Parties and their counsel represent that neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement. If a Class Member submits an Election Not to Participate in Settlement, Class Counsel will not solicit, represent, or otherwise encourage that Non-Participating Class Member to participate in separate litigation against Defendant. The parties agree that this clause does not, however, preclude Defendant from requiring an individual to exclude themselves

from the Settlement as part of a separately negotiated individual settlement and release agreement that includes the claims covered by this Settlement.

6. Additional Briefing and Final Approval.

- a. Unless otherwise ordered by the Court, Class Counsel will file with the Court their motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment no later than the date Plaintiff files the Motion for Final Approval, and the application will be scheduled to be heard by the Court at the Final Approval Hearing.
- b. Not later than sixteen (16) court days before the Final Approval Hearing, the Plaintiff will file with the Court a motion for final approval of the Settlement, the PAGA Payment, and payment of the Settlement Administration Expenses.
- c. If any opposition is filed to the motion for final approval and/or the motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the PAGA Payment, then not later than five (5) court days before the Final Approval Hearing, both Parties may file a reply in support of the motion for final approval, and Plaintiff and Class Counsel may also file a reply in support of their motion for the Class Representative Service Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.
- d. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiff and Class Counsel for the PAGA Payment, Class Representative Service Payment, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this Paragraph.
- e. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment substantially in the form attached hereto as Exhibit C. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

7. Waiver of Right to Appeal. Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiff and Participating Class

Members who did not timely submit an objection to the Settlement, Defendant, and its respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The Judgment therefore will become nonappealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final.

8. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of the Court not later than fourteen days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payment or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this Paragraph, provided that Defendant's obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.
9. **Timing of Settlement Funding and Provision of Settlement Shares and Other Payments.** Defendant shall fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. Defendant shall fund the Gross Settlement Amount and the amount necessary to pay Defendant's share of payroll taxes within fourteen (14) days of the Effective Date. Within fourteen (14) days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will make payment of all Settlement Shares to Participating Class Members, as well as payment of Settlement Administration Expenses, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payment and the LWDA Payment in accordance with this Agreement.
10. **Uncashed Settlement Share Checks.** A Participating Class Member must cash his or her Settlement Share check within 180 days after it is mailed to him or her. If a check is returned to the Settlement Administrator or not cashed within 120 days after the last mailing, the Settlement Administrator will make all reasonable efforts to re-mail it to the affected Participating Class Member at his or her correct address by use of available email

addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook. If a Participating Class Member's Settlement Share check is not cashed within 120 days after its last mailing to the Participating Class Member, the Settlement Administrator will also send the affected Participating Class Member a notice informing him or her that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the 60-day period after this notice, the funds from such uncashed checks will be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the Settlement Class Member to whom the check was issued, until such time that they claim their property. The Parties agree that this disposition results in no "unpaid residue" within the meaning of California Code of Civil Procedure Section 384, as the entire Net Settlement Amount will be paid out to Participating Class Members, whether or not they all cash their Settlement Share checks.

11. **Final Report by Settlement Administrator to Court.** Within ten days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will provide the Parties with a declaration providing a final report on the disbursements of all funds from the Gross Settlement Amount.

F. Release of Claims.

1. **Participating Class Members.** Upon entry of final judgment and payment by Defendant of the Gross Settlement Amount in accordance with Paragraph III.E.9 of this Agreement, Defendant and the Released Parties shall be entitled to a release from the Participating Class Members for any and all claims that were alleged in the Complaint or could have been asserted based on the factual allegations asserted in the Action. Specifically, without limitation, Participating Class Members will release claims under Cal. Lab. Code §§ 201, 202, 203, 204, 223, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and the IWC Wage Orders, and the federal Fair Labor Standards Act ("Released Class Claims"), as well as claims by or on behalf of the State of California or any of its divisions, including the LWDA, under the Private Attorney General Act, Cal. Lab. Code § 2698, *et seq.* and for unlawful and/or unfair business practices under Cal. Bus. & Prof Code § 17200 *et seq.*, to the extent such claims are predicated on the Released Class Claims; and any claim for attorneys' fees and costs related to the above-referenced Released Class Claims. The doctrines of res judicata, claim preclusion, issue preclusion, primary rights, and collateral estoppel shall fully and broadly apply to Released Class Claims and the release in this Settlement to the greatest effect and extent permitted by law.
2. **Plaintiff.** Upon the occurrence of the Effective Date, Plaintiff generally, unconditionally, irrevocably and absolutely releases and discharges the

Released Parties from any and all claims, transactions or occurrences between them that occurred during the Class Period, to the fullest extent permitted by law (“Plaintiff’s Released Claims”). This release of Plaintiff’s Released Claims unconditionally, irrevocably and absolutely releases and discharges the Released Parties from any claim that Plaintiff could maintain in any action against any Released Party that occurred during the Class Period. Notwithstanding the foregoing, nothing in this Settlement Agreement waives or releases any rights which as a matter of law cannot be waived and released by private agreement, including rights to sue to enforce this Agreement and rights to unemployment benefits and workers’ compensation benefits and claims outside the Class Period.

Plaintiff acknowledges that she may discover facts or law different from, or in addition to the facts or law that she knows or believes to be true with respect to the claims and matters released by way of this Agreement and agrees, nonetheless, that this Agreement and the releases contained in it shall be and remain effective in all respects, notwithstanding such different or additional facts or the discovery of them. The Parties declare and represent that they intend this Agreement to be complete and not subject to any claim of mistake, and that the releases herein express full and complete releases, and that they intend that the releases herein shall be final and complete. The Parties execute this release with the full knowledge that this release of the Plaintiff’s Released Claims cover all possible claims by Plaintiff against the Released Parties, to the fullest extent permitted by law. To the extent permitted by law, Plaintiff expressly waives her right to recovery of any type, including damages, penalties, or reinstatement, in any administrative or court action, whether state or federal, and whether brought by Plaintiff or on Plaintiff’s behalf, related in any way to the matters released herein.

