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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

RAUL FRIAS-ESTRADA, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

TREK RETAIL CORPORATION, a Wisconsin
corporation, and DOES 1 through 10, inclusive,

Defendants.

Case No. MSC20-01916

CLASS ACTION

[Assigned for all purposes to: Hon. Edward
G. Weil, Dept. 39]

**DECLARATION OF JUSTIN F.
MARQUEZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Filed concurrently with: Plaintiff's Notice of
Motion and Motion for Preliminary Approval
of Class Action Settlement, Memorandum of
Points and Authorities; Declaration of
LATLC President Steven Vartazarian; and
[Proposed] Order Granting Plaintiff's Motion
for Preliminary Approval of Class Action
Settlement]

PRELIMINARY APPROVAL HEARING

Date:

Time: 9:00 a.m.

Dept: 39

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1. I am admitted, in good standing, to practice as an attorney in the State of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Southern, Eastern, and Northern Districts of California. I am a Senior Partner at Wilshire Law Firm, PLC, counsel of record for Plaintiff Raul Frias-Estrada (“Plaintiff”). I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them under oath if called as a witness. This Declaration is submitted in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

2. This is a wage and hour class action and PAGA representative action. Plaintiff and putative class members worked in California as hourly-paid, non-exempt employees for Defendant during the class period. Defendant specializes in bicycle and cycling product manufacturing and operates nationwide with its headquarters in Waterloo, Wisconsin.

4. On September 21, 2020, Plaintiff filed a putative wage-and-hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Cal. Lab. Code §§ 1194 and 1198); (3) failure to provide meal periods (Cal. Lab. Code §§ 226.7 and 512); (4) failure to

1 authorize and permit rest periods (Cal. Lab. Code §§ 226.7); (5) failure to timely pay final wages
2 at termination (Cal. Lab. Code §§ 201-203); (6) failure to provide accurate itemized wage
3 statements (Cal. Lab. Code § 226); (7) failure to indemnify employees for expenditures (Cal. Lab.
4 Code § 2802); and (8) unfair business practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*). On
5 June 14, 2022, Plaintiff filed a First Amended Class and Representative Action Complaint adding
6 a claim for civil penalties under PAGA, as well as claims for violation of Labor Code sections 204,
7 210, 246, and 925.

8 DISCOVERY AND INVESTIGATION

9 5. Following the filing of the initial Complaint, the Parties exchanged documents and
10 information before mediating this action. Defendant produced a sample of time and pay records
11 for the class members. Defendant also provided documents of their wage and hour policies and
12 practices during the class period, and information regarding the total number of current and former
13 employees in its informal discovery responses.

14 6. After reviewing documents regarding Defendant's wage and hour policies and
15 practices, analyzing Defendant's timekeeping and payroll records, Class Counsel was able to
16 evaluate the probability of class certification, success on the merits, and Defendant's maximum
17 monetary exposure for all claims. Class Counsel also investigated the applicable law regarding
18 the claims and defenses asserted in the litigation. Class Counsel reviewed these records and
19 utilized an expert to prepare a damages analysis prior to mediation

20 SETTLEMENT NEGOTIATIONS

21 7. On October 1, 2021, the Parties participated in private mediation with experienced
22 class action mediator, Jeffrey Krivis, Esq. The mediation was conducted via Zoom. The settlement
23 negotiations were at arm's length and, although conducted in a professional manner, were
24 adversarial. The Parties went into the mediation willing to explore the potential for a settlement
25 of the dispute, but each side was also prepared to litigate their position through trial and appeal if
26 a settlement had not been reached.

27 8. After extensive negotiations and discussions regarding the strengths and
28 weaknesses of Plaintiff's claims and Defendant's defenses, the Parties were able to reach a

1 resolution, the material terms of which are encompassed within the Settlement, the material terms
2 of which are encompassed within the Settlement Agreement and First Amendment to Settlement
3 Agreement (collectively referred herein as the “Settlement”). Attached as **Exhibits 1 and 2**,
4 respectively, are true and correct copies of the Joint Stipulation Re: Class Settlement and First
5 Amendment to Joint Stipulation Re: Class Settlement.

6 9. The settlement includes \$10,000.00 allocated to Plaintiff’s claims under PAGA,
7 with 75% of which (\$7,500.00) being paid to the LWDA and 25% (\$2,500.00) being paid to the
8 participating Class Members (Settlement Agreement, § XVI.) Class Counsel submitted the
9 proposed settlement to the LWDA before filing this Motion for Preliminary Approval.

10 10. The Settlement provides that Defendant will not oppose a fee application of up to
11 33 1/3% (\$225,000.00) of the Gross Settlement Amount, plus out-of-pocket costs not to exceed
12 \$15,000.00. (Settlement Agreement, § XIII.)

13 11. I requested several bids from experienced class action settlement administrators to
14 handle the responsibilities of the Settlement Administrator under this settlement. The Parties
15 accepted the bid of Phoenix Settlement Administrators. In its bid, Phoenix Settlement
16 Administrators agreed to cap its costs at \$9,250.00 if there are 550 class members. The bid also
17 provides that class notice will be provided in English and Spanish. A true and correct copy of the
18 bid is attached hereto as **Exhibit 2**.

19 12. Plaintiff does not have any interest, financial or otherwise, in the proposed *cy pres*
20 recipient, Los Angeles Trial Lawyers’ Charities (“LATLC”), or the third-party administrator,
21 Phoenix Settlement Administrators.

22 13. No one at Wilshire Law Firm, PLC (meaning the law firm itself and anyone
23 employed at the law firm) has any interest, financial or otherwise, in the proposed *cy pres* recipient,
24 LATLC, or the third-party administrator, Phoenix Settlement Administrators.

25 14. Wilshire Law Firm, PLC has no fee-splitting agreement with any other counsel in
26 this case.

27 **THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE**

28 15. Class Counsel has conducted a thorough investigation into the facts of this case.

1 Based on the foregoing discovery and their own independent investigation and evaluation, Class
2 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
3 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
4 of significant delay, the defenses that could be asserted by Defendant both to certification and on
5 the merits, trial risk, and appellate risk.

6 16. Based on an analysis of the facts and legal contentions in this case, documents and
7 information from Defendant, I evaluated Defendant's maximum exposure. I took into account the
8 risk of not having the claims certified and the risk of not prevailing at trial, even if the claims are
9 certified. After using the data Defendant provided, including a random sampling of timekeeping
10 and payroll records, as well as class member demographics (i.e., the number of class members,
11 workweeks, and average total compensation of the class), with the assistance of a statistics expert,
12 I created a damages model to evaluate the realistic range of potential recovery for the class. The
13 damages model is based on the following benchmarks:

14 Total Class Members: 491

15 Terminated Class Members during 3-year statute: 188

16 Total Workweeks: 22,533

17 PAGA Pay Periods: 8,800

18 Avg. Hourly Rate: \$19.43

19 Class period: September 22, 2016 through December 1, 2021

20 17. Discovery and investigation revealed that Defendant failed to pay class members
21 for all hours worked, including overtime wages, failed to have a legally compliant written policy
22 providing meal periods and authorizing and permitting rest periods.

23 18. Plaintiff alleges that Defendant failed to pay for all hours worked, including
24 minimum, straight time, and overtime wages. My expert analyzed Defendant's timekeeping and
25 payroll records and found many instances where Defendant failed to pay employees for all hours
26 worked, particularly the time employees spent engaging in work-related duties pre-shift, during
27 meal periods, and post-shift. A more conservative estimate was appropriate given the difficulty of
28 proving an off-the-clock work violation on a class-wide basis. Assuming that Defendant failed to

1 pay employees for one hour of work per workweek, with 50% of that work being paid at the
2 overtime rate, potential liability for this claim is \$632,084.00. Because individualized issues can
3 be a significant obstacle to certifying and proving off-the-clock claims, I discounted this figure by
4 80% to account for the difficulty of prevailing on a motion for class certification and a trial on the
5 merits, yielding a realistic damage estimate of \$126,416.80.¹ Additionally, my expert investigated
6 the issue regarding Defendant's failure to include non-discretionary renumeration in the
7 employees' overtime rate and found that Defendant's exposure for this theory of liability to be at
8 \$31,138.00. In sum, a realistic damage estimate for Defendant's failure to pay for all hours worked
9 would be **\$157,554.80**.

10 19. With respect to the meal period claim, Plaintiff alleges that Defendant required him
11 and similarly situated class members to work in lieu of taking meal periods, and Defendant lacked
12 legally compliant policies and practices providing meal periods for the entirety of the class period.
13 My expert analyzed Defendant's timekeeping records and found that approximately 39.1% of all
14 meal breaks had violations of short, missed, or no meal periods. Potential liability for the meal
15 period claim, factoring in the premiums issued to off-set the remaining premiums owed, which
16 includes shifts 5-6 hours long, shifts over six hours long, shifts over ten hours long, and shifts over
17 12 hours long is \$567,600.00, including interest; however, I discounted this figure by 80% to
18 account for the difficulty of certifying and proving meal period claims, and to account for the
19 possibility of class members voluntarily choosing to forego a meal period, yielding a realistic
20 damage estimate of **\$113,520.00**.

21 20. With respect to the rest period claim, Plaintiff alleges that Defendant required him
22 and similarly situated class members to work in lieu of taking rest periods, and Defendant lacked
23 legally compliant policies and practices authorizing and permitting employees to take rest periods
24 for the entirety of the class period. Assuming a 100% violation rate for the entirety of the class
25

26 ¹ This discount for risk at certification and trial is reasonable because the Judicial Council
27 of California found that only 21.4% of all class actions were certified either as part of a
28 settlement *or* as part of a contested certification motion. See Findings of the Study of California
Class Action Litigation, 2000-2006, available at [http:// www.courts.ca.gov/documents/class-
action-lit-study.pdf](http://www.courts.ca.gov/documents/class-action-lit-study.pdf).

1 period based on Plaintiff's and other class members' experience working for Defendant,
2 Defendant's potential liability for the rest period claim is \$1,852,972.00; however, I discounted
3 this figure by 80% to account for the difficulty of certifying and proving rest period claims,
4 particularly because rest periods do not have to be recorded, and to account for the possibility of
5 class members voluntarily choosing to forego a rest period, yielding a realistic damage estimate of
6 **\$370,594.40.**

7 21. With respect to the claim for unreimbursed business expenses, Plaintiff alleges that
8 Defendant required him and similarly situated class members to purchase specific work-related
9 equipment and tools (e.g., handlebar bolts, derailler hangers, etc.) and required the use of personal
10 cell phones during working hours. My expert estimated the potential liability for this claim to be
11 worth \$165,859.00; however, I discounted this figure by 80% to account for the difficulty of
12 certifying and proving this claim, yielding a realistic damage estimate of **\$33,175.80.**

13 22. In sum, Plaintiff's maximum recovery for the unpaid wages based on the failure to
14 pay for all hours worked (minimum, straight time, and overtime wages), failure to provide
15 compliant meal and rest periods, and failure to indemnify employees for necessary business
16 expenditures is \$3,249,653.00, but, **after factoring in the risk and uncertainty of prevailing at**
17 **certification and trial, Plaintiff's realistic estimated recovery for the non-penalty claims is**
18 **\$674,845.00.**

19 23. With respect to Plaintiff's derivative claims for statutory and civil penalties,
20 Plaintiff estimated that Defendant's realistic potential liability is **\$120,000.00.** While Defendant's
21 maximum potential liability for waiting time penalties is \$811,257.00 based on approximately 188
22 terminated class members during the 3-year statute, \$815,150.00 for inaccurate wage statements
23 based on approximately 428 class members who worked 8,800 pay periods within the 1-year
24 statute, and \$880,000.00 for PAGA violations based on the Court assessing a \$100 penalty for
25 initial violations for all 8,800 pay periods within the 1-year statute, I believe that it would be
26 unrealistic to expect the Court to award the full \$2,506,407.00 in penalties given Defendant's
27 defenses, the contested nature of Plaintiff's claims, and the discretionary nature of penalties.
28 Considering that the underlying claims are realistically estimated to be \$674,845.00, such a

disproportionate award would also raise due process concerns. Weighing these factors, and applying a discount to account for the risk and uncertainty of prevailing at trial, I arrived at \$120,000.00 for statutory and civil penalties.

