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15
16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF SANTA CLARA**

18 THOMAS HEFNER, as an individual on
behalf of himself and all similarly situated

19
20 Plaintiff,

21 v.

22 SOLARAY, LLC, a California limited liability
company; and DOES 1 THROUGH 50,
23 inclusive,

24 Defendants.
25

Case No.: 21CV384796

[Assigned for all purposes to the Honorable Sunil R. Kulkarni, Dept. 1]

**STIPULATION OF SETTLEMENT AND
RELEASE OF CLAIMS**

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1 This Stipulation of Settlement and Release of Claims (“Agreement”) is entered into by Plaintiff
2 Thomas Hefner, as an individual and on behalf of all others similarly situated (“Plaintiff”), and Defendant
3 Solaray LLC (“Defendant”) (collectively, the “Parties”). The terms and conditions of the Agreement stated
4 below are agreed to, and once approved by the Court, shall constitute a settlement and compromise of the
5 Action (defined below), subject to approval by the Court. If this Agreement is not finally approved by the
6 Court, or is otherwise nullified, then the Parties shall return to their positions preceding this Agreement
7 unless the Parties agree to seek reconsideration of the ruling or agree to seek Court approval of a
8 renegotiated agreement.

9 **I. RECITALS**

10 **A.** On April 12, 2021, Plaintiff submitted written notice to the California Labor and Workforce
11 Development Agency (“LWDA”) and Defendant as required by the Private Attorneys General Act
12 (“PAGA”) informing them of Defendant’s alleged violations of the Labor Code. Plaintiff subsequently
13 filed amended written notices to the LWDA on April 28, 2021, and May 19, 2021, respectively, alleging
14 additional theories and facts in support of Plaintiff’s claims.

15 **B.** On July 27, 2021, Plaintiff filed a putative class action and PAGA action complaint on
16 behalf of himself and all persons similarly situated against Defendant. The complaint included claims for:
17 (1) failure to provide legally compliant meal periods and/or timely pay premium wages; (2) failure to
18 provide legally compliant rest periods and/or timely pay premium wages; (3) failure to timely pay
19 minimum and/or regular wages; (4) failure to timely pay all overtime and/or double time wages; (5)
20 unlawful deductions and/or underpayment of wages; (6) failure to timely pay all wages due upon
21 separation of employment; (7) failure to furnish accurate itemized wage statements; (8) failure to maintain
22 accurate records; (9) failure to provide employment and personnel records upon request; (10) violation of
23 Business & Professions Code §§ 17200, *et seq.*; and (11) violation of the PAGA.

24 **C.** On April 7, 2022, the Parties attended mediation with Steven Serratore, Esq., a
25 distinguished mediator with extensive experience mediating labor and employment class action and
26 PAGA actions such as this one. After lengthy negotiations during which Plaintiff and the Class Members,
27 represented by Class Counsel, and Defendant, represented by its counsel, recognized the risks and burdens
28 of continuing with the litigation, the Parties reached an agreement to settle and resolve all claims, rights,

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1 demands, liabilities, and causes of action of any nature or description arising from the facts pleaded in the
2 operative complaint or the facts plead in the related LWDA notice.

3 **D.** The settlement outlined in this Agreement represents a compromise and settlement of
4 highly disputed claims. Nothing in this Agreement is intended, or may be construed, as an admission by
5 Defendant that any of the claims alleged in the Action have merit, that the Action should be certified as a
6 class action, or that Defendant bears any liability to the Class Members on those claims, nor as an
7 admission by Plaintiff and the Class Members that Defendant’s defenses in the Action have merit.

8 **E.** Based on these recitals, the Parties hereby agree as follows:

9 **II. DEFINITIONS**

10 **A.** “**Action**” means the lawsuit filed on July 27, 2021 and entitled *Thomas Hefner, as an*
11 *individual on behalf of himself and all similarly situated, Plaintiff, v. Solaray, LLC, a California limited*
12 *liability company; Solaray Sunglasses, LLC, a Delaware limited liability company, and DOES 1 through*
13 *50, inclusive, Defendants, Santa Clara County Superior Court, Case No. 21CV384796.*

14 **B.** “**Administration Costs**” means all fees and costs incurred by the Settlement Administrator
15 to administer the settlement in accordance with this Agreement and any Court Orders.

16 **C.** “**Agreement**” or “**Settlement**” means this Stipulation of Settlement and Release of Claims,
17 including any exhibits attached thereto.

18 **D.** “**Class Counsel**” means GrahamHollis, APC, 3555 Fifth Avenue, Suite 200, San Diego,
19 California 92103, (619) 692-0800. For purposes of providing any notices in connection with this
20 Agreement, Class Counsel shall refer to Graham S.P. Hollis, ghollis@grahamhollis.com, Monique R.
21 Rodriguez, mrodriguez@grahamhollis.com, and Nora J. Steinhagen, nsteinhagen@grahamhollis.com.

22 **E.** “**Class Counsel Payment**” means the amount in attorneys’ fees and litigation costs
23 awarded by the Court to Class Counsel from the Gross Settlement Amount.

24 **F.** “**Class Notice**” means the Notice of Settlement and Release of Claims, substantially in the
25 form attached hereto as Exhibit A, subject to Court approval.

26 **G.** “**Class Member**” or “**Settlement Class**” means all non-exempt Route Sales
27 Representatives, Route Service Representatives, and Route Relief Representatives who are employed or
28 have been employed by Defendant and who worked in California at any time during the Settlement Class

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1 Period.

2 **H. “Class Member Payment”** means the portion of the Net Settlement Amount that each
3 Participating Class Member shall be entitled to receive from the Net Settlement Amount. For Class
4 Members who are also PAGA Employees, the Class Member Payment does not include the separate
5 PAGA Settlement Payment provided to each such individual.

6 **I. “Court”** means California Superior Court, County of Santa Clara.

7 **J. “Defendant”** refers to Solaray, LLC.

8 **K. “Defense Counsel”** means attorneys Julie A. Vogelzang, Lisa Hird Chung, and Carl J.
9 Lehman of the law firm Schor Vogelzang & Chung LLP, 2170 Fourth Avenue, San Diego, CA 92101,
10 phone (619) 906-2400.

11 **L. “Effective Date”** means the later of (a) the date the Court issues a Final Approval Order
12 granting approval of the Settlement, if no objections have been filed and if Class Counsel agrees in writing
13 to waive any right to appeal the amount awarded by the Court as the Class Counsel Payment; (b) the time
14 of appeal of the Final Approval Order has expired if an objection has been filed and no appeal was filed;
15 or (c) the final resolution of any appeal that has been filed concerning the Final Approval Order.

16 **M. “Enhancement Payment”** means the sum of up to \$7,500.00, to be paid out of the Gross
17 Settlement Amount, for which Plaintiff shall apply to the Court as an award for his services to the Class
18 Members, LWDA, and PAGA Employees in bringing this action, and in exchange for agreeing to a general
19 release of all claims arising out of his employment with Defendant.

20 **N. “Final Approval Order”** means the final formal court order signed by the Court following
21 the Final Approval Hearing approving this Agreement, issuing an associated entry of final judgment.

22 **O. “Gross Settlement Amount”** means seven hundred fifty thousand dollars and zero cents
23 (\$750,000.00). The Gross Settlement Amount includes all payments made to the Settlement Class, the
24 Enhancement Payment, Administration Costs, the Class Counsel Payment, and the PAGA Settlement.
25 The employer’s share of applicable payroll taxes (e.g., FICA, FUTA, etc.) shall be paid by Defendant
26 separate and apart from the Gross Settlement Amount.

27 **P. “Individual Settlement Payment(s)”** refers to the payments Participating Class Members
28 and PAGA Employees shall be entitled to receive—consisting of a Class Member Payment, a PAGA

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1 Settlement Payment, or both—pursuant to this Agreement and subject to Court approval.

2 **Q.** “LWDA” means California’s Labor and Workforce Development Agency.

3 **R.** “LWDA Payment” means the amount payable to the LWDA from the PAGA Settlement.

4 **S.** “Net Settlement Amount” means the Gross Settlement Amount minus the amounts
5 awarded for the PAGA Settlement, the Administration Costs, the Enhancement Payment, and the Class
6 Counsel Payment.

7 **T.** “PAGA” means the California Private Attorneys General Act of 2004, codified in
8 California Labor Code §§ 2698 *et seq.*

9 **U.** “PAGA Employees” means all non-exempt Route Sales Representatives, Route Service
10 Representatives, and Route Relief Representatives who are employed or have been employed by
11 Defendant and who worked in California at any time during the Settlement PAGA Period.

12 **V.** “PAGA Settlement” means Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00)
13 from the Gross Settlement Amount that is allocated for resolution of the PAGA claims, subject to Court
14 approval. Of the PAGA Settlement, 75% will be considered the LWDA Payment, and the remaining 25%
15 will be distributed to PAGA Employees as PAGA Settlement Payments.

16 **W.** “PAGA Settlement Payment” means the amount payable to each PAGA Employee from
17 the PAGA Settlement.

18 **X.** “Participating Class Member” means any Class Member who does not timely request
19 exclusion from (i.e., opt-out of) the Settlement.

20 **Y.** “Plaintiff” refers to Plaintiff Thomas Hefner, individually.

21 **Z.** “Preliminary Approval Date” means the date the Court preliminarily approves the
22 Settlement embodied in this Agreement.

23 **AA.** “Qualified Settlement Fund” or “QSF” means a fund within the meaning of Treasury
24 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement Administrator for
25 the benefit of Participating Class Members and PAGA Employees.

26 **BB.** “Released Class Claims” refers to all class claims, rights, demands, liabilities, and causes
27 of action of any nature or description arising from the facts pled in the operative complaint in the Action
28 or in the related notice to LWDA that arose during the Class Period and will be extinguished by operation

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1 of this Agreement, as set forth in this Agreement. The Released Class Claims shall apply to all
2 Participating Settlement Class Members for the Settlement Class Period.

3 **CC. “Released PAGA Claims”** refers to all PAGA claims, rights, demands, liabilities, and
4 causes of action of any nature or description arising from the facts pled in the operative complaint in the
5 Action or the facts pled in the related LWDA notice arising during the PAGA Period that will be
6 extinguished by operation of this Agreement, as set forth in this Agreement. The Released PAGA Claims
7 shall apply to all PAGA Employees for the PAGA Settlement Period.

8 **DD. “Released Parties”** means Defendant Solaray LLC and all of its current and former
9 officers, directors, members, managers, employees, consultants, partners, shareholders, joint ventures,
10 agents, successors, assigns or legal representatives, including but not limited to Pugs Holdings LLC.