Notwithstanding the provisions of section 1542, and for the purpose of implementing a full and complete release and discharge of all of Plaintiff’s Released Claims, Plaintiff expressly acknowledges that this settlement is intended to include in its effect, without limitation, all Plaintiff’s Released Claims which Plaintiff does not know or suspect to exist in her favor at the time of execution hereof, and that the Settlement contemplates the extinguishment of all such Plaintiff’s Released Claims.

Plaintiff and Defendant acknowledge that it is their mutual intent not only to resolve all matters presently in dispute between them, but also by this Agreement to forever prevent the reoccurrence of any question, dispute, or claim regarding the past employment or future consideration for employment of Plaintiff by Defendant or Released Parties.

3. **Plaintiff’s Waiver of Rights Under California Civil Code Section 1542.** As partial consideration for the Class Representative Service Payment, the Plaintiff’s Released Claims shall include all such claims, whether known or unknown by the releasing party. Thus, even if Plaintiff discover facts and/or claims in addition to or different from those that they now know or believe

to be true with respect to the subject matter of the Plaintiff's Released Claims, those claims will remain released and forever barred. Therefore, with respect to Plaintiff's Released Claims, Plaintiff expressly waives and relinquishes the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

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

4. **Class Counsel.** As of the date the Judgment becomes Final and payment by Defendant of the Gross Settlement Amount in accordance with Paragraph III.E.9 of this Agreement, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against the Released Parties arising from or related to the Action.

- G. **No Effect on Other Benefits.** The Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiff or Participating Class Members, and Plaintiff and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.

- H. **Limitation on Public Statements About Settlement.** The Parties agree that Plaintiff and Class Counsel will not publish the fact of, or terms of, this Settlement to members of the press, including to Verdicts and Settlements. Plaintiff and Class Counsel will not publish the fact of, or terms of, this Settlement or any related information on any website, for advertising purposes and/or in publication materials generally available to the public. Further, Class Counsel and Plaintiff agree not to issue press releases or initiate any public statements regarding the Settlement, including but not limited to in the media or on the Internet, with the exception of the Class Notice. This provision shall not prohibit Class Counsel from communicating with Class Members after preliminary approval is granted for the sole purpose of administering the Settlement. This provision also does not limit Class Counsel from complying with ethical obligations. Plaintiff and Class Counsel agree not to respond to any media inquiries except to refer reporters to the papers filed with the court. The Parties may make public statements to the Court as necessary to obtain preliminary or final approval of the Settlement. The Parties and their counsel shall refrain from publicly disparaging any of the other parties or counsel, including the Released Parties, or taking any public action designed or reasonably foreseeable to cause harm to the public perception of any of the Released Parties regarding any issue related in any way to the Action or the Settlement, but nothing herein is intended to prevent any party or their counsel, should it be required in connection with official court proceedings in other actions, from discussing the Settlement.

I. Miscellaneous Terms.

1. No Admission of Liability or Class Certification for Other Purposes.

- a. Defendant and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant or the Released Parties, or an admission by Plaintiff that any of the claims were non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement). Nothing in this Agreement shall be construed as an admission by Defendant of any liability or wrongdoing as to Plaintiff, Class Members, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. Moreover, it is not, and it should not be construed as, any admission of fact or law in this matter or any other matter that a class action is appropriate, and that settlement of this Action by way of a class action in no way waives Released Parties' defenses in another action with respect to an individual's waiver of rights to file a class and/or collective action. The parties have entered into this settlement with the intention of avoiding further disputes and litigation with the attendant inconvenience, expenses and risks. Nothing in this Agreement shall be construed as an admission by Plaintiff that Plaintiff's claims do not have merit or that class action is inappropriate.
- b. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiff or Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.

- c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.
2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
3. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the mediator for resolution.
4. **No Prior Assignments:** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.
5. **No Tax Advice:** Neither Class Counsel nor Defendant's Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
6. **Modification of Agreement.** Except as set forth in III.I.3 hereinabove this Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives.
7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
11. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty days after the Judgment becomes Final, Class Counsel will return or destroy and confirm in writing to Defendant the destruction of all such documents and data.
12. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
13. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiff and the Class:

HAINES LAW GROUP, APC
Paul K. Haines
Fletcher W. Schmidt
Alexandra R. McIntosh
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355
E-Mail: phaines@haineslawgroup.com
fschmidt@haineslawgroup.com
amcintosh@haineslawgroup.com

TOJARIEH LAW FIRM, PC
Joseph Tojarieh
10250 Constellation Blvd., Suite 100
Los Angeles, CA 90067

Tel: (310) 553-5533
Fax:(310) 553-5536
E-Mail: jft@tojariehlaw.com

To Defendant:

LITTLER MENDELSON, P.C.
Angela J. Rafoth
Emily A. Mertes
333 Bush Street, 34th Floor
San Francisco, CA 94104
Tel.: (415) 433-1940
Fax: (415) 399-8490
E-Mail: arafoth@littler.com
emertes@littler.com

14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
15. **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process from the mediation with Tripper Ortman on August 16, 2021 until the earlier of the Effective Date or the reopening of renewed discovery.
16. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action under CCP section 664.6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of this Settlement.