24. Using these estimated figures, Plaintiff predicted that the realistic maximum recovery for all claims, including penalties, would be \$794,845.00. This means that the \$675,000.00 settlement figure represents approximately 85% of the realistic maximum recovery ($\$675,000 / \$794,845 = 84.9\%$). Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class. Indeed, because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

25. While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action. Plaintiff also recognizes that proving the amount of wages due to each Class Member would be an expensive, time-consuming, and uncertain proposition.

26. This settlement avoids the risks and the accompanying expense of further litigation. Although the Parties had engaged in a significant amount of investigation, informal discovery and class-wide data analysis, the Parties had not yet completed formal written discovery. Plaintiff intended to depose corporate officers and managers of Defendant. Moreover, preparation for class certification and a trial remained for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or adverse summary judgment ruling. Had the Court certified any claims, Defendant could move to decertify the claims. As a result, the Parties would incur considerably more attorneys' fees and costs through trial.

27. The Net Settlement Amount available for Class Member settlement payments is estimated to be \$405,750.00, for a class of 491 persons.² As a result, each Settlement Class Member is eligible to receive an average net benefit of approximately \$826.37.

² The Net Settlement Amount is: \$675,000.00 minus \$225,000.00 for Class Counsel's attorneys' fees, minus \$15,000.00 for Class Counsel's litigation expenses, minus \$9,250.00 in administration costs, minus \$7,500.00 for the PAGA portion sent to the LWDA, minus \$2,500.00 for payments to the Aggrieved Employees on a *pro rata basis*, and minus \$10,000.00 for the class representative service award.

1 28. The proposed settlement of \$675,000.00 therefore represents a substantial recovery
2 when compared to Plaintiff's reasonably forecasted recovery. When considering the risks of
3 litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary
4 to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement
5 amount of \$675,000.00 is within the "ballpark" of reasonableness, and preliminary settlement
6 approval is appropriate.

7 ENHANCEMENT AWARD FOR PLAINTIFF IS REASONABLE

8 29. Class Counsel represent that Plaintiff devoted a great deal of time and work assisting
9 counsel in the case, communicated with counsel very frequently for litigation and to prepare for
10 mediation, and was frequently in contact with Class Counsel during the mediation. Plaintiff's
11 requested enhancement award is reasonable particularly in light of the substantial benefits Plaintiff
12 generated for all class members.

13 30. Throughout this litigation, Plaintiff, who is a former employee of Defendant, has
14 cooperated immensely with my office and has taken many actions to protect the interests of the
15 class. Plaintiff provided valuable information regarding unpaid overtime, meal period, and rest
16 period claims. Plaintiff also informed my office of developments and information relevant to this
17 action, participated in decisions concerning this action, made himself available to answer questions
18 during the mediation, and provided my office with the names and contact information of potential
19 witnesses in this action. Before we filed this case, Plaintiff provided my office with several
20 documents, including policy documents, and communications from Defendant regarding the claims
21 alleged in this action. The information and documentation provided by Plaintiff was instrumental
22 in establishing the wage and hour violations alleged in this action, and the recovery provided for
23 in the Settlement Agreement would have been impossible to obtain without Plaintiff's
24 participation.

25 31. At the same time, Plaintiff faced many risks in adding himself as the class
26 representative in this matter. Plaintiff faced actual risks with his future employment, as putting
27 himself on public record in an employment lawsuit could also very well affect his likelihood for
28 future employment. Furthermore, as part of this settlement, Plaintiff is executing a general release

1 of all claims against Defendant.

2 32. In turn, class members will now have the opportunity to participate in a settlement,
3 reimbursing them for alleged wage violations they may have never known about on their own or
4 been willing to pursue on their own. If these class members would have each tried to pursue their
5 legal remedies on their own, that would have resulted in each having to expend a significant amount
6 of their own monetary resources and time, which were obviated by Plaintiff putting himself on the
7 line on behalf of these other class members.

8 33. In the final analysis, this class action would not have been possible without the aid
9 of Plaintiff, who put his own time and effort into this litigation, sacrificed the value of his own
10 individual claims, and placed himself at risk for the sake of the class members. The requested
11 enhancement award for Plaintiff for his service as the class representative and for his general
12 release of all individual claims is a relatively small amount of money when the time and effort put
13 into the litigation are considered and in comparison to enhancements granted in other class actions.
14 The requested incentive award is therefore reasonable to compensate Plaintiff for his active
15 participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation*, et al.,
16 No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class members were
17 misclassified as exempt outside salespersons, I was co-lead Class Counsel and helped negotiate a
18 \$2.5 million class action settlement for 339 class members, and the court approved a \$25,000.00
19 class representative incentive award for each named plaintiff.

20 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

21 34. The Settlement provides for attorneys' fees payable to Class Counsel in an amount
22 up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of \$225,000.00,
23 plus actual costs and expenses not to exceed \$15,000.00. The proposed award of attorneys' fees
24 to Class Counsel in this case can be justified under either method – lodestar or percentage recovery.
25 Class Counsel, however, intend to base the proposed award of fees, costs and expenses on the
26 percentage method as many of the entries in the time records will have to be redacted to preserve
27 attorney-client and attorney work product privileges.

28 35. I am informed and believe that the fee and costs provision is reasonable. The fee

1 percentage requested is less than that charged by my office for most employment cases. My office
2 invested significant time and resources into the case, with payment deferred to the end of the case,
3 and then, of course, contingent on the outcome.

4 36. It is further estimated that my office will need to expend at least another 50 to 100
5 hours to monitor the process leading up to the final approval and payments made to the class. My
6 office also bears the risk of taking whatever actions are necessary if Defendant fails to pay.

7 37. The risk to my office has been very significant, particularly if we would not be
8 successful in pursuing this class action. In that case, we would have been left with no compensation
9 for all the time taken in litigating this case. Indeed, I have taken on a number of class action cases
10 that have resulted in thousands of attorney hours being expended and ultimately having
11 certification denied or the defendant company going bankrupt. The contingent risk in these types
12 of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing
13 on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

14 38. Because most individuals cannot afford to pay for representation in litigation on an
15 hourly basis, Wilshire Law Firm, PLC represents virtually all of its employment law clients on a
16 contingency fee basis. Pursuant to this arrangement, we are not compensated for our time unless
17 we prevail at trial or successfully settle our clients' cases. Because Wilshire Law Firm, PLC is
18 taking the risk that we will not be reimbursed for our time unless our client settles or wins his or
19 her case, we cannot afford to represent an individual employee on a contingency basis if, at the
20 end of our representation, all we are to receive is our regular hourly rate for services. It is essential
21 that we recover more than our regular hourly rate when we win if we are to remain in practice so
22 as to be able to continue representing other individuals in civil rights employment disputes.

23 39. As of the drafting of Plaintiff's Motion for Preliminary Approval of Class Action
24 Settlement, my office has incurred around \$13,837.05 in expenses litigating this action, and we
25 anticipate accruing additional costs up to Final Approval of the Settlement. These expenses were
26 reasonably necessary to the litigation and were actually incurred by my office. They should be
27 reimbursed in full, up to the maximum amount allowed in the Settlement Agreement.

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41. Wilshire Law Firm, PLC is qualified to handle this litigation because its attorneys are experienced in litigating Labor Code violations in both individual, class action, and representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling, numerous wage and hour class action lawsuits, as well as class actions involving consumer rights and data privacy litigation.

43. My practice is focused on advocating for the rights of consumers and employees in class action litigation and appellate litigation. I am currently the primary attorney in charge of litigating several class action cases in state and federal courts across the United States.

45. I am on the California Employment Lawyers Association (CELA)'s Wage and Hour Committee and Mentor Committee, and I was selected to speak at CELA's 2019 Advanced Wage & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively mentored young attorneys through CELA's mentorship program.

46. I am also an active member of the Consumer Attorneys of California (CAOC). In

2020, I was selected for a position on CAOC's Board of Directors. I am also a member of CAOC's Diversity Committee, and I help assist the CAOC in defeating bills that harm employees. Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC, in defeating AB 443, which proposed legislation that sought to limit the enforceability of California Labor Code § 226.

47. As the attorney responsible for day-to-day management of this matter at the Wilshire Law Firm, PLC, I have over eleven years of experience with litigating wage and hour class actions. Over the last ten years, I have managed and assisted with the litigation and settlement of several wage and hour class actions. In those class actions, I performed similar tasks as those performed in the course of prosecuting this action. My litigation experience includes:

- a. I served as lead or co-lead in negotiating class action settlements worth over \$10 million in gross recovery to class members for each year during 2020 and 2021.
- b. To my knowledge, I am the only attorney to appear on each of the following *Top Verdict* lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- c. As lead counsel, on April 29 2021, I prevailed against CVS Pharmacy, Inc. by winning class certification on behalf of hundreds of thousands of consumers for misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct. C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- d. As lead counsel, I prevailed against Bank of America by: winning class certification on behalf of thousands of employees for California Labor Code violations; defeating appellate review of the court's order certifying the class; defeating summary judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.* (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2, 2018).). The decision certifying the class in *Frausto* is also discussed in *Class Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call Center Employees for Violation of State Law Wage and Hour Rules*, 35 A.L.R. Fed.

3d Art. 8.

- e. I was the primary author of the class certification and expert briefs in *ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action for over 40,000 class members for off-the-clock, meal period, split shift, and reimbursement claims. *ABM Industries Overtime Cases* is the first published California appellate authority to hold that an employer’s “auto-deduct policy for meal breaks in light of the recordkeeping requirements for California employers is also an issue amenable to classwide resolution.” (*Id.* at p. 310.)³ Notably, the Court of Appeal also held that expert analysis of timekeeping records can also support the predominance requirement for class certification. (*Id.* at p. 310-311.) In 2021, the case settled for \$140 million, making it one of the largest ever wage and hour class action settlements for hourly-paid employees in California.
- f. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims under California’s Private Attorney Generals Act (“PAGA”) cannot be used to calculate the amount in controversy under the Class Action Fairness Act (“CAFA”). This case is cited in several leading treatises such as *Wright & Miller’s Federal Practice & Procedure*, and *Newberg on Class Actions*. In October 2016, the U.S. Supreme Court denied review of a case that primarily concerned *Yocupicio*. That effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus support from a brief authored by Andrew J. Pincus.⁴ Considering that leading Supreme Court practitioners from the class action defense bar were very motivated in undermining *Yocupicio* case, but failed, this demonstrates the national importance of the *Yocupicio* decision.
- g. On December 13, 2018, the United States District Court granted final approval of

³ As a California district court observed before the *ABM Industries Overtime* decision, “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE Connectivity Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL 1758048, *7.)

⁴ <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.

1 the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services,*
2 *LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in
3 which I served as lead counsel. In doing so, the Court found: “Class Counsel’s
4 declarations show that the attorneys are experienced and successful litigators.” (*Id.*
5 at p. *10.)

6 h. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a
7 reported decision permitting class-wide discovery even though the employer has a
8 lawful policy because “[t]he fact that a company has a policy of not violating the
9 law does not mean that the employees follow it, which is the issue here.” The court
10 also ordered defendant to pay for the cost of *Belaire-West* notice.

11 i. In 2013, I represented a whistleblower that reported that his former employer was
12 defrauding the State of California with the help of bribes to public employees. The
13 case, a false claims (*qui tam*) action, resulted in the arrest and criminal prosecution
14 of State of California employees by the California Attorney General’s Office.

15 j. In 2013, I was part of a team of attorneys that obtained conditional certification for
16 over 2,000,000 class members in a federal labor law case for misclassification of
17 independent contractors that did crowdsourced work on the Internet, *Otey v.*
18 *CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the
19 following pro-plaintiff reported decisions:

20 1) 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding
21 that an unaccepted Rule 68 offer doesn’t moot plaintiff’s claims, and
22 granting plaintiff’s motion to strike defendant’s affirmative defenses
23 based on *Twombly/Iqbal*).

24 2) 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order
25 granting conditional collective certification).

26 3) 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the
27 magistrate judge’s discovery ruling which held that “evidence of
28 other sources of income is irrelevant to the question of whether a

1 plaintiff is an employee within the meaning of the FLSA”).

