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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 14 **FOR THE COUNTY OF SANTA CRUZ**

16 DONTAY HENDERSON, individually, and on
 behalf of all others similarly situated,

17 *Plaintiff,*

18 vs.

19 FRONT ST., INC.; and DOES 1 through 10,
 20 inclusive,

21 *Defendants.*

Case No.: 21CV02059

[Honorable Timothy Schmal, Department 10]

**JOINT STIPULATION OF CLASS AND
 PAGA ACTION SETTLEMENT
 AGREEMENT**

Complaint Filed: August 20, 2021
 Trial Date: Not Set

JOINT STIPULATION OF CLASS AND PAGA ACTION SETTLEMENT AGREEMENT

Subject to final approval of this Court, this Joint Stipulation of Class and PAGA Action Settlement Agreement (“Settlement,” “Agreement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Dontay Henderson (“Plaintiff”) and Defendant Front St., Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties” and individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means *Dontay Henderson v. Front St. Inc.*, Superior Court of the State of California, County of Santa Cruz, Case No. 21CV02059.
- 1.2. “Administrator” means Apex Class Action LLC, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with its “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all non-exempt employees of Defendant who worked in California in the period from August 20, 2020 through October 3, 2023.
- 1.5. “Class” means all non-exempt employees of Defendant who worked in California in the period from August 20, 2017 through October 3, 2023.
- 1.6. “Class Counsel” means Moon Law Group, PC.
- 1.7. “Class Counsel Fees Payment” means the amount allocated to Class Counsel for reimbursement of the reasonable attorneys’ fees incurred to prosecute the Action.
- 1.8. “Class Counsel Expenses Payment” means the amount allocated to Class Counsel for reimbursement of the reasonable attorneys’ expenses incurred to prosecute the Action.
- 1.9. “Class Data” means Class Member identifying information in Defendant’s possession, including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.10. “Class Member” means a member of the Class, as either a Participating Class Member

1 or Non-Participating Class Member, including a Non-Participating Class Member who
2 qualifies as an Aggrieved Employee.

3 1.11. “Class Member Address Search” means the Administrator’s investigation and search for
4 current Class Member mailing addresses using all reasonably available sources,
5 methods, and means, including, but not limited to, the National Change of Address
6 database, skip traces, and direct contact by the Administrator with Class Members.

7 1.12. “Class Notice” means the court-approved Notice of Class and PAGA Action Settlement
8 to be mailed to Class Members in English and Spanish, substantially in the form
9 attached to this Settlement Agreement as **Exhibit A** and incorporated by reference
10 herein.

11 1.13. “Class Period” means the period from August 20, 2017 through October 3, 2023.

12 1.14. “Class Representative” means the named Plaintiff in the Operative Complaint in the
13 Action seeking Court approval to serve as a Class Representative, Dontay Henderson.

14 1.15. “Class Representative Service Payment” means the payment to the Class Representative
15 for initiating the Action, providing services in support of the Action, and releasing any
16 and all claims under California Civil Code section 1542.

17 1.16. “Court” means the Superior Court of California, County of Santa Cruz.

18 1.17. “Defendant” means Defendant Front St., Inc.

19 1.18. “Defense Counsel” means Layton Law Firm.

20 1.19. “Effective Date” means the date by when both of the following have occurred: (a) the
21 Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b)
22 the Judgment is final. The Judgment is final as of the latest of the following occurrences:
23 (a) if no Participating Class Member objects to the Settlement, the day the Court enters
24 Judgment; (b) if one or more Participating Class Members objects to the Settlement, the
25 day after the deadline for filing a notice of appeal from the Judgment; or if a timely
26 appeal from the Judgment is filed, the day after the appellate court affirms the Judgment
27 and issues a remittitur.

28 1.20. “Final Approval” means the Court Order Granting Final Approval of the Settlement.

- 1 1.21. “Final Approval Hearing” means the Hearing on Plaintiff’s Motion for Final Approval
2 of the Settlement.
- 3 1.22. “Final Judgment” means the Judgment Granting Final Approval of the Settlement.
- 4 1.23. “Gross Settlement Amount” means the total amount Defendant agrees to pay under the
5 Settlement Agreement, subject to the terms in Paragraph 8 below. The Gross Settlement
6 Amount will be used to pay the Individual Class Payments, Individual PAGA Payments,
7 LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Expenses
8 Payment, Class Representative Service Payment, and Administration Expenses
9 Payment.
- 10 1.24. “Individual Class Payment” means a Participating Class Member’s pro rata share of the
11 Net Settlement Amount calculated according to the number of Workweeks he or she
12 worked during the Class Period.
- 13 1.25. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of
14 the PAGA Penalties calculated according to the number of PAGA Pay Periods he or she
15 worked during the PAGA Period, pursuant to Labor Code section 2699(i).
- 16 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency
17 entitled under Labor Code section 2699(i).
- 18 1.27. “LWDA PAGA Payment” means 75% of the PAGA Penalties paid to the LWDA,
19 pursuant to Labor Code section 2699(i).
- 20 1.28. “Net Settlement Amount” means the Gross Settlement Amount less the following
21 payments approved by the Court: the Individual PAGA Payments, LWDA PAGA
22 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class
23 Counsel Expenses Payment, and Administration Expenses Payment. The remainder is to
24 be paid to Participating Class Members as Individual Class Payments.
- 25 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
26 Settlement Agreement by sending the Administrator a valid and timely Request for
27 Exclusion.
- 28 1.30. “Operative Complaint” means the First Amended Class and Representative Action