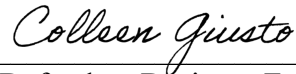
IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Jun 9, 2022
Date


Janelle Basich (Jun 9, 2022 16:31 EDT)
Plaintiff Janelle Basich-Mustafa

6/14/2022
Date


Defendant Designer Fragrances & Cosmetics Company

June 9, 2022

Date



Haines Law Group, APC
Counsel for Plaintiff

Jun 9, 2022

Date



Joseph Tojarieh (Jun 9, 2022 15:20 PDT)

Tojarieh Law Firm, PC
Counsel for Plaintiff

June 14, 2022

Date



Little Mendelson, P.C.
Counsel for Defendant

EXHIBIT A

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR
FINAL COURT APPROVAL AND OPT OUT FORM]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JANELLE BASICH-MUSTAFA, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

DESIGNER FRAGRANCES & COSMETICS
COMPANY, a California Corporation, d/b/a NYX
Professional Makeup; and DOES 1 through 100,

Defendants.

Case No. 20STCV16314

NOTICE OF CLASS ACTION SETTLEMENT

To: All current and former non-exempt employees of Designer Fragrances & Cosmetics Company (“Designer Fragrances & Cosmetics Company”); in California who worked at any time between April 28, 2016 and <<PRELIM APPROVAL DATE>>, (the “Class Period”).

**PLEASE READ THIS NOTICE CAREFULLY
THIS NOTICE IS BEING PROVIDED TO YOU IN ENGLISH AND SPANISH
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

You may be entitled to money from this Settlement. Designer Fragrances & Cosmetics Company’s records show that you were employed by Designer Fragrances & Cosmetics Company as a non-exempt employee in California between April 28, 2016 and the <<PRELIM APPROVAL DATE>>. The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment. Notice of the final judgment will be posted online at <<ADMIN WEBSITE URL>>.

What is this case about?

Plaintiff Janelle Basich-Mustafa (“Plaintiff”) brought this lawsuit against Designer Fragrances & Cosmetics Company, asserting claims on behalf of all Participating Class Members. Plaintiff is known as the “Class Representative,” and her attorneys, who also represent the interests of all Participating Class Members, are known as “Class Counsel.”

In the Lawsuit, Plaintiff alleged that Designer Fragrances & Cosmetics Company: (1) failed to pay all minimum wages; (2) failed to pay all overtime wages; (3) failed to provide all meal periods; (4) failed to authorize and permit all rest periods; (5) failed to maintain accurate records and issue accurate, itemized wage statements; (6) failed to pay all final wages at termination; (7) engaged in unfair business practices; and (8) is liable for civil penalties under the Private Attorneys General Act (Labor Code section 2698) (“PAGA”).

Designer Fragrances & Cosmetics Company denies that it has done anything wrong. Designer Fragrances & Cosmetics Company denies that it owes Participating Class Members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Designer Fragrances & Cosmetics Company, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff’s claims. However, to avoid additional expense, inconvenience, and interference with business operations, the parties concluded that it is in Designer Fragrances & Cosmetics Company’s best interests and the interests of Participating Class Members to settle the Lawsuit on the terms summarized in this Notice. After Designer Fragrances & Cosmetics Company provided relevant information to Class Counsel, the Settlement was reached after mediation and negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Designer Fragrances & Cosmetics Company, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by Designer Fragrances & Cosmetics Company, your decision about whether to participate in the Settlement will not affect your employment. California law and Designer Fragrances & Cosmetics Company's policies strictly prohibit unlawful retaliation. Designer Fragrances & Cosmetics Company will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Participating Class Member because of his or her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

<p>Attorneys for Plaintiff / Participating Class Members:</p> <p>HAINES LAW GROUP, APC Paul K. Haines (SBN 248226) phaines@haineslawgroup.com Fletcher W. Schmidt (SBN 286462) fschmidt@haineslawgroup.com Alexandra R. McIntosh (SBN 320904) amcintosh@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com</p> <p>TOJARIEH LAW FIRM, PC Joseph Tojarieh (SBN 265492) 10250 Constellation Blvd., Suite 100 Los Angeles, CA 90067 Tel: (310) 553-5533 Fax: (310) 553-5536</p>	<p>Attorneys for Designer Fragrances & Cosmetics Company:</p> <p>LITTLER MENDELSON P.C. Angela Rafoth (SBN 241966) arafoth@littler.com Emily Mertes (SBN 296743) emertes@littler.com 333 Bush Street, Floor 34 San Francisco, CA 94104-2842 Tel: (415) 433-1940 Fax: (415) 399-8490 littler.com</p>
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What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class – for settlement purposes only – of all current and former non-exempt employees of Designer Fragrances & Cosmetics Company in California who worked at any time during the Class Period. Participating Class Members who do not submit a valid and timely Opt-Out Request from the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Designer Fragrances & Cosmetics Company, as described below in the “Release” section.

Designer Fragrances & Cosmetics Company agreed to pay \$1,750,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Participating Class Members, attorneys’ fees and expenses, settlement administration costs, payment to the California Labor and Workforce Development Agency (“LWDA”) for its share of PAGA civil penalties, and the Class Representative Service Payment. Designer Fragrances & Cosmetics Company will fund the Gross Settlement Amount no later than 14 days after the final approval of the settlement (assuming no objections or appeals).

The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and who will perform other duties relating to the Settlement. The Court has approved setting aside up to \$18,500.00 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Participating Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as

attorneys' fees, which will be paid from the Gross Settlement Amount. Participating Class Members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Fund (which is currently estimated to be \$583,333.33) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$35,000.00 for verified costs which were incurred by Class Counsel in connection with the Lawsuit.

Class Representative Service Payment. Class Counsel will ask the Court to award \$7,500.00 to Plaintiff as a Class Representative Service Payment. This is meant to compensate Plaintiff for her service and extra work provided on behalf of the Participating Class Members.