11 **EE. “Response Deadline”** means the sixty (60) calendar day period following the initial
12 mailing of the Class Notice, during which time Class Members may elect to postmark or fax to the
13 Settlement Administrator any request for exclusion from the Settlement, submit an objection to the
14 Settlement, or submit a dispute to the Settlement Administrator over the number of Workweeks Worked.
15 If the sixtieth (60th) calendar day falls on a Sunday or federal holiday, then the Response Deadline will be
16 extended to the next day on which the U.S. Postal Service is open.

17 **FF. “Settlement Administrator”** refers to the third-party administrator, Phoenix Class Action
18 Settlement Solutions (“Phoenix”), selected by the Parties and approved by the Court, or any other third-
19 party approved by the Court.

20 **GG. “Settlement Class Period”** refers to the period of July 27, 2017, through and including
21 August 8, 2022.

22 **HH. “Settlement PAGA Period”** refers to the period of May 23, 2020, through and including
23 August 8, 2022.

24 **II. “Waiting Time Subclass”** means all Class Members who, as of August 8, 2022, are former
25 non-exempt employees of Defendant who performed work for Defendant in the State of California at any
26 time during the Settlement Class Period.

27 **JJ. “Workweeks Worked”** means any week (defined as Sunday through Saturday) during
28 which a Class Member performed work for Defendant on at least one day of that week during the relevant

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1 period, according to Defendant’s timekeeping records.

2 **III. SETTLEMENT TERMS**

3 **A. Gross Settlement Amount**

4 The Gross Settlement Amount shall be seven hundred fifty thousand dollars and zero cents
5 (\$750,000.00). The Gross Settlement Amount shall include all payments made to the Settlement Class,
6 the PAGA Settlement, the Administration Costs, the Enhancement Payment, and the Class Counsel
7 Payment. Defendant agrees to pay the employer’s share of applicable payroll tax payments separate and
8 apart from the Gross Settlement Amount. Except as provided herein, each side is to bear its own fees and
9 costs. Other than the employer’s share of applicable payroll tax payments, in no event will Defendant be
10 required to pay more than the amount of the Gross Settlement Amount set forth in this paragraph except
11 as outlined in this Agreement. No portion of the Gross Settlement Amount will revert to Defendant.

12 **1. Funding of the Gross Settlement Amount**

13 Within fifteen (15) calendar days after the Effective Date, the Settlement Administrator will
14 provide Defense Counsel with the account information so that Defendant may wire to the QSF the Gross
15 Settlement Amount and the amount of employer-side taxes due on the wage portion of the Net Settlement
16 Amount to be paid to Participating Class Members.

17 Within thirty (30) calendar days after the Effective Date, Defendant shall wire the Gross Settlement
18 Amount and the employer-side taxes to the QSF.

19 **2. Escalator Clause**

20 The Gross Settlement Amount was calculated with, and is premised on, the understanding that
21 there are approximately 63 Class Members and 5,471 Workweeks Worked between July 27, 2017, and
22 the date of mediation, April 7, 2022. If the total number of Workweeks Worked from July 27, 2017, to
23 April 7, 2022, are determined to be in excess of 110% of 5,471 workweeks, the Gross Settlement Amount
24 will be increased on a *pro rata* basis for each Workweek Worked above 6,019 workweeks.

25 **B. Net Settlement Amount**

26 The Net Settlement Amount shall be available for distribution to Participating Class Members on
27 a *pro rata* basis based on the number of Workweeks Worked during the Class Period.

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1 **C. PAGA Settlement**

2 Subject to Court approval, the Parties shall allocate a total of seventy-five thousand dollars and
3 zero cents (\$75,000.00) from the Gross Settlement Amount for the compromise of claims brought under
4 the PAGA. California Labor Code § 2699(i) requires that the Parties distribute any settlement of PAGA
5 claims as follows: seventy-five (75%) to the LWDA, and twenty-five percent (25%) to the allegedly
6 aggrieved employees. The Parties, therefore, agree that fifty-six thousand, two hundred fifty dollars and
7 zero cents (\$56,250.00) of the PAGA Settlement shall be paid to the LWDA (the “LWDA Payment”)
8 from the Gross Settlement Amount by the Settlement Administrator pursuant to the terms set forth herein.
9 The remaining eighteen thousand, seven hundred and fifty dollars and zero cents (\$18,750.00) of the
10 PAGA Settlement shall be distributed to PAGA Employees by the Settlement Administrator (i.e., “PAGA
11 Settlement Payment”) pursuant to the terms set forth herein. PAGA Settlement Payments will be treated
12 100% as civil penalties.

13 **1. No Right to Opt Out of PAGA Settlement**

14 The Parties acknowledge that no PAGA Employee has the right to request exclusion from (i.e.,
15 opt out of) the PAGA Settlement. The PAGA Settlement Payments shall be distributed to all PAGA
16 Employees irrespective of whether the individual submits a request for exclusion from the Settlement.

17 **2. Notice to the LWDA**

18 The Parties agree that Plaintiff will submit a copy of this Agreement to the LWDA within ten (10)
19 calendar days of its execution by all Parties, and Class Counsel and will thereafter submit a copy of any
20 judgment or other order providing for an award of PAGA civil penalties in conformity with California
21 Labor Code § 2699(1)(3).

22 **D. Administration Costs**

23 The Parties agree that Phoenix will act as the Settlement Administrator in this matter.
24 Administration Costs are not to exceed five thousand nine-hundred-ninety-nine dollars and zero cents
25 (\$5,995.00), based on the class size and distributions under the terms of this Agreement. All awarded
26 Administration Costs shall be paid from the Gross Settlement Amount upon completion of all duties
27 required to be performed by the Settlement Administrator under the terms of this Agreement, or as
28 otherwise required by the Court. Should the Court approve less than the amount requested in

1 Administration Costs, the difference shall be included in the Net Settlement Amount.

2 **E. Enhancement Payment**

3 Class Counsel will request, and Defendant will not oppose, payment of an Enhancement Payment
4 to Plaintiff in an amount not to exceed seven thousand five hundred dollars and zero cents (\$7,500.00), to
5 be paid out of the Gross Settlement Amount. The Enhancement Payment is intended as reasonable
6 additional compensation for the time and effort expended by Plaintiff in connection with the initiation and
7 maintenance of this Action. The Enhancement Payment will be paid from the Gross Settlement Amount
8 and shall be in addition to any payment(s) Plaintiff is otherwise entitled to as a Class Member and PAGA
9 Employee. The Enhancement Payment will be reported to the taxing authorities by means of an IRS Form
10 1099. Should the Court approve a lesser amount than the seven thousand five hundred dollars and zero
11 cents (\$7,500.00) requested, or no award at all, the difference shall be included in the Net Settlement
12 Amount for distribution to Participating Class Members. This Settlement is not contingent on Plaintiff's
13 receipt of any Enhancement Payment out of the Gross Settlement Amount. The Parties agree that the
14 approval and amount of any Enhancement Payment in this Settlement shall be in the Court's sole
15 discretion and not subject to any appeal.

16 Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on the
17 Enhancement Payment, and shall hold Defendant, Defense Counsel, and Class Counsel harmless from
18 any claim or liability for taxes, penalties, or interest arising as a result of the Enhancement Payment
19 pursuant to this Agreement. Plaintiff acknowledges and agrees that Defendant, Defense Counsel, and
20 Class Counsel have made no representations or warranties regarding the tax consequences of payment of
21 the Enhancement Payment, and Plaintiff has not relied on any such representations or warranties.

22 **F. Class Counsel Payment**

23 Defendant and Defense Counsel will not oppose the application to the Court by the Class for an
24 award of the Class Counsel Payment, which consists of: (1) an amount not to exceed one-third (1/3) of
25 the Gross Settlement Amount (i.e., \$250,000.00) to Class Counsel for attorneys' fees; and (2)
26 reimbursement of Class Counsel's reasonable litigation costs to cover Class Counsel's actual and
27 documented costs, not to exceed sixteen thousand five hundred dollars and zero cents (\$16,500.00). The
28 Class Counsel Payment is to be paid out of the Gross Settlement Amount. Should the Court approve less

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1 than the amount of fees and costs requested by Class Counsel, the difference shall be included in the Net
2 Settlement Amount. Class Counsel shall not seek payment of attorneys’ fees or reimbursement of costs or
3 expenses except as set forth herein. The Settlement Administrator will issue an IRS Form 1099 to Class
4 Counsel with respect to the attorneys’ fees and costs awarded to them. Other than the Class Counsel
5 Payment described in this paragraph, each Party shall bear its own attorneys’ fees and costs. This
6 paragraph does not preclude Class Counsel from appealing from a refusal by the Court to award the full
7 amounts requested for the Class Counsel Payment (i.e., attorneys’ fees and costs).

8 **G. Individual Settlement Payments**

9 The Settlement Administrator, according to the terms, conditions, and procedures set forth in this
10 Agreement, shall have the authority and obligation to calculate the amounts of each Individual Settlement
11 Payment in accordance with this Agreement and any Order of the Court. Each Individual Settlement
12 Payment consists of the amounts to be paid to each Participating Class Member as a Class Member
13 Payment and to each PAGA Employee as the PAGA Settlement Payment.

14 **1. Calculation of Class Member Payments**

15 The Net Settlement Amount shall be available for distribution to each Class Member on a pro rata
16 basis according to the number of Workweeks Worked during the Settlement Class Period. Members of
17 the Waiting Time Subclass will be credited with an additional six (6) workweeks toward the calculation
18 of their total Workweeks Worked. The Class Member Payment is to be calculated by: the number of the
19 Class Member’s credited Workweeks Worked during the Settlement Class Period, divided by the total
20 number of credited Workweeks Worked by all Class Members during the Settlement Class Period,
21 multiplied by the Net Settlement Amount.

22 To the extent Class Members request exclusion from the settlement, the formula should be adjusted
23 so that the Net Settlement Amount is distributed on a pro-rata basis to all Participating Class Members.

24 ***i. Calculating Workweeks Worked***

25 For purposes of the Class Member Payments, “Workweeks Worked” refers to any week during
26 which a Class Member actively performed work for Defendant on at least one day of the week (i.e., was
27 not on vacation or a leave of absence) during the Settlement Class Period. Defendant shall provide the
28 Settlement Administrator with the number of Workweeks Worked by each Class Member during the

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1 Settlement Class Period.

2 **2. Calculation of PAGA Settlement Payments**

3 Each PAGA Employee is entitled to a pro-rata share of twenty-five percent (25%) of the PAGA
4 Settlement (i.e., \$18,750.00) based on the number of Workweeks Worked during the Settlement PAGA
5 Period. The PAGA Settlement Payment is to be calculated by: the number of the PAGA Employee’s
6 Workweeks Worked during the Settlement PAGA Period, divided by the total number of Workweeks
7 Worked by all PAGA Employees during the Settlement PAGA Period, multiplied by 25% of the PAGA
8 Settlement.