- 1 Complaint filed on December 23, 2021.
- 2 1.31. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee
3 worked for Defendant for at least one day during the PAGA Period.
- 4 1.32. "PAGA Period" means the period from August 14, 2020 through October 3, 2023.
- 5 1.33. "PAGA" means the California Labor Code Private Attorneys General Act of 2004.
- 6 1.34. "PAGA Notice" means the August 14, 2021 notice Plaintiff submitted to the LWDA
7 regarding potential Labor Code violations, pursuant to Labor Code section 2699.3(a).
- 8 1.35. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the
9 Gross Settlement Amount in settlement of the PAGA Claims. The PAGA Penalties will
10 be allocated 25% to the Aggrieved Employees and the 75% to LWDA, pursuant to
11 Labor Code section 2699(i).
- 12 1.36. "Participating Class Member" or "Settlement Class Member" means a Class Member
13 who does not submit a valid and timely Request for Exclusion from the Settlement.
- 14 1.37. "Plaintiff" means the named Plaintiff in the Action, Dontay Henderson.
- 15 1.38. "Preliminary Approval" means the Court Order Granting Preliminary Approval of the
16 Settlement.
- 17 1.39. "Preliminary Approval Order" means the Order Granting Preliminary Approval of the
18 Class Settlement and Approval of PAGA Settlement.
- 19 1.40. "Released Class Claims" means the claims released as described in Paragraph 6.1.
- 20 1.41. "Released PAGA Claims" means the claims released as described in Paragraph 6.2.
- 21 1.42. "Released Parties" means Defendant and all related companies, subsidiaries, owners,
22 shareholders, members, agents (including, without limitation, any investment bankers,
23 accountants, insurers, reinsurers, attorneys and any past, present or future officers,
24 directors and employees), predecessors, successors, and assigns.
- 25 1.43. "Request for Exclusion" means a Class Member's timely submission of a valid written
26 request to be excluded from the Class Settlement signed by the Class Member.
- 27 1.44. "Response Deadline" means sixty (60) days after the Administrator mails the Class
28 Notice to the Class Members and Aggrieved Employees and shall be the last date on

1 which Class Members may: (a) fax, email, or mail a Request for Exclusion from the
2 Settlement, or (b) fax, email, or mail an Objection to the Settlement. Class Members to
3 whom Class Notices are resent after having been returned undeliverable to the
4 Administrator shall have an additional fourteen (14) days beyond the date the Response
5 Deadline has expired.

6 1.45. “Settlement” means the disposition of the Action effected by this Agreement and the
7 Judgment.

8 1.46. “Workweek” means any week during which a Class Member worked for Defendant for
9 at least one day during the Class Period.

10 **2. RECITALS.**

11 2.0. On August 20, 2021, Plaintiff commenced this Action by filing a complaint alleging
12 causes of action against Defendant for (1) Failure to Pay Minimum Wage and Straight
13 Time Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay
14 Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal
15 Periods [Cal. Lab. Code §§ 226.7 and 512]; (4) Failure to Authorize and Permit Rest
16 Breaks [Cal. Lab. Code § 226.7]; (5) Failure to Indemnify Necessary Business Expenses
17 [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab.
18 Code §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab.
19 Code § 226]; and (8) Unfair Business Practices [Cal. Bus & Prof. Code §§ 17200, et seq.].
20 On December 23, 2021, Plaintiff filed the Operative Complaint alleging a ninth cause of
21 action against Defendant for Civil Penalties Under the Private Attorneys General Act
22 (“PAGA”) [Cal. Lab. Code § 2699, *et seq.*]. Defendant denies the allegations in the
23 Operative Complaint, denies any failure to comply with the laws identified in in the
24 Operative Complaint, and denies any and all liability for the causes of action alleged in the
25 Operative Complaint.

26 2.1. On August 14, 2021, Plaintiff submitted to the LWDA timely written notice of the Labor
27 Code violations he alleged Defendant violated, pursuant to Labor Code section
28 2699.3(a).

2.2. On October 3, 2023, the Parties participated in private mediation with professional mediator, Hon. Carl West (Ret.).

2.3. Prior to mediation, Plaintiff obtained, in addition to other data, documents, and information, a sample of the time and corresponding payroll records of the Class, and the employee handbooks and relevant policies in effect during the Class Period and overlapping PAGA Period. This investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129-130 (2008), in that such information and investigation was sufficient to assess the merits of the Parties' respective positions and to reach a compromise in the Action on a fair and equitable basis.

2.4. The Court has not granted class certification.

2.5. The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any other pending matter asserting claims that will be affected by this Settlement.

3. MONETARY TERMS.

3.0. Gross Settlement Amount. The Gross Settlement Amount is \$810,000.00. Except as otherwise provided by Paragraph 8 below, Defendant agrees to pay no more than the Gross Settlement Amount and employer payroll taxes in connection with the portion of the Individual Class Payments allocated to wages. Defendant has no obligation to pay the Gross Settlement Amount or any payroll taxes prior to the deadline stated in Paragraph 5.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit a claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.1. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount in the amounts specified by the Court in the Final Approval:

3.1.1. To Plaintiff: A Class Representative Service Payment to the Class

1 Representative of not more than \$5,000.00, in addition to any Individual Class
2 Payment and Individual PAGA Payment the Class Representative is entitled to
3 receive as a Participating Class Member and Aggrieved Employee. Defendant
4 will not oppose a request for this payment provided it does not exceed this
5 amount. As part of the motion for the Class Counsel Fees Payment and Class
6 Counsel Expenses Payment, Plaintiff will seek Court approval for the Class
7 Representative Service Payment no later than sixteen (16) court days prior to the
8 Final Approval Hearing. If the Court approves the Class Representative Service
9 Payment in an amount less than requested, the Administrator will allocate the
10 remainder to the Net Settlement Amount. The Administrator will report the
11 Class Representative Service Payment using IRS Form 1099. Plaintiff assumes
12 full responsibility and liability for employee taxes owed on the Class
13 Representative Service Payment.

14 3.1.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third (33
15 1/3%) of the Gross Settlement Amount, which is currently estimated to be
16 \$270,000.00; and a Class Counsel Expenses Payment of not more than
17 \$20,000.00. Defendant will not oppose requests for these payments provided
18 they do not exceed these amounts. Plaintiff and/or Class Counsel will file a
19 motion for Class Counsel Fees Payment and Class Counsel Expenses Payment
20 no later than sixteen (16) court days prior to the Final Approval Hearing. If the
21 Court approves a Class Counsel Fees Payment and/or a Class Counsel Expenses
22 Payment less than the amounts requested, the Administrator will allocate the
23 remainder to the Net Settlement Amount. Released Parties shall have no liability
24 to Class Counsel or any other counsel arising from any claim to any portion of
25 any Class Counsel Fee Payment and/or Class Counsel Expenses Payment. The
26 Administrator will report the Class Counsel Fees Payment and Class Counsel
27 Expenses Payment using one or more IRS 1099 Forms. Class Counsel assume
28 full responsibility and liability for taxes owed on the Class Counsel Fees

1 Payment and the Class Counsel Expenses Payment, and shall hold Defendant
2 harmless, and indemnify Defendant from any dispute or controversy regarding
3 any division or sharing of the Class Counsel Fee Payment and/or Class Counsel
4 Expenses Payment.