PAGA Payment to the State of California. The parties have agreed to allocate \$50,000.00 of the Gross Settlement Amount as PAGA civil penalties. Per Labor Code section 2699(i), 75% of such penalties (\$37,500.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$12,500.00) will be payable to the individuals with PAGA standing ("aggrieved employees") as part of the Net Settlement Amount.

Calculation of Participating Class Members' Settlement Share. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount, which will be distributed to all Participating Class Members who do not submit a valid and timely Opt-Out Request (described below). The Net Settlement Amount will be divided as follows:

- (i) PAGA Amount: The \$12,500.00 payable to PAGA Members as PAGA civil penalties will be designated as the "PAGA Amount." Each employee who was employed by Designer Fragrances & Cosmetics Company in California any time between April 28, 2019 and <<PRELIM APPROVAL DATE>>, will receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
- (ii) Wage Statement Amount: Ten percent (10%) of the Net Settlement Amount will be designated as the "Wage Statement Amount." Each employee who was employed by Designer Fragrances & Cosmetics Company in California any time between April 28, 2019 and <<PRELIM APPROVAL DATE>>, will receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
- (iii) Waiting Time Amount: Ten percent (10%) of the Net Settlement Amount will be designated as the "Waiting Time Amount." The Waiting Time Amount will be distributed in equal shares to each Participating Class Member who separated their employment with Designer Fragrances & Cosmetics Company on or after April 28, 2017.
- (iv) The remainder of the Net Settlement Amount will be distributed to each Participating Class Member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Participating Class Member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all Participating Class Members during the Class Period.

Settlement Shares to Participating Class Members. If the Court grants final approval of the Settlement, Settlement Shares will be mailed to Participating Class Members who did not submit a valid and timely Opt-Out Request. Each Participating Class Member who receives a Settlement Share must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Participating Class Members whose checks are not cashed within 180 days after mailing will be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the Settlement Class Member to whom the check was issued, until such time that they claim their property.

Allocation and Taxes. Each Settlement Share will be allocated as 66.6% penalties and interest and 33.4% wages. The Settlement Administrator will be responsible for issuing to Participating Class Members an IRS Form 1099 (for amounts paid as penalties and interest) and IRS Form W2 (for amounts paid as wages). Amounts paid to PAGA Members for their share of civil penalties under PAGA will be allocated as 100% penalties. The Settlement Administrator will issue PAGA Members an IRS Form 1099 for these payments. The Settlement Administrator will be responsible for calculating and withholding all employee-share employment taxes and other legally required withholdings from each Settlement Share.

Release. If the Court approves the Settlement, each Participating Class Member who has not submitted a timely and valid Opt-Out Request will fully release and discharge Designer Fragrances & Cosmetics Company, any predecessors and successors in interest, companies acquiring any or all of Defendant's assets or capital stock, current or former officers, directors, shareholders, agents, representatives, and employees of Defendant, any client companies of Defendant for which the Class Members serviced while employed by Defendant, any current or former parent corporations, subsidiary corporations, affiliates, and assigns, including but not limited to NYX Professional Makeup, Urban Decay Cosmetics, Luxury Beauty Store, Atelier Cologne, and Kiehl's since 1851; current or former officers, directors, shareholders, agents, representatives, and employees of Defendant; and insurers of any of the foregoing persons or entities (collectively the "Released Parties"), from any and all claims that were alleged in the Complaint or could have been asserted based on the factual allegations asserted in the Action. Specifically, without limitation, Participating Class Members will release claims under Cal. Lab. Code §§ 201, 202, 203, 204, 223, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and the IWC Wage Orders, and the federal Fair Labor Standards Act ("Released Class Claims"), as well as claims by or on behalf of the State of California or any of its divisions, including the LWDA, under the Private Attorney General Act, Cal. Lab. Code § 2698, *et seq.* and for unlawful and/or unfair business practices under Cal. Bus. & Prof Code § 17200 *et seq.*, to the extent such claims are predicated on the Released Class Claims; and any claim for attorneys' fees and costs related to the above-referenced Released Class Claims. The doctrines of res judicata, claim preclusion, issue preclusion, primary rights, and collateral estoppel shall fully and broadly apply to Released Class Claims and the release in this Settlement to the greatest effect and extent permitted by law. This release will apply to claims arising during the Class Period and become effective upon the date that Designer Fragrances & Cosmetics Company deposits the entire Gross Settlement Amount with the Settlement Administrator.

Conditions of Settlement. The Settlement is conditioned upon the occurrence of all of the following events: (a) if no timely objections are filed or if all objections are withdrawn, the date upon which the Court enters Final Approval; (b) the first business day following the last date on which a notice of appeal from the Judgment may be filed and none is filed; (c) if Judgment is entered and a timely appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal (the "Effective Date").

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your Settlement Share, which has been calculated for you based on the formula set forth above, as stated in the accompanying Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of workweeks that you worked during the Class Period and PAGA Period as well as whether you are entitled to a share of the Wage Statement and/or Waiting Time Amount. The information contained in Designer Fragrances & Cosmetics Company's records regarding this information, along with your estimated Settlement Share, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Participating Class Members. Should a consensus not be reached, any outstanding disputes will be submitted to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a timely Opt-Out Request Form.

Send the Opt-Out Request directly to the Settlement Administrator at <<ADMINISTRATOR CONTACT INFO>>. Any person who submits a timely Opt-Out request from the Settlement will, upon receipt by the Settlement Administrator, no longer be a Participating Class Member, will be barred from participating in any portion of the Settlement, and will receive no benefits from the Settlement. **Do not submit both a Dispute and Opt-Out Request.** If you do, the Opt-Out request will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator. Your written objection should include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. All objections or other correspondence must state the name and number of the case, which is *Janelle Basich-Mustafa v. Designer Fragrances & Cosmetics Company, et al.*, Los Angeles County Superior Court, Case No. 20STCV16314. Objections in writing must be postmarked on or before **<<RESPONSE DEADLINE>>**.