9 *i. Calculating Workweeks Worked*

10 For purposes of the PAGA Settlement Payments, “Workweeks Worked” refers to any week during
11 which a PAGA Employee actively performed work for Defendant on at least one day of the week (i.e.,
12 was not on vacation or a leave of absence) during the Settlement PAGA Period. Defendant shall provide
13 the Settlement Administrator with the number of Workweeks Worked by each PAGA Employee during
14 the Settlement PAGA Period.

15 **3. Tax Treatment of Individual Settlement Payments**

16 The Individual Settlement Payments payable to each Participating Class Member will be
17 apportioned as outlined below. The amounts paid as wages shall be subject to all tax withholdings
18 customarily made from employees’ wages and all other authorized and required withholdings, and shall
19 be reported by IRS Form W-2.

20 The amounts paid as civil or statutory penalties and interest shall be subject to all authorized and
21 required withholdings other than the tax withholdings customarily made from employees’ wages, and
22 shall be reported by IRS Form 1099.

23 *i. Allocation of Class Member Payments*

24 Class Member Payments will be allocated as follows: 1/3 to settlement of wage claims, and 2/3
25 to settlement of claims for interest and statutory penalties. However, the six (6) additional Workweeks
26 Worked credited to members of the Waiting Time Subclass shall be allocated 100% as penalties.
27 Plaintiff and Class Members shall be solely responsible for taxes associated with the IRS Form 1099
28 payments.

1 **ii. Allocation of PAGA Settlement Payments**

2 PAGA Settlement Payments shall be allocated 100% as civil penalties.

3 **4. Employer Taxes**

4 The Gross Settlement Amount does not include employer payroll taxes, which shall be paid by
5 Defendant separate and apart from the Gross Settlement Amount. The employer payroll taxes will be
6 calculated by the Settlement Administrator based on the amounts to be paid as wages to Participating
7 Class Members. The Settlement Administrator will be responsible for making all necessary employer tax
8 payments and government filings in connection with such payments.

9 **5. Distribution of Individual Settlement Payments**

10 Within forty-five (45) calendar days after the Effective Date, the Settlement Administrator shall
11 distribute from the QSF all Individual Settlement Payments to Participating Class Members and PAGA
12 Employees, the LWDA Payment to the LWDA, the Enhancement Award approved by the Court to
13 Plaintiff, the Administration Costs approved by the Court to the Settlement Administrator, and the Class
14 Counsel Payment approved by the Court to Class Counsel.

15 **6. Undeliverable/Uncashed Payments**

16 Individual Settlement Payments issued to Participating Class Members and PAGA Employees will
17 expire one hundred and eighty (180) calendar days from the date they are issued by the Settlement
18 Administrator. Any Individual Settlement Payments that remain uncashed or undeliverable following the
19 hundred and eighty (180) calendar days will be void, and the Settlement Administrator will issue the
20 unclaimed funds to the California State Controller in the name of the Participating Class Member or PAGA
21 Employee. The Released Class Claims will be binding upon all Participating Class Members, including
22 those who do not cash their Class Member Payment, as of the Effective Date. The Released PAGA Claims
23 will be binding upon all PAGA Employees, including those who do not cash their PAGA Settlement
24 Payments, as of the Effective Date.

25 Neither Defendant, Defense counsel, Class Counsel, Plaintiff, nor the Settlement Administrator
26 will have any liability for lost or stolen Individual Settlement Payments, forged signatures on Individual
27 Settlement Payments, or unauthorized negotiation of the Individual Settlement Payments.

28 As soon as practicable after the one hundred and eighty (180) calendar day period but no later than

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1 thirty (30) calendar days after the check void date, the Settlement Administrator shall provide the Parties
2 with a report outlining all relevant events to date and advising of the total dollar amount paid to
3 Participating Class Members and PAGA Employees, and the number and total amount of any uncashed
4 or undeliverable checks.

5 **7. Individual Settlement Payments Do Not Trigger Additional or Derivative**
6 **Payments**

7 It is expressly understood and agreed that the receipt of the Individual Settlement Payments will
8 not entitle any Participating Class Member to additional or derivative compensation or benefits under any
9 company bonus, contest, or other compensation or benefit plan or agreement in place during the period(s)
10 covered by this Agreement, nor will it entitle any Participating Class Member to any increased retirement,
11 401(k) benefits or matching benefits, or deferred compensation benefits. It is the intent of this Agreement
12 that the Individual Settlement Payments provided for in this Agreement are the sole payments to be made
13 by Defendant to the Participating Class Members and PAGA Employees, and that the Participating Class
14 Members and PAGA Employees are not entitled to any additional or derivative compensation or benefits
15 as a result of having received the Individual Settlement Payments (notwithstanding any contrary language
16 or agreement in any benefit or compensation plan document that might have been in effect during the
17 period covered by this Agreement).

18 **H. Notice to Settlement Class**

19 **1. Class Member Information**

20 Within fifteen (15) calendar days after the Court grants preliminary approval of the Settlement,
21 Defendant will provide to the Settlement Administrator a confidential list of Class Members containing
22 the names, last known addresses, telephone numbers (if available), Social Security numbers, the dates of
23 hire and, if applicable, termination date for each Class Member, and the number of Workweeks Worked
24 during the Settlement Class Period and the Settlement PAGA Period, as applicable. The data provided to
25 the Settlement Administrator will be treated as confidential and will not be disclosed to anyone, except as
26 may be required to applicable tax authorities, pursuant to Defendant’s express written consent, by order
27 of the Court, or to carry out the reasonable steps described in this Agreement to locate missing Class
28 Members or resolve a dispute as to Workweeks Worked.

2. Content of Class Notice

The Class Notice will be substantially in the same form attached as Exhibit A and include the Gross Settlement Amount, the PAGA Settlement, anticipated amounts for Administration Costs, the Enhancement Payment, the Class Counsel Payment, that Class Member’s anticipated Individual Settlement Payment, that Class Member’s Workweeks Worked, the terms of the Released Class Claims and the Released PAGA Claims, the procedure for requesting exclusion from the Settlement, the procedure for objecting to the Settlement, the procedure for disputing the number of Workweeks Worked, and the date, time and location of the Final Approval Hearing. No claim form is required to participate in the Settlement.

3. Mailing of Class Notice

Within ten (10) calendar days after receiving the Class Member Information from Defendant, the Settlement Administrator will (1) run the names of all Class Members through the National Change of Address (“NCOA”) database to determine any updated mailing addresses and also perform an Accurint (or substantially similar) in-depth skip trace to obtain the best possible mailing address prior to mailing the Class Notice; (2) update the addresses of any Class Member for whom an updated mailing address was found through the NCOA search or the Accurint skip trace; and (3) mail the Class Notice to all identified Class Members via first-class regular U.S. Mail, using his or her last known address or updated address located through the NCOA search and/or skip trace, and retain proof of mailing.

If any Class Notices are returned as undeliverable within thirty (30) calendar days of the mailing of the Class Notice and the returned mailing includes a forwarding address, the Settlement Administrator shall re-mail the Class Notice to the forwarding address within five (5) calendar days of receiving the returned mailing. If any Class Notices are returned as undeliverable within thirty (30) calendar days of the mailing of the Class Notice and the returned mailing does not include a forwarding address, the Settlement Administrator will have five (5) calendar days from receipt of the returned Class Notice to perform an in-depth skip trace for a more current address for the Class Member and to re-mail the Class Notice to the Class Member. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each such re-mailing and so notify Class Counsel and Defense Counsel. The obligation to trace and re-send returned Class Notices shall cease after three (3) mailings or forty-five (45)

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1 calendar days after the initial mailing, whichever occurs first. The time period to respond may not be
2 extended on account of a returned or undeliverable mailing.

3 The Settlement Administrator will be responsible for taking all reasonable steps, consistent with
4 its agreed-upon job parameters, Court orders, and fee, according to the deadlines set forth in this
5 Settlement, to trace the mailing address of any Class Member for whom a Class Notice is returned by the
6 U.S. Postal Service as undeliverable. These reasonable steps will include, at a minimum, the tracking of
7 all undelivered mail, performing an address search for all mail returned without a forwarding address, and
8 promptly re-mailing the Notice Packet to Class Members for whom new addresses are found.

9 **4. Status Reports and Declarations**

10 The Settlement Administrator shall provide weekly status reports to counsel for the Parties, which
11 shall include: (a) the number of Class Notices mailed; (b) number of Class Notices returned; (c) number
12 of Class Notices re-mailed; (d) the number of objections received; (e) the number of requests for exclusion
13 received; and (f) the number of disputes to the number of Workweeks Worked received.

14 No later than twenty (20) calendar days before the Final Approval Hearing, the Settlement
15 Administrator will provide Class Counsel and Defense Counsel with a declaration of due diligence setting
16 forth its compliance with its obligations under this Settlement and the cost of administration for filing with
17 the Court in connection with Plaintiff’s motion for final approval of the Settlement.

18 **I. Class Members’ Options**

19 Class Members are not required to submit a claim form to participate in the Settlement. Class
20 Members may choose to request exclusion from the Settlement or submit objections to the Settlement as
21 outlined herein.

22 **1. Requests for Exclusion**

23 The Class Notice will provide that Class Members who do not want to participate in the Settlement
24 may request exclusion from the Settlement by submitting a written request for exclusion on or before the
25 Response Deadline. To be valid, the request for exclusion must: (1) contain the full name, address, and
26 last four digits of the Social Security number and/or the Employee ID number of the Class Member
27 requesting to be excluded from the Settlement; (2) be signed by the Class Member who is requesting to
28 be excluded from the Settlement; (3) state in substance: “I wish to exclude myself from the Settlement in

1 *Thomas Hefner v. Solaray, LLC, et al.*, Santa Clara County Superior Court, Case No. 21CV384796, and I
2 understand that by requesting to be excluded from the Settlement I will not receive any money from the
3 Settlement other than the PAGA Settlement Payment I will receive if I am an eligible PAGA Employee.”
4 If the request for exclusion does not contain the information listed in (1)-(3) above or is not postmarked
5 by the Response Deadline and returned to the Settlement Administrator at the specified address, it will not
6 be deemed a timely and valid request for exclusion from the Settlement. The date of the postmark on the
7 return mailing envelope or fax stamp shall be the exclusive means used to determine whether the request
8 for exclusion has been timely submitted. Any Class Member who submits a timely and valid request for
9 exclusion will not be entitled to any recovery under the Settlement, with the exception of the PAGA
10 Settlement Payment, and will not be bound by the terms of the Settlement, with the exception of the
11 Released PAGA Claims, nor will that Class Member have any right to object, appeal, or comment thereon.
12 Class Members who do not submit a timely and valid request for exclusion on or before the Response
13 Deadline shall be bound by all terms of the Settlement and the Final Approval Order and Judgment entered
14 in this Action if the Settlement is approved by the Court.

