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Attorneys for Plaintiff LUCAS DELACRUZ

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 14 **IN AND FOR THE COUNTY OF SAN DIEGO**

16 LUCAS DELACRUZ, an individual, on behalf
 17 of himself, and on behalf of all persons
 18 similarly situated,

18 Plaintiffs,

19 vs.

20 WAL-MART ASSOCIATES, INC., a
 21 Delaware Corporation; BONOBOBOS, INC., a
 22 Delaware Corporation; and DOES 1 through
 23 50, Inclusive.

23 Defendants.

Case No.: 36-2021-00046421

[Action Filed November 1, 2021]

**STIPULATION OF SETTLEMENT OF
 CLASS AND PAGA ACTION CLAIMS
 AND RELEASE OF CLAIMS**

1 This Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims is
2 entered into by and between Plaintiff LUCAS DELACRUZ (hereinafter “Plaintiff”), an individual,
3 on behalf of the Settlement Class, and in his representative capacity on behalf of the State of
4 California and the Aggrieved Employees, and Defendants BONOBOBOS, INC. (“Bonobos”), and
5 WAL-MART ASSOCIATES, INC. (“Walmart”) (collectively, “Defendants”):

6 **I. DEFINITIONS**

- 7 A. “Action” shall mean the putative class and representative action lawsuit designated
8 *Delacruz v. Wal-Mart Associates, Inc., et al.*, San Diego County Superior Court, Case
9 No. 36-2021-00046421, filed November 1, 2021.
- 10 B. “Administration Costs” shall mean the amount paid to the Settlement Administrator
11 from the Gross Settlement Amount for administering the Settlement pursuant to this
12 Agreement currently estimated not to exceed \$7,500.00.
- 13 C. “Aggrieved Employees” means all current and former non-exempt employees who
14 worked at Defendants’ Bonobos stores, including Walmart employees who worked at
15 Bonobos stores, at any time during the PAGA Period.
- 16 D. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of
17 Class and PAGA Action and Release of Claims.
- 18 E. “Attorneys’ Expenses” means the award of expenses that the Court authorizes to be
19 paid to Class Counsel for the expenses they have incurred of up to \$15,000.00.
- 20 F. “Attorneys’ Fees” means the award of fees that the Court authorizes to be paid to
21 Class Counsel for the services they have rendered to Plaintiff and the Settlement
22 Class in the Action, currently not to exceed one-third of the Gross Settlement
23 Amount currently estimated to be \$150,000.00 out of \$450,000.00. Attorneys’ fees
24 will be divided between Class Counsel as follows (50% to JCL Law Firm, APC, and
25 50% to Zakay Law Group, APLC).
- 26 G. “Class” or the “Class Members” means all current and former non-exempt employees
27 who worked at Defendants Bonobos stores, including Walmart employees that
28 worked at Bonobos stores, at any time during the Class Period.

- 1 H. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC, and
2 Shani O. Zakay, Esq. of Zakay Law Group, APLC.
- 3 I. “Class Data” means information regarding Class Members that Defendants will in
4 good faith compile from its records and provide to the Settlement Administrator. It
5 shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class
6 Member’s full name; last known address; Social Security Number; start dates and end
7 dates of employment.
- 8 J. “Class Period” means the period beginning November 1, 2017, through March 6,
9 2023.
- 10 K. “Class Representative” shall mean plaintiff Lucas Delacruz.
- 11 L. “Court” means the Superior Court for the State of California, County of San Diego
12 currently presiding over the Action.
- 13 M. “Defendants” shall mean Bonobos, Inc., and Wal-Mart Associates, Inc.
- 14 N. “Effective Date” means the earliest date, following entry by the Court (or Courts) of
15 an Order (or Orders) and judgment finally approving this Settlement, upon which one
16 of the following have occurred: (i) if no objection is filed to the settlement and no
17 objector appears at the hearing on final approval, the date of the Court’s entry of the
18 order granting final approval, (ii) if an objection is filed to the settlement and/or an
19 objector appears at the hearing on final approval, then the earlier of the following: (a)
20 the expiration of all potential appeal periods without a filing of a notice of appeal of
21 the final approval order or judgment, i.e., sixty (60) days after the entry of the final
22 approval order and judgment; (b) final affirmance of the final approval order and
23 judgment by an appellate court as a result of any appeal(s), or (c) final dismissal or
24 denial of all such appeals (including any petition for review, rehearing, certiorari, etc.)
25 such that the final approval order and judgment concerning the Actions is no longer
26 subject to further judicial review. If this settlement is approved through motions in
27 both Courts, then Effective Date shall mean the latter of both approvals.