You may also appear at the Final Approval Hearing scheduled for **<<FINAL APPROVAL HEARING DATE/TIME>>** in Department 10 of the Los Angeles County Superior Court, Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, California 90012. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing if you wish to appear in person. You have the right to appear either in person or through your own attorney at this hearing, whether or not you submit a written objection. If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on **<<FINAL APPROVAL HEARING DATE/TIME>>**, in Department 10 of the Los Angeles County Superior Court, Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, California 90012. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, the Service Payment to the Class Representative, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. **You are not required to attend the Final Approval Hearing.**

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Clerk's Office at the Los Angeles County Courthouse, located at the Los Angeles County Superior Court, Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, California 90012, during regular business hours. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, DESIGNER FRAGRANCES & COSMETICS COMPANY, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is **<<RESPONSE DEADLINE>>**.

NOTICE OF SETTLEMENT AWARD

JANELLE BASICH-MUSTAFA v. DESIGNER FRAGRANCES & COSMETICS COMPANY, et al.
LOS ANGELES COUNTY SUPERIOR COURT, CASE NO. 20STCV16314

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the information listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Settlement Share:

According to Designer Fragrances & Cosmetics Company’s records:

- (a) You worked _____ workweeks for Designer Fragrances & Cosmetics Company in California between April 28, 2016, and <<PRELIM APPROVAL DATE>>;
- (b) There were _____ total workweeks worked by employees of Designer Fragrances & Cosmetics Company in California between April 28, 2016, and <<PRELIM APPROVAL DATE>>;
- (c) You worked _____ workweeks for Designer Fragrances & Cosmetics Company in California between April 28, 2019, and <<PRELIM APPROVAL DATE>>;
- (d) There were _____ total workweeks worked by employees of Designer Fragrances & Cosmetics Company in California between April 28, 2019, and <<PRELIM APPROVAL DATE>>; and
- (e) You <<DID/DID NOT>> separate your employment with Designer Fragrances & Cosmetics Company on or after April 28, 2017.

Based on the above, your Settlement Share is estimated to be \$ _____ and your PAGA Amount is estimated to be \$ _____.

(IV) If you disagree with items (a) - (e) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from Designer Fragrances & Cosmetics Company’s records, those records will control unless you are able to provide documentation that establishes that Designer Fragrances & Cosmetics Company’s records are mistaken. If there is a dispute about whether Designer Fragrances & Cosmetics Company’s information or yours is accurate, and the dispute cannot be resolved informally, the Parties and the Settlement Administrator will resolve the dispute as described in the Class Notice that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED NO LATER THAN <<RESPONSE DEADLINE>>.

Signature: _____

Date: _____

OPT-OUT FORM

JANELLE BASICH-MUSTAFA v. DESIGNER FRAGRANCES & COSMETICS COMPANY, et al.
LOS ANGELES COUNTY SUPERIOR COURT, CASE NO. 20STCV16314

IF YOU DO NOT WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MUST COMPLETE, SIGN AND MAIL THIS FORM, POSTMARKED ON OR BEFORE **[INSERT DATE], ADDRESSED AS FOLLOWS:**

<p>PHOENIX SETTLEMENT ADMINISTRATORS <i>BASICH-MUSTAFA V. DESIGNER FRAGRANCES & COSMETICS COMPANY</i> SETTLEMENT ADMINISTRATOR</p> <p>ADDRESS ADDRESS PHONE FAX</p>

DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE A PAYMENT UNDER THE SETTLEMENT. PLEASE NOTE THAT EMPLOYEES MAY NOT EXCLUDE THEMSELVES FROM THEIR SHARE OF PAGA CIVIL PENALTIES.

By signing, filling out, and returning this form, I confirm that I ***do not*** want to be included in the Settlement of the lawsuit entitled *Janelle Basich-Mustafa v. Designer Fragrances & Cosmetics Company*, Los Angeles County Superior Court Case No. 20STCV16314.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *BASICH-MUSTAFA V. DESIGNER FRAGRANCES & COSMETICS COMPANY* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT.

Name Telephone Number

Address

Date Signature

Last Four Digits of Social Security Number: ____ _

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT]

1 **HAINES LAW GROUP, APC**
2 Paul K. Haines (SBN 248226)
3 phaines@haineslawgroup.com
4 Fletcher W. Schmidt (SBN 286462)
5 fschmidt@haineslawgroup.com
6 Alexandra R. McIntosh (SBN 320904)
7 amcintosh@haineslawgroup.com
8 2155 Campus Drive, Suite 180
9 El Segundo, California 90245
10 Tel: (424) 292-2350
11 Fax: (424) 292-2355

7 **TOJARIEH LAW FIRM, PC**
8 Joseph Tojarieh (SBN 265492)
9 10250 Constellation Blvd., Suite 100
10 Los Angeles, CA 90067
11 Tel: (310) 553-5533
12 Fax: (310) 553-5536

Attorneys for Plaintiff

13
14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF LOS ANGELES**

18 JANELLE BASICH-MUSTAFA, as an
19 individual and on behalf of all others
20 similarly situated,

21 Plaintiff,

22 v.