2 4) 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting
3 broad discovery because “an FLSA plaintiff is entitled to discovery
4 from locations where he never worked if he can provide some
5 evidence to indicate company-wide violations”).

6 j. From 2012 to 2013, I was part of a team of attorneys that obtained class certification
7 for over 60,000 class members for off-the-clock claims, *Linares v. Securitas*
8 *Security Services USA, Inc.*, Los Angeles Superior Court No. BC416555. We also
9 successfully opposed subsequent appeals to the California Court of Appeal and
10 California Supreme Court.

11 48. Benjamin H. Haber is a fifth-year Associate Attorney at Wilshire Law Firm, PLC.
12 He was admitted to practice law in the State of California and the Central, Southern, Eastern, and
13 Northern Districts of California. He graduated from the University of California, Los Angeles,
14 with a Bachelor of Arts in Political Science, and received his Juris Doctor from the University of
15 California, Hastings College of the Law in 2016. During law school, he was a member of the
16 executive board for the Hastings Law Journal and a student mediator at the San Francisco Superior
17 Court, Small Claims Division. Since graduating law school, he has focused his legal work
18 primarily on wage and hour class action litigation. His current contingent billing rate for this case
19 is \$650 per hour, which is consistent with my level of experience in the wage and hour arena.

20 49. Arrash T. Fattahi is a second-year Associate Attorney at Wilshire Law Firm, PLC.
21 He was admitted to practice law in the State of California and the Central and Southern Districts
22 of California in January 2021. Arrash graduated from the University of California, Los Angeles,
23 with a Bachelor of Arts in Political Science, *summa cum laude*. He received his Juris Doctor from
24 The George Washington University Law School. During law school, he was a Notes Editor for
25 the Federal Circuit Bar Journal. Since January 2021, his practice has mainly been focused on wage
26 and hour class action litigation. His current contingent billing rate for this case is \$450 per hour.

27 50. My current contingent billing rate of \$850 per hour is consistent with my practice
28 area, lead appellate experience in the Ninth Circuit Court of Appeals, numerous awards received,

1 legal market and accepted hourly rates:

- 2 a. In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town
3 Anymore,” *NATIONAL LAW JOURNAL*, the following hourly billing rates were
4 reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense of
5 wage-and-hour class actions that I opposed when litigating wage-and-hour class
6 actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd
7 Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435,
8 8th Year - \$455. I am an 12th year attorney and Senior Partner, with most of my
9 experience in class action litigation as a primary practice area. Having successfully
10 briefed and argued a published appeal in the Ninth Circuit Court of Appeals
11 involving CAFA and PAGA, having experience certifying large class actions
12 (including *ABM Industries Overtime Cases*, which was decided on appeal), and
13 having received numerous awards for my legal work, my hourly rate should be
14 adjusted upward.
- 15 b. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior
16 Court approved my \$750 hourly rate when he granted final approval of the class
17 action settlement in *Faye Zhang v. Richemont North America, Inc.*, No.
18 19STCV32396.
- 19 c. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District
20 Court granted final approval of the \$1,600,000 class action settlement in *Carlos*
21 *Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-
22 SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the
23 Court approved my then \$750 hourly rate after finding it was “reasonable, given the
24 qualifications of the attorneys who worked on this matter.” (*Id.* at p. *3.)
- 25 d. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court
26 approved my \$800 hourly rate when he granted final approval of the class action
27 settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, No. 30-2019-
28 01066522-CU-OE-CXC.

1 e. On May 6, 2022, the Hon. Jay A. Garcia-Gregory of the United States District Court,
2 District of Puerto Rico, approved my \$850 hourly rate when he granted final
3 approval of the class action settlement in *Serrano v. Inmediata Corp.*, No. 3:19-cv-
4 01811-JAG, Dkt. 57 (U.S. Dist. Ct. P.R. May 6, 2022).

5 I declare under penalty of perjury under the laws of the State of California and the United
6 States that the foregoing is true and correct.

7 Executed on August 26, 2022, at Los Angeles, California.

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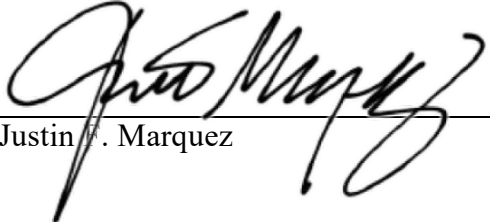

Justin F. Marquez

Exhibit 1

Justin F. Marquez, Esq. (SBN 262417)
justin@wilshirelawfirm.com

Benjamin H. Haber, Esq. (SBN 315664)
benjamin@wilshirelawfirm.com

Arrash T. Fattahi, Esq. (SBN 333676)
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Attorneys for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

RAUL FRIAS-ESTRADA, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

TREK RETAIL CORPORATION, a Wisconsin
corporation; and DOES 1 through 10, inclusive,

Defendant.

Case No.: MSC20-01916

CLASS ACTION

[Hon. Edward G. Weil, Dept. 39]

**JOINT STIPULATION RE: CLASS
SETTLEMENT**

Complaint filed: September 22, 2020
Trial date: Not set

This Joint Stipulation Re: Class Settlement is made by and between the Named Plaintiff, RAUL FRIAS-ESTRADA (“Plaintiff”), on his own behalf and on behalf of all members of the Settlement Class, as defined below, and Defendant TREK RETAIL CORPORATION (“Defendant,” and together with Plaintiff, the “Parties”), in the lawsuit entitled *Raul Frias-Estrada v. Trek Retail Corporation*, filed in Contra Costa County Superior Court, Case No. MSC20-01916. This Joint Stipulation Re: Class Settlement resolves all claims that were asserted or could have been asserted against Defendant pertaining to the claims in the Litigation.

I. DEFINITIONS

A. Administrative Costs. All administrative costs of settlement, including cost of notice to the Settlement Class, claims administration, and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Joint Stipulation Re: Class Settlement.

B. Settlement Agreement. The terms “Settlement Agreement” or “Agreement” are used synonymously herein to mean this Joint Stipulation Re: Class Settlement.

C. Class Counsel. The term “Class Counsel” as used herein means: WILSHIRE LAW FIRM, PLC and all the lawyers of the firm acting on behalf of Named Plaintiff and the Settlement Class. The term Class Counsel shall be used synonymously with the term Plaintiff’s Counsel.

D. Court. The term “Court” as used herein means the Superior Court of the State of California for the County of Contra Costa.

E. Final. The term “Final” means: (1) the date of final affirmation of the Final Approval Order from any appeal, the expiration of the time for, or the denial of, a petition to review the Final Approval Order, or if review is granted, the date of final affirmation of the Final Approval Order following review pursuant to that grant; or (2) the date of final dismissal of any appeal from the Final Approval Order or the final dismissal of any proceeding to review the Final Approval Order, provided that the Final Approval Order is affirmed and/or not reversed in any part; or (3) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the Court’s Final Approval Order, as determined under Rule 8.104(a)(3) of the California Rules of Court.

F. Date of Final Approval. The terms “Date of Final Approval” or “Final Approval

Order” as used herein mean the final formal judgment entered by the Court at the Final Fairness and Approval Hearing in accordance with the terms herein, approving this Agreement.

G. Defendant. The term “Defendant” as used herein means TREK RETAIL CORPORATION.

H. Employer Taxes. Employer-funded taxes and contributions imposed on the wage portions of the Settlement Payment under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and any similar state taxes and contributions required of employers, such as for unemployment insurance.

I. Litigation. The term “Litigation” as used herein means the action entitled filed in Contra Costa County Superior Court, Case No. MSC20-01916.

J. Named Plaintiff. The term “Named Plaintiff” as used herein means Raul Frias-Estrada.

K. Net Settlement Fund. The term “Net Settlement Amount” or “Net Settlement Fund” as used herein means the Settlement Amount minus any award of attorneys’ fees and Litigation costs, Administrative Costs, enhancement to the Named Plaintiff, and penalties recoverable pursuant to California’s Private Attorneys General Act (“PAGA”) (the “PAGA Settlement”), and as provided in Sections VIII, XIII, XIV, XV, and XVI, respectively.

L. Participating Class Members. The term “Participating Class Members” as used herein means all Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.

M. Participating PAGA Members. The term “Participating PAGA Members” means all Participating Class Members who worked for Defendant from September 22, 2019 through December 1, 2021, or the date when the Court grants preliminary approval of the settlement, whichever is earlier.

N. Net Settlement Payments. The term “Net Settlement Payment(s)” shall include payments made to the Settlement Class as part of the Settlement, including wages, penalties and interest.

O. Settlement. The term “Settlement” as used herein means this Agreement to resolve

the Litigation.

P. Settlement Administrator. The term “Settlement Administrator” as used herein means Phoenix Settlement Administrators, which will be responsible for the administration of the Settlement Amount, as defined below, and all related matters.

Q. Settlement Amount. The term “Settlement Amount” as used herein means the sum of Six Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$675,000.00). This is the gross amount Defendant can be required to pay under this Settlement Agreement. The Settlement Amount includes: (1) the Net Settlement Payments to be paid to Participating Class Members; (2) Court-approved attorneys’ fees and Litigation costs pursuant to Section XIII; (3) the enhancement to Named Plaintiff, as approved by the Court; (4) the Administrative Costs, as approved by the Court; (5) the PAGA Settlement to the California Labor & Workforce Development Agency (“LWDA”) and to Participating PAGA Members, as approved by the Court; (6) any statutory penalties; and (7) interest.

R. Settlement Class. For settlement purposes only, the Parties agree to the certification of a class pursuant to California *Code of Civil Procedure* § 382 defined as:

All persons who worked for any Defendant in California as an hourly-paid or non-exempt employee during the Settlement Period (together, collectively referred to as the "Class Members").

S. Settlement Period. The term “Settlement Period” as used herein means the period from September 22, 2016 through December 1, 2021, or the date when the Court grants preliminary approval of the settlement, whichever is earlier.

II. BACKGROUND

A. In the Litigation, the Named Plaintiff alleges, *inter alia*, on behalf of himself and all others similarly situated, that Defendant violated California state wage and hour laws, the California *Business and Professions Code* Section 17200, *et seq.*, and the PAGA, as a result of Defendant’s California wage and hour policies and practices. Specifically, Named Plaintiff alleges that Defendant failed to pay its employees at or above the applicable minimum wage rates, failed to provide regular, overtime, and double time pay, failed to provide meal breaks (including first and second meal breaks), failed to authorize and permit legally compliant rest breaks each day based on the hours

1 worked by each employee, and failed to provide reimbursements for all necessary business-related
2 expenses incurred by the class members. Named Plaintiff further alleged that the aforementioned
3 resulted in the employees receiving inaccurate wage statements, and the underpayment of wages to
4 employees upon termination and/or resignation.

5 Class Counsel conducted informal discovery concerning the claims set forth in the Litigation,
6 such as a sample of class member timekeeping and payroll records, Defendant's policies and
7 procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of
8 wage statements, and providing all wages at separation, as well as information regarding the number
9 of putative class members and the mix of current versus former employees, the wage rates in effect,
10 and the amount of meal and rest period premium wages paid to class members.

11 **B.** Named Plaintiff and Class Counsel have engaged in good faith, arms-length
12 negotiations with Defendant concerning possible settlement of the claims asserted in the Litigation.
13 The Parties participated in a full day of mediation before Jeff Krivis, Esq., a well-respected wage
14 and hour class action mediator, that resulted in a tentative settlement of the Litigation, subject to the
15 approval of the Court, and finalization of a formal Joint Stipulation Re: Class Settlement. The Parties
16 have engaged in extensive negotiations about the terms and conditions of the Settlement at the
17 mediation and subsequent thereto. The Parties have now formalized the Settlement Agreement for
18 submission to the Court for Preliminary and Final Approval.

19 **C.** Class Counsel has conducted an investigation of the law and facts relating to the
20 claims asserted in the Litigation and has concluded, taking into account the sharply contested issues
21 involved, the defenses asserted by Defendant, the expense and time necessary to pursue the Litigation
22 through trial and any appeals, the risks and costs of further prosecution of the Litigation, the risk of
23 an adverse outcome, the uncertainties of complex litigation, and the substantial benefits to be
24 received by the Named Plaintiff and the members of the Settlement Class pursuant to this Agreement,
25 that a settlement with Defendant on the terms and conditions set forth herein is fair, reasonable,
26 adequate, and in the best interests of the Settlement Class. Named Plaintiff, on his own behalf and
27 on behalf of the Settlement Class, has agreed to settle the Litigation with Defendant on the terms set
28 forth herein.