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- 1 O. "Service Award" means an award in the amount of \$10,000 or in an amount that the
2 Court authorizes to be paid to the Class Representative, in addition to his Individual
3 Settlement Payment and his individual Aggrieved Employee Payment, in recognition
4 of his efforts and risks in assisting with the prosecution of the Action.
- 5 P. "Funding Date" shall mean the date by which Defendants have paid the entire Gross
6 Settlement Amount to the Claims Administrator in accord with the terms of this
7 Agreement. Defendants will pay the Gross Settlement Amount to the Claims
8 Administrator thirty (30) calendar days after the Effective Date.
- 9 Q. "Gross Settlement Amount" means Four Hundred and Fifty Thousand Dollars
10 (\$450,000.00) that Defendants must pay into the QSF in connection with this
11 Settlement, inclusive of the sum of Individual Settlement Payments, Administration
12 Costs, Attorneys' Fees and Attorneys' Expenses, Service Award, and the PAGA
13 Penalties and *exclusive* of the employer's share of payroll tax, if any, triggered by any
14 payment under this Settlement.
- 15 R. "Individual Settlement Payments" means the amount payable from the Net Settlement
16 Amount to each Settlement Class Member and excludes any amounts distributed to
17 Aggrieved Employees pursuant to PAGA.
- 18 S. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less
19 Attorneys' Fees and Attorneys' Expenses, Service Award, PAGA Penalties, and
20 Administration Costs.
- 21 T. "Notice Packet" means the Class Notice to be provided to the Class Members by the
22 Settlement Administrator in the form set forth as **Exhibit A** to this Agreement (other
23 than formatting changes to facilitate printing by the Settlement Administrator).
- 24 U. "Operative Complaint" shall mean the Third Amended Complaint on file in the
25 Action filed on March 21, 2023.
- 26 V. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
27 Labor Code § 2698 *et seq.*
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- 1 W. “PAGA Payment Ratio” means the respective Pay Periods during the PAGA Period
- 2 for each Aggrieved Employee divided by the sum total of the Pay Periods for all
- 3 Aggrieved Employees during the PAGA Period.
- 4 X. “PAGA Pay Periods,” for purposes of calculating the distribution of the Aggrieved
- 5 Employee Payment, as defined herein, means the number of pay periods of
- 6 employment during the PAGA Period that each Aggrieved Employee worked in
- 7 California.
- 8 Y. “PAGA Period” means the period beginning August 27, 2020, through March 6,
- 9 2023.
- 10 Z. “PAGA Penalties” shall mean Twenty-Five Thousand Dollars (\$25,000) to be
- 11 allocated from the Gross Settlement Amount, with 25% of the payment going to the
- 12 Aggrieved Employees (“Aggrieved Employee Payment”) and 75% of the payment
- 13 going to the Labor and Workforce Development Agency (“LWDA Payment”). The
- 14 amount of the PAGA Penalties is subject to Court approval pursuant to California
- 15 Labor Code section 2699(l). Any reallocation of the Gross Settlement Amount to
- 16 increase the PAGA Penalties will not constitute grounds by either party to void this
- 17 Agreement, so long as the Gross Settlement Amount remains the same.
- 18 AA. “Parties” means Plaintiff and Defendants, collectively, and “Party” shall mean either
- 19 Plaintiff or Defendants, individually.
- 20 BB. “Payment Ratio” means the respective Workweeks for each Class Member divided
- 21 by the sum total Workweeks for all Class Members.
- 22 CC. “Plaintiff” shall mean Lucas Delacruz.
- 23 DD. “QSF” means the Qualified Settlement Fund established, designated, and maintained
- 24 by the Settlement Administrator to fund the Gross Settlement Amount.
- 25 EE. “Released Class Claims” shall mean the release from the Class Members of all class
- 26 claims alleged in the operative Third Amended Complaint, or which could have been
- 27 alleged in the operative complaint based on the facts alleged, which occurred during
- 28 the Class Period, and expressly excluding all other claims, including claims for vested

1 benefits, wrongful termination, unemployment insurance, disability, social security,
2 workers' compensation, and class claims outside of the Class Period.

3 FF. "Released PAGA Claims" shall mean the release from the Aggrieved Employees of
4 all PAGA claims alleged in the operative Third Amended Complaint and Plaintiff's
5 PAGA notices to the LWDA which occurred during the PAGA Period, and expressly
6 excluding all other claims, including claims for vested benefits, wrongful termination,
7 unemployment insurance, disability, social security, workers' compensation, and
8 PAGA claims outside of the PAGA Period.

9 GG. "Released Parties" shall mean Defendants Bonobos, Inc., and Wal-Mart Associates,
10 Inc., along with each of its current and former subsidiaries, parent corporations,
11 affiliates, predecessors, insurers, agents, employees, successors, assigns, officers,
12 officials, directors, employers, attorneys, personal representatives, executors, and
13 shareholders, including their respective pension, profit, sharing, savings, health, and
14 other employee benefit plans of any nature, the successors of such plans, and those
15 plans' respective current or former trustees and administrators, agents, employees,
16 and fiduciaries, as well as the personal representatives or executors of any such
17 persons.

18 HH. "Response Deadline" means the date forty-five (45) calendar days after the Settlement
19 Administrator mails Notice Packets to Class Members and the last date on which
20 Class Members may submit requests for exclusion or objections to the Settlement.

21 II. "Settlement" means the disposition of the Action pursuant to this Agreement.

22 JJ. "Settlement Administrator" means Apex Class Action LLC, located at 20371 Irvine
23 Avenue, Newport Beach, CA 92660; Tel: (800) 355-0700. The Settlement
24 Administrator establishes, designates and maintains, as a QSF under Internal Revenue
25 Code section 468B and Treasury Regulation section 1.468B-1, into which the amount
26 of the Gross Settlement Amount is deposited for the purpose of resolving the claims
27 of Settlement Class Members. The Settlement Administrator shall maintain the funds
28 until distribution in an account(s) segregated from the assets of Defendants and any

1 person related to Defendants. *All accrued interest shall be paid and distributed to*
2 *the Settlement Class Members as part of their respective Individual Settlement*
3 *Payment.*

4 KK. “Settlement Class Members” or “Settlement Class” means all Class Members who
5 have not submitted a timely and valid request for exclusion as provided in this
6 Agreement.

7 LL. “Workweeks,” for purposes of calculating the distribution of the Net Settlement
8 Amount, means the number of weeks of employment during the Class Period that
9 each Class Member was employed by Defendants in California.