23 DESIGNER FRAGRANCES &
24 COSMETICS COMPANY, a California
25 corporation d/b/a NYX Professional
26 Makeup; and DOES 1 through 100,

27 Defendants.

CASE NO. 20STCV16314

*[Case assigned for all purposes to the Hon.
William F. Highberger, Dept. 10]*

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

Date: June 2, 2022
Time: 11:00 a.m.
Dept.: 10

Action Filed: April 28, 2020
Trial Date: None Set

1 The Motion of Plaintiff Janelle Basich-Mustafa (“Plaintiff”) for Preliminary Approval of
2 Class Action Settlement came regularly for hearing before this Court on June 2, 2022, at 11:00
3 a.m. The Court, having considered the proposed Amended Class Action Settlement Agreement
4 and Release of Claims (the “Settlement”), attached as Exhibit 1 to the Supplemental Declaration
5 of Fletcher W. Schmidt filed concurrently herewith; having considered Plaintiff’s Motion for
6 Preliminary Approval of Class Action Settlement, Memorandum of Points and Authorities in
7 support thereof, and supporting declarations filed therewith; and good cause appearing, HEREBY
8 ORDERS THE FOLLOWING:

9 1. The Court GRANTS preliminary approval of the class action settlement as set
10 forth in the Settlement and finds its terms to be within the range of reasonableness of a settlement
11 that ultimately could be granted approval by the Court at a Final Approval Hearing. For purposes
12 of the Settlement, the Court finds that the proposed Settlement Class is ascertainable and that
13 there is a sufficiently well-defined community of interest among the members of the Settlement
14 Class in questions of law and fact. Therefore, for settlement purposes only, the Court grants
15 conditional certification of the following Settlement Class:

16 All current and former non-exempt employees of Defendant
17 Designer Fragrances & Cosmetics Company (“Defendant” or
18 “Designer Fragrances & Cosmetics Company”) in California who
19 worked at any time between April 28, 2016 and the date of
 preliminary approval (the “Class Period”).

20 2. For purposes of the Settlement, the Court designates named Plaintiff Janelle
21 Basich-Mustafa as Class Representative and designates Paul K. Haines, Fletcher W. Schmidt, and
22 Alexandra R. McIntosh of Haines Law Group, APC and Joseph Tojarieh of Tojarieh Law Firm,
23 PC as Class Counsel.

24 4. The Court designates Phoenix Settlement Administrators as the third-party
25 Settlement Administrator for mailing notices.
26
27
28

1 5. The Court approves, as to form and content, the Class Notice, Notice of
2 Settlement, and Opt-Out Form attached as a combined Exhibit A to the Class Action Settlement
3 Agreement and submitted concurrently with Plaintiff’s Motion.

4 6. The Court finds that the form of notice to the Settlement Class regarding the
5 pendency of the action and of the Settlement, and the methods of giving notice to members of the
6 Settlement Class constitute the best notice practicable under the circumstances, and constitute
7 valid, due, and sufficient notice to all members of the Settlement Class. The form and method of
8 giving notice complies fully with the requirements of California Code of Civil Procedure § 382,
9 California Civil Code § 1781, California Rules of Court 3.766 and 3.769, the California and
10 United States Constitutions, and other applicable law.

11 7. The Court further approves the procedures for Settlement Class members to opt
12 out of or object to the Settlement, as set forth in the Opt-Out Form.

13 8. The procedures and requirements for filing objections in connection with the Final
14 Fairness Hearing are intended to ensure the efficient administration of justice and the orderly
15 presentation of any Class Member’s objection to the Settlement, in accordance with the due
16 process rights of all Settlement Class members.

17 9. The Court directs the Settlement Administrator to mail the Class Notice, Notice of
18 Settlement Award, and Opt-Out Form (collectively the “Notice Packet”) to the members of the
19 Settlement Class in accordance with the terms of the Settlement. The Court directs the Settlement
20 Administrator to carry out all duties as required by the Settlement.

21 10. The Class Notice shall provide at least 60 calendar days’ notice for members of
22 the Settlement Class to opt out of, or object to the Settlement. Any Opt-Out Form or Objection
23 shall be submitted directly to the Settlement Administrator and not filed with the Court. Upon
24 receipt of any Opt-Out Form or Objections, the Settlement Administrator shall forward copies of
25 all Opt-Out Forms and Objections to counsel for all parties. The Settlement Administrator shall
26 file a declaration concurrently with the filing of the Motion for Final Approval of Class Action
27 Settlement which authenticates a copy of every Request for Exclusion and Objection received by
28

1 the Settlement Administrator. The Settlement Administrator shall give notice to any objecting
2 Settlement Class member of any continuance of the hearing on Plaintiff’s Motion for Final
3 Approval of Class Action Settlement.

4 11. The Final Fairness Hearing on the question of whether the Settlement should be
5 finally approved as fair, reasonable, and adequate is scheduled in Department 10 of this Court,
6 located at 312 North Spring Street, Los Angeles, California 90012, on November 17, 2022, at
7 11:00 a.m.

8 12. At the Final Approval Hearing, the Court will consider: (a) whether the Settlement
9 should be finally approved as fair, reasonable, and adequate for the Settlement Class; (b) whether
10 a judgment granting final approval of the Settlement should be entered; and (c) whether Plaintiff’s
11 application for reasonable attorneys’ fees, reimbursement of litigation expenses, enhancement
12 payments to Plaintiff, settlement administration costs, and payment to the Labor and Workforce
13 Development Agency (“LWDA”) for penalties under the Labor Code Private Attorneys General
14 Act (“PAGA”) should be granted.

15 13. Counsel for the parties shall file memoranda, declarations, or other statements and
16 materials in support of their request for final approval of the Settlement, attorneys’ fees, litigation
17 expenses, Plaintiff’s enhancement payment, settlement administration costs, and payment to the
18 LWDA for PAGA penalties prior to the Final Approval Hearing according to the time limits set
19 by the Code of Civil Procedure and the California Rules of Court.