15 No later than fourteen (14) calendar days after the Response Deadline, the Settlement
16 Administrator shall provide Defense Counsel with a complete list of all Class Members who have timely
17 submitted valid requests for exclusion, including the Class Member’s name and Social Security number,
18 and the amount of the Individual Settlement Payment associated with that Class Member, including the
19 wage portion and employer-side taxes for each such payment. Class Counsel shall be provided with a
20 summary report that includes the names of the individuals who requested exclusion and the number of
21 requests for exclusion received by the Settlement Administrator.

22 **2. Objections**

23 The Class Notice will provide that Class Members who wish to object to the Settlement must
24 submit to the Settlement Administrator, no later than the Response Deadline, a written statement objecting
25 to the Settlement (“Notice of Objection”). The Notice of Objection must be signed by the Class Member
26 and state: (1) the full name of the Class Member; (2) the last four digits of the Class Member’s Social
27 Security number and/or the Employee ID number; (3) the case name and case number; (4) the basis for
28 the objection, including any evidence; and (4) if the Class Member intends to appear at the Final Approval

1 Hearing. The date of the postmark on the return mailing envelope or fax stamp shall be the exclusive
2 means used to determine whether the Notice of Objection has been timely submitted. The Settlement
3 Administrator will provide the Parties with any Notice of Objection within five (5) calendar days of receipt
4 of the Notice of Objection. Plaintiff will file any such Notices of Objection with the Court in advance of
5 any Final Approval Hearing. Any Class Member may appear at the Final Approval Hearing to address
6 their objection(s) to the Settlement with the Court. A Class Member who does not object to the Settlement
7 will be deemed to have waived all objections and will be foreclosed from making any objections to the
8 Settlement, whether by appeal or otherwise.

9 If a Class Member who has timely submitted a valid objection to the Settlement files a Notice of
10 Appeal of the Judgment within the time period prescribed by law, Defendant shall not be required to fund
11 any portion of the Gross Settlement Amount, and the Settlement Administrator shall not distribute or pay
12 any monies until the appeal(s) are finally resolved in favor of the Settlement or dismissed with prejudice.

13 **3. Disputes to Number of Workweeks Worked**

14 Class Members will have the opportunity to dispute the number of workweeks worked. Class
15 Members will have until the Response Deadline to submit their dispute to the number of Workweeks
16 Worked, including any supporting documentation to the Settlement Administrator. If such a dispute arises
17 with respect to a Class Member, Defendant will manually review its payroll and personnel records to
18 verify the correct number of Workweeks Worked. Defendant's records shall have a rebuttable
19 presumption of correctness. After consultation with Class Counsel and Defense Counsel, the Settlement
20 Administrator will make a determination of the Class Member's number of Workweeks Worked. This
21 determination shall be final and binding on the Parties and the Class Member unless a request for review
22 thereof is submitted by Class Counsel (on behalf of the affected Class Member) or Defense Counsel to
23 the Court, which will make a final decision at the Final Approval Hearing and is non-appealable.

24 **4. No Solicitation of Exclusions or Objections**

25 At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class
26 Members to submit a request for exclusion from the Settlement, file a Notice of Objection to the
27 Settlement, or appeal the Final Approval Order and/or Final Judgment. Class Counsel shall not represent
28 any Class Members with respect to any such objections.

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J. Option to Terminate Settlement

If five percent (5%) or more of the Class Members request exclusion from the Settlement, Defendant shall have the unilateral right in its sole and absolute discretion to void the Settlement in its entirety. If Defendant exercises its right to void the Settlement, then Defendant shall pay the cost of the administration of the Settlement up to the date this Agreement is nullified.

The option to terminate the Settlement must be exercised by Defendant by providing written notice to Class Counsel within ten (10) business days of Defense Counsel receiving notification from the Settlement Administrator that more than five percent (5%) of the Class Members have submitted timely and valid requests for exclusion from the Settlement.

K. Releases

1. Released Class Claims

Upon the Effective Date, and except as to the right to enforce the terms and conditions of this Agreement, each Participating Class Member will release the Released Parties of all claims, actions, demands, causes of action, suits, debts, obligations, rights, liabilities, or legal theories of relief of any nature or description arising from the facts, legal theories, and primary rights asserted in the operative complaint in the Action or the facts pled in the related LWDA notice, including but not limited to claims for (1) failure to provide legally compliant meal periods and/or timely pay premium wages in violation of Labor Code §§ 204, 226.7, 512, 558, 1198 and the “Meal Periods” section of IWC Wage Order No. 7-2001; (2) failure to provide legally compliant rest periods and/or timely pay premium wages in violation of Labor Code §§ 204, 226.7, 1198 and the “Rest Periods” section of IWC Wage Order No. 7-2001; (3) failure to timely pay minimum and/or regular wages in violation of Labor Code §§ 204, 210, 1194, 1194.2, 1197, 1197.1, 1198 and the “Minimum Wages” section of IWC Wage Order No. 7-2001; (4) failure to pay all overtime wages and/or double time wages in violation of Labor Code §§ 204, 210, 510, 558, 1194, 1198 and the “Hours and Days of Work” section of IWC Wage Order No. 7-2001; (5) unlawful deductions and/or underpayment of wages in violation of Labor Code §§ 221, 222, 223, and 224; (6) failure to timely pay all wages due upon separation of employment in violation of Labor Code §§ 201, 202, and 203 and 210; (7) failure to furnish accurate itemized wage statements in violation of Labor Code §§ 226, 1198, and the “Records” section of IWC Wage Order No. 7-2001; (8) failure to maintain accurate records in

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1 violation of Labor Code § 226 and the IWC Wage Order No. 7-2001; (9) failure to provide employment
2 and personnel records upon request in violation of Labor Code §§ 226 and 1198.5; (10) violations of
3 Business and Professions Code §§ 17200 *et seq.* based solely on the facts alleged in the operative
4 complaint in the Action; and (11) any and all damages, restitution, disgorgement, civil penalties, statutory
5 penalties, taxes, interest, costs or attorneys’ fees resulting therefrom (“Released Class Claims”). The
6 period of the Released Class Claims shall extend to the limits of the Class Period. The res judicata effect
7 of the Judgment will be the same as that of the Released Class Claims. The Released Class Claims shall
8 not apply to claims for workers’ compensation benefits, unemployment insurance benefits, or any other
9 claim or right that as a matter of law cannot be waived or released.

10 **2. Released PAGA Claims**

11 Upon the Effective Date, and except as to the right to enforce the terms and conditions of this
12 Agreement, each PAGA Employee will release the Released Parties of all claims pursuant to PAGA of
13 any nature or description arising from the facts, legal theories, and primary rights asserted in the operative
14 complaint in the Action or the facts pled in the related LWDA notice, including but not limited to PAGA
15 claims for (1) failure to provide legally compliant meal periods and/or timely pay premium wages in
16 violation of Labor Code §§ 204, 210, 226.7, 512, 558, 1198 and the “Meal Periods” section of IWC Wage
17 Order No. 7-2001; (2) failure to provide legally compliant rest periods and/or timely pay premium wages
18 in violation of Labor Code §§ 204, 210, 226.7, 1198 and the “Rest Periods” section of IWC Wage Order
19 No. 7-2001; (3) failure to timely pay minimum and/or regular wages in violation of Labor Code §§ 204,
20 210, 1194, 1194.2, 1197, 1197.1, 1198 and the “Minimum Wages” section of IWC Wage Order No. 7-
21 2001; (4) failure to pay all overtime wages and/or double time wages in violation of Labor Code §§ 204,
22 210, 510, 558, 1194, 1198 and the “Hours and Days of Work” section of IWC Wage Order No. 7-2001;
23 (5) unlawful deductions and/or underpayment of wages in violation of Labor Code §§ 212, 221, 223, 224,
24 and 225.5; (6) failure to timely pay all wages due upon separation of employment in violation of Labor
25 Code §§ 201, 202, 203 and 210; (7) failure to furnish accurate itemized wage statements in violation of
26 Labor Code §§ 226, 226.3, and the “Records” section of IWC Wage Order No. 7-2001; (8) failure to
27 maintain accurate records in violation of Labor Code §§ 226, 1174, 1174.5 and the “Records” section
28 IWC Wage Order No. 7-2001; and (9) failure to provide employment and personnel records upon request

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1 in violation of Labor Code §§ 226, 1198, and 1198.5 based solely on the facts alleged in the operative
2 complaint in the Action (“Released PAGA Claims”). The period of the Released PAGA Claims shall
3 extend to the limits of the PAGA Period. The res judicata effect of the Judgment will be the same as that
4 of the Release. The Released PAGA Claims shall not apply to any claim or right that as a matter of law
5 cannot be waived or released.

6 **3. General Release by Plaintiff**

7 This Settlement is conditioned upon a full release by Plaintiff. In exchange for the Enhancement
8 Payment, upon the Effective Date, and except as to the right to enforce the terms and conditions of the
9 Settlement Agreement, Plaintiff individually and on his own behalf releases the Released Parties from any
10 and all charges, complaints, claims, causes of action, demands, disputes, damages, business expenses,
11 attorneys’ fees, costs, losses, and liabilities of any kind or nature whatsoever, known or unknown,
12 suspected or unsuspected, asserted or unasserted, which Plaintiff, at any time heretofore, had or claimed
13 to have or Plaintiff may have, including but not limited to any and all claims arising out of, relating to, or
14 resulting from his employment with and/or separation of employment with Released Parties, including
15 any claims arising under any federal, state, or local law, statute, ordinance, rule, or regulation or Executive
16 Order relating to employment, including, but in no way limited to, any claim under Title VII of the Civil
17 Rights Act of 1964, as amended (“Title VII”), 42 U.S.C. § 1981; the Americans with Disabilities Act
18 (“ADA”); the Family and Medical Leave Act (“FMLA”); the Employee Retirement Income Security Act
19 (“ERISA”); the California Family Rights Act (“CFRA”); the California Fair Employment and Housing
20 Act (“FEHA”); all claims for wages or penalties under the Fair Labor Standards Act (“FLSA”); all claims
21 for wages or penalties under the California Labor Code; Business and Professions Code §§ 17200 *et seq.*;
22 all laws relating to violation of public policy, retaliation, or interference with legal rights; any and all other
23 employment or discrimination laws; whistleblower claims; any tort, fraud, or constitutional claims; and
24 any breach of contract claims or claims of promissory estoppel. It is agreed that this is a general release
25 and is to be broadly construed as a release of all claims; provided that, notwithstanding the foregoing, this
26 paragraph expressly does not include a release of any claims that cannot be released hereunder by law.
27 Plaintiff understands and expressly agrees that this Agreement extends to claims that he has against
28 Released Parties, of whatever nature and kind, known or unknown, suspected or unsuspected, vested or

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1 contingent, past, present, or future, arising from or attributable to an incident or event, occurring in whole
2 or in part, on or before the Effective Date of this Settlement Agreement. Any and all rights granted under
3 any state or federal law or regulation limiting the effect of this Settlement Agreement, including the
4 provisions of section 1542 of the California Civil Code, ARE HEREBY EXPRESSLY WAIVED. Section
5 1542 of the California Civil Code reads as follows:

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
7 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
8 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
9 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.