5 3.1.3. To the Administrator: An Administration Expenses Payment not to exceed
6 \$12,000.00, except for a showing of good cause and as approved by the Court. If
7 the Court approves payment less than the amount requested, or to the extent the
8 Administration Expense Payment is less than the amount requested, the
9 Administrator will allocate the remainder to the Net Settlement Amount.

10 3.1.4. To Each Participating Class Member: An Individual Class Payment calculated
11 by (a) dividing the Net Settlement Amount by the total number of Workweeks
12 worked by all Participating Class Members during the Class Period and (b)
13 multiplying the result by each Participating Class Member's Workweeks.

14 3.1.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating
15 Class Member's Individual Class Payment will be allocated to settlement
16 of claims for wages (the "Wage Portion"). The Wage Portion is subject
17 to tax withholding and will be reported on an IRS W-2 Form. 40% of
18 each Participating Class Member's Individual Class Payment will be
19 allocated to settlement of claims for interest and 40% will be allocated to
20 penalties (together, the "Non-Wage Portion"). The Non-Wage Portion is
21 not subject to wage withholdings and will be reported on IRS 1099
22 Forms. Participating Class Members assume full responsibility and
23 liability for any employee taxes owed on their Individual Class Payment.

24 3.1.4.2. Effect of Non-Participating Class Members on Calculation of Individual
25 Class Payments. Non-Participating Class Members will not receive any
26 Individual Class Payments. The Administrator will allocate amounts
27 equal to their Individual Class Payments to the Net Settlement Amount
28 for distribution to Participating Class Members on a pro rata basis.

1 3.1.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
2 \$60,000.00 to be paid from the Gross Settlement Amount, with 75%
3 (\$45,000.00) allocated to the LWDA PAGA Payment and 25% (\$15,000.00)
4 allocated to the Individual PAGA Payments. If the Court approves PAGA
5 Penalties less than the amount requested, the Administrator will allocate the
6 remainder to the Net Settlement Amount. The Administrator will report the
7 Individual PAGA Payments on IRS 1099 Forms. Aggrieved Employees assume
8 full liability for any taxes owed on their Individual PAGA Payment.

9 3.1.5.1. The Administrator will calculate each Individual PAGA Payment by (a)
10 dividing the amount of the Aggrieved Employees' 25% share of PAGA
11 Penalties (\$15,000.00) by the total number of PAGA Pay Periods worked
12 by all Aggrieved Employees during the PAGA Period and (b) multiplying
13 the result by each Aggrieved Employee's PAGA Pay Periods.

14 **4. MOTION FOR PRELIMINARY APPROVAL**

15 4.0. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for
16 expeditiously finalizing and filing the Motion for Preliminary Approval after the full
17 execution of this Agreement; obtaining a prompt hearing date for the Motion for
18 Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for
19 Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
20 Approval to the Administrator.

21 4.1. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
22 Preliminary Approval and/or the supporting declarations and documents, Class Counsel
23 and Defense Counsel will expeditiously work together on behalf of the Parties by meeting
24 in person or by telephone, and in good faith, to resolve the disagreement. If the Court does
25 not grant Preliminary Approval or conditions Preliminary Approval on any material
26 change to this Agreement, Class Counsel and Defense Counsel will expeditiously work
27 together on behalf of the Parties by meeting in person or by telephone, and in good faith, to
28 modify the Agreement and otherwise satisfy the Court's concerns.

1
2 **5. SETTLEMENT FUNDING AND PAYMENTS.**

3 5.0. Class Data. Not later than fifteen (15) days after the Court grants Preliminary Approval
4 of the Settlement, Defendant will simultaneously deliver the Class Data to the
5 Administrator in the form of a Microsoft Excel spreadsheet or equivalent electronic
6 form. To protect Class Members' privacy rights, the Administrator must maintain the
7 Class Data in confidence, use the Class Data only for purposes of this Settlement and for
8 no other purpose, and restrict access to the Class Data to Administrator employees who
9 need access to the Class Data to effect and perform under this Agreement. In no event
10 will the Class Data be shared with or provided to Plaintiff or Class Counsel unless
11 necessary to ensure Class Counsel's ability to discharge fiduciary duties. Defendant has
12 a continuing duty to immediately notify Class Counsel if it discovers that the Class Data
13 omitted Class Member Identifying Information and to provide corrected Class Data as
14 soon as reasonably feasible. Without any extension of the deadline by which Defendant
15 must send the Class Data to the Administrator, the Parties and their counsel will
16 expeditiously use best efforts, in good faith, to resolve any issues related to missing or
17 omitted Class Data.

18 5.1. Funding of Gross Settlement Amount. On or before October 3, 2024, Defendant shall
19 fund ½ of the Gross Settlement Amount by transmitting the funds to the Administrator;
20 and on or before April 3, 2025, Defendant shall fund the remaining ½ of the Gross
21 Settlement Amount and the amounts necessary to fully pay its share of payroll taxes by
22 transmitting the funds to the Administrator.

23 5.2. Payments from the Gross Settlement Amount. No later than fourteen (14) days after
24 Defendant fully funds the Gross Settlement Amount, the Administrator shall mail
25 checks for the Individual Class Payments, Individual PAGA Payments, LWDA PAGA
26 Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, Class
27 Representative Service Payment, and Administration Expenses Payment. Disbursement
28 of the Class Counsel Fees Payment, Class Counsel Expenses Payment, and Class

1 Representative Service Payment shall not precede disbursement of the Individual Class
2 Payments and Individual PAGA Payments.

3 5.2.1. The Administrator will issue checks for the Individual Class Payments and/or
4 Individual PAGA Payments and send them to the Class Members via First Class
5 U.S. Mail, postage prepaid. The face of each check shall prominently state the
6 date (not less than 180 days after the date of mailing) when the check will be
7 voided. The Administrator will cancel all checks not cashed by the void date.
8 The Administrator will send checks for Individual Class Payments to all
9 Participating Class Members, including those for whom Class Notice was
10 returned undelivered. The Administrator will send checks for Individual PAGA
11 Payments to all Aggrieved Employees, including Non-Participating Class
12 Members who qualify as Aggrieved Employees and those for whom Class
13 Notice was returned undelivered. The Administrator may send Participating
14 Class Members a single check combining their Individual Class Payment and
15 Individual PAGA Payment. Before mailing any checks, the Settlement
16 Administrator must update the recipients' mailing addresses using the National
17 Change of Address Database. The Administrator must conduct a Class Member
18 Address Search for all other Class Members whose checks are returned
19 undelivered without USPS forwarding address.