20 14. The implementation schedule is provided below (assuming the Court signs this
21 Order on June 2, 2022):

Event	Date
Defendant to provide Class Member information to the Settlement Administrator no later than [20 business days after preliminary approval]:	July 1, 2022
Settlement Administrator to mail Notice Packet to Class Members no later than [14 days from receipt of Class Member information]:	July 15, 2022
Deadline for Class Members to request exclusion from, submit dispute, or object to the Settlement [60 calendar days from mailing of Notice Packet]:	September 13, 2022

Deadline for Plaintiff to file Motion for Final Approval of Class Action Settlement:	At least 16 court days prior to Final Approval Hearing
Final Approval Hearing:	November 17, 2022, at 11:00 a.m.

15. Pending the Final Approval Hearing, all proceedings in this action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are stayed.

16. Counsel for the parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the Settlement which are not materially inconsistent with either this Order or the terms of the Settlement.

IT IS SO ORDERED.

Dated: _____, 2022

Honorable William F. Highberger
Judge of the Superior Court

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

1 **HAINES LAW GROUP, APC**
2 Paul K. Haines (SBN 248226)
3 phaines@haineslawgroup.com
4 Fletcher W. Schmidt (SBN 286462)
5 fschmidt@haineslawgroup.com
6 Alexandra R. McIntosh (SBN 320904)
7 amcintosh@haineslawgroup.com
8 2155 Campus Drive, Suite 180
9 El Segundo, California 90245
10 Tel: (424) 292-2350
11 Fax: (424) 292-2355

7 **TOJARIEH LAW FIRM, PC**
8 Joseph Tojarieh (SBN 265492)
9 10250 Constellation Blvd., Suite 100
10 Los Angeles, CA 90067
11 Tel: (310) 553-5533
12 Fax: (310) 553-5536

Attorneys for Plaintiff

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES**

16
17 JANELLE BASICH-MUSTAFA, as an
18 individual and on behalf of all others
19 similarly situated,

20 Plaintiff,

21 v.

22 DESIGNER FRAGRANCES &
23 COSMETICS COMPANY, a California
24 corporation d/b/a NYX Professional
25 Makeup; and DOES 1 through 100,

26 Defendants.

CASE NO. 20STCV16314

*[Case assigned for all purposes to the Hon.
William F. Highberger, Dept. 10]*

**[PROPOSED] JUDGMENT AND ORDER
GRANTING PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT, ATTORNEYS' FEES AND
COSTS, AND CLASS REPRESENTATIVE
ENHANCEMENT PAYMENT**

Date:
Time:
Dept.: 10

Action Filed: April 28, 2020
Trial Date: None Set

1 **[PROPOSED] JUDGMENT AND ORDER**

2 The Motion of Plaintiff Janelle Basich-Mustafa (“Plaintiff”) for Final Approval of Class
3 Action Settlement, Attorneys’ Fees and Costs, and Class Representative Enhancement Payment
4 (“Final Approval Motion”) came on regularly for hearing before this Court on TBD, 2022, at
5 TBD a.m., pursuant to California Rule of Court 3.769 and the prior Order Granting Preliminary
6 Approval of Class Action Settlement. Having considered the parties’ Stipulation of Settlement
7 (“Settlement”) and the documents and evidence presented in support thereof, and recognizing the
8 sharply disputed factual and legal issues involved in this case, the risks of further prosecution,
9 and the substantial benefits to be received by the Settlement Class, as defined herein, pursuant to
10 the Settlement, the Court hereby makes a final ruling that the proposed Settlement is fair,
11 reasonable, and adequate, and is the product of good faith, arm’s-length negotiations between the
12 parties. Good cause appearing therefor, the Court hereby GRANTS Plaintiff’s Final Approval
13 Motion and HEREBY ORDERS THE FOLLOWING:

14 1. Final judgment is hereby entered in conformity with the Settlement and this Final
15 Approval Order.

16 2. The conditional class certification is hereby made final, and the Court thus
17 certifies, for purposes of the Settlement, the following Settlement Class:

18 All current and former non-exempt employees of Defendant Designer
19 Fragrances & Cosmetics (“Defendant” or “Designer Fragrances &
20 Cosmetics Company”) in California who worked at any time between April
21 28, 2016 and <<PRELIM APPROVAL DATE>>, (the “Class Period”).

22 3. As of the date that this Judgment becomes final, all Settlement Class members, by
23 virtue of this Judgment, will fully release and discharge Defendant Designer Fragrances &
24 Cosmetics Company, any predecessors and successors in interest, companies acquiring any or all
25 of Defendant’s assets or capital stock, current or former officers, directors, shareholders, agents,
26 representatives, and employees of Defendant, any client companies of Defendant for which the
27 Class Members serviced while employed by Defendant, any current or former parent
28 corporations, subsidiary corporations, affiliates, and assigns, including but not limited to NYX
Professional Makeup, Urban Decay Cosmetics, Luxury Beauty Store, Atelier Cologne, and
Kiehl’s since 1851; current or former officers, directors, shareholders, agents, representatives,

1 and employees of Defendant; and insurers of any of the foregoing persons or entities (collectively
2 the “Released Parties”) from any and all claims that were pled in the Action, titled *Janelle Basich-
3 Mustafa v. Designer Fragrances & Cosmetics Company*, Los Angeles County Superior Court
4 Case No. 20STCV16314, or claims which could have been pled based on the factual allegations
5 in the Action, that arose during the Class Period (the “Released Claims”). The time period for the
6 Released Claims will be from April 28, 2016 through the date of preliminary approval.

