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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,

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

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

3 **XVI. PRIVATE ATTORNEYS GENERAL ACT ALLOCATION**

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

14 **XVII. COURT APPROVAL**

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

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

25 **XVIII. MISCELLANEOUS PROVISIONS**

26 **A. Stay of Litigation.**

27 Named Plaintiff and Defendant agree to the stay of all discovery in the Litigation, pending
28 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.

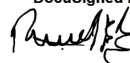
In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant's Counsel and Class Counsel, on behalf 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:

05EC0020F467470...

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.
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