20 5.2.2. No later than seven (7) days of receiving a returned check, the Administrator
21 must re-mail the check to the USPS forwarding address provided or to an
22 address ascertained through the Class Member Address Search. The
23 Administrator need not take further steps to deliver the check to the Class
24 Member whose re-mailed check is returned as undelivered. The Administrator
25 shall promptly send a replacement check to any Class Member whose original
26 check is lost or misplaced, requested by the Class Member prior to the void date.
27 For any Class Member whose check(s) is/are uncashed and cancelled after the
28 void date, the Administrator shall transmit the funds represented by such

1 check(s) to the California Controller’s Unclaimed Property Fund in the name of
2 the Class Member, thereby leaving no “unpaid residue” subject to the
3 requirements of California Code of Civil Procedure section 384(b).

4 5.2.3. The payment of Individual Class Payments and Individual PAGA Payments
5 shall not obligate Defendant to confer any additional benefits or make any
6 additional payments to Class Members (such as 401(k) contributions or bonuses)
7 beyond those specified in this Agreement.

8 **6. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross
9 Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual
10 Class Payments Participating Class Members, Aggrieved Employees, and Class Counsel will release
11 claims against all Released Parties as follows:

12 6.1 Participating Class Members’ Release: All Participating Class Members on behalf of
13 themselves and their respective former and present representatives, agents, attorneys,
14 heirs, administrators, successors, and assigns, release Released Parties from all claims
15 alleged in the Operative Complaint, including unpaid wages, overtime, missed meal and
16 rest periods, waiting time penalties, and payroll stub violations through the date the Court
17 preliminarily approves of the Settlement.

18 6.1.1 Participating Class Members do not release any other claims, including claims for
19 vested benefits, wrongful termination, violation of the Fair Employment and
20 Housing Act, unemployment insurance, disability, social security, workers’
21 compensation, or claims based on facts occurring outside the Class Period.

22 6.2 Aggrieved Employees’ Release: All Aggrieved Employees, on behalf of themselves, the
23 LWDA, and their respective former and present representatives, agents, attorneys, heirs,
24 administrators, successors, and assigns, release the Released Parties from all claims for
25 civil penalties under PAGA alleged in the Operative Complaint, including PAGA
26 penalties through the date the Court preliminarily approves of the Settlement.

27 **7. SETTLEMENT ADMINISTRATION.**

28 7.1 Selection of Administrator. The Parties have jointly selected Apex Class Action LLC to

1 serve as the Administrator and verified that, as a condition of appointment, Apex Class
2 Action LLC agrees to be bound by this Agreement and to perform, as a fiduciary, all
3 duties specified in this Agreement in exchange for payment of Administration Expenses.
4 The Parties and their Counsel represent that they have no interest or relationship,
5 financial or otherwise, with the Administrator other than potentially a professional
6 relationship arising out of prior experiences administering settlements.

7 7.2 Employer Identification Number. The Administrator shall have and use its own
8 Employer Identification Number for purposes of calculating payroll tax withholdings and
9 providing reports to state and federal tax authorities.

10 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that
11 meets the requirements of a Qualified Settlement Fund (“QSF”) under U.S. Treasury
12 Regulation section 468B-1.

13 7.4 Notice to Class Members.

14 7.4.1 No later than three (3) business days after receipt of the Class Data, the
15 Administrator shall notify Class Counsel that the list has been received and state
16 the number of Class Members, Aggrieved Employees, Workweeks, and PAGA
17 Pay Periods in the Class Data.

18 7.4.2 No later than fourteen (14) days after receiving the Class Data, and using best
19 efforts to perform as soon as possible, the Administrator will send to all Class
20 Members identified in the Class Data, via first-class United States Postal Service
21 (“USPS”), the Class Notice, in English and Spanish and substantially in the form
22 attached to this Agreement as **Exhibit A**. The Class Notice shall prominently
23 estimate the dollar amounts of any Individual Class Payment and/or Individual
24 PAGA Payment payable to the Class Member, and the number of Workweeks
25 and PAGA Pay Periods used to calculate these amounts. Before mailing Class
26 Notices, the Administrator shall update Class Member addresses using the
27 National Change of Address database.

28 7.4.3 Not later than three (3) business days after its receipt of any Class Notice

1 returned by the USPS as undelivered, the Administrator shall re-mail the Class
2 Notice using any forwarding address provided by USPS. If USPS does not
3 provide a forwarding address, the Administrator shall conduct a Class Member
4 Address Search and re-mail the Class Notice to the most current address
5 obtained. The Administrator has no obligation to make further attempts to locate
6 or send the Class Notice to Class Members whose Class Notice is returned by
7 USPS a second time.

8 7.4.4 The deadlines for Class Members' written Objections and Requests for Exclusion
9 will be extended an additional fourteen (14) days beyond the sixty (60) days
10 otherwise provided in the Class Notice for all Class Members whose notice is re-
11 mailed. The Administrator will inform the Class Member of the extended
12 deadline with the re-mailed Class Notice.

13 7.4.5 If the Administrator, Defendant, Defense Counsel, or Class Counsel is contacted
14 by or otherwise discovers any person who believe he or she should have been
15 included in the Class Data and received a Class Notice, the Parties will
16 expeditiously meet and confer in person or by telephone, and in good faith, in an
17 effort to agree on whether to include them as a Class Member. If the Parties
18 agree, such person will be a Class Member entitled to the same rights as other
19 Class Members and the Administrator will send, via email or overnight delivery,
20 a Class Notice requiring him or her to exercise options under this Agreement no
21 later than fourteen (14) days after receipt of Class Notice, or the deadline dates in
22 the Class Notice, whichever are later.

23 7.5 Requests for Exclusion (Opt-Outs).

24 7.5.1 No later than sixty (60) days after the Administrator mails the Class Notice (plus
25 an additional fourteen (14) days for Class Members whose Class Notice is re-
26 mailed), Class Members who wish to exclude themselves from the Class
27 Settlement must fax, email, or mail the Administrator a signed written Request
28 for Exclusion. A Request for Exclusion is a letter from a Class Member or

1 his/her representative that reasonably communicates the Class Member's
2 election to be excluded from the Settlement and includes the Class Member's
3 name, address, and email address or telephone number. To be valid, a Request
4 for Exclusion must be timely faxed, emailed, or postmarked by the Response
5 Deadline.