1 **D.** Defendant has concluded that, because of the substantial expense of defending against
2 the Litigation, the length of time necessary to resolve the issues presented herein, the inconvenience
3 involved, and the concomitant disruption to its business operations, it is in Defendant's best interests
4 to accept the terms of this Agreement. Defendant denies each of the allegations and claims asserted
5 against them in the Litigation. However, Defendant nevertheless desires to settle the Litigation for
6 the purpose of avoiding the burden, expense and uncertainty of continuing litigation and for the
7 purpose of putting to rest the controversies engendered by the Litigation.

8 **E.** This Agreement is intended to and does effectuate the full, final and complete
9 settlement of all allegations and claims that were asserted, or could have been asserted, in the
10 Litigation by Named Plaintiff and members of the Settlement Class as set forth in Section II(A).

11 **III. JURISDICTION**

12 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
13 Litigation includes claims that, while Defendant denies them in their entirety, would, if proven,
14 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
15 Final Approval of the Settlement and after the Court has ordered the entry of Judgment, pursuant to
16 California *Code of Civil Procedure* Section 664.6 the Court shall retain jurisdiction of this action
17 solely for the purpose of interpreting, implementing, and enforcing this Settlement consistent with
18 the terms set forth herein.

19 **IV. STIPULATION OF CLASS CERTIFICATION**

20 The Parties stipulate to the certification of this Settlement Class for purposes of Settlement
21 only. This Stipulation is contingent upon the Preliminary and Final Approval and certification of the
22 Settlement Class only for purposes of Settlement. Should the Settlement not become final, for
23 whatever reason, the fact that the Parties were willing to stipulate provisionally to class certification
24 as part of the Settlement shall have no bearing on, and shall not be admissible in connection with,
25 the issue of whether a class should be certified in a non-settlement context in the Litigation.
26 Defendant expressly reserves the right to oppose class certification and/or proactively move to deny
27 certification should this Settlement be modified or reversed on appeal or otherwise not become final.

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1 **V. MOTION FOR PRELIMINARY APPROVAL**

2 Named Plaintiff will bring a motion before the Court for an order preliminarily approving the
3 Settlement including the Notice of Class Action and Proposed Settlement, and Workweek Dispute
4 Form, which are attached hereto as **Exhibits “A” and “B,”** respectively, and including certification
5 of the Settlement Class for settlement purposes only.

6 The date that the Court grants Preliminary Approval of this Agreement will be the
7 “Preliminary Approval Date.” Class Counsel will prepare the Motion for Preliminary Approval and
8 will provide Defendant’s counsel the opportunity to review it and provide input before it is filed. On
9 the same date on which it is filed with the Court, Class Counsel shall concurrently submit the Motion
10 for Preliminary Approval to the LWDA in compliance with Labor Code § 2698, *et seq.*, the PAGA.

11 **VI. STATEMENT OF NO ADMISSION**

12 **A.** Defendant denies liability to Named Plaintiff and to the Settlement Class upon any
13 claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an
14 admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims
15 made against them in the Litigation.

16 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor any
17 statements, discussions or communications, nor any materials prepared, exchanged, issued or used
18 during the course of the negotiations leading to this Agreement or the Settlement, is intended by the
19 Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible
20 in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or
21 proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
22 regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties
23 themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or
24 any other judicial, arbitral, administrative, investigative, or other forum or proceeding, as purported
25 evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or
26 executive order, or any obligation or duty at law or in equity, or for any other purpose.
27 Notwithstanding the foregoing, this Agreement may be used and filed in any proceeding before the
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1 Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement
2 or any orders or judgments of the Court entered in connection with implementation of the Settlement.

3 C. None of the documents produced or created by Named Plaintiff or the Settlement
4 Class in connection with the claims procedures or claims settlement procedures constitute, and they
5 are not intended to constitute, an admission by Defendant of any violation of any federal, state, or
6 local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or
7 in equity.

8 D. The Parties agree that class certification pursuant to California *Code of Civil*
9 *Procedure* Section 382 under the terms of this Agreement is for settlement purposes only. Nothing
10 in this Agreement will be construed as an admission or acknowledgement of any kind that any class
11 should be certified or given collective treatment in the Litigation or in any other action or proceeding.
12 Further, neither this Agreement nor the Court's actions with regard to this Agreement will be
13 admissible in any court or other tribunal regarding the propriety of class certification or collective
14 treatment. In the event that this Agreement is not approved by the Court or any appellate court, is
15 terminated, or otherwise fails to be enforceable, Named Plaintiff will not be deemed to have waived,
16 limited, or affected in any way any claims, rights, or remedies in the Litigation, and Defendant will
17 not be deemed to have waived, limited, or affected in any way any of their objections or defenses in
18 the Litigation.

19 **VII. WAIVER, RELEASE AND CONFIDENTIALITY**

20 **A. Release as to All Settlement Class Members.**

21 As of the date on which Defendant fully funds the settlement, Named Plaintiff and all
22 members of the Settlement Class, except those that make a valid and timely request to be excluded
23 from the Settlement Class and Settlement, waive, release, discharge, and promise never to assert in
24 any forum any and all wage-related claims that were alleged in the Litigation or which could have
25 been alleged in the Litigation based on the facts asserted in the Litigation arising during the
26 Settlement Period against Defendant, and its divisions, affiliates, predecessors, successors,
27 shareholders, officers, directors, employees, agents, trustees, representatives, administrators,
28 fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers,

1 and related corporations, including the following claims: (1) all claims alleged in the operative
2 complaint, under any legal theory of liability, for the failure to pay all wages of any kind, including
3 any minimum or straight time wages, owed pursuant to California Labor Code §§ 204, 510, 1194,
4 1194.2, and 1197, the California Industrial Welfare Commission (“IWC”) Wage Orders, or any
5 comparable federal statute under any theory of liability; (2) all claims alleged in the operative
6 complaint, under any legal theory of liability, for the failure to pay overtime or double time wages
7 owed pursuant to California Labor Code §§ 204, 510, 1194, and 1198, the IWC Wage Orders, or any
8 comparable federal statute under any theory of liability; (3) all claims alleged in the operative
9 complaint, under any legal theory of liability, for the failure to provide meal periods pursuant to
10 California Labor Code §§ 226.7 and 512, and the IWC Wage Orders; (4) all claims alleged in the
11 operative complaint, under any legal theory of liability, for the failure to provide rest periods pursuant
12 to California Labor Code § 226.7, and the IWC Wage Orders; (5) all claims alleged in the operative
13 complaint, under any legal theory of liability, for the failure to properly calculate any premiums owed
14 and/or paid pursuant to California Labor Code § 226.7(b); (6) all claims alleged in the operative
15 complaint, under any legal theory of liability, for any penalties of any kind arising from an alleged
16 failure to pay final wages or other amounts allegedly owed to Class Members pursuant to California
17 Labor Code §§ 201-204; (7) all claims alleged in the operative complaint, under any legal theory of
18 liability, for any penalties of any kind arising from an alleged wage statement violation pursuant to
19 California Labor Code §§ 226 and 1174.5; (8) all claims alleged in the operative complaint, under
20 any legal theory of liability, for failure to indemnify employees for expenditures pursuant to
21 California Labor Code § 2802; (9) all claims alleged in the operative complaint, under any legal
22 theory of liability, for violation of Business & Professions Code §§ 17200, *et seq.*; (10) all claims
23 alleged in the operative complaint and Plaintiff’s PAGA letter, under any legal theory of liability,
24 for penalties pursuant to the PAGA (Labor Code §§ 2698, *et seq.*); and (11) all claims alleged in the
25 operative complaint, under any legal theory of liability, for any penalties or any another amounts
26 that could be potentially owed to Class Members during the Settlement Period, including penalties
27 owed pursuant to California Labor Code §§ 210, 226.3, 246, 558, 925, and 1197.1.

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B. General Release by Named Plaintiff Only.

In addition to the release made in Section VII(A), Named Plaintiff makes the additional following general release of all claims, known or unknown. Named Plaintiff releases Defendant, and each of its respective subsidiaries, affiliates, predecessors or successors in interest, officers, directors, shareholders, employees, attorneys, agents, assigns, insurers, and re-insurers of any of them, from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with Named Plaintiff's employment with Defendant as well as any and all acts or omissions by or on the part of Defendant. (The release set forth in this Paragraph B shall be referred to hereinafter as the "General Release.")

With respect to the General Release, Named Plaintiff stipulates and agrees that, upon the Date of Final Approval, Named Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

"SECTION 1542. [CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE.] A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

Accordingly, if the facts relating in any manner to this Settlement are found hereafter to be other than or different from the facts now believed to be true, the release of claims contained herein shall be effective as to all unknown claims.

VIII. SETTLEMENT ADMINISTRATOR

Named Plaintiff and Defendant, through their respective counsel, have selected Phoenix Settlement Administrators as the Settlement Administrator to administer the Settlement, which

1 includes, but is not limited to, distributing and responding to inquiries about Notice of Class Action
2 and Proposed Settlement and Workweek Dispute Form, determining the validity of any disputes and
3 opt-outs, calculating all amounts to be paid from the Net Settlement Amount, and maintaining a
4 website with information about the Settlement. The Settlement Administrator shall update the
5 website to include any changes of the location or date of the Final Approval Hearing and the final
6 judgment. Charges and expenses of the Settlement Administrator, estimated to be no more
7 \$10,000.00, will be paid from the Settlement Amount. Any charges and expenses of the Settlement
8 Administrator greater than the allocated \$10,000.00 will come from the Settlement Amount. If the
9 actual Settlement Administrator fees are less than the Parties' estimation, the difference between the
10 actual and estimated Settlement Administrator fees will revert to the participating Settlement Class
11 members. The Parties agree that this Agreement may be provided to the Settlement Administrator
12 to effectuate its implementation of the settlement procedures herein.

13 **IX. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

14 **A. Notice.**

15 Named Plaintiff and Defendant, through their respective attorneys, have jointly prepared a
16 Notice of Class Action and Proposed Settlement (the "Notice") and a Workweek Dispute Form,
17 which in substance will be provided to the members of the Settlement Class as follows:

18 **B. Class Data.**

19 As soon as practicable following Preliminary Approval of the Settlement, but no later than
20 thirty (30) calendar days after the Court's Preliminary Approval order, Defendant will provide to the
21 Settlement Administrator the following information about each Settlement Class member ("Class
22 List"): (1) name; (2) last known home address; (3) number of workweeks as a class member during
23 the Settlement Period or the dates of employment for each Settlement Class member; and (4) Social
24 Security number. Defendant further agrees to consult with the Settlement Administrator prior to the
25 production date to ensure that the format will be acceptable to the Settlement Administrator.
26 Plaintiff's Counsel shall also receive a redacted Class List that shall only disclose an identification
27 number attributed to each class member and the number of workweeks each class member worked
28 during the Settlement Period.

C. Notice Mailing.

The Settlement Administrator shall run all the addresses provided through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information, and shall mail the Notice and Workweek Dispute Form to the members of the Settlement Class via first-class regular U.S. Mail using the most current mailing address information available, within ten (10) calendar days of the receipt of the Class List from Defendant. The Notice shall provide the members of the Settlement Class forty-five (45) days' notice of all applicable dates and deadlines.

The Notice will also include information regarding the nature of the Litigation; a summary of the terms of the Settlement; the definition of the Settlement Class; a statement that the Court has preliminarily approved the Settlement; the nature and scope of the claims being released; the procedure and time period for objecting to the Settlement, the date and location of the Final Approval Hearing; information regarding the opt-out procedure; Defendant's calculation of the number of Eligible Workweeks that each Settlement Class member has worked as an employee in California at any time during the Settlement Period, and the estimated potential recovery for the proposed Settlement Class Member. The Notice shall enclose the Workweek Dispute Form for Settlement Class members.