10 **II. RECITALS**

11 A. On August 27, 2021, Plaintiff filed a Notice of Violations with the Labor and
12 Workforce Development Agency (LWDA) and served the same on Defendants.

13 B. On November 1, 2021, Plaintiff filed the Action, alleging claims for:

- 14 1. Unfair competition (Bus. & Prof. Code §§ 17200 *et seq.*);
- 15 2. Failure to pay overtime wages (Labor Code §§ 510 *et seq.*);
- 16 3. Minimum wage violations (Labor Code §§ 1194, 1197 and 1197.1)
- 17 4. Meal period violations (Labor Code §§ 226.7, 512 and the applicable Wage
18 Order);
- 19 5. Rest period violations (Labor Code §§ 226.7, 516 and the applicable wage
20 order);
- 21 6. Failure to reimburse employees for required expenses (Labor Code § 2802);
- 22 7. Wage statement violations (Labor Code § 226 and 226.2 *et seq.*);
- 23 8. Failure to Pay Sick Pay at the Correct Rate (Labor Code § 246);
- 24 9. Failure to provide wages when due (Labor Code §§ 201, 202, 203; 204);
- 25 10. Violation of the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*);

26 C. On December 27, 2021, Plaintiff filed a First Amended Complaint dismissing cause
27 of action number 8, Failure to Pay Sick Pay at the Correct Rate (Labor Code § 246),
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1 and cause of action number 9, Failure to provide wages when due (Labor Code §§
2 201, 202, 203; 204).

3 D. On August 31, 2022, Plaintiff filed a Second Amended Complaint for the purpose of
4 incorporating the claims and factual allegations for an alleged failure to provide
5 seating claim pursuant to Cal. Code of Reg., Title 8, Section 1 1070(14).

6 E. On March 21, 2023, Plaintiff filed the operative Third Amended Complaint adding
7 the claims for Defendants' alleged failure to pay wages when due in violation of Labor
8 Code §§ 201, 202, and 203, and to add additional allegations regarding off-the-clock
9 Covid-19 screenings.

10 F. On March 21, 2023, Plaintiff sent an amended PAGA notice to the LWDA adding
11 claims for Defendants' alleged failure to pay wages when due in violation of Labor
12 Code §§ 201, 202, and 203, and to add additional allegations regarding off-the-clock
13 COVID-19 screenings.

14 G. The Class Representative believes he has claims based on alleged violations of the
15 California Labor Code, and the Industrial Welfare Commission Wage Orders, and
16 that class certification is appropriate because the prerequisites for class certification
17 can be satisfied in the Action, and this action is manageable as a PAGA representative
18 action.

19 H. Defendants deny any liability or wrongdoing of any kind associated with the claims
20 alleged in the Action, disputes any wages, damages and penalties claimed by the Class
21 Representative, alleged in the Operative Complaint, and/or alleged in the Class
22 Representative's PAGA notices to the LWDA are owed, and further contend that, for
23 any purpose other than settlement, the Action is not appropriate for class or
24 representative action treatment. Defendants contend, among other things, that at all
25 times they complied with the California Labor Code and the Industrial Welfare
26 Commission Wage Orders.

27 I. The Class Representative is represented by Class Counsel. Class Counsel investigated
28 the facts relevant to the Action, including conducting an independent investigation as

1 to the allegations, reviewing documents and information exchanged through informal
2 discovery, and reviewing documents and information provided by Defendants
3 pursuant to informal requests for information to prepare for mediation. Defendants
4 produced for the purpose of settlement negotiations certain employment data
5 concerning the Class, which Class Counsel reviewed and analyzed with the assistance
6 of an expert. Based on their own independent investigation and evaluation, Class
7 Counsel are of the opinion that the Settlement with Defendants is fair, reasonable, and
8 adequate, and is in the best interest of the Class considering all known facts and
9 circumstances, including the risks of significant delay, defenses asserted by
10 Defendants, uncertainties regarding class certification, and numerous potential
11 appellate issues. Although it denies any liability, Defendants are agreeing to this
12 Settlement solely to avoid the inconveniences and cost of further litigation. The
13 Parties and their counsel have agreed to settle the claims on the terms set forth in this
14 Agreement.

15 J. On March 6, 2023, the Parties participated in mediation presided over by Jeffrey A.
16 Ross, an experienced mediator of wage and hour class and PAGA actions. The Parties
17 accepted a Mediator’s settlement proposal, which was subsequently memorialized in
18 the form of a Memorandum of Understanding.

19 K. This Agreement replaces and supersedes the Memorandum of Understanding and any
20 other agreements, understandings, or representations between the Parties. This
21 Agreement represents a compromise and settlement of highly disputed claims.
22 Nothing in this Agreement is intended or will be construed as an admission by
23 Defendants that the claims in the Action of Plaintiff or the Class Members have merit
24 or that Defendants bear any liability to Plaintiff or the Class on those claims or any
25 other claims, or as an admission by Plaintiff that Defendants’ defenses in the Action
26 have merit.

27 L. The Parties believe that the Settlement is fair, reasonable, and adequate. The
28 Settlement was arrived at through arm’s-length negotiations, taking into account all

1 relevant factors. The Parties recognize the uncertainty, risk, expense, and delay
2 attendant to continuing the Action through trial and any appeal. Accordingly, the
3 Parties desire to settle, compromise and discharge all disputes and claims arising from
4 or relating to the Action fully, finally, and forever.

5 M. The Parties agree to certification of the Class for purposes of this Settlement only. If
6 for any reason the settlement does not become effective, Defendants reserve the right
7 to contest certification of any class for any reason and reserve all available defenses
8 to the claims in the Action. The Settlement, this Agreement, and the Parties'
9 willingness to settle the Action will have no bearing on, and will not be admissible in
10 connection with any litigation.