10 **L. Certification of the Settlement Class**

11 For Settlement purposes only, the Parties stipulate to certification of the Settlement Class under
12 California Code of Civil Procedure § 382. The Parties agree that the motion for preliminary approval
13 seeking, *inter alia*, certification of a class is for purposes of the Settlement only. If, for any reason, the
14 Settlement is not approved, the stipulation to certification will be void. The Parties further agree that
15 certification for purposes of the Settlement is in no way an admission that class certification is proper
16 under the standard applied to contested certification motions, or that Plaintiff is an adequate class
17 representative, and that this Settlement will not be admissible in this or any other proceeding as evidence
18 that (i) a class should be certified or (ii) Defendant is liable to Plaintiff or the Settlement Class as alleged.

19 **M. Dismissal of Solaray Sunglasses, LLC**

20 Defendant represents that Solaray Sunglasses, LLC was not operational or in existence in
21 California at any time during the Class Period, and Defendant will provide a signed declaration to that
22 effect. Within ten (10) business days after receipt of the signed declaration, Plaintiff will file with the
23 Court a request to dismiss Solaray Sunglasses, LLC from the Action without prejudice.

24 **N. No Admission of Liability**

25 Defendant denies any and all alleged wrongdoing or the violation of any rights of the Plaintiff
26 and/or Class Members or PAGA Employees. By entering into this Agreement, Defendant does not admit,
27 and in fact specifically disclaims, the violation of any law or regulation. This Agreement is entered into
28 solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or

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1 will be construed as an admission of any liability or wrongdoing by Defendant, or as an admission by the
2 Class Members that any of their claims were non-meritorious or that any defense asserted by Defendant
3 was meritorious. This Settlement and the fact that the Parties were willing to settle the Action and have
4 entered into this Settlement will have no bearing on, and will not be admissible in connection with, any
5 litigation, other than as is necessary to enforce the terms of this Settlement.

6 **O. Settlement Administration**

7 The Settlement Administrator, on Defendant’s behalf, shall have the authority and obligation to
8 make payments, credits, and disbursements, including payments and credits in the manner set forth herein,
9 to Participating Class Members calculated in accordance with the methodology set out in this Agreement
10 and orders of the Court. The Parties agree to cooperate in the Settlement administration process and to
11 make all reasonable efforts to control and minimize the cost and expenses incurred in administration of
12 the Settlement. The Parties each represent they do not have any financial interest in the Settlement
13 Administrator or otherwise have a relationship with the Settlement Administrator that could create a
14 conflict of interest. The Settlement Administrator shall be responsible for: printing and mailing the Class
15 Notice to Class Members as directed by the Court; receiving and reporting the requests for exclusions,
16 Notices of Objection, and Workweeks Worked disputes; providing declaration(s) as necessary in support
17 of preliminary and/or final approval of this Settlement; posting notice of the Final Approval Hearing,
18 Class Notice, motion documents, court orders and the Final Judgment on a settlement website; establishing
19 and maintaining a QSF; processing and mailing payments to Plaintiff, Class Counsel, Participating Class
20 Members, PAGA Employees, and the LWDA; issuing all required tax forms; and any other tasks as the
21 Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement
22 Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator
23 responsibilities. Any legally mandated tax reports, tax forms, tax filings, or other tax documents required
24 by administration of this Settlement Agreement shall be prepared by the Settlement Administrator. Any
25 expenses incurred in connection with such preparation shall be a cost of administration of the Settlement.
26 No fewer than twenty (20) calendar days prior to the Final Approval Hearing, the Settlement Administrator
27 shall provide the Parties with a statement detailing the costs of administration. The Settlement
28 Administrator shall be paid the Court-approved Administration Costs no later than thirty (30) calendar

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1 days after the Gross Settlement Amount is fully funded.

2 **P. Motion for Preliminary Approval**

3 Class Counsel will file an unopposed motion with the Court (the “Preliminary Approval Motion”) seeking, *inter alia*, an order approving the Settlement outlined in this Agreement; approving the Class Notice and notice plan; and setting a date and time for the Final Approval Hearing. Defense Counsel will 6 not respond or will file a notice of non-opposition to the motion so long as Plaintiff provides the draft Preliminary Approval Motion to Defense Counsel for review and approval before it is filed with the Court.

8 Should the Court, after a reasonable opportunity to cure and remedy any stated deficiencies by the Parties, who will meet and confer in good faith to resolve any such deficiencies, ultimately decline to grant preliminary approval of the Settlement as proposed by the Parties, then the Settlement is terminated, and 11 the Parties will revert to their respective positions.

12 **Q. Final Approval**

13 As soon as practicable following the Response Deadline, Class Counsel will file with the Court a motion for final approval of the Settlement, requesting that the Court grant final approval of the Agreement and adjudging its terms to be fair, reasonable, and adequate; approving the requested PAGA Settlement, 16 Administration Costs, the Enhancement Payment, and the Class Counsel Payment; and enter judgment. Defendant agrees it will not oppose Plaintiff’s motion for final approval so long as Plaintiff provides the 18 draft motion to Defendant to review prior to filing and the motion is in all respects consistent with the terms of this Agreement; however, Defendant may file a brief or statement in support of obtaining final 20 approval of the Settlement, if necessary.

21 **R. Termination of Settlement Agreement**

22 Either Party may terminate this Agreement by giving written notice to the other party (through its 23 counsel) no later than twenty (20) calendar days after receiving notice that one of the following has occurred: (i) the Court declines to enter the Preliminary Approval Order, the Final Approval Order, or 24 final judgment in substantially the form submitted by the Parties; (ii) the Settlement does not become final because of any appellate court action; or (iii) the Court’s final approval of the Settlement is reversed or 26 materially modified on appellate review.

28 In the event termination of this Settlement is provided in accordance with the foregoing, this

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1 Settlement will become and shall be considered null and void, and it will have the following effects: (i)
2 the Parties will have no further obligations under the Settlement; (ii) Defendant shall have no obligation
3 to make any payments to any person, party, Class Member, or attorney that otherwise would have been
4 owed under this Settlement, except that the party who opted to terminate the Settlement will pay the
5 Settlement Administrator’s reasonable fees and expenses incurred as of the date that the Settlement is
6 terminated; (iii) the Preliminary Approval Order, Final Approval Order, and final judgment, including any
7 order of class certification, shall be vacated; (iv) the Settlement and all negotiations, statements, and
8 proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall
9 be restored to their respective positions in the Action prior to the Settlement; and (v) neither this Settlement
10 nor any ancillary documents, actions, statements or filings in furtherance of settlement (including all
11 matters associated with the mediation) shall be admissible or offered into evidence in the Action or any
12 other case or proceeding for any purpose whatsoever. In the event an appeal is filed from the Court’s final
13 judgment, or any other appellate review is sought, administration of the Settlement shall be stayed pending
14 final resolution of the appeal or other appellate review.

15 **S. Interim Stay of Proceedings**

16 The Parties agree to stay all proceedings, dates, and deadlines, in the Action, subject to necessary
17 compliance with the Court’s orders, except such proceedings necessary to implement and complete the
18 Settlement, in abeyance pending the Final Approval Hearing to be conducted by the Court.

19 **T. Continuing Jurisdiction**

20 The Court shall retain exclusive and continuing jurisdiction over the Action and this Agreement
21 for purposes of: (i) enforcing this Agreement, (ii) addressing any claims administration matters that may
22 arise; and (iii) addressing such post-Judgment matters as may be appropriate under court rules or
23 applicable law.

24 **U. Modifications and Waivers**

25 No waiver, modification or amendment of this Agreement will be valid unless it appears in writing
26 signed by or on behalf of all Parties, and then shall be valid subject to Court approval. Any failure by any
27 party to insist upon the strict performance by the other party of any provision of this Agreement shall not
28 be deemed a waiver of future performance of the same provisions or of any other provisions of this

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1 Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the
2 specific performance of any provision of this Agreement. The time periods and dates provided in this
3 Agreement with respect to giving notices and hearings are subject to Court approval and modification by
4 the Court or by written stipulation of Class Counsel and Defense Counsel.

5 **V. Publicity**

6 The Parties and their counsel agree that they will not issue any press releases or initiate any contact
7 with the media about the fact, amount, or terms of the Settlement prior to the filing of Plaintiff’s motion
8 for preliminary approval. Unless required by applicable law, neither Plaintiff nor his counsel shall
9 publicize the terms of this Agreement in any medium, or initiate or issue any press release or have any
10 communications to the press or media concerning the Action, the Settlement of the Action, and/or this
11 Agreement prior to preliminary approval of the Settlement except as posted by the Settlement
12 Administrator as ordered by the Court. If counsel for any of the Parties receives an inquiry about the
13 Settlement from the media prior to final approval of the Settlement, counsel may respond by confirming
14 only the terms of the Settlement which are publicly available.

15 Notwithstanding the foregoing, nothing will prevent Class Counsel from communicating
16 confidentially with members of the Settlement Class as necessary to fulfill their obligations as Class
17 Counsel.

18 **W. Fair, Adequate, and Reasonable Settlement**

19 This Settlement was reached after extensive negotiations. The Parties believe and agree that this
20 Settlement is a fair, adequate, and reasonable resolution of the Action and have arrived at this Settlement
21 through arm’s-length negotiations, taking into account all relevant factors, present and potential, and will
22 so represent it to the Court.

23 **X. Authorization to Enter Into Settlement Agreement**

24 Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom
25 they represent to negotiate this Agreement and to take all appropriate actions required or permitted to be
26 taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
27 documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate
28 with each other and use their best efforts to affect the implementation of the Settlement. The persons

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1 signing this Agreement on behalf of Defendant represent and warrant that they are authorized to sign this
2 Agreement on behalf of Defendant. Plaintiff represents and warrants that he is authorized to sign this
3 Agreement and that he has not assigned any claim, or part of a claim, covered by this Settlement to a third
4 party.

5 **Y. Miscellaneous Terms**

6 **1. Disputes Regarding Agreement**

7 If the Parties dispute the interpretation of this Agreement, they shall first attempt to resolve the
8 dispute informally through good faith negotiations, and if those efforts are unsuccessful, the Parties agree
9 that disputes arising out of or relating to this Agreement will be submitted to Steven Serratore, Esq. or a
10 mutually agreeable mediator for mediation. The Parties will equally split the costs of the mediator and the
11 Parties will bear their own attorneys' fees and other costs incurred.