For each Settlement Class member, the Workweek Dispute Form will identify the number of Eligible Workweeks that he or she was employed and inform the employee of his or her right to dispute this number by completing and returning the form within forty-five (45) days of the postmark date of the Workweek Dispute Form. A Settlement Class member's receipt of his or her share of the Net Settlement Payments is not conditional on the submission of the Workweek Dispute Form. Absent the receipt of a Workweek Dispute Form the number of workweeks identified in the Workweek Dispute Form shall be deemed accurate. The settlement of any disputes concerning the number of Eligible Workweeks is discussed in Section X, below.

D. Returned Notices.

If a Notice is returned from the initial notice mailing, the Settlement Administrator will

perform a skip trace in an attempt to locate a more current address. If the Settlement Administrator is successful in locating a new address, it will re-mail the Notice to the Settlement Class member. Further, any Notices returned with a forwarding address to the Settlement Administrator, as non-deliverable before the deadline date, shall be sent to the forwarding address affixed thereto. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Settlement Class member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Settlement Class members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Notice shall be re-mailed to the original address. If the Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing. Settlement Class members who receive a re-mailed Notice will have fifteen (15) additional days to submit an Opt-Out Form or objection to the settlement (i.e., 60 calendar days from first mailing) irrespective of when the first mailing was returned as undeliverable as long as the return mailing is received within the initial forty-five (45) day Response Deadline.

E. Deficiency Notice.

Should any member of the Settlement Class timely submit a Workweek Dispute Form with a deficiency, the Settlement Administrator shall, within five (5) calendar days of receipt by the Settlement Administrator of each timely submitted Workweek Dispute Form, send a deficiency notice. The deficiency notice will provide the member of the Settlement Class no more than fourteen (14) days from the mailing of the deficiency notice to postmark a written response to cure all deficiencies. The failure of a member of Settlement Class to timely submit a Workweek Dispute or timely respond to a notice of deficiency shall invalidate the dispute unless all Parties' counsel agree to allow the dispute.

F. Settlement Administrator's Declaration.

No later than twenty-five (25) days before the Final Approval Hearing, the Settlement Administrator shall provide counsel for Defendant and Class Counsel with a declaration attesting to the completion of the Notice process, including the number of attempts to obtain valid mailing

addresses for and re-sending of any returned Notices, as well as the number of valid Workweek Dispute Forms, opt-outs and deficiencies that the Settlement Administrator received.

G. Objections.

1. Timing. The objection must be submitted to the Settlement Administrator by mail, postmarked by the Response Deadline.

2. Format. Any Objections must state: (a) the case name (e.g., *Frias-Estrada v. Trek Retail Corporation*) and case number (MSC20-01916); (b) the objecting person's or his or her attorney's full name, address, and telephone number; (c) the words "Notice of Objection" or "Formal Objection;" (d) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval Hearing; (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing; and (g) state whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class.

3. Notice of Intent to Appear. Settlement Class members who timely submit valid objections to the Settlement may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel.

4. Effect of Objection. If a Settlement Class member objects to the Settlement, the Settlement Class member will remain a member of the Settlement Class and if the Court approves this Agreement, the Settlement Class member will be bound by the terms of the Settlement and Final Approval Order in the same way and to the same extent as a Settlement Class member who does not object. The date of mailing of the Notice to the objecting Settlement Class member shall be conclusively determined according to the records of the Settlement Administrator. The Court retains final authority with respect to the consideration and admissibility of any Settlement Class member objections. Any Settlement Class member who submits an objection may also participate in the settlement.

H. Opportunity to be Excluded and Defendant's Opt-Out Threshold.

In order for any Settlement Class member to validly exclude himself or herself from the Settlement Class and the Settlement (i.e., to validly opt out), a written request for exclusion ("Request

1 to be Excluded”) must be signed by the Settlement Class member or his or her authorized
2 representative and must be sent to the Settlement Administrator, postmarked by no later than forty-
3 five (45) days after the date the Settlement Administrator initially mails the Notice to the Settlement
4 Class members. The Notice shall contain instructions on how to opt out.

5 **1. Effect of Opt-Out.** The date of the initial mailing of the Notice, and the date the
6 signed Request to be Excluded was postmarked, shall be conclusively determined according to the
7 records of the Settlement Administrator. Any Settlement Class member who timely and validly
8 submits a Request to be Excluded from the Settlement Class and the Settlement will not be entitled
9 to any portion of the Net Settlement Payments, will not be bound by the terms and conditions of the
10 Settlement, and will not have any right to object, appeal, or comment thereon.

11 **2. Failure to Opt-Out.** Any member of the Settlement Class who does not timely
12 file and mail a Request to be Excluded from the Settlement Class will be deemed included in the
13 Settlement Class in accordance with this Settlement.

14 **3. Tolerance of Opt-Outs.** In the event that ten percent (10%) or more of the Class
15 Members exercise their right to exclude themselves and opt out of the Settlement and Settlement
16 Agreement, Defendant retains the exclusive right, but not the obligation, to withdraw from and
17 terminate the Settlement and the Settlement Agreement and return all Parties back to their same
18 position before the Settlement was reached and the Settlement Agreement was entered into. In the
19 event that Defendant exercises such rights under this paragraph, Named Plaintiff and Defendant shall
20 resume the Litigation through and until there is a final settlement of the Litigation. Defendant must
21 notify Class Counsel and the Court of such a decision to withdraw and terminate the Settlement no
22 later than five (5) days prior to the date of the Final Approval Hearing. In the event of Defendant’s
23 withdrawal, no party may use the fact that the Parties agreed to the Settlement for any reason, and
24 Defendant shall pay all administration expenses incurred through the date of its termination of the
25 Settlement.

26 **I. Cooperation.**

27 The Parties and their respective counsel agree not to encourage members of the Settlement
28 Class to refrain from participating in the Settlement, to opt out of the Settlement, or to object to the

1 Settlement, directly or indirectly, through any means. However, if a Settlement Class member
2 contacts Class Counsel, Class Counsel may discuss the terms of the Settlement and the Settlement
3 Class member's options.

4 **X. DISPUTES PROCEDURE**

5 If the member of the Settlement Class disputes the number of Eligible Workweeks set forth
6 in the Workweek Dispute Form, such person must follow the directions in the Workweek Dispute
7 Form and in the Notice, including preparing a statement setting forth the number of Eligible
8 Workweeks that such person believes in good faith is correct, and stating that the member of the
9 Settlement Class authorizes the Settlement Administrator to review the Settlement Class member's
10 personnel file and leave management records to determine such information, and attaching any
11 relevant documentation in support thereof. Documentary evidence and paystubs are helpful to
12 substantiate such person's dispute claim, but it is not required. The member of the Settlement Class
13 must mail the signed and completed statement no later than forty-five (45) days after the date of the
14 mailing of the Workweek Dispute Form, or the number of Eligible Workweeks set forth in the Notice
15 and Workweek Dispute Form will govern the Net Settlement Payment to the member of the
16 Settlement Class.

17 Upon timely receipt of any such challenge, the Settlement Administrator, in consultation with
18 Class Counsel and counsel for Defendant, will review the pertinent payroll records showing the dates
19 the Settlement Class member was employed and the pertinent leave(s) taken, which records
20 Defendant agrees to make available to the Settlement Administrator and Class Counsel.

21 After consulting with Class Counsel and counsel for Defendant, the Settlement Administrator
22 shall compute the number of Eligible Workweeks to be used in computing the Settlement Class
23 member's pro rata share of the Net Settlement Amount. In the event there is a disparity between the
24 dates a Settlement Class member claims he or she worked during the Settlement Period and the dates
25 indicated by Defendant's records, Defendant's records will control unless inconsistent with paycheck
26 stub(s) (or bona fide copies thereof) provided by the Settlement Class member, in which case the
27 paycheck stub(s) will control. The Parties shall file with the Court all disputes submitted, and the
28 resolution of those disputes. The Court shall have the right to review any decision made by the

1 Settlement Administrator regarding a claim dispute.

2 **XI. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

3 **A. Distribution Formula.**

4 Subject to the Court finally approving the Settlement, the Settlement Administrator shall
5 distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and
6 Judgment. The maximum amount Defendant can be required to pay under this Settlement for any
7 purpose is the Settlement Amount. The Settlement Administrator shall keep Defendant's Counsel
8 and Class Counsel apprised of all distributions from the Settlement Amount. The Settlement
9 Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person
10 shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the
11 Settlement Administrator based on the distributions and payments made in accordance with this
12 Agreement.

13 The Settlement Administrator will calculate the total number of workweeks for all Class
14 Members who were employed by Defendant during the Settlement Class Period ("Total
15 Workweeks"). The value of each Workweek shall be determined by the Settlement Administrator by
16 dividing the Net Settlement Fund (not including the amount the Court approves in PAGA penalties)
17 by the total number of Workweeks available to the Class Members who do not opt out in accordance
18 with Section IX(H) above during the Settlement Class Period ("Workweek Point Value").

19 An "Individual Settlement Payment" for each Class Member will then be determined by
20 multiplying a Class Member's workweeks worked during the Class Period ("Eligible Workweeks")
21 by the Workweek Point Value. The Individual Settlement Payment will be reduced by any required
22 legal deductions, for each participating Class Member.

23 Members of the Settlement Class not opting out will receive a lump sum payment as good
24 and valuable consideration for the waiver and release of claims set forth in Section VII(A), above,
25 in an amount determined by the Settlement Administrator in accordance with the provisions of this
26 Agreement.

27 As to distribution of PAGA penalties, the Settlement Administrator will calculate the total
28 number of workweeks for all Participating PAGA Members who were employed by Defendant

1 during the PAGA Period ("Total PAGA Workweeks"). The value of each PAGA Workweek shall
2 be determined by the Settlement Administrator by dividing 25% of the total amount the Court
3 approves in PAGA penalties by the total number of PAGA Workweeks available to Participating
4 PAGA Members ("PAGA Workweek Point Value"). Each payment to Participating PAGA
5 Members shall be treated as 100% penalties.

6 **B. Funding of Settlement.**

7 Within fourteen (14) calendar days following the date on which the Court grants Final
8 Approval of the Settlement and a determination of the pro-rata share of the settlement amount to
9 which each member of the Settlement Class is entitled, Defendant will deposit the Settlement
10 Amount and the Employer Taxes into an interest-bearing trust account for the benefit of the
11 participating Settlement Class members and Class Counsel, through the Settlement Administrator.
12 At no time prior to Final Approval of the Settlement shall Defendant be required to escrow any
13 portion of the Settlement Amount.

14 **C. Time for Distribution and *Cy Pres*.**

15 **1. Distribution.**

16 The Settlement Administrator shall cause the Settlement Amount (inclusive of the Net
17 Settlement Amount, the Court approved attorney's fees and Litigation costs, Court approved
18 enhancement to Named Plaintiff, and PAGA Settlement) and the Employer Taxes to be mailed within
19 twenty-one (21) calendar days following the Date of Final Approval. At no time will Defendant be
20 required to escrow any portion of the Settlement Amount.

21 **2. Uncashed Checks.**

22 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
23 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace
24 search and, if another address is identified, shall mail the check to the newly identified address. Any
25 settlement checks remaining uncashed after one hundred and eighty (180) days shall be deemed
26 unpaid residue pursuant Code of Civil Procedure Section 384(a). In accordance with Code of Civil
27 Procedure Section 384, the Parties shall follow the procedure set for in (1) – (5) below in regard to
28 unpaid residue:

- (1) Unpaid residue (uncashed or returned checks) will be paid, *with interest*, to Midwest Athletes Against Childhood Cancer, Inc. (“MACC Fund”), 10000 W. Innovation Dr., Suite 135, Milwaukee, WI 53226;
- (2) The attorneys for the Parties shall file, with the Motion for Final Approval, a stand-alone Stipulation to Amend Judgment and Proposed Stipulated Amended Judgment (Section 384) memorializing the Parties’ agreement to amend the judgment to adopt the administrator’s determination of amount of unpaid residue, plus interest at the legal rate of 10% from the date of entry of the initial judgment, to be paid to the *cy pres*;
- (3) The Parties shall attach to the Stipulation a [Proposed] Stipulated Amended Judgment form with a signature line for the court and blanks for the amount of residue plus interest to be added to the judgment and the total amount of the amended judgment;
- (4) Along with the Final Report, the administrator shall file, with the court, a photocopy of the attorneys’ Stipulation to Amend Judgment along with a [Proposed] Stipulated Amended Judgment form with the amount of residue plus interest to be added to the judgment and the total amount of the judgment, plus interest, filled in;
- (5) The court signs and enters the Stipulated Amended Judgment.