6 7.5.2 If the Administrator has reason to question the authenticity of a Request for
7 Exclusion, the Administrator may demand additional proof of the Class
8 Member's identity. The Administrator's determination of authenticity shall be
9 final and not appealable or otherwise susceptible to challenge.

10 7.5.3 Every Class Member who does not submit a timely and valid Request for
11 Exclusion is deemed to be a Participating Class Member under this Agreement,
12 entitled to all benefits and bound by all terms and conditions of the Settlement,
13 including the Participating Class Members' Release under Paragraph 6.1 of this
14 Agreement, regardless of whether the Participating Class Member actually
15 receives the Class Notice or objects to the Settlement.

16 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a
17 Non-Participating Class Member and shall not receive an Individual Class
18 Payment or have the right to object to the class action components of the
19 Settlement. Because future PAGA claims are subject to claim preclusion upon
20 entry of the Judgment, Non-Participating Class Members who are Aggrieved
21 Employees are deemed to release the claims identified under Paragraph 6.2 of
22 this Agreement and are eligible for an Individual PAGA Payment.

23 7.6 Challenges to Calculation of Workweeks. Each Class Member shall have sixty (60) days
24 after the Administrator mails the Class Notice (plus an additional fourteen (14) days for
25 Class Members whose Class Notice is re-mailed) to challenge the number of Class
26 Workweeks and PAGA Pay Periods allocated to the Class Member in the Class Notice.
27 The Class Member may challenge the allocation by communicating with the
28 Administrator via fax, email, or mail. Defendant's business records will be presumed

1 determinative, but the Class Member may produce evidence to the Administrator
2 supporting documentation or evidence indicating the dates contended to have been
3 worked. The Administrator's determination of each Class Member's allocation of
4 Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise
5 susceptible to challenge. The Administrator shall promptly provide copies of all
6 challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and
7 Class Counsel and the Administrator's determination of the challenges.

8 7.7 Objections to Settlement.

9 7.7.1 No later than sixty (60) days after the Administrator's mailing of the Class Notice
10 (plus an additional fourteen (14) days for Class Members whose Class Notice
11 was re-mailed), Participating Class Members who elect to send a written
12 objection to the Administrator must send a written objection to the Administrator,
13 by fax, email, or mail. In the alternative, Participating Class Members may
14 appear in Court (or hire an attorney to appear in Court) to present verbal
15 objections at the Final Approval Hearing.

16 7.7.2 Only Participating Class Members may object to the class action components of
17 the Settlement and/or this Agreement, including contesting the fairness of the
18 Settlement and/or amounts requested for the Class Counsel Fees Payment, Class
19 Counsel Expenses Payment and/or Class Representative Service Payment. Non-
20 Participating Class Members have no right to object to any of the class action
21 components of the Settlement.

22 7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
23 performed or observed by the Administrator contained in this Agreement or otherwise.

24 7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish,
25 maintain, and use an internet website to post information of interest to Class
26 Members, including the date, time and location for the Final Approval Hearing
27 and copies of the Agreement, Motion for Preliminary Approval, Preliminary
28 Approval, Class Notice, Motion for Final Approval, Motion for Class Counsel

1 Fees Payment, Class Counsel Expenses Payment, and Class Representative
2 Service Payment, Final Approval and Judgment. The Administrator will also
3 maintain and monitor an email address and toll-free telephone number to receive
4 Class Member calls, faxes and emails.

5 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
6 promptly review on a rolling basis Requests for Exclusion to ascertain their
7 validity.

8 7.8.2.1 Not later than five (5) days after the expiration of the deadline for
9 submitting a Request for Exclusion, the Administrator shall email a list to
10 Class Counsel and Defense Counsel containing (a) the names and other
11 identifying information of Class Members who have timely submitted
12 valid Requests for Exclusion (“Exclusion List”); (b) the names and other
13 identifying information of Class Members who have submitted an invalid
14 Request for Exclusion; (c) copies of all Requests for Exclusion submitted
15 (whether valid or invalid).

16 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written
17 reports to Class Counsel and Defense Counsel that, among other things, tally the
18 number of: Class Notices mailed or re-mailed, Class Notices returned
19 undelivered, Requests for Exclusion (whether valid or invalid) received,
20 objections received, challenges to Workweeks and/or PAGA Pay Periods
21 received and/or resolved, and checks mailed for Individual Class Payments and
22 Individual PAGA Payments (“Weekly Report”). The Weekly Reports must
23 include the Administrator’s assessment of the validity of any Requests for
24 Exclusion and attach copies of all Requests for Exclusion and objections
25 received.

26 7.8.4 Administrator’s Declaration. Not later than fourteen (14) days before the date by
27 which Plaintiff is required to file the Motion for Final Approval of the
28 Settlement, the Administrator will provide Class Counsel and Defense Counsel a

1 signed declaration suitable for filing in Court attesting to its due diligence and
2 compliance with all of its obligations under this Agreement, including, but not
3 limited to, its mailing of Class Notice, the Class Notices returned as undelivered,
4 the re-mailing of Class Notices, attempts to locate Class Members, the total
5 number of Requests for Exclusion from Settlement it received (both valid or
6 invalid), the number of written objections and attach the Exclusion List. The
7 Administrator will supplement its declaration as needed or requested by the
8 Parties and/or the Court. Class Counsel is responsible for filing the
9 Administrator's declaration(s) in Court.

10 7.8.5 Final Report by Settlement Administrator. No later than ten (10) days after the
11 Administrator disburses all funds in the Gross Settlement Amount, the
12 Administrator will provide Class Counsel and Defense Counsel with a final
13 report detailing its disbursements by employee identification number, only of all
14 payments made under this Agreement. At least fifteen (15) days before any
15 deadline set by the Court, the Administrator will provide Class Counsel and
16 Defense Counsel a signed declaration suitable for filing in Court attesting to its
17 disbursement of all payments required under this Agreement. Class Counsel is
18 responsible for filing the Administrator's declaration in Court.