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

12 **III. TERMS OF AGREEMENT**

13 A. Settlement Consideration and Settlement Payments by Defendants.

14 1. Settlement Consideration. In full and complete settlement of the Action, and
15 in exchange for the releases set forth below, Defendants will pay the sum of
16 the Individual Settlement Payments, the Service Award, the Attorneys' Fees
17 and Attorneys' Expenses, PAGA Penalties, and the Administration Costs, as
18 specified in this Agreement, equal to the Gross Settlement Amount of Four
19 Hundred and Fifty Thousand Dollars (\$450,000.00). The Parties agree that
20 this is a non-reversionary Settlement and that no portion of the Gross
21 Settlement Amount shall revert to Defendants. Other than the Defendants'
22 share of employer payroll taxes and as provided in Section III.A.2 below,
23 Defendants shall not be required to pay more than the Gross Settlement
24 Amount.

25 2. Class Size. Defendants represent that the Class was comprised of
26 approximately 291 individuals who collectively worked approximately
27 14,000 workweeks during the Class Period. Should the Workweeks increase
28 beyond 5% of the Projected Workweeks (*i.e.*, more than 14,700 Workweeks),

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Defendants shall notify Plaintiff that it will, at Defendants' sole discretion, either (i) increase the Gross Settlement Amount on a pro-rata basis equal to the percentage increase in the number of Workweeks worked by the Class members above five percent (5%) (e.g., if the number of Workweeks increases by 6%, the Gross Settlement Amount will increase by one percent (1%)); or (ii) end the Class Period at any point before the Workweeks do not exceed 14,700.

3. Settlement Payment. Defendants shall deposit the Gross Settlement Amount into the QSF, through the Settlement Administrator on or before the Funding Date. Any interest accrued will be added to the NSA and distributed to the Settlement Class Members except that if final approval is reversed on appeal, then Defendants are entitled to prompt return of the principal and all interest accrued.

4. Defendants' Share of Payroll Taxes. Defendants' share of employer side payroll taxes is in addition to the Gross Settlement Amount and shall be paid together with the Gross Settlement Amount on the Funding Date.

B. Release by Settlement Class Members. As of the Funding Date, in exchange for the consideration set forth in this Agreement, Plaintiff and the Settlement Class Members release the Released Parties from the Released Class Claims for the Class Period.

C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of California release the Released Parties from the Released PAGA Claims for the PAGA Period. As a result of this release, the Aggrieved Employees shall be precluded from bringing claims against Defendants for the Released PAGA Claims.

D. Conditions Precedent: This Settlement will become final and effective only upon the occurrence of all of the following events:

1. The Court enters an order granting preliminary approval of the Settlement;

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- 2. The Court enters an order granting final approval of the Settlement and a Final Judgment;
- 3. If an objector appears at the final approval hearing, the time for appeal of the Final Judgment and Order Granting Final Approval of Class Action Settlement expires; or, if an appeal is timely filed, there is a final resolution of any appeal from the Judgment and Order Granting Final Approval of Class Action Settlement; and
- 4. Defendants fully fund the Gross Settlement Amount.

E. Nullification of Settlement Agreement. If this Settlement Agreement is not preliminarily or finally approved by the Court, fails to become effective, or is reversed, withdrawn, or modified by the Court, or in any way prevents or prohibits Defendants from obtaining a complete resolution of the Released Class Claims and Released PAGA Claims, or if Defendants fail to fully fund the Gross Settlement Amount:

- 1. This Settlement Agreement shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;
- 2. The conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and
- 3. None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.

F. In the event that Defendants fail to fund the Gross Settlement Amount, Defendants shall bear the sole responsibility for any cost to issue or reissue any curative notice to the Settlement Class Members and all Settlement Administration Costs incurred to the date of nullification.

1 G. Certification of the Class. The Parties stipulate to conditional class certification of the
2 Class for the Class Period for purposes of settlement only. In the event that this
3 Settlement is not approved by the Court, fails to become effective, or is reversed,
4 withdrawn or modified by the Court, or in any way prevents or prohibits Defendants
5 from obtaining a complete resolution of the Released Class Claims and Released
6 PAGA Claims, the conditional class certification (obtained for any purpose) shall be
7 void *ab initio* and of no force or effect, and shall not be admissible in any judicial,
8 administrative or arbitral proceeding for any purpose or with respect to any issue,
9 substantive or procedural.

10 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
11 effect of the payments called for, and Class Members and/or Aggrieved Employees are
12 not relying on any statement or representation by the Parties in this regard. Class
13 Members and/or Aggrieved Employees understand and agree that they will be
14 responsible for the payment of any taxes and penalties assessed on the Individual
15 Settlement Payments and/or Aggrieved Employees' individual shares of the Aggrieved
16 Employee Payment described and will be solely responsible for any penalties or other
17 obligations resulting from their personal tax reporting of Individual Settlement
18 Payments and/or Aggrieved Employees' individual shares of the Aggrieved Employee
19 Payment. .