7 4. Plaintiff Janelle Basich-Mustafa is hereby confirmed as Class Representative. Paul
8 K. Haines, Fletcher Schmidt, and Alexandra R. McIntosh of Haines Law Group, APC and Joseph
9 Tojarieh of Tojarieh Law Firm, PC are hereby confirmed as Class Counsel.

10 5. Notice was mailed to the Settlement Class members for whom addresses were
11 obtained in English and Spanish as set forth in the Settlement, which was approved by the Court
12 on May 5, 2021. The notice process has been completed in conformity with the Settlement and
13 with this Court’s orders. The notice provided due and adequate notice of the proceedings and
14 matters set forth therein, informed Settlement Class members of their rights, and fully satisfied
15 the requirements of California Code of Civil Procedure § 1781(e), California Rule of Court 3.769,
16 and due process.

17 6. The Court finds that ___ members of the Settlement Class objected to or opt-ed
18 out of the Settlement, and that the ___% participation rate in the Settlement supports final
19 approval.

20 7. The Court hereby approves the Settlement as set forth in the Settlement Agreement
21 as fair, reasonable, and adequate, and directs the parties to effectuate the Settlement Agreement
22 according to its terms.

23 8. For purposes of settlement only, the Court finds that: (a) the members of the
24 Settlement Class are ascertainable and so numerous that joinder of all members is impracticable;
25 (b) there are questions of law or fact common to the Settlement Class and there is a well-defined
26 community of interest among members of the Settlement Class with respect to the subject matter
27 of the litigation; (c) the claims of the Class Representative are typical of the claims of the members
28 of the Settlement Class; (d) the Class Representative has fairly and adequately protected the

1 interests of the Settlement Class members; (e) a class action is superior to other available methods
2 for an efficient adjudication of this controversy; and (f) Class Counsel are qualified to serve as
3 counsel for the Class Representative and the Settlement Class.

4 9. The Court finds that given the absence of objections, and objections being a
5 prerequisite to appeal, this Order will be considered final as of the date it is signed by this Court.

6 10. The Court orders that within thirty (14) calendar days after the Effective Date, as
7 that term is defined in the Settlement Agreement, Defendant shall deposit the Gross Settlement
8 Amount of One Million Seven Hundred Fifty Thousand Dollars and No Cents (\$1,750,000.00)
9 into a Qualified Settlement Fund held by the Settlement Administrator, as provided for in the
10 Settlement.

11 11. The Court finds that the Settlement Awards, as defined and provided for in the
12 Settlement, are fair, reasonable, and adequate, and orders the Settlement Administrator to
13 distribute the individual payments in conformity with the terms of the Settlement.

14 12. The Court finds that the payment to the State of California Labor and Workforce
15 Development Agency (“LWDA”) in the amount of \$37,500.00 for its 75% share of civil penalties
16 under the California Labor Code Private Attorneys General Act (“PAGA”) is fair, reasonable and
17 adequate, and orders the Settlement Administrator to distribute this payment to the LWDA in
18 conformity with the terms of the Settlement.

19 13. The Court finds that the Class Representative Enhancement Payment in the
20 amount of \$7,500.00 to Plaintiff is appropriate in recognition of the risks undertaken by Plaintiff
21 and for Plaintiff’s service to the Settlement Class; for the amount of time and effort spent by
22 Plaintiff as the Class Representative; for Plaintiff’s general release of claims provided as part of
23 the Settlement Agreement; and for serving the interests of the Class Members. The Court finds
24 that this amount is fair, reasonable, and adequate, and orders that the Settlement Administrator
25 make this payment in conformity with the terms of the Settlement.

26 14. The Court finds that attorneys’ fees in the total amount of \$583,333.33, and actual
27 litigation costs of \$____, are fair, reasonable, and adequate in light of the common fund provided
28 for the benefit of the Settlement Class, and orders that the Settlement Administrator distribute

1 these payments to Class Counsel in conformity with the terms of the Settlement. The Court finds
2 that the time devoted to the matter by Class Counsel was reasonably necessary in the investigation
3 and prosecution of this action and that the fees are appropriately awarded in light of the benefit
4 provided to the Settlement Class by Class Counsel's efforts.

5 15. The Court orders that the Settlement Administrator shall be paid \$_____ from the
6 Gross Settlement Amount for all of its work done and to be done until the completion of this
7 matter and finds that sum appropriate.

8 16. Any funds from Individual Settlement Payment checks remaining uncashed after
9 the 180-day check-cashing deadline shall be transferred to the Controller of the State of California
10 to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the
11 name of the Settlement Class Member to whom the check was issued, until such time that they
12 claim their property..

13 17. Pursuant to California Code of Civil Procedure section 664.6 and Rule 3.769(h) of
14 the California Rules of Court, the Court will retain jurisdiction over this action and the Parties
15 until final performance of the Settlement Agreement.

16 18. This document will constitute a final judgment pursuant to California Rule of
17 Court 3.769(h), which provides, "If the court approves the settlement agreement after the final
18 approval hearing, the court must make and enter judgment. The judgment must include a
19 provision for the retention of the court's jurisdiction over the parties to enforce the terms of the
20 judgment. The court may not enter an order dismissing the action at the same time as, or after,
21 entry of judgment." The Court will retain jurisdiction to enforce the Settlement and this Final
22 Approval Order and Judgment.

23 19. The Settlement Administrator will make a final report of the Settlement
24 disbursement and Plaintiff will file the report by _____. The Court sets a final distribution
25 hearing for _____, at _____ a.m./p.m.

26 **IT IS SO ORDERED.**

27
28 Dated: _____, 2022 _____

Honorable William F. Highberger
Judge of the Superior Court

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