19 **8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE**

20 8.1 Based on a review of its business records to date, Defendant estimates the Workweek
21 count is estimated to equal 41,318 for the Class Period. In the event of an increase in
22 Workweeks of more than 10% from the original estimate of 41,318 for the Class Period,
23 the Gross Settlement Amount shall be increased by the percentage that the actual number
24 of Workweeks exceeds 10% of the original estimate (the "Escalator Clause").
25 Specifically, if the number of Workweeks is 45,450 or more, the Gross Settlement
26 Amount shall be increased by the percentage that the actual number of pay periods
27 exceeds 45,450.
28

1 **9. DEFENDANT’S RIGHT TO WITHDRAW.**

2 If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of
3 the total of all Class Members, Defendant may, but is not obligated to, elect to withdraw from the
4 Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have
5 no force or effect whatsoever, and neither Party will have any further obligation to perform under this
6 Agreement; except, however, Defendant will remain responsible for paying all Settlement
7 Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of
8 its election to withdraw within ten (10) days of the expiration of the Response Deadline; late elections
9 will have no effect.

10 **10. MOTION FOR FINAL APPROVAL.**

11 No later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will
12 file a Motion for Final Approval of the Settlement that includes a request for approval of the PAGA
13 settlement under Labor Code section 2699(l) and a Proposed Final Approval Order and Judgment.

14 10.1 Response to Objections. Each Party retains the right to respond to any objection raised
15 by a Participating Class Member, including the right to file responsive documents in
16 Court no later than five (5) court days prior to the Final Approval Hearing, or as
17 otherwise ordered or accepted by the Court.

18 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
19 Approval on any material change to the Settlement, including, but not limited to, the
20 scope of release to be granted by Class Members, the Parties will expeditiously work
21 together in good faith to attempt to address the Court’s concerns by revising the
22 Agreement as necessary to obtain Final Approval. The Court’s decision to award less
23 than the amounts requested for the Class Representative Service Payment, Class Counsel
24 Fees Payment, Class Counsel Expenses Payment, and/or Administration Expenses
25 Payment shall not constitute a material modification to the Agreement within the
26 meaning of this paragraph.

27 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
28 Court will retain jurisdiction over the Parties, Action, and Settlement solely for purposes

1 of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
2 administration matters, and (iii) addressing such post-Judgment matters as are permitted
3 by law.

4 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
5 conditions of this Agreement, specifically including the Class Counsel Fees Payment and
6 Class Counsel Expenses Payment set forth in this Settlement, the Parties, their respective
7 counsel, and all Participating Class Members who did not object to the Settlement as
8 provided in this Agreement, waive all rights to appeal from the Judgment, including all
9 rights to post-judgment and appellate proceedings, the right to file motions to vacate
10 judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal
11 does not include any waiver of the right to oppose such motions, writs or appeals. If an
12 objector appeals the Judgment, the Parties' obligations to perform under this Agreement
13 will be suspended until such time as the appeal is finally resolved and the Judgment
14 becomes final, except as to matters that do not affect the amount of the Net Settlement
15 Amount.

16 10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
17 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
18 material modification of this Agreement, including, but not limited to, the scope of
19 release to be granted by Class Members, this Agreement shall be null and void. The
20 Parties shall nevertheless expeditiously work together in good faith to attempt to address
21 the appellate court's concerns and to obtain Final Approval and entry of Judgment,
22 sharing, on a 50-50 basis, any additional Settlement Administration Expenses reasonably
23 incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's
24 award of the Class Representative Service Payment, Class Counsel Fees Payment, Class
25 Counsel Expenses Payment, and/or Administration Expenses Payment shall not
26 constitute a material modification to the Agreement within the meaning of the Judgment
27 within the meaning of this paragraph, as long as the Gross Settlement Amount remains
28 unchanged.

1 **11. AMENDED JUDGMENT.**

2 If any amended Judgment is required under Code of Civil Procedure section 384, the Parties will
3 work together in good faith to jointly submit and file a proposed amended Judgment.

4 **12. ADDITIONAL PROVISIONS.**

5 12.1 No Admission of Liability, Class Certification or Representative Manageability for Other
6 Purposes. This Agreement represents a compromise and settlement of highly disputed
7 claims. Nothing in this Agreement is intended or should be construed as an admission by
8 Defendant that any of the allegations in the Operative Complaint have merit or that
9 Defendant has any liability for any claims asserted; nor should it be intended or
10 construed as an admission by Plaintiff that Defendant's defenses in the Action have
11 merit. The Parties agree that class certification and representative treatment is for
12 purposes of this Settlement only. If, for any reason the Court does grant Preliminary
13 Approval, Final Approval or enter Judgment, Defendant reserves the right to contest
14 certification of any class for any reasons, and Defendant reserves all available defenses
15 to the claims in the Action, and Plaintiff reserves the right to move for class certification
16 on any grounds available and to contest Defendant's defenses. The Settlement, this
17 Agreement, and the Parties' willingness to settle the Action will have no bearing on, and
18 will not be admissible in connection with, any litigation, except for proceedings to
19 enforce or effectuate the Settlement and this Agreement.

20 12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant, and
21 Defense Counsel separately agree that, until the Motion for Preliminary Approval of
22 Settlement is filed, they and each of them will not disclose, disseminate and/or publicize,
23 or cause or permit another person to disclose, disseminate or publicize, any of the terms
24 of the Agreement directly or indirectly, specifically or generally, to any person,
25 corporation, association, government agency, or other entity except: (1) to the Parties'
26 attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement
27 confidential; (2) to counsel in a related matter; (3) to the extent necessary to report
28 income to appropriate taxing authorities; (4) in response to a court order or subpoena; or

1 (5) in response to an inquiry or subpoena issued by a state or federal government agency.
2 Each Party agrees to immediately notify each other Party of any judicial or agency order,
3 inquiry, or subpoena seeking such information.

4 12.2.1 Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree not to,
5 directly or indirectly, initiate any conversation or other communication, before
6 the filing of the Motion for Preliminary Approval, with any third party regarding
7 this Agreement or the matters giving rise to this Agreement, except to respond
8 only that “the matter was resolved” or words to that effect. This paragraph does
9 not restrict Class Counsel’s communications with Class Members in accordance
10 with Class Counsel’s ethical obligations owed to Class Members.

11 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and
12 employees will not solicit any Class Member to opt out of or object to the Settlement, or
13 appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
14 Counsel’s ability to communicate with Class Members in accordance with Class
15 Counsel’s ethical obligations owed to Class Members.