20 I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
21 the "acknowledging party" and each Party to this Agreement other than the
22 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision
23 of this Agreement, and no written communication or disclosure between or among the
24 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
25 such communication or disclosure constitute or be construed or be relied upon as, tax
26 advice within the meaning of United States Treasury Department circular 230 (31 CFR
27 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
28 her or its own, independent legal and tax counsel for advice (including tax advice) in

1 connection with this Agreement, (b) has not entered into this Agreement based upon
2 the recommendation of any other Party or any attorney or advisor to any other Party,
3 and (c) is not entitled to rely upon any communication or disclosure by any attorney
4 or adviser to any other party to avoid any tax penalty that may be imposed on the
5 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
6 any limitation that protects the confidentiality of any such attorney's or adviser's tax
7 strategies (regardless of whether such limitation is legally binding) upon disclosure by
8 the acknowledging party of the tax treatment or tax structure of any transaction,
9 including any transaction contemplated by this Agreement.

10 J. Preliminary Approval Motion. As soon thereafter as practicable after the execution of
11 this Agreement, Plaintiff shall file with the Court a Motion for Order Granting
12 Preliminary Approval and supporting papers, which shall include this Settlement
13 Agreement. Plaintiff will provide Defendants with a draft of the Motion at least three
14 (3) business days prior to the filing of the Motion to give Defendants an opportunity
15 to review and comment upon the Motion.

16 K. Settlement Administrator. The Settlement Administrator shall be responsible for:
17 establishing and administering the QSF; calculating, processing and mailing payments
18 to the Class Representative, Class Counsel, LWDA and Class Members; printing and
19 mailing the Notice Packets to the Class Members as directed by the Court; receiving
20 and reporting the objections and requests for exclusion; calculating, deducting and
21 remitting all legally required taxes from Individual Settlement Payments and
22 distributing tax forms for the Wage Portion, the Penalties Portion and the Interest
23 Portion of the Individual Settlement Payments and/or Aggrieved Employees'
24 individual shares of the Aggrieved Employee Payment; processing and mailing tax
25 payments to the appropriate state and federal taxing authorities; providing
26 declaration(s) as necessary in support of preliminary and/or final approval of this
27 Settlement; and other tasks as the Parties mutually agree or the Court orders the
28 Settlement Administrator to perform. The Settlement Administrator shall keep the

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Parties timely apprised of the performance of all Settlement Administrator responsibilities by among other things, sending a weekly status report to the Parties' counsel stating the date of the mailing, the of number of Elections Not to Participate in Settlement it receives (including the numbers of valid and deficient), and number of objections received.

L. Notice Procedure.

1. Class Data. No later than ten (10) business days after the Preliminary Approval Date, Defendants shall provide the Settlement Administrator with the Class Data for purposes of preparing and mailing Notice Packets to the Class Members.

2. Notice Packets.

a) The Notice Packet shall contain the Notice of Class Action Settlement in a form substantially similar to the form attached as **Exhibit A**. The Notice of Class Action Settlement shall inform Class Members and Aggrieved Employees that they need not do anything in order to receive an Individual Settlement Payment and/or Aggrieved Employees' individual shares of the Aggrieved Employee Payment and to keep the Settlement Administrator apprised of their current mailing address, to which the Individual Settlement Payments and/or Aggrieved Employees' individual shares of the Aggrieved Employment Payment will be mailed following the Funding Date. The Notice of Class Action Settlement shall set forth the release to be given by all members of the Class who do not request to be excluded from the Settlement Class and/or Aggrieved Employees in exchange for an Individual Settlement Payment and/or Aggrieved Employees' individual shares of the Aggrieved Employment Payment, the number of Workweeks worked by each Class Member during the Class Period and PAGA Period, if any, and the estimated amount of their Individual

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Settlement Payment if they do not request to be excluded from the Settlement and each Aggrieved Employees' share of the Aggrieved Employment Payment, if any. The Settlement Administrator shall use the Class Data to determine Class Members' Workweeks and PAGA Workweeks. The Notice will also advise the Aggrieved Employees that they will release the Released PAGA Claims and will receive their share of the Aggrieved Employee Payment regardless of whether they request to be excluded from the Settlement.

b) The Notice Packet's mailing envelope shall include the following language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE ENTITLED TO PARTICIPATE IN A CLASS ACTION SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED NOTICE."

3. Notice by First Class U.S. Mail. Upon receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. No later than twenty-one (21) calendar days after preliminary approval of the Settlement, the Settlement Administrator shall mail copies of the Notice Packet to all Class Members via regular First-Class U.S. Mail and electronic mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member.

4. Undeliverable Notices. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to any forwarding address provided. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a

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correct address by lawful use of skip-tracing, or other search using the name, address and/or Social Security number of the Class Member involved, and shall then perform a re-mailing, if another mailing address is identified by the Settlement Administrator. Class Members who received a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15) days from the original Response Deadline.

5. Disputes Regarding Individual Settlement Payments. Class Members will have the opportunity, should they disagree with Defendants’ records regarding the start and end dates of employment to provide documentation and/or an explanation to show contrary dates. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Agreement. The Settlement Administrator’s determination of the eligibility for and amount of any Individual Settlement Payment shall be binding upon the Class Member and the Parties.

6. Disputes Regarding Administration of Settlement. Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement will be resolved by the Court under the laws of the State of California. Before any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.