12 **2. Waiver of Right to Appeal**

13 The Parties agree to waive all appeals from the Court's Final Approval of this Settlement, except
14 as outlined herein.

15 **3. Integrated Agreement**

16 After it is signed and delivered by all Parties and their counsel, this Agreement and its exhibits
17 will constitute the entire agreement between the Parties relating to the terms of Settlement, and will
18 supersede any prior or contemporaneous oral representations, warranties, covenants, or inducements made
19 to any Party concerning this Settlement or its exhibits, including the terms of the Settlement.

20 **4. Execution in Counterparts**

21 This Agreement may be executed in one or more counterparts. Electronic or facsimile signatures
22 will be accepted as an original signature. All executed counterparts and each of them will be deemed to
23 be one and the same instrument. Any executed counterpart will be admissible in evidence to prove the
24 existence and contents of this Agreement.

25 **5. Invalidity of Any Provision**

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

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1 ///

2 **6. Governing Law**

3 All terms and conditions of this Agreement and its exhibits will be governed by and interpreted
4 according to the laws of the State of California, without giving effect to any conflict of law or choice of
5 law principles.

6 **7. Settlement Binding on Successors**

7 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their
8 respective heirs, spouses, trustees, executors, administrators, attorneys, agents, successors, and assigns.

9 **8. Captions and Headings**

10 The captions, headings, and section and paragraph numbers in this Agreement are inserted for the
11 reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the
12 provisions of this Agreement.

13 **9. Notices**

14 Unless otherwise specifically provided herein, all notices, demands, or other communications
15 given hereunder shall be in writing and shall be deemed to have been duly given as of the third business
16 day after mailing by United States registered or certified mail, return receipt requested, addressed as
17 follows:

18 To Class Counsel:

19 GRAHAMHOLLIS APC
20 Graham S.P. Hollis
ghollis@grahamhollis.com
21 Monique R. Rodriguez
mrodriguez@grahamhollis.com
22 Nora J. Steinhagen
nsteinhagen@grahamhollis.com
23 3555 Fifth Avenue, Suite 200
San Diego, California 92103
24 Telephone: 619.692.0800
25 Facsimile: 619.692.0822

To Defense Counsel:

SCHOR, VOGELZANG & CHUNG, LLP
Julie A. Vogelzang (SBN 174411)
julie@svclegal.com
Lisa Hird Chung (SBN 246766)
lisa@svclegal.com
Carl J. Lehman (SBN 327321)
carl@svclegal.com
2170 Fourth Avenue
San Diego, California 32101
Telephone: 619.906.2400
Facsimile: 619.906.2401

26 **10. Use and Return of Documents and Data**

27 All originals, copies, and summaries of documents and data provided to Class Counsel by
28 Defendant in connection with the mediation or other Settlement negotiations in this matter may be used

GRAHAM HOLLIS APC
3555 FIFTH AVENUE SUITE 200
SAN DIEGO, CALIFORNIA 92103

1 only with respect to this Settlement, and for no other purpose, and may not be used in any way that violates
2 any existing contractual agreement, statute, or rule. Within 30 days after the Effective Date, Class Counsel
3 will return or destroy all such documents and data. In accordance with the professional rules and laws,
4 Class Counsel may retain all papers and property to which the client is entitled, and may keep their own
5 work product and field briefs and pleadings that may refer to, quote or incorporate the documents or data.
6 Upon written request from Defendant, Class Counsel will confirm in writing to Defendant the destruction
7 of all such documents and data.

8 **11. Circular 230 Disclaimer**

9 Each Party to this Agreement (for purposes of this section, the “Acknowledging Party” and each
10 Party to this Agreement other than the Acknowledging Party, an “Other Party”) acknowledges and agrees
11 that:

12 a) Neither Class Counsel nor Defense Counsel intend anything contained in this Settlement
13 to constitute advice regarding taxes or taxability, nor shall anything in this Settlement or any written
14 communication or disclosure between or among the Parties or their attorneys and other advisors, be relied
15 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
16 amended) or otherwise;

17 b) The Acknowledging Party (i) has relied exclusively upon his, her or its own, independent
18 legal and tax counsel for advice (including tax advice) in connection with this Agreement, (ii) has not
19 entered into this Agreement based upon the recommendation of any Other Party or any attorney or advisor
20 to any Other Party, and (iii) is not entitled to rely upon any communication or disclosure by any attorney
21 or advisor to any Other Party to avoid any tax penalty that may be imposed on the Acknowledging Party;
22 and

23 c) No attorney or advisor to any Other Party has imposed any limitation that protects the
24 confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is
25 legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any
26 transaction, including any transaction contemplated by this Agreement.

27 **12. No Reliance on Representations**

28 The Parties have made such investigation of the facts and the law pertaining to the matters

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SAN DIEGO, CALIFORNIA 92103

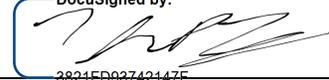
1 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on
2 any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their
3 agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or
4 with regard to the advisability of making and executing this Agreement, or with respect to any other
5 matters. No representations, warranties, or inducements have been made to any party concerning this
6 Agreement.

7 **13. Binding Effect**

8 This Agreement shall become binding and enforceable upon its execution pursuant to California
9 Code of Civil Procedure § 664.6.

10 **IT IS SO AGREED.**

11 Dated: 6/14/2022, 2022

DocuSigned by:

3821FD093742147F...

Plaintiff THOMAS HEFNER

13 Dated: _____, 2022

Defendant SOLARAY, LLC

By: _____
Title: _____

16 **Approved as to Form and Content:**

17 Dated: June 14, 2022

GRAHAMHOLLIS APC

18 By: 

19 GRAHAM S.P. HOLLIS
20 MONIQUE R. RODRIGUEZ
21 NORA J. STEINHAGEN
Attorneys for Plaintiff THOMAS HEFNER

22 Dated: _____, 2022

SCHOR VOGELZANG & CHUNG LLP

23 By:

24 JULIE VOGELZANG
25 LISA HIRD CHUNG
26 CARL J. LEHMAN
27 Attorney for Defendant SOLARAY, LLC
28

GRAHAMHOLLIS APC
3555 FIFTH AVENUE SUITE 200
SAN DIEGO, CALIFORNIA 92103

1 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on
2 any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their
3 agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or
4 with regard to the advisability of making and executing this Agreement, or with respect to any other
5 matters. No representations, warranties, or inducements have been made to any party concerning this
6 Agreement.

7 **13. Binding Effect**

8 This Agreement shall become binding and enforceable upon its execution pursuant to California
9 Code of Civil Procedure § 664.6.

10 **IT IS SO AGREED.**

11 Dated: _____, 2022

Plaintiff THOMAS HEFNER

12
13 Dated: June 14, 2022

Defendant SOLARAY, LLC

By: Chris W. Rullman
Title: CAO

14
15
16 **Approved as to Form and Content:**

17 Dated: _____, 2022

GRAHAMHOLLIS APC

18 By: _____

19 GRAHAM S.P. HOLLIS
20 MONIQUE R. RODRIGUEZ
21 NORA J. STEINHAGEN
Attorneys for Plaintiff THOMAS HEFNER

22 Dated: June 17, 2022

SCHOR VOGELZANG & CHUNG LLP

23 By: _____

24 JULIE VOGELZANG
25 LISA HIRD CHUNG
26 CARL J. LEHMAN
27 Attorney for Defendant SOLARAY, LLC
28

EXHIBIT A

Thomas Hefner v. Solaray, LLC, et al., Santa Clara County Superior Court, Case No. 21CV384796
SUPERIOR COURT FOR THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

NOTICE OF SETTLEMENT AND RELEASE OF CLAIMS

You are not being sued. This notice affects your rights. Please read it carefully.

To: All current and former non-exempt Route Sales Representatives, Route Service Representatives, and Route Relief Representatives who are employed or have been employed by Solaray, LLC (“Defendant”) and who worked in California at any time between July 27, 2017, through and including August 8, 2022.

You have received this Notice of Settlement and Release of Claims (“Notice”) because Defendant’s records identify you as a current or former non-exempt employee of Defendant who performed work for Defendant in the State of California at any time from July 27, 2017, through and including August 8, 2022. The purpose of this Notice is to explain the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for the benefits, and how to receive them.

- **READ THIS NOTICE CAREFULLY. YOUR RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.**
- **THE COURT HAS NOT DETERMINED THAT DEFENDANT VIOLATED THE LAW. DEFENDANT DENIES THAT IT VIOLATED ANY LAWS OR THAT IT HARMED WORKERS IN ANY WAY. IT IS SETTLING THIS LAWSUIT TO AVOID THE EXPENSE AND BURDEN OF FURTHER LITIGATION.**
- **DEFENDANT WILL NOT RETALIATE IN ANY MANNER AGAINST ANY SETTLEMENT CLASS MEMBER RELATED TO THIS LAWSUIT.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<p>PARTICIPATE IN THE SETTLEMENT - <u>NO ACTION REQUIRED</u></p>	<p>You do not have to do anything to receive your Individual Settlement Payments other than ensuring that the Settlement Administrator has your current mailing address on file if it changes from the address to which this Notice was mailed. Payments will be mailed to you after the Court grants final approval of the Settlement. (See Section 5 for more information.)</p> <p>If you are a Participating Class Member, as defined below, you will be mailed a check in exchange for the release of the Released Class Claims, as detailed below.</p> <p>If you are a PAGA Employee, as defined below, you will be mailed a check in exchange for the release of the Released PAGA Claims regardless of whether you request exclusion from the Settlement.</p>
<p>EXCLUDE YOURSELF FROM THE SETTLEMENT</p>	<p>Decline your Class Member Payment. Write to the Settlement Administrator by [date] stating that you do not want to participate in the Settlement and do not want to receive your Class Member Payment. (See Section 5 for more information.) This is the only option that will allow you to bring your own lawsuit against Defendant for the same claims settled in this Lawsuit. You cannot, however, exclude yourself from the PAGA portion of this Settlement and will still receive a check as a PAGA Employee, if applicable.</p>
<p>OBJECT TO THE SETTLEMENT</p>	<p>Write to the Settlement Administrator by [date] if you think the Settlement is not fair. You may also ask to speak in Court about why you think the Settlement is not fair. (See Section 5 for more information.)</p>

	NOTE: You cannot object to the Settlement if you ask to exclude yourself from the Settlement.
DISPUTE THE NUMBER OF WORKWEEKS WORKED	If you believe that your number of Workweeks Worked is incorrect, you must notify the Settlement Administrator of your belief and provide supporting documentation by [date]. (See Section 5 for more information.)
CHANGE/UPDATE YOUR CONTACT INFORMATION	Update your personal information to ensure that your Individual Settlement Payment is mailed to the correct address by contacting the Settlement Administrator at (###) ###-####.