16 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement,
17 together with its attached exhibits, shall constitute the entire agreement between the
18 Parties relating to the Settlement, superseding any and all oral representations,
19 warranties, covenants, or inducements made to or by any Party.

20 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
21 represent that they are authorized by Plaintiff and Defendant, respectively, to take all
22 appropriate action required or permitted to be taken by such Parties pursuant to this
23 Agreement to effectuate its terms, and to execute any other documents reasonably
24 required to effectuate the terms of this Agreement, including any amendments to this
25 Agreement.

26 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their
27 best efforts, in good faith, to implement the Settlement by, among other things,
28 modifying the Settlement Agreement, submitting supplemental evidence and

1 supplementing points and authorities as requested by the Court. In the event the Parties
2 are unable to agree upon the form or content of any document necessary to implement
3 the Settlement, or on any modification of the Agreement that may become necessary to
4 implement the Settlement, the Parties will seek the assistance of a mediator and/or the
5 Court for resolution.

6 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not
7 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
8 or encumber to any person or entity and portion of any liability, claim, demand, action,
9 cause of action, or right released and discharged by the Party in this Settlement.

10 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant, nor Defense Counsel are
11 providing any advice regarding taxes or taxability, nor shall anything in this Settlement
12 be relied upon as such within the meaning of United States Treasury Department
13 Circular 230 (31 CFR Part 10, as amended) or otherwise.

14 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended,
15 modified, changed, or waived only by an express written instrument signed by all Parties
16 or their representatives, and approved by the Court.

17 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to
18 the benefit of, the successors of each of the Parties.

19 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be
20 governed by and interpreted according to the internal laws of the State of California,
21 without regard to conflict of law principles.

22 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
23 this Agreement. This Agreement will not be construed against any Party on the basis that
24 the Party was the drafter or participated in the drafting.

25 12.13 Confidentiality. To the extent permitted by law, all agreements made and orders entered
26 during the Action and in this Agreement relating to the confidentiality of information
27 shall survive the execution of this Agreement.

28 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to

1 Evidence Code section 1152, and all copies and summaries of the Class Data provided to
2 Class Counsel by Defendant in connection with the mediation, other settlement
3 negotiations, or in connection with the Settlement, may be used only with respect to this
4 Settlement, and no other purpose, and may not be used in any way that violates any
5 existing contractual agreement, statute, or rule of court.

6 12.14.1 Not later than ninety (90) days after the date the Court discharges the
7 Administrator's obligation to provide a declaration confirming the final pay out
8 of all Settlement funds, Plaintiff shall destroy all paper and electronic versions
9 of Class Data received from Defendant unless, prior to the Court's discharge of
10 the Administrator's obligation, Defendant makes a written request to Class
11 Counsel for the return, rather than the destruction, of Class Data.

12 12.15 Recitals. The representations, covenants, and recitations set forth in the Recitals section
13 of this Agreement are material to this Agreement and are hereby incorporated into and
14 made a part of this Agreement as though they were fully set forth herein.

15 12.16 Headings. The descriptive heading of any section or paragraph of this Agreement is
16 inserted for convenience of reference only and does not constitute a part of this
17 Agreement.

18 12.17 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall
19 be to calendar days. In the event any date or deadline set forth in this Agreement falls on
20 a weekend or federal legal holiday, such date or deadline shall be on the first business
21 day thereafter.

22 12.18 Notice. All notices, demands or other communications between the Parties in connection
23 with this Agreement will be in writing and deemed to have been duly given as of the
24 third business day after mailing by United States mail, or the day sent by email or
25 messenger, addressed as follows:

26 To Plaintiff:

27 MOON LAW GROUP, PC
28 Kane Moon
Allen Feghali

Lannie Pham
1055 West Seventh Street, Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128

To Defendant:

LAYTON LAW FIRM
Rona P. Layton
111 N. Market Street, #300
San Jose, CA 95113
Telephone: (408) 892-9870

12.19 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.20 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that, pursuant to California Code of Civil Procedure section 583.330, to extend the date to bring a case to trial under California Code of Civil Procedure section 583.310 for the entire period of this settlement process.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Agreement between Plaintiff and Defendant as of the date(s) set forth below:

(Signature Page Follows)

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Plaintiff & Class Representative:

Dated: 12/15/2023

DocuSigned by:

By: _____
BABF52C595A041D...
Plaintiff, Dontay Henderson

Plaintiff's Counsel:

Dated: 12/18/2023

MOON LAW GROUP, P.C.

By:  _____
Kane Moon
Allen Feghali
Lannie Pham
Attorneys for Plaintiff, Dontay Henderson

Defendant:

Dated:

Front St., Inc.

By: _____
Name: Amy McCabe
Title: President

Defense Counsel:

Dated:

LAYTON LAW FIRM

By: _____
Rona Layton
Attorney for Defendant

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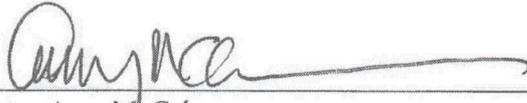
Plaintiff & Class Representative:

Dated: _____
By: _____
Plaintiff, Dontay Henderson

Plaintiff's Counsel:

Dated: MOON LAW GROUP, P.C.
By: _____
Kane Moon
Allen Feghali
Lannie Pham
Attorneys for Plaintiff, Dontay Henderson

Defendant:

Dated: Front St., Inc.
12/18/2023
By: 
Name: Amy McCabe
Title: President

Defense Counsel:

Dated: 12/18/23 LAYTON LAW FIRM
By: 
Rona Layton
Attorney for Defendant

EXHIBIT A

NOTICE OF CLASS AND PAGA ACTION SETTLEMENT

Dontay Henderson v. Front St., Inc.
Superior Court of the State of California, County of Santa Cruz
Case Number 21CV02059

PLEASE READ THIS NOTICE

The above class and representative action (“Action”) was filed by Plaintiff Dontay Henderson (“Plaintiff”) against Defendant Front St., Inc. (“Defendant”). In the Action, Plaintiff alleges Defendant failed to properly compensate Class Members for all regular and overtime hours worked, failed to provide Class Members with compliant meal and/or rest periods or compensation in lieu thereof, failed to reimburse Class Members for necessary business expenses, failed to provide Class Members with accurate itemized wage statements, failed to timely pay Class Members all wages owed during employment and/or upon termination, violated California Business and Professions Code sections 17200, *et. seq.*, and/or owes civil penalties to the Labor and Workforce Development Agency (“LWDA”) and Aggrieved Employees under the Private Attorneys General Act, California Labor Code sections 2698, *et. seq.* (“PAGA”). Defendant denies these allegations and contends it complied with all applicable laws.