7. Exclusions. The Notice of Class Action Settlement contained in the Notice Packet shall state that Class Members who wish to exclude themselves from the Settlement must submit a signed copy of the Request for Exclusion form to the Settlement Administrator by the Response Deadline. A Request for Exclusion form will be mailed together with the Notice Packet to all Class Members. The Request for Exclusion will not be valid if it is not timely

1 submitted, if it is not signed by the Class Member, or if it does not contain the
2 name and address and last four digits of the Social Security number of the
3 Class Member. The date of the postmark on the mailing envelope or fax stamp
4 on the Request for Exclusion shall be the exclusive means used to determine
5 whether the request for exclusion was timely submitted. Any Class Member
6 who submits a timely Request for Exclusion shall be excluded from the
7 Settlement Class will not be entitled to an Individual Settlement Payment and
8 will not be otherwise bound by the terms of the Settlement or have any right
9 to object, appeal or comment thereon. However, any Class Member that
10 submits a timely Request for Exclusion that is also an Aggrieved Employee
11 will still receive his/her pro rata share of the Aggrieved Employee Payment,
12 as specified below, and in consideration, will be bound by the Release by the
13 PAGA Class as set forth herein. Class Members who fail to submit a valid
14 and timely Request for Exclusion on or before the Response Deadline shall be
15 bound by all terms of the Settlement and any final judgment entered in this
16 Action if the Settlement is approved by the Court. No later than fourteen (14)
17 calendar days after the Response Deadline, the Settlement Administrator shall
18 provide counsel for the Parties with a final list of the Class Members who have
19 timely submitted timely Requests for Exclusion. Defendants retain the right,
20 in the exercise of its sole discretion, to nullify the settlement within thirty (30)
21 days after expiration of the exclusion period, if ten percent (10%) or more of
22 Class Members exclude themselves from the Settlement. At no time shall any
23 of the Parties or their counsel seek to solicit or otherwise encourage members
24 of the Class to submit Requests for Exclusion from the Settlement.

- 25 8. Objections. The Notice of Class Action Settlement contained in the Notice
26 Packet shall state that Class Members who wish to object to the Settlement
27 may submit to the Settlement Administrator a written statement of objection
28 (“Notice of Objection”) by the Response Deadline. The postmark date of

1 mailing shall be deemed the exclusive means for determining that a Notice of
2 Objection was served timely. The Notice of Objection, if in writing, must be
3 signed by the Settlement Class Member and state: (1) the case name and
4 number; (2) the name of the Settlement Class Member; (3) the address of the
5 Settlement Class Member; (4) the last four digits of the Settlement Class
6 Member's Social Security number; (5) the basis for the objection; and (6) if
7 the Settlement Class Member intends to appear at the Final
8 Approval/Settlement Fairness Hearing. Settlement Class Members who fail
9 to make objections in writing in the manner specified above may still make
10 their objections orally at the Final Approval/Settlement Fairness Hearing with
11 the Court's permission. Settlement Class Members will have a right to appear
12 at the Final Approval/Settlement Fairness Hearing to have their objections
13 heard by the Court regardless of whether they submitted a written objection.
14 At no time shall any of the Parties or their counsel seek to solicit or otherwise
15 encourage Class Members to file or serve written objections to the Settlement
16 or appeal from the Order and Final Judgment. Class Members who submit a
17 written request for exclusion may not object to the Settlement. Class Members
18 may not object to the PAGA Penalties.

19 M. Funding and Allocation of the Gross Settlement Amount. Defendants are required to
20 pay the Gross Settlement Amount plus any employer's share of payroll taxes as
21 mandated by law within the time specified hereinabove on the Funding Date.

22 1. Calculation of Individual Settlement Payments. Individual Settlement
23 Payments shall be paid from the Net Settlement Amount and shall be paid
24 pursuant to the formula set forth herein. Using the Class Data, the Settlement
25 Administrator shall add up the total number of Workweeks for all Class
26 Members. The respective Workweeks for each Class Member will be divided
27 by the total Workweeks for all Class Members, resulting in the Payment Ratio
28 for each Class Member. Each Class Member's Payment Ratio will then be

1 multiplied by the Net Settlement Amount to calculate each Class Member's
2 estimated Individual Settlement Payments. Each Individual Settlement
3 Payment will be reduced by any legally mandated employee tax withholdings
4 (e.g., employee payroll taxes, etc.). Individual Settlement Payments for Class
5 Members who submit valid and timely requests for exclusion will be
6 redistributed to Settlement Class Members who do not submit valid and timely
7 requests for exclusion on a pro rata basis based on their respective Payment
8 Ratios.

9 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
10 Class Data, the Settlement Administrator shall add up the total number of
11 PAGA Pay Periods for all Aggrieved Employees during the PAGA Period.
12 The respective PAGA Pay Periods for each Aggrieved Employees will be
13 divided by the total PAGA Pay Periods for all Aggrieved Employees, resulting
14 in the "PAGA Payment Ratio" for each Aggrieved Employee. Each
15 Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the
16 Aggrieved Employee Payment to calculate each Aggrieved Employee's
17 estimated share of the Aggrieved Employee Payment.

18 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
19 Settlement Payments shall be allocated and treated as 25% wages ("Wage
20 Portion") and 55% penalties ("Penalties Portion"), and 20% pre-judgment
21 interest ("Interest Portion"). The Wage Portion of the Individual Settlement
22 Payments shall be reported on IRS Form W-2 and the Penalty Portion and
23 Interest Portion of the Individual Settlement Payments shall be reported on
24 IRS Form 1099 issued by the Settlement Agreement.

25 4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved
26 Employee Settlement Payments shall be allocated and treated as 100%
27 penalties and shall be reported on IRS Form 1099.
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5. No Credit Toward Benefit Plans. The Individual Settlement Payments and individual shares of the PAGA Penalties made to Settlement Class Members and/or Aggrieved Employees under this Settlement Agreement, as well as any other payments made pursuant to this Settlement Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

6. All monies received by Settlement Class Members under the Settlement which are attributable to wages shall constitute income to such Settlement Class Members solely in the year in which such monies actually are received by the Settlement Class Members. It is the intent of the Parties that Individual Settlement Payments and individual shares of the PAGA Penalties provided for in this Settlement agreement are the sole payments to be made by Defendants to Settlement Class Members and/or Aggrieved Employees in connection with this Settlement Agreement, with the exception of Plaintiff, and that the Settlement Class Members and/or Aggrieved Employees are not entitled to any new or additional compensation or benefits as a result of having received the Individual Settlement Payments and/or their shares of the Aggrieved Employee Payment.