XII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN

The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy, or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant, policies or bonus programs. Any payments made under the terms of this Settlement shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of Defendant’s benefit plan, policy or bonus program. Defendant retain the right to modify the language of their benefit plans, policies and bonus programs

1 to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for
2 “hours worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by
3 applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual, or
4 any other purpose, and that additional contributions or benefits are not required by this Settlement.

5 **XIII. CLASS COUNSEL ATTORNEYS’ FEES AND LITIGATION COSTS**

6 Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall not
7 seek or receive an amount in excess of \$225,000.00, which represents one-third of the Settlement
8 Amount for all past and future attorneys’ fees necessary to prosecute, settle and administer the
9 Litigation and this Settlement. Additionally, Defendant shall not oppose an application by Class
10 Counsel for, and Class Counsel shall not seek or receive an amount in excess of \$15,000.00, which
11 represents all past and future Litigation costs and expenses necessary to prosecute, settle and
12 administer the Litigation and this Settlement. Any attorneys’ fees or Litigation costs awarded to
13 Class Counsel by the Court as part of the Settlement Amount shall be deducted from the Settlement
14 Amount for the purpose of determining the Net Settlement Amount. The “future” aspect of these
15 amounts include, without limitation, all time and expenses expended by Class Counsel in defending
16 the Settlement and securing preliminary and Final Approval (including any appeals therein). There
17 will be no additional charge of any kind to either the members of the Settlement Class or request for
18 additional consideration from Defendant for such work. This amount shall include all attorneys’
19 fees, Litigation costs, and expenses for which Named Plaintiff and Class Counsel could claim under
20 any legal theory whatsoever. Within twenty-one (21) calendar days following the Date of Final
21 Approval, the Settlement Administrator shall disburse payment from the Settlement Amount for the
22 amount of attorneys’ fees and Litigation costs approved by the Court to Class Counsel. Should the
23 Court approve a lesser percentage or amount of fees and/or Litigation costs than the amount that
24 Class Counsel ultimately seeks, then any such unapproved portion or portions shall revert into the
25 Net Settlement Amount to be distributed between the participating Settlement Class Members on a
26 pro-rata basis.

27 **XIV. ENHANCEMENT TO NAMED PLAINTIFF**

28 Defendant shall not oppose an application by Named Plaintiff, and Named Plaintiff shall not

1 seek or receive an amount in excess of \$10,000.00 for his participation in and assistance with the
2 Litigation (*i.e.*, Named Plaintiff's class representative enhancement / service award). Any
3 enhancement awarded to Named Plaintiff by the Court as part of the Settlement Amount shall be
4 deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount,
5 and shall be reported on IRS Form 1099. If the Court approves an enhancement of less than
6 \$10,000.00 to Named Plaintiff, then the unapproved portion or portions shall revert into the Net
7 Settlement Amount to be distributed between the participating Settlement Class Members on a pro-
8 rata basis.

9 **XV. TAXATION AND ALLOCATION**

10 The Parties agree that all employment taxes and other legally required withholdings will be
11 withheld from payments to the members of the Settlement Class and Named Plaintiff based on the
12 Parties stipulated allocation of the Net Settlement Amount as provided for in this Section.

13 In Defendant's sole discretion, and to which Named Plaintiff and Class Counsel do not object,
14 the amount of federal income tax withholding will be based upon a flat withholding rate for
15 supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or
16 supplemented. Income tax withholding will also be made pursuant to applicable state and/or local
17 withholding codes or regulations.

18 For withholding tax characterization purposes and payment of taxes, the Net Settlement
19 Amount shall be deemed and is allocated by the Parties as follows ("Net Settlement Allocation"):

- 20 (1) 50% as wages; and
21 (2) 50% as penalties and interest.

22 Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the
23 Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement, by the Settlement
24 Administrator. If the Code, the regulations promulgated thereunder, or other applicable tax law, is
25 changed after the date of this Agreement, the processes set forth in this Section may be modified in
26 a manner to bring Defendant into compliance with any such changes.

27 Finally, any and all Employer Taxes which Defendant normally would be responsible for
28 paying based on the Net Settlement Payments made to the individual Class Members will be paid by

Defendant in addition to and not as a deduction from the Settlement Amount based on the stipulated Net Settlement Allocation.

XVI. PRIVATE ATTORNEYS GENERAL ACT ALLOCATION

In order to implement the terms of this Settlement and to settle claims alleged under the PAGA, California *Labor Code* section 2698, *et seq.*, the Parties agree to allocate \$10,000.00 from the Settlement Amount as penalties authorized by the PAGA. Seventy-five percent (75%) of this amount will be paid to the LWDA and twenty-five percent (25%) of this amount will be distributed to the participating Class Members, through the Settlement Administrator and at no additional cost to Defendant. Within twenty-one (21) calendar days following the Date of Final Approval, the Settlement Administrator shall disburse the PAGA Settlement to the LWDA and will provide notice to the LWDA of the fact that the Settlement has been approved by the Court along with a copy of the Settlement Agreement and the Court order confirming the approval of the Settlement through the appropriate LWDA/California Department of Industrial Relations (“DIR”) website.

XVII. COURT APPROVAL

This Agreement and the Settlement is contingent upon Final Approval by the Court and the entry of judgment. Named Plaintiff and Defendant agree to take all steps as may be reasonably necessary to secure both Preliminary Approval and Final Approval of the Settlement, to the extent not inconsistent with the terms of this Agreement, and will not take any action adverse to each other in obtaining court approval, and, if necessary, appellate approval, of the Settlement in all respects. Named Plaintiff and Defendant expressly agree that they will not file any objection to the terms of the Settlement or assist or encourage any person or entity to file any such objection.

In the event it becomes impossible to secure approval of the Settlement, the Parties shall be restored to their respective positions in the Litigation, as of the date of the hearing on the Motion for Preliminary Approval, except as otherwise provided in Section XVIII, below.

XVIII. MISCELLANEOUS PROVISIONS

A. Stay of Litigation.

Named Plaintiff and Defendant agree to the stay of all discovery in the Litigation, pending Final Approval of the Settlement by the Court.

B. Interpretation of the Agreement.

This Agreement constitutes the entire agreement between Named Plaintiff and Defendant. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California for the County of Contra Costa, and Named Plaintiff and Defendant hereby consent to the personal jurisdiction of the Court over them solely in connection therewith. Named Plaintiff, on his own behalf and on behalf of the Settlement Class, and Defendant participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither Named Plaintiff nor Defendant may claim that any ambiguity in this Agreement should be construed against the other.

The terms and conditions of this Agreement constitute the exclusive and final understanding and expression of all agreements between Named Plaintiff and Defendant with respect to the Settlement of the Litigation. The Agreement may be modified only by a writing signed by the original signatories and approved by the Court.

C. Further Cooperation.

Named Plaintiff and Defendant and their respective attorneys shall proceed diligently to prepare and execute all documents, to seek the necessary approvals from the Court, and to do all things reasonably necessary or convenient to consummate the Agreement as expeditiously as possible.

D. Confidentiality of Documents.

After the expiration of any appeals period, Named Plaintiff, the Settlement Administrator, and Class Counsel shall maintain the confidentiality of all documents, deposition transcripts,

1 declarations and other information obtained in the lawsuit, unless necessary for appeal or such
2 documents are ordered to be disclosed by the Court or by a subpoena.

3 **E. Counterparts.**

4 The Agreement may be executed in one or more actual or non-original counterparts, all of
5 which will be considered one and the same instrument and all of which will be considered duplicate
6 originals.

7 **F. Authority.**

8 Each individual signing below warrants that he or she has the authority to execute this
9 Agreement on behalf of the party for whom or which that individual signs.

10 **G. No Third-Party Beneficiaries.**

11 Named Plaintiff, members of the Settlement Class, and Defendant are direct beneficiaries of
12 this Agreement, but there are no third-party beneficiaries.

13 **H. Modification.**

14 This Agreement may not be changed, altered, or modified, except in a writing signed by the
15 Parties, and approved by the Court. Notwithstanding the forgoing, the Parties agree that any dates
16 contained in this Agreement may be modified by agreement of the Parties in writing without Court
17 approval if the Parties agree and cause exists for such modification. This Agreement may not be
18 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

19 In addition to the above, this Agreement may be modified based on the final size of the
20 Settlement Class. Defendant's best estimate for the number of workweeks worked by the members
21 of the Settlement Class between the period of September 22, 2016 to October 1, 2021 is 23,219. If
22 the number of workweeks for this time period is determined to be more than 10% higher than this
23 estimate (i.e., 25,541 or more workweeks), the Settlement Amount shall be increased by the average
24 gross payout to the Class Members based on the 23,219 workweeks. For example, if there are 20%
25 more workweeks than the initial figure of 23,219 workweeks during the time period stated above (in
26 this Paragraph), then Defendant will increase the Settlement Amount by 20%. The Settlement
27 Amount will not be reduced due to Defendant's estimate.

28 ///

I. Deadlines Falling on Weekends or Holidays.

To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

J. Severability.

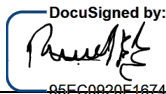
In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant's Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

APPROVED AS TO FORM AND CONTENT:

Date: 12/14/2021, 2021

RAUL FRIAS-ESTRADA, on behalf of himself
and all others similarly situated

By: _____

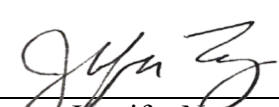
DocuSigned by:

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RAUL FRIAS-ESTRADA, *Plaintiff*

Date: December 15, 2021

TREK RETAIL CORPORATION


By: _____


Name: Jennifer Naeger
Position: Vice President & General Counsel
For TREK RETAIL CORPORATION,
Defendant

APPROVED AS TO FORM:

Date: December 15, 2021


WILSHIRE LAW FIRM

By: 
Justin F. Marquez, Esq.
Benjamin H. Haber, Esq.
Arrash T. Fattahi, Esq.

Attorneys for Plaintiff

Date: December 15, 2021

PETTIT KOHN INGRASSIA LUTZ & DOLIN
PC

By: 
Jennifer N. Lutz, Esq.
Rio F. Schwarting, Esq.

Attorneys for Defendant

WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010-1137

Exhibit A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA
Raul Frias-Estrada v. Trek Retail Corporation
Case No. MSC20-01916

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX -

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT.
TREK RETAIL CORPORATION WILL NOT RETALIATE AGAINST YOU FOR
PARTICIPATING IN THIS SETTLEMENT.**

THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.

A California court authorized this notice. This is not a solicitation from a lawyer.

YOU ARE HEREBY NOTIFIED that a proposed settlement (“the Settlement”) of the above-captioned class action (“the Action”) filed in the Contra Costa County Superior Court has been reached by Trek Retail Corporation (“Trek”) and Raul Frias-Estrada (“Plaintiff”), an individual, on behalf of himself and all others similarly situated and has been granted Preliminary Approval by the Court supervising the Action. The Contra Costa County Superior Court has ordered that this Class Notice be sent to you because you may be a Settlement Class member. The purpose of this Class Notice is to inform you of the Settlement of this class action and your legal rights under the Settlement as follows:

- Trek has agreed to settle a lawsuit brought on behalf of all persons who worked for Trek in California as an hourly-paid or non-exempt employee during the period from September 22, 2016 through December 1, 2021 (the “Settlement Period”) (hereafter, “Settlement Class”).
- The proposed Settlement resolves all alleged claims regarding the following wage and hour policies and/or practices of Trek: minimum wage, straight time wage, overtime and/or double time wage, failure to pay for all hours worked, meal and rest breaks and any premiums thereon, wage statement violations, waiting time penalties, failure to indemnify for expenditures, and other penalties of any kind arising from an alleged failure to pay wages. Finally, the settlement resolves claims for unfair competition and penalties under California’s Private Attorneys General Act (“PAGA”) arising out of the alleged wage and hour policies and practices of Trek. The settlement avoids costs and risks to you from continuing the lawsuit, pays money to employees, and releases Trek from liability for these claims.
- The parties in the lawsuit disagree on whether Trek is liable for the allegations raised in this case and how much money could have been won if the employees won at trial.
- **Your legal rights may be affected. Read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Get a Payment	If you are a member of the Settlement Class, you will automatically receive a payment if you do not exclude yourself. If you accept a payment and do not exclude yourself you will give up certain rights as set forth on page 4 below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below.
Exclude Yourself	Get no payment. Send a letter to the Settlement Administrator as provided below. This is the only option that allows you to bring your own claim against Trek about the legal claims in this case. The Settlement will bind all Settlement Class Members who do not request exclusion.
Object	Write to the Court about why you do not like the settlement. Directions are provided below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of a class on whose behalf this lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

Plaintiff filed this lawsuit in Contra Costa County Superior Court on behalf of the Settlement Class. The lawsuit alleges that members of the Settlement Class were not paid all minimum, straight time, and overtime wages, were not paid for or properly provided meal and rest breaks, were not paid all wages due at termination and/or resignation, were not issued accurate wage statements, were not provided reimbursements for all necessary business-related expenses, and were subjected to unfair competition. The lawsuit seeks recovery of wages, restitution, statutory and civil penalties, interest, and attorneys' fees and costs.