1. Introduction

The Honorable Sunil R. Kulkarni of the Superior Court for the State of California, County of Santa Clara, has granted preliminary approval of a proposed settlement (“Settlement”) of this putative class and Private Attorneys General Act (“PAGA”) action (the “Action” or “Lawsuit”).

The purpose of this Notice is to provide a brief description of the claims alleged in the Action, the key terms of the Settlement, and your rights and options with respect to the Settlement. **You have received this Notice because Defendant’s records indicate that you are a Class Member (defined below) and you may be entitled to an Individual Settlement Payment.**

Unless you choose to be excluded from the Settlement by following the procedures described below, you will be deemed a Participating Class Member and, if the Court grants final approval of the Settlement, you will be mailed a check for your share of the Gross Settlement Amount. However, all PAGA Employees (as defined below) will receive a pro rata portion of the PAGA Settlement regardless of whether they opt out of the Settlement. The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at **:00 .m. on _____, 2022**, in Department 1 of the Superior Court for the State of California, County of Santa Clara, located at 191 North First Street, San Jose, California, 95113. You are not required to attend the Final Approval Hearing, but you are welcome to do so. The Court may change the Final Approval Hearing date or time without notice.

2. Summary of the Litigation

Plaintiff Thomas Hefner (“Plaintiff”), on behalf of himself and on behalf of other non-exempt Route Sales Representatives, Route Service Representatives, and Route Relief Representatives who are employed or have been employed by Solaray, LLC and who worked in the State of California at any time from July 27, 2017, through and including August 8, 2022, claims that Defendant violated California state labor laws by: (1) failing to provide legally compliant meal periods and/or timely pay premium wages; (2) failing to provide legally compliant rest periods and/or timely pay premium wages; (3) failing to timely pay minimum and regular wages; (4) failing to pay timely all overtime and double time wages; (5) unlawfully deducting and/or underpaying wages; (6) failing to timely pay all wages due and owing upon separation of employment; (7) failing to furnish accurate itemized wage statements; (8) failing to maintain accurate records; and (9) failing to provide employment and personnel records upon request. Plaintiff also alleges a cause of action for violation of Business & Professions Code §§ 17200, *et seq.* The Action also serves as an enforcement action in accordance with the PAGA, Labor Code sections 2698 *et seq.*

After the exchange of relevant information and evidence, the Parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the Action. On April 7, 2022, the Parties participated in a mediation with Steven Serratore, Esq., an experienced and well-respected class action mediator. With Mr. Serratore’s guidance, the Parties were able to negotiate a complete settlement of the claims described above.

Questions? Contact the Settlement Administrator toll free at 1-*-***-**** or visit www._____.com**

Counsel for Plaintiff, and the attorneys approved by the Court to represent the Settlement Class, Graham S.P. Hollis, Monique Rodriguez, and Nora J. Steinhagen of GrahamHollis APC (“Class Counsel”), have investigated and researched the facts and circumstances underlying the issues raised in the Action and the applicable law. While Class Counsel believes that the claims alleged in this Lawsuit have merit, Class Counsel also recognizes that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believes the proposed settlement is fair, adequate, reasonable, and in the best interests of all Class Members, PAGA Employees and the State of California.

The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable. Any final determination of those issues will be made at the final hearing. You have legal rights and options that you may exercise as part of this Settlement. Judge Sunil R. Kulkarni of the Superior Court of the State of California, County of Santa Clara, is overseeing this Lawsuit. The Lawsuit is known as *Thomas Hefner v. Solaray, LLC, et al.*, Case No. 21CV384796.

Defendant has denied, and continues to deny, the factual and legal allegations in the case and believes that it has valid defenses to the asserted claims. Defendant denies any wrongdoing and asserts that its pay practices at all times complied with the law. Defendant further denies that it owes the monies claimed in the Lawsuit. However, Defendant has voluntarily agreed to the terms of a negotiated settlement in order to avoid the burden and expense of continued litigation. By agreeing to settle the Action, Defendant is not admitting liability on any of the factual allegations or claims in the Action or that the Action can or should proceed as a class or PAGA representative action. Defendant has agreed to settle the case as part of a compromise with Plaintiff.

3. Summary of the Proposed Settlement Terms

Plaintiff and Defendant have agreed to settle the Action in exchange for a Gross Settlement Amount of \$750,000.00. This amount is inclusive of: (1) Class Member Payments to all Participating Class Members; (2) an Enhancement Payment in an amount up to \$7,500.00 to Plaintiff; (3) the Class Counsel Payment, which includes \$250,000.00 in attorney’s fees and reasonable litigation costs not to exceed \$16,500.00; (4) the PAGA Settlement in the amount of \$75,000.00; and (5) reasonable Administration Costs not to exceed \$5,995.00. After deducting the Enhancement Payment, the Class Counsel Payment, the PAGA Settlement, and the Administration Costs, a Net Settlement Amount of approximately \$395,000.00 will be allocated to Class Members who do not opt out of the settlement (“Participating Class Members”).

Each Participating Class Member’s settlement payment (“Class Member Payment”) will be based on the number of workweeks the Participating Class Member worked during the period of July 27, 2017, through August 8, 2022 (“Class Period”). The Net Settlement Amount will be distributed on a pro rata basis according to the number of Workweeks Worked during the Class Period. “Workweeks Worked” means any week (defined as Sunday through Saturday) during which you performed work for Defendant on at least one day of that week during the relevant time period, according to Defendant’s timekeeping records. Any Participating Class Member whose employment with Defendant terminated between July 27, 2017, and August 8, 2022 (the “Waiting Time Subclass”) will be credited with an additional six (6) workweeks toward the calculation of their total Workweeks Worked.

Class Member Payments will be calculated as follows: the number of the Class Member’s Workweeks Worked during the Class Period, divided by the total number of Workweeks Worked by all Class Members during the Class Period, multiplied by the Net Settlement Amount. Class Member Payments will be treated as two-thirds interest and penalties (for which IRS Forms 1099-MISC will be issued), and one-third wages (for which IRS Forms W-2 will be issued). Participating Class Members will be responsible for taxes associated with the wages portion of the Class Member Payments. The six (6) additional Workweeks Worked credited to individuals in the Waiting Time Subclass will be allocated 100% as penalties.

Questions? Contact the Settlement Administrator toll free at 1-*-***-**** or visit www.***.com**

The Parties also will seek approval for a PAGA Settlement from the Gross Settlement Amount in the amount of \$75,000.00, 75% of which will go to the California Labor & Workforce Development Agency (“LWDA”), which enforces the PAGA, and 25% of which will be paid to all individuals who Defendant employed as non-exempt Route Sales Representatives, Route Service Representatives, and Route Relief Representatives in California at any time from July 27, 2017, through and including August 8, 2022 (“PAGA Employees”). Each PAGA Employee is entitled to a pro rata share of the 25% portion of the PAGA Settlement available for distribution to PAGA Employees based on the number of Workweeks Worked by that person during the period of July 27, 2017, through and including August 8, 2022 (“PAGA Period”). The PAGA Settlement Payment is to be calculated as follows: the number of the PAGA Employee’s Workweeks Worked during the PAGA Period, divided by the total number of Workweeks Worked by all PAGA Employees during the PAGA Period, multiplied by 25% of the PAGA Settlement. The full amount of the PAGA Settlement Payment will be allocated as penalties, for which IRS Forms 1099-MISC will be issued. The PAGA Settlement Payment will be paid to all PAGA Employees regardless of whether a Class Member requests exclusion from the Settlement.

Each Individual Settlement Payment will be reduced by any required legal deductions. Participating Class Members and PAGA Employees should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

All checks will be voided 180 days after issuance. After the 180-day period, the associated funds from all uncashed or undeliverable Class Member Payment and PAGA Settlement Payment (collectively, Individual Settlement Payment) checks will be directed to the California State Controller in the name of the individual who did not cash those checks.

According to Defendant’s records, you performed work for Defendant in California during the Class Period for a total of [REDACTED] Workweeks Worked. According to Defendant’s records, you performed work for Defendant in California during the PAGA Period for a total of [REDACTED] Workweeks Worked.

Accordingly, if the Settlement is finally approved by the Court, your estimated Individual Settlement Payment would be approximately \$ [REDACTED], which includes a \$ [REDACTED] Class Settlement Payment and a \$ [REDACTED] PAGA Settlement Payment. If you believe the information provided above is incorrect, please promptly contact the Settlement Administrator at [REDACTED]. If you dispute the information stated above, Defendant’s records will control unless you are able to provide documentation that establishes otherwise.

4. Why Is This Being Referred to as a “Class and PAGA Action”?

The Settlement about which you are receiving notice concerns a Lawsuit that includes class action and PAGA action claims. The class action claims under California law are for Defendant’s alleged: (1) failure to provide lawful meal periods and/or timely pay premium wages; (2) failure to provide lawful rest periods and/or timely pay premium wages; (3) failure to timely pay minimum and/or regular wages; (4) failure to timely pay all overtime and/or double time wages; (5) unlawful deductions and/or underpayment of wages; (6) failure to timely pay all wages due and owing upon separation of employment; (7) failure to furnish accurate itemized wage statements; (8) failure to maintain accurate records; (9) failure to provide employment and personnel records upon request; and (10) violation of Business & Professions Code section 17200, *et seq.* Further, this case includes representative claims involving the PAGA for civil penalties, which is referred to as a “representative action.”

The key distinctions between a “class action” and a “representative action” are the requirements for how you participate in or how or if you can exclude yourself from the Settlement.

If you wish to participate in the Settlement and receive your Individual Settlement Payment as explained in this Notice, you do not have to do anything. You will receive your Individual Settlement Payment under

Questions? Contact the Settlement Administrator toll free at 1-*-***-**** or visit [www.\[REDACTED\].com](http://www.[REDACTED].com)**

the Settlement by doing nothing. If you want to request to be excluded from and not be bound by the Settlement, then you must submit your intention to be excluded from the Settlement in the manner and timeframe described in Section 5 of this Notice. If you request exclusion from the Settlement, you not receive a Class Member Payment but you will receive a PAGA Settlement Payment and will be bound by the Released PAGA Claims that are part of the Settlement.

If the Court approves the PAGA Settlement, you will receive a PAGA Settlement Payment and do not have the option to exclude yourself and you will be bound by the Released PAGA Claims.

In sum, for the Class Member Payment, you do not have to do anything to get the money and be bound by the Released Class Claims. For the PAGA Settlement Payment, you do not need to do anything to receive your payment and you will be bound by the PAGA Released Claims.

5. Your Options Under the Settlement

Option 1 – *Automatically Receive a Payment from the Settlement*

If want to receive your Individual Settlement Payment from the Settlement, then no further action is required on your part. You will automatically receive your Individual Settlement Payment checks from the Settlement Administrator if and when the Settlement receives final approval by the Court.