7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members' and/or Aggrieved Employees' last known mailing address no later than thirty (30) business days after the Funding Date.

8. Expiration. Any checks issued to Settlement Class Members and Aggrieved Employees shall remain valid and negotiable for one hundred and eighty (180)

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days from the date of their issuance. If a Settlement Class Member and/or Aggrieved Employees does not cash his or her settlement check within 90 days, the Settlement Administrator will send a letter to such persons, advising that the check will expire after the 180th day, and invite that Settlement Class Member and/or Aggrieved Employees to request reissuance in the event the check was destroyed, lost or misplaced. In the event an Individual Settlement Payment and/or Aggrieved Employees' individual share of the PAGA Penalties check has not been cashed within one hundred and eighty (180) days, all funds represented by such uncashed checks, plus any interest accrued thereon, shall be transmitted to the California Controller's Unclaimed Property Fund in the name of the Settlement Class Member and/or Aggrieved Employee.

9. Service Award. In addition to the Individual Settlement Payment as a Settlement Class Member and his individual share of the Aggrieved Employee Payment, Plaintiff will apply to the Court for an award of not more than \$10,000.00, as the Service Award. Defendants will not oppose a Service Award of not more than \$10,000.00 for Plaintiff. The Settlement Administrator shall pay the Service Award, either in the amount stated herein if approved by the Court or some other amount as approved by the Court, to Plaintiff from the Gross Settlement Amount no later than thirty (30) business days after the Funding Date. Any portion of the requested Service Award that is not awarded to the Class Representative shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for his Service Award. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on his Service Award and shall hold harmless the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Service Award. Approval

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of this Settlement shall not be conditioned on Court approval of the requested amount of the Service Award. If the Court reduces or does not approve the requested Service Award, Plaintiff shall not have the right to revoke the Settlement, and it will remain binding.

10. Attorneys’ Fees and Attorneys’ Expenses. Defendants understand Class Counsel will file a motion for or Attorneys’ Fees not to exceed one-third of the Gross Settlement Amount currently estimated to be \$150,000 **and** Attorneys’ Expenses supported by declaration not to exceed Fifteen Thousand Dollars (\$15,000.00). Any awarded Attorneys’ Fees and Attorneys’ Expenses shall be paid from the Gross Settlement Amount. Any portion of the requested Attorneys’ Fees and/or Attorneys’ Expenses that are not awarded to Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Settlement Administrator shall allocate and pay the Attorneys’ Fees to Class Counsel from the Gross Settlement Amount no later than thirty (30) calendar days after the Funding Date. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the payments made pursuant to this paragraph. In the event that the Court reduces or does not approve the requested Attorneys’ Fees, Plaintiff and Class Counsel shall not have the right to revoke the Settlement, or to appeal such order, and the Settlement will remain binding.

11. PAGA Penalties. Twenty-Five Thousand Dollars (\$25,000) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Penalties”). The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Penalties (\$18,750) to the California Labor and Workforce Development Agency no later than thirty (30) business days after the Effective Date

1 (hereinafter “LWDA Payment”). Twenty-five percent (25%) of the PAGA
2 Penalties (\$6,250) will be distributed to the Aggrieved Employees as
3 described in this Agreement (hereinafter “Aggrieved Employee Payment”).
4 For purposes of distributing the PAGA Penalties to the Aggrieved Employees,
5 each Aggrieved Employee shall receive their pro-rata share of the Aggrieved
6 Employee Payment using the PAGA Payment Ratio as defined above.

7 12. Administration Costs. The Settlement Administrator shall be paid for the
8 costs of administration of the Settlement from the Gross Settlement Amount.
9 The estimate of the Administration Costs is \$7,500.00. The Settlement
10 Administrator shall be paid the Administration Costs no later than thirty (30)
11 business days after the Effective Date.

12 N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with
13 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
14 twenty-eight (28) days following the expiration of the Response Deadline, which
15 motion shall request final approval of the Settlement and a determination of the
16 amounts payable for the Service Award, the Attorneys’ Fees and Attorneys’
17 Expenses, the PAGA Penalties, and the Administration Costs. Plaintiff will provide
18 Defendants with a draft of the Motion at least 3 business days prior to the filing of the
19 Motion to give Defendants an opportunity to propose changes or additions to the
20 Motion.

21 1. Declaration by Settlement Administrator. No later than seven (7) days after
22 the Response Deadline, the Settlement Administrator shall submit a
23 declaration in support of Plaintiff’s motion for final approval of this
24 Settlement detailing the number of Notice Packets mailed and re-mailed to
25 Class Members, the number of undeliverable Notice Packets, the number of
26 timely requests for exclusion, the number of objections received, the amount
27 of the average Individual Settlement Payment and highest Individual
28 Settlement Payment, the Administration Costs, and any other information as

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the Parties mutually agree or the Court orders the Settlement Administrator to provide.

2. Final Approval Order and Judgment. Class Counsel shall present an Order Granting Final Approval of Class Action Settlement to the Court for its approval, and Judgment thereon, at the time Class Counsel files the Motion for Final Approval.