Trek denies any liability or wrongdoing of any kind associated with the claims alleged in the lawsuit. Trek contends, among other things, that they complied at all times with the California Labor Code, the California Business and Professions Code, and all other applicable law. Trek further denies that the lawsuit is appropriate for class treatment for any purpose other than settling this lawsuit.

The Court has made no ruling and will make no ruling on the merits of the Litigation and its allegations and claims.

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did **not** decide in favor of the Plaintiff or Trek. Plaintiff thinks he would have prevailed on his claims at a trial. Trek does not think that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the costs, risks, and uncertainty of a trial, and the class members will get compensation. Plaintiff and Plaintiff's attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all class members.

B. Who is in the Class?

The Settlement Class consists of all persons who worked for Trek in California as an hourly-paid or non-exempt employee during the Settlement Period.

C. What does the Settlement provide?

1. Settlement Amount.

Trek will pay a total of Six Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$675,000.00) (the “Settlement Amount”) to settle the lawsuit.

The following sums will be paid from the Settlement Amount: all Net Settlement Payments (inclusive of all employment taxes and all other legally required withholdings that would otherwise be due from the individual class members) to the Settlement Class, Attorneys’ Fees (not to exceed 33 ⅓ % of the Settlement Amount, or \$225,000.00), Litigation Expenses not to exceed \$15,000.00, Settlement Administrative Costs estimated in an amount not to exceed \$10,000.00, the PAGA Settlement Payment in the amount of \$10,000.00, and an enhancement payment to the Named Plaintiff not to exceed \$10,000.00. Any and all Employer Taxes which Trek normally would be responsible for paying on the Net Settlement Payments made to individual Class Members will be paid by Trek separate and apart from the Settlement Amount.

The funds used for the Settlement Amount shall be paid to the Settlement Administrator. The Settlement Administrator shall disburse the Court-approved enhancement to the Named Plaintiff, Court-approved Attorneys’ Fees and Litigation Expenses, Settlement Administration Costs, and the PAGA Settlement Payment at the same time and manner as the Net Settlement Payments to the Settlement Class members.

2. Net Settlement Amount.

“Net Settlement Amount” means the Settlement Amount minus the Attorneys’ Fees, Litigation Expenses, Settlement Administrative Costs, the portion of the PAGA Settlement payment payable to the Labor & Workforce Development Agency (“LWDA”), and the enhancement payment to the Named Plaintiff.

3. Your Individual Payment Amount.

The Claims Administrator will calculate the total number of workweeks for all Class Members who were employed by Defendant Trek during the Settlement Period (“Total Workweeks”). The value of each Workweek shall be determined by the Claims Administrator by dividing the Net Settlement Amount by the total number of Workweeks available to the Class Members who do not “opt out” (as defined on pages 5-6 below) during the Settlement Period (“Workweek Point Value”).

An “Individual Settlement Payment” for each Class Member will then be determined by multiplying a Class Member’s workweeks (“Eligible Workweeks”) by the Workweek Point Value. The Individual Settlement Payment will be reduced by any required legal deductions, for each participating Class Member.

4. Tax Matters.

The Settlement Administrator will distribute IRS Forms W-2 and 1099 (and the equivalent California forms) to Settlement Class members reflecting the payments each Settlement Class member receives under

the Settlement. For tax purposes, Net Settlement Payments will be allocated as follows: 50% as wages and 50% as penalties and interest. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code and the California Franchise Tax Board.

Interest and penalties paid under this Settlement shall not be subject to federal, state and local payroll withholding taxes. The Settlement Administrator shall issue an IRS form 1099 for payments of interest and penalties. The usual and customary deductions will be taken out of the amounts attributable to unpaid wages. Settlement Class members should consult with their tax advisors concerning the tax consequences of the payment they receive under the Settlement.

D. What are you giving up to get a payment and stay in the Class?

As of the date on which Trek fully funds the settlement, Named Plaintiff and all members of the Settlement Class, except those that make a valid and timely request to be excluded from the Settlement Class and Settlement, waive, release, discharge, and promise never to assert in any forum any and all wage-related claims that were alleged in the Litigation or which could have been alleged in the Litigation based on the facts asserted in the Litigation arising during the Settlement Period against Trek, and its divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, and related corporations, including the following claims: 1) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to pay all wages of any kind, including any minimum or straight time wages, owed pursuant to California Labor Code §§ 204, 510, 1194, 1194.2, and 1197, the California Industrial Welfare Commission (“IWC”) Wage Orders, or any comparable federal statute under any theory of liability; 2) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to pay overtime or double time wages owed pursuant to California Labor Code §§ 204, 510, 1194, and 1198, the IWC Wage Orders, or any comparable federal statute under any theory of liability; 3) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to provide meal periods pursuant to California Labor Code §§ 226.7 and 512, and the IWC Wage Orders; 4) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to provide rest periods pursuant to California Labor Code § 226.7, and the IWC Wage Orders; 5) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to properly calculate any premiums owed and/or paid pursuant to California Labor Code § 226.7(b); 6) all claims alleged in the operative complaint, under any legal theory of liability, for any penalties of any kind arising from an alleged failure to pay final wages or other amounts allegedly owed to Class Members pursuant to California Labor Code §§ 201-204; 7) all claims alleged in the operative complaint, under any legal theory of liability, for any penalties of any kind arising from an alleged wage statement violation pursuant to California Labor Code §§ 226 and 1174.5; 8) all claims alleged in the operative complaint, under any legal theory of liability, for failure to indemnify employees for expenditures pursuant to California Labor Code § 2802; 9) all claims alleged in the operative complaint, under any legal theory of liability, for violation of Business & Professions Code §§ 17200, *et seq.*; 10) all claims alleged in the operative complaint, under any legal theory of liability, for penalties pursuant to the PAGA (Labor Code §§ 2698, *et seq.*); and 11) all claims alleged in the operative complaint, under any legal theory of liability, for any penalties or any another amounts that could be potentially owed to Class Members arising out of and/or related to the allegations in the Litigation arising during the Settlement Period, including penalties owed pursuant to California Labor Code §§ 210, 226.3, 246, 558, 925, and 1197.1.

THE FINAL APPROVAL HEARING

The Court will conduct a Final Approval Hearing regarding the proposed settlement (the “Final Approval Hearing”) on , 2023, at 725 Court Street, Martinez, CA 94553, in Department 39 of the Contra

Costa County Superior Court (Wakefield Taylor Courthouse). The Court will determine: (i) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class members; (ii) whether the Settlement Class members should be bound by the terms of the settlement; (iii) the amount of the attorneys' fees and costs to Plaintiff's counsel; and (iv) the amount that should be awarded to the Plaintiff as an enhancement payment. At the Final Approval Hearing, the Court will hear all objections, as well as arguments for and against the proposed Settlement. You are permitted to provide an objection at the Final Approval Hearing, in the first instance, even if you did not provide a written objection beforehand. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

The Final Approval Hearing may be continued without further notice to the Class. You may contact Plaintiff's counsel, listed in this Notice, to inquire into the date and time of the Final Approval Hearing.

Condition of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – GET A PAYMENT**

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS AND WISH TO RECEIVE YOUR SHARE OF THE SETTLEMENT, THEN YOU DO NOT HAVE TO DO ANYTHING AND YOU WILL AUTOMATICALLY RECEIVE A SETTLEMENT PAYMENT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE.

The average potential recovery for each proposed Settlement Class Member is \$.

The estimated amount of your Settlement Payment is set forth on the Workweek Dispute Form which accompanies this Notice.

The amount of the Settlement Payment paid to each Settlement Class member is based upon the number of workweeks you worked between September 22, 2016 through December 1, 2021. The number of workweeks applicable to your claim is also set forth on the accompanying Workweek Dispute Form. If you believe that the number of workweeks stated is incorrect, you may dispute the number of workweeks by following the instructions on the Workweek Dispute Form. If you believe that the number of workweeks stated is correct, you do not have to do anything.

The Settlement Payment you will receive will be a full and final settlement of your released claims described in Section D above.

- **OPTION 2 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself ("opt out") from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will **not** be bound by a judgment in this case and you will have the right to file your own lawsuit against Trek, subject to time limits called Statute of Limitations and other potential defenses that Trek may assert, and to pursue your own claims in a separate suit.

You can opt out of the Settlement Class by completing the form on **Page 8** of this Notice and mailing it by First Class U.S. Mail or equivalent to the Settlement Administrator at the following address: Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. To be valid, your request for exclusion must be postmarked no later than [45 days after mailing].

- **OPTION 3 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Approval Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing to object, regardless of whether you provided a written objection beforehand, either in person or through an attorney at your own expense.

Any written objection may be mailed to the Settlement Administrator at [Address] by [45 days after mailing].

The contact information for Plaintiff’s counsel and Defendant’s counsel is provided below solely for your informational purposes. Written objections should only be sent to the Settlement Administrator at the address provided above, not to Plaintiff’s counsel or Defendant’s counsel.

PLAINTIFF’S/CLASS COUNSEL

Justin F. Marquez, Esq.
justin@wilshirelawfirm.com
Benjamin H. Haber, Esq.
benjamin@wilshirelawfirm.com
Arrash T. Fattahi, Esq.
afattahi@wilshirelawfirm.com
WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

TREK RETAIL CORPORATION’S COUNSEL

Jennifer N. Lutz, Esq. (SBN 190460)
jlutz@pettitkohn.com
Rio F. Schwarting, Esq. (SBN 323363)
rschwarting@pettitkohn.com
**PETTIT KOHN INGRASSIA LUTZ &
DOLIN PC**
11622 El Camino Real, Suite 300
San Diego, California 92130
Telephone: (858) 755-8500
Facsimile: (858) 755-8504

CHANGE OF ADDRESS

If you move after receiving this Notice, if it was misaddressed, or if for any reason you want your Settlement Award or future correspondence concerning this Action to be sent to a different address, you must supply your preferred address to the Settlement Administrator at:

Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you may review the detailed “Joint Stipulation Re: Class Settlement” and “First Amendment to Joint Stipulation Re: Class Settlement,” which are available for viewing online, along with other court records regarding this case, on the following website:

URL: [Insert website provided by Settlement Administrator]

The pleadings and other records in the lawsuit are also available on the website.

Alternatively, you may also obtain a copy of the Settlement Agreement and related documents online through the Contra Costa County Superior Court's website, by going to the following webpage: <https://odyportal.cc-courts.org/Portal/?clearSession=True> and entering "MSC20-01916" for the case number.