Option 2 – *Request Exclusion from the Settlement by [DATE]*

If you do not wish to participate in the Settlement, you may exclude yourself from receiving the Class Member Payment and being subject to the Released Class Claims by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Settlement and Release of Claims, decided not to participate in the Settlement, and desire to “opt out” and be excluded from the Settlement. You can submit a request to exclude you from the Settlement. The written request for exclusion must include: (1) your full name, current mailing address, and last four digits of your Social Security number and/or your Employee ID number; (2) the signature of the person requesting to be excluded from the Settlement; and (3) a statement which substantially reads as follows: “I wish to exclude myself from the Settlement in *Thomas Hefner v. Solaray, LLC, et al.*, Santa Clara County Superior Court, Case No. 21CV384796, and I understand that by requesting to be excluded from the Settlement I will not receive any money from the Settlement other than the PAGA Settlement Payment I will receive if I am an eligible PAGA Employee.”

The written request for exclusion must be timely mailed or faxed to the Settlement Administrator at [REDACTED].

The written request to be excluded must be postmarked or faxed by [REDACTED], 2022. The date of the postmark on the mailing envelope or fax stamp will be the exclusive means used to determine whether a request for exclusion has been timely submitted. If you submit a request for exclusion that is not postmarked or faxed by [REDACTED], 2022, or your request does not include all of the information listed above, then your request for exclusion will be rejected, and you will be included in the Settlement Class. If more 5% of Class Members request exclusion, Defendant has the option to void the entire Settlement.

Any Class Member who requests to be excluded from the Class will not be entitled to any recovery under the Settlement and will not be bound by the Settlement or have any right to object, appeal, or comment on the Settlement. If you do not request exclusion from the Settlement but then later do not cash your Individual Settlement Payment checks, you will still be bound by the Released Class Claims. If you request exclusion from the Settlement, you will still receive a PAGA Settlement Payment and will be bound by the Released PAGA Claims that are part of the Settlement.

Questions? Contact the Settlement Administrator toll free at 1-*-***-**** or visit [www.\[REDACTED\].com](http://www.[REDACTED].com)**

Option 3 – Object to the Settlement by [DATE]

If you decide to object to the Settlement because you find any portion of it unfair or unreasonable, you must submit a written objection stating why you object to the Settlement. The objection must be signed by the Class Member or their authorized legal representative and state: (1) the full name of the Class Member; (2) the last four digits of the Class Member’s Social Security number and/or the Employee ID number; (3) the case name and case number; (4) the basis for the objection, including any evidence; and (5) if the Class Member intends to appear at the Final Approval Hearing. The objection must be timely faxed or mailed to the Settlement Administrator at [REDACTED].

All objections must be postmarked or faxed by [REDACTED] 2022. By submitting an objection, you are not excluding yourself from the Settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the Settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Approval Hearing set for [REDACTED] at [REDACTED] a.m./p.m. in Department 1 of the Superior Court for the State of California, County of Santa Clara, located at 191 North First Street, San Jose, California, 95113, and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing. The Court may change the hearing date or time without notice.

6. What Rights Am I Releasing in the Settlement?

If you choose **Option 1 and do nothing**, and if the Court grants final approval of the Settlement (subject to any appeal), then you will be mailed a check for your Individual Settlement Payment. In addition, you will be deemed to have released or waived the following claims (“**Released Class Claims**”):

Upon the Effective Date, and except as to the right to enforce the terms and conditions of the Agreement, each Participating Class Member will release the Released Parties of all claims, actions, demands, causes of action, suits, debts, obligations, rights, liabilities, or legal theories of relief of any nature or description arising from the facts, legal theories, and primary rights asserted in the operative complaint in the Action or in the related notice sent by Plaintiff to the LWDA, including but not limited to claims for (1) failure to provide legally compliant meal periods and/or timely pay premium wages in violation of Labor Code §§ 204, 226.7, 512, 558, 1198 and the “Meal Periods” section of IWC Wage Order No. 7-2001; (2) failure to provide legally compliant rest periods and/or timely pay premium wages in violation of Labor Code §§ 204, 226.7, 1198 and the “Rest Periods” section of IWC Wage Order No. 7-2001; (3) failure to timely pay minimum and/or regular wages in violation of Labor Code §§ 204, 210, 1194, 1194.2, 1197, 1197.1, 1198 and the “Minimum Wages” section of IWC Wage Order No. 7-2001; (4) failure to pay all overtime wages and/or double time wages in violation of Labor Code §§ 204, 210, 510, 558, 1194, 1198 and the “Hours and Days of Work” section of IWC Wage Order No. 7-2001; (5) unlawful deductions and/or underpayment of wages in violation of Labor Code §§ 221, 222, 223, and 224; (6) failure to timely pay all wages due upon separation of employment in violation of Labor Code §§ 201, 202, and 203 and 210; (7) failure to furnish accurate itemized wage statements in violation of Labor Code §§ 226, 1198, and the “Records” section of IWC Wage Order No. 7-2001; (8) failure to maintain accurate records in violation of Labor Code § 226 and the IWC Wage Order No. 7-2001; (9) failure to provide employment and personnel records upon request in violation of Labor Code §§ 226 and 1198.5; (10) violations of Business and Professions Code §§ 17200 *et seq.* based solely on the facts alleged in the operative complaint in the Action; and (11) any and all damages, restitution,

Questions? Contact the Settlement Administrator toll free at 1-*-***-**** or visit [www.\[REDACTED\].com](http://www.[REDACTED].com)**

disgorgement, civil penalties, statutory penalties, taxes, interest, costs or attorneys' fees resulting therefrom ("Released Class Claims"). The Released Class Claims include a release of any federal Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* ("FLSA") claims that could be asserted based on the facts alleged in the Complaint or notice to the LWDA. The period of the Released Class Claims shall extend to the limits of the Class Period. The res judicata effect of the Judgment will be the same as that of the Released Class Claims. The Released Class Claims shall not apply to claims for workers' compensation benefits, unemployment insurance benefits, or any other claim or right that as a matter of law cannot be waived or released.

Further, PAGA Employees will be bound by the "**Released PAGA Claims**," which includes a release of the following:

Upon the Effective Date, and except as to the right to enforce the terms and conditions of the Agreement, each PAGA Employee will release the Released Parties of all claims pursuant to the Private Attorneys General Act (codified in Labor Code §§ 2698 *et seq.*) of any nature or description arising from the facts, legal theories, and primary rights asserted in the operative complaint in the Action or the facts pled in the related LWDA notice, including but not limited to PAGA claims for (1) failure to provide legally compliant meal periods and/or timely pay premium wages in violation of Labor Code §§ 204, 210, 226.7, 512, 558, 1198 and the "Meal Periods" section of IWC Wage Order No. 7-2001; (2) failure to provide legally compliant rest periods and/or timely pay premium wages in violation of Labor Code §§ 204, 210, 226.7, 1198 and the "Rest Periods" section of IWC Wage Order No. 7-2001; (3) failure to timely pay minimum and/or regular wages in violation of Labor Code §§ 204, 210, 1194, 1194.2, 1197, 1197.1, 1198 and the "Minimum Wages" section of IWC Wage Order No. 7-2001; (4) failure to pay all overtime wages and/or double time wages in violation of Labor Code §§ 204, 210, 510, 558, 1194, 1198 and the "Hours and Days of Work" section of IWC Wage Order No. 7-2001; (5) unlawful deductions and/or underpayment of wages in violation of Labor Code §§ 212, 221, 223, 224, and 225.5; (6) failure to timely pay all wages due upon separation of employment in violation of Labor Code §§ 201, 202, 203 and 210; (7) failure to furnish accurate itemized wage statements in violation of Labor Code §§ 226, 226.3, and the "Records" section of IWC Wage Order No. 7-2001; (8) failure to maintain accurate records in violation of Labor Code §§ 226, 1174, 1174.5 and the "Records" section IWC Wage Order No. 7-2001; and (9) failure to provide employment and personnel records upon request in violation of Labor Code §§ 226, 1198, and 1198.5 based solely on the facts alleged in the operative complaint in the Action ("Released PAGA Claims"). The period of the Released PAGA Claims shall extend to the limits of the PAGA Period. The res judicata effect of the Judgment will be the same as that of the Release.

The term "Released Parties" means Defendant and all of its current and former officers, directors, members, managers, employees, consultants, partners, shareholders, joint ventures, agents, successors, assigns or legal representatives, including but not limited to Pugs Holdings LLC. Please be advised that if you later decide to bring a claim against any of the Released Parties for any of the claims you released (outlined above), you may be responsible for the attorneys' fees and costs of the Released Parties for violating the release provisions of this Settlement.

If you choose **Option 2 and request exclusion**, then you will no longer be a Class Member, and you will (1) be barred from participating in the Settlement, but you will not be deemed to have released the Released Class Claims, (2) be barred from

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filing an objection to the Settlement, and (3) not receive a Class Member Payment. You will, however, receive a PAGA Settlement Payment and will be bound by the Released PAGA Claims.

If you choose **Option 3 and object**, then you will still be entitled to your Individual Settlement Payment. If the Court overrules your objection, you will be deemed to have released the Released Class Claims.

7. Final Approval Hearing

The Final Approval Hearing has been set for [DATE], at [TIME] in Department 1 of the Santa Clara County Superior Court for the State of California, located at 191 N. 1st Street, San Jose, California 95113. You do not need to attend the hearing to be a part of the Settlement. However, if you wish to object to the Settlement, you may appear at the hearing. Please note that the hearing may be continued without further notice to Class Members. Please be advised that the Court may reschedule the Final Approval Hearing without further notice to Class Members.

8. Additional Information

This Notice is only a summary of the Action and the Settlement. For a more detailed statement of the matters involved in the Action and the Settlement, you may refer to the pleadings, the Settlement Agreement, and other papers filed in the case by accessing the Court's public portal at portal.scscourt.org/search, clicking on "Search" then "Case Information" and entering the case number (21CV384796) or by visiting the Records department located at 191 N. 1st Street, San Jose, California 95113, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays and closures. A copy of the Settlement Agreement and other important information may also be obtained by visiting www._____.com. You may contact your own attorney, at your own expense, to advise you, or you may contact the Settlement Administrator or Class Counsel, whose information is below.

Settlement Administrator:

[Settlement Administrator]
[Address]
[Phone Number]
[Fax Number]
[website]

Class Counsel:

Graham S.P. Hollis
Monique R. Rodriguez
Nora J. Steinhagen
Graham **Hollis** APC
3555 Fifth Avenue, Suite 200
San Diego, California 92103
Phone: (619) 546-4373 (English)
(619) 798-4528 (Spanish)

If your address changes, or is different from the address on the envelope enclosing this Notice, please promptly notify the Settlement Administrator.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANT, OR DEFENDANT'S ATTORNEYS WITH INQUIRIES.

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