N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide an opportunity for Counsel for Defendants to review the Motions for Preliminary and Final Approval, including the Order Granting Final Approval of Class Action Settlement, and Judgment before filing with the Court. The Parties and their counsel will cooperate with each other and use their best efforts to effect the Court’s approval of the Motions for Preliminary and Final Approval of the Settlement, and entry of Judgment.

O. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts to implement the Settlement.

P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval/Settlement Fairness Hearing to be conducted by the Court.

Q. Amendment or Modification. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

R. Plaintiff’s Individual Claims. In addition to this Agreement and the claims he is releasing hereby, Plaintiff is entering into a separate individual settlement agreement, which shall provide for a separate individual payment, and which shall provide for an additional broad release, including a waiver of Civil Code Section 1542. That release, waiver and discharge of all claims shall include, but will not be limited to, any and all claims arising out of the Action, as well as additional claims described in the individual settlement agreement, which are separate and different from the claims alleged in the Action.

1 S. Entire Agreement. Except with respect to Plaintiff’s individual settlement agreement,
2 described in paragraph “R” immediately above, this Agreement and any attached
3 Exhibit constitute the entire Agreement among these Parties, and no oral or written
4 representations, warranties or inducements have been made to any Party concerning
5 this Agreement or its Exhibit other than the representations, warranties and covenants
6 contained and memorialized in this Agreement and its Exhibit.

7 T. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
8 represent they are expressly authorized by the Parties whom they represent to negotiate
9 this Agreement and to take all appropriate Action required or permitted to be taken by
10 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
11 documents required to effectuate the terms of this Agreement. The persons signing
12 this Agreement on behalf of Defendants represents and warrants that he/she is
13 authorized to sign this Agreement on behalf of Defendants. Plaintiff represents and
14 warrants that he is authorized to sign this Agreement and that he has not assigned any
15 claim, or part of a claim, covered by this Settlement to a third-party.

16 U. No Public Comment: The Parties and their counsel agree that they will not issue any
17 press releases, initiate any contact with the press, respond to any press inquiry, or have
18 any communication with the press about the fact, amount, or terms of the Settlement
19 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
20 of its terms for any marketing or promotional purposes. Nothing herein will restrict
21 Class Counsel from including publicly available information regarding this settlement
22 in future judicial submissions regarding Class Counsel’s qualifications and experience.
23 Further, Class Counsel will not include, reference or use the Settlement Agreement for
24 any marketing or promotional purposes, either before or after the Motion for
25 Preliminary Approval is filed.

26 V. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
27 to the benefit of, the successors or assigns of the Parties, as previously defined.

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- 1 W. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
- 2 shall be governed by and interpreted according to the laws of the State of California.
- 3 X. Counterparts. This Agreement may be executed in one or more counterparts. All
- 4 executed counterparts and each of them shall be deemed to be one and the same
- 5 instrument provided that counsel for the Parties to this Agreement shall exchange
- 6 among themselves copies or originals of the signed counterparts.
- 7 Y. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
- 8 is a fair, adequate, and reasonable settlement of this Action and have arrived at this
- 9 Settlement after extensive arms-length negotiations, taking into account all relevant
- 10 factors, present and potential.
- 11 Z. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
- 12 respect to the interpretation, implementation and enforcement of the terms of this
- 13 Agreement and all orders and judgments entered in connection therewith, and the
- 14 Parties and their counsel submit to the jurisdiction of the Court for purposes of
- 15 interpreting, implementing and enforcing the settlement and all orders and judgments
- 16 entered in connection with this Agreement.
- 17 AA. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
- 18 the Court shall first attempt to construe the provisions valid to the fullest extent
- 19 possible consistent with applicable precedents so as to define all provisions of this
- 20 Agreement valid and enforceable.
- 21 BB. No Unalleged Claims. Except with respect to individual claims alleged by Plaintiff
- 22 and settled separately by an individual settlement agreement between the Parties
- 23 described in paragraph “R” above, Plaintiff and Class Counsel represent that they do
- 24 not currently intend to pursue any claims against the Released Parties, including, but
- 25 not limited to, any and all claims relating to or arising from Plaintiff’s employment
- 26 with Defendants, regardless of whether Class Counsel is currently aware of any facts
- 27 or legal theories upon which any claims or causes of action could be brought against
- 28 Released Parties, including those facts or legal theories alleged in the operative

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complaint in this Action. The Parties further acknowledge, understand and agree that this representation is essential to the Agreement and that this Agreement would not have been entered into were it not for this representation.

CC. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this settlement only.

DD. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the Released Class Claims and Released PAGA Claims have merit and give rise to liability on the part of Defendants. Defendants claim that the Released Class Claims and Released PAGA Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to and no action taken to carry out this Agreement may be construed or used as an admission by or against the Defendants or Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other than as may be specifically set forth herein, each Party shall be responsible for and shall bear its/his own attorney's fees and costs.

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: Apr 11, 2023

Luke Delacruz
Luke Delacruz (Apr 11, 2023 15:40 PDT)

LUCAS DELACRUZ

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

DATED: April 25, 2023 | 09:37 CDT

Chad Pekron
WAL-MART ASSOCIATES, INC.
BONOBOS, INC.

Chad Pekron
Printed Name

Vice President, Complex Commercial Litigation
Title

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IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: April 12, 2023

JCL LAW FIRM, A.P.C.

By:  _____

Attorneys for Plaintiff and the Settlement Class Members

DATED: April 12, 2023

ZAKAY LAW GROUP, APLC

By:  _____

Attorneys for Plaintiff and the Settlement Class Members

DATED: April 26, 2023

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By:  _____

Paloma P. Peracchio, Esq.
Mitchell A. Wrosch, Esq.
Attorneys for Defendants