ANY INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO PLAINTIFF'S COUNSEL LISTED ABOVE OR TO THE SETTLEMENT ADMINISTRATOR, Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92867, (800) 523-5773. Please refer to the *Raul Frias-Estrada v. Trek Retail Corporation* Class Action Settlement.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS

[COMPLETE THIS FORM *ONLY IF YOU CHOOSE TO*
NOT PARTICIPATE IN THIS SETTLEMENT AND
CHOOSE *NOT* TO RECEIVE A SETTLEMENT SHARE]

OPT-OUT FORM

Raul Frias-Estrada v. Trek Retail Corporation
CONTRA COSTA COUNTY SUPERIOR COURT CASE NUMBER MSC20-01916

INSTRUCTIONS: TO OPT-OUT OF THE SETTLEMENT, YOU MUST COMPLETE, SIGN AND MAIL THIS FORM BY FIRST CLASS U.S. MAIL OR EQUIVALENT, POSTAGE PAID, POSTMARKED ON OR BEFORE **[+45 DAYS FROM MAILING]**, ADDRESSED TO:

Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863

Please fill in all of the following information (type or print):

NAME (First, Middle, Last): _____
STREET ADDRESS: _____
CITY, STATE, ZIP CODE: _____
TELEPHONE NUMBERS: Home: _____ Work: _____

**IT IS STRONGLY RECOMMENDED THAT YOU RETAIN PROOF OF MAILING
THIS FORM POSTMARKED ON OR BEFORE **[DATE]**.**

I **[insert your name]** wish to be excluded from the Settlement Class in the case of *Raul Frias-Estrada v. Trek Retail Corporation*, Contra Costa County Superior Court Case Number MSC20-01916.

I understand I will not receive money from the proposed class action settlement.

I further verify that the following is true: My name, address and other contact information are accurately set forth above. I received and had the opportunity to read the Notice of Proposed Class Action Settlement that were sent to me along with this Opt-Out Form. I understand that by signing this side of the form, I voluntarily choose to exclude myself from the proposed settlement of this class action. **I understand that by excluding myself, I may not accept any money allocated for me in the proposed settlement and may not object to the settlement.** On the other hand, I also understand that if I wish to assert any claims related to those set forth in this lawsuit in my individual capacity, I shall have to do so separately. I understand that any such claims are subject to strict time limits, known as statutes of limitations, which restrict the time within which I may file any such action. I understand that I should consult with an attorney at my own expense if I wish to obtain advice regarding my rights with respect to this settlement or my choice to opt out of the settlement. Trek Retail Corporation has not encouraged me to opt out, and I choose to opt out of my own free will.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Signed: _____

Date: _____

Print Name: _____

Last four digits of Social Security Number _____

Exhibit B

CLASS WORKWEEK DISPUTE FORM

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

Raul Frias-Estrada v. Trek Retail Corporation
Case No. MSC20-01916

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX -

INSTRUCTIONS

IF YOU WERE EMPLOYED BY TREK RETAIL CORPORATION (“TREK”) IN CALIFORNIA AS AN HOURLY-PAID OR NON-EXEMPT EMPLOYEE BETWEEN SEPTEMBER 22, 2016 AND DECEMBER 1, 2021, THEN YOU ARE A SETTLEMENT CLASS MEMBER.

The amount of your estimated Settlement Payment is based upon the Eligible Workweeks you worked for Trek in California from September 22, 2016 to December 1, 2021.

“Eligible Workweeks” are defined as any week in which you worked at least one (1) day during the calendar week. The number of Eligible Workweeks applicable to your claim is set forth in Section I below. If you believe that the number of workweeks stated is incorrect, you may dispute the number of workweeks by submitting this completed Workweek Dispute Form with any supporting documents on or before [redacted] [45 days after initial mailing]. Documentary evidence may be helpful to substantiate your dispute claim, but it is not required. **If you believe that the number of workweeks stated below is correct, you do not have to do anything.**

If you have moved or may move in the future, you must immediately send your new address to the Settlement Administrator at P.O. Box 7208, Orange, CA 92863; otherwise, your individual settlement payment may not reach you. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your settlement payment.

I. YOUR COMPENSABLE WORKWEEKS

You worked as an hourly-paid or non-exempt employee for Trek Retail Corporation in California, which qualifies you as a Settlement Class Member, and your total number of Eligible Workweeks in this position are: <<NUMBER OF WORKWEEKS>> .

II. YOUR ESTIMATED SETTLEMENT PAYMENT

Based upon the number of workweeks stated above, your estimated pre-tax Settlement Payment is <<INSERT>>.

III. CHALLENGE TO WORKWEEKS

If you wish to dispute the Eligible Workweeks data listed, you must postmark your dispute and provide all supporting information and/or documentation, if any, to the Settlement Administrator by **<<NOTICE PERIOD DEADLINE>>**.

Check the box below ONLY if you wish to dispute the data listed in Section I:

☐ I wish to dispute the number of Eligible Workweeks listed in Section I. I believe the correct amount of my workweeks is _____. I understand that, by submitting this dispute, I hereby authorize the Settlement Administrator to review Trek's records and make a determination as to the validity of my dispute based upon Trek's records as well as the records and information that I submit to the Settlement Administrator.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the information I provided in this Workweek Dispute Form is true and correct.

Dated: _____

Signature: _____

Print or Type Name: _____

MAIL TO:

**RAUL FRIAS-ESTRADA v. TREK RETAIL CORPORATION
CLASS ACTION SETTLEMENT**

c/o

**[Insert]
address**

IF YOU ARE CONTESTING THE AMOUNT OF YOUR ELIGIBLE WORKWEEKS, YOU MUST SIGN, POSTMARK, AND RETURN THIS FORM TO THE SETTLEMENT ADMINISTRATOR ON OR BEFORE «OPT-OUT DEADLINE**».**

Exhibit 2

Justin F. Marquez, Esq. (SBN 262417)
justin@wilshirelawfirm.com
 Benjamin H. Haber, Esq. (SBN 315664)
benjamin@wilshirelawfirm.com
 Arrash T. Fattahi, Esq. (SBN 333676)
afattahi@wilshirelawfirm.com

WILSHIRE LAW FIRM

3055 Wilshire Blvd., 12th Floor
 Los Angeles, California 90010
 Telephone: (213) 381-9988
 Facsimile: (213) 381-9989

Attorneys for Plaintiff

Jennifer N. Lutz, Esq. (SBN 190460)
jlutz@pettitkohn.com
 Rio F. Schwarting, Esq. (SBN 323363)
rschwarting@pettitkohn.com

PETTIT KOHN INGRASSIA LUTZ & DOLIN PC

11622 El Camino Real, Suite 300
 San Diego, California 92130
 Telephone: (858) 755-8500
 Facsimile: (858) 755-8504

Attorneys for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

RAUL FRIAS-ESTRADA, individually, and on
 behalf of all others similarly situated,

Plaintiff,

v.

TREK RETAIL CORPORATION, a Wisconsin
 corporation; and DOES 1 through 10, inclusive,

Defendant.

Case No.: MSC20-01916

CLASS ACTION

[Hon. Edward G. Weil, Dept. 39]

**FIRST AMENDMENT TO JOINT
STIPULATION RE: CLASS
SETTLEMENT**

Complaint filed: September 22, 2020
 FAC filed: June 14, 2022
 Trial date: Not set

This First Amendment to Joint Stipulation re: Class Settlement (“Amendment”) is made by and between the Named Plaintiff, RAUL FRIAS-ESTRADA (“Plaintiff”), on his own behalf and on behalf of all members of the Settlement Class, and Defendant TREK RETAIL CORPORATION (“Defendant,” and together with Plaintiff, the “Parties”), in the lawsuit entitled *Raul Frias-Estrada v. Trek Retail Corporation*, filed in the Contra Costa County Superior Court, Case No. MSC20-01916. This Amendment resolves all claims that were asserted or could have been asserted against Defendant pertaining to the claims in the Litigation.

WHEREAS, the Parties entered into a Joint Stipulation re: Class Settlement (“Settlement Agreement”) on December 15, 2021;

WHEREAS, pursuant to Section XVIII(H) of the Settlement Agreement, the Parties have agreed to amend the Settlement Agreement solely to the extent set forth in this Amendment.

NOW THEREFORE, the Parties hereby agree to modify the Settlement Agreement as follows:

1. The language of Section XI(C)(2), titled “Uncashed Checks,” is removed in its entirety and replaced with the following language: “If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. Any settlement checks remaining uncashed after one hundred and eighty (180) days shall be deemed unpaid residue pursuant Code of Civil Procedure Section 384(a). Unpaid residue (uncashed or returned checks) will be paid to the Los Angeles Trial Lawyers’ Charities, 2708 Wilshire Boulevard, Suite 391, Santa Monica, CA 90403.”

APPROVED AS TO FORM AND CONTENT:

Date: 7/19/2022, 2022

RAUL FRIAS ESTRADA, on behalf of himself
and all others similarly situated

By: 
RAUL FRIAS ESTRADA, Plaintiff

WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010-1137

Date: July 20, 2022

TREK RETAIL CORPORATION

By: 

Name: Jennifer Naeger
Position: Vice President & General Counsel
For TREK RETAIL CORPORATION,
Defendant

APPROVED AS TO FORM:

Date: July 19, 2022

WILSHIRE LAW FIRM

By: 

Justin F. Marquez, Esq.
Benjamin H. Haber, Esq.
Arrash T. Fattahi, Esq.

Attorneys for Plaintiff

Date: July 19, 2022

PETTIT KOHN INGRASSIA LUTZ & DOLIN
PC

By: 

Jennifer N. Lutz, Esq.
Rio F. Schwarting, Esq.

Attorneys for Defendant

Exhibit 3



CASE ASSUMPTIONS

Class Members	550
Opt Out Rate	1%
Opt Outs Received	6
Total Class Claimants	545
Subtotal Admin Only	\$9,250.00

WILL NOT EXCEED	\$9,250.00
------------------------	-------------------

For 550 Class Members

November 2, 2021

Case: Frias-Estrada v. Trek Retail Opt-Out wLanguage

Phoenix Contact: Jodey Lawrence
 Contact Number: 949.566.1455
 Email: Jodey@phoenixclassaction.com

Requesting Attorney: Justin Marquez
 Firm: Wilshire Law Firm, PLC
 Contact Number: (213) 381-9988, Ext. 345
 Email: justin@wilshirelawfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly.
 Estimate is based on 550 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	2	\$200.00
Programming Database & Setup	\$100.00	2	\$200.00
	\$134.45	1	\$134.45
Call Center & Long Distance	\$2.50	55	\$137.50
NCOA (USPS)	\$0.30	550	\$165.00
Total			\$836.95

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Translation / Website

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Data Merge & Duplication Scrub	\$0.15	550	\$82.50
Notice Packet & Opt-Out Form	\$1.00	550	\$550.00
Estimated Postage (up to 2 oz.)*	\$0.70	550	\$385.00
Language Translation	\$950.00	1	\$950.00
Website	\$200.00	1	\$200.00
Total			\$2,367.50

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$50.00	3	\$150.00
Skip Tracing Undeliverables	\$2.00	110	\$220.00
Remail Notice Packets	\$2.00	110	\$220.00
Estimated Postage	\$0.70	110	\$77.00
Programming Undeliverables	\$50.00	2	\$100.00
Total			\$767.00

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$125.00	2	\$250.00
Non Opt-Out Processing	\$175.00	1	\$175.00
Case Associate	\$50.00	4	\$200.00
Opt-Outs/Deficiency/Dispute Letters	\$8.50	14	\$116.88
Case Manager	\$85.00	3	\$255.00
Total			\$996.88

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$125.00	2	\$250.00
Disbursement Review	\$125.00	2	\$250.00
Programming Manager	\$95.00	2	\$190.00
QSF Bank Account & EIN	\$75.00	3	\$225.00
Check Run Setup & Printing	\$125.00	2	\$250.00
Mail Class Checks, W2 and 1099 *	\$1.50	545	\$816.75
Estimated Postage Checks, W2 and 1099	\$0.56	545	\$304.92
Total			\$2,286.67

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$100.00	2	\$200.00
Remail Undeliverable Checks (Postage Included)	\$1.50	20	\$30.00
Case Associate	\$55.00	2	\$110.00
Reconcile Uncashed Checks	\$85.00	2	\$170.00
Conclusion Reports	\$100.00	2	\$200.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$115.00	1	\$115.00
IRS & QSF Annual Tax Reporting * (State Tax Reporting Included)	\$1,000.00	1	\$1,000.00
Total			\$1,995.00
* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.			
Estimate Total:			\$9,250.00



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

Raul Frias-Estrada v. Trek Retail Corporation, et al.
MSC20-01916

PROOF OF SERVICE