A Joint Stipulation of Class and PAGA Action Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”) has been reached in the Action and preliminarily approved by the Court. You have been identified by Defendant’s records as a Class Member. Therefore, you are subject to the terms of the Settlement. Please read this notice carefully, as it may affect your legal rights.

“Class” or “Class Member(s)” means all non-exempt employees of Defendant who worked in California in the period from August 20, 2017 through October 3, 2023 (“Class Period”). “Aggrieved Employee(s)” means all non-exempt employees of Defendant who worked in California in the period from August 14, 2020 through October 3, 2023 (“PAGA Period”).

YOUR LEGAL RIGHTS AND OPTIONS WITH RESPECT TO THE SETTLEMENT	
Participate in the Settlement	If you want to participate in the Settlement, remain in the Class, and receive your Individual Class Payment and, <i>if eligible</i> , Individual PAGA Payment, <u>then you do not need to do anything.</u>
Exclude Yourself From the Settlement	If you do not want to participate in the Settlement or remain in the Class, <u>then you should follow the instructions in Section 6.</u> If you exclude yourself from the Settlement, you <i>will not</i> receive your Individual Class Payment and you will not release the Released Claims against the Released Parties (defined in Section 4 below). However, if you exclude yourself from the Settlement and you are an Aggrieved Employee, you <i>will</i> receive your Individual PAGA Payment and release the Released PAGA Claims against the Released Parties.
Object to the Settlement	If you want to object to the Settlement but remain in the Class, <u>then you should follow the instructions in Section 7.</u> If you object, you will still be bound by the terms of the Settlement, if approved by the Court.

1. WHY DID I GET THIS NOTICE?

You have received this Notice because Defendant’s records reflect that you are a Class Member or Aggrieved Employee, as defined above. This Notice provides you with information about (1) the monetary terms of the Settlement, (2) your estimated Individual Class Payment, provided you are a “Participating Class Member” (*i.e.*, a Class Member who does not request to be excluded from the Settlement), (3) your estimated Individual PAGA Payment, provided you are an “Aggrieved Employee,” (4) the terms of the Settlement, including the claims that are being released, (5) how to participate in, exclude yourself from, or object to the Settlement, and (6) where to find additional information regarding the Action and Settlement.

2. WHAT IS THIS CASE ABOUT?

Plaintiff Dontay Henderson filed a Class Action Complaint against Defendant Front St., Inc. on August 20, 2021, which commenced the lawsuit entitled *Dontay Henderson v. Front St., Inc., Superior Court of the State of California, County of Santa Cruz, Case Number 21CV02059*. Plaintiff then filed a First Amended Class and Representative Action Complaint on December 23, 2021 (the “Operative Complaint”).

The Operative Complaint alleges that Defendant: (1) failed to pay minimum wages for all hours worked; (2) failed to pay overtime compensation for all overtime hours worked and/or at the correct rate of pay; (3) failed to provide compliant meal periods or compensation in lieu thereof; (4) failed to provide compliant rest breaks or compensation in lieu thereof; (5) failed to indemnify necessary business expenses; (6) failed to timely pay all compensation due upon termination or resignation; (7) failed to provide accurate itemized wage statements; (8) engaged in unfair business practices in violation of Business and Professions Code sections 17200, *et seq.*; and (9) owes civil penalties under PAGA.

Defendant denies any liability or wrongdoing of any kind. Defendant contends, among other things, that (i) it complied at all times with the California Labor Code, all Industrial Welfare Commission Wage Orders, and the Business and Professions Code; (ii) employees were correctly and timely paid all wages due and owing; (iii) meal periods and rest breaks were provided as required by applicable law; and (iv) employees were reimbursed for all necessary business expenses incurred.

The Court has not ruled on the merits of the claims alleged in the Operative Complaint. By preliminarily approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case on the merits. Rather, the Court has determined only that there is sufficient evidence to determine, on a preliminary basis, that the proposed Settlement is fair, adequate, and reasonable and that any final determination of those issues will be made at the Final Approval Hearing. Defendant reserves the right, if for any reason the Settlement fails, to contest any factual or legal allegations, including to contest whether the Action should proceed as a class or representative action.

3. THE MONETARY TERMS OF THE SETTLEMENT AND CALCULATION OF YOUR INDIVIDUAL CLASS PAYMENT AND INDIVIDUAL PAGA PAYMENT

Without admitting any liability or wrongdoing, and to avoid the business disruptions caused by litigating these claims, Defendant has agreed to pay a Gross Settlement Amount of \$810,000.00 to settle the Action. The following amounts will be paid from the Gross Settlement Amount:

- An Administrator Expenses Payment not to exceed \$12,000.00, for reimbursement of the Administrator’s reasonable fees and expenses;
- A Class Representative Service Payment not to exceed \$5,000.00, for the Plaintiff’s services as Class Representative and General Release under the Settlement;

- PAGA Penalties in the amount of \$60,000.00 to the LWDA (75%) and Aggrieved Employees (25%), for the payment of civil penalties under PAGA;
- A Class Counsel Expenses Payment not to exceed \$20,000.00 to Class Counsel, for reimbursement of the reasonable attorneys' expenses incurred to prosecute the Action; and
- A Class Counsel Fees Payment not to exceed \$270,000.00 to Class Counsel, for reimbursement of the reasonable attorneys' fees incurred to prosecute the Action.

The amount remaining from the Gross Settlement Amount after the above deductions is called the "Net Settlement Amount." The Net Settlement Amount will be allocated to all Participating Class Members on a *pro rata* basis, based on their number of Workweeks. Each such payment is an "Individual Class Payment" and will be calculated as follows:

1. The Administrator will determine the number of Workweeks worked by each Participating Class Member during the Class Period ("Workweeks") based on Defendant's business records;
2. The Administrator will determine the value of a single Workweek by dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members; and
3. Each Participating Class Member shall receive an Individual Class Payment equal to his or her Workweeks multiplied by the value of a single Workweek.

You have been credited with [REDACTED] Workweeks based on Defendant's business records of your employment. Based on these Workweeks, your Individual Class Payment, prior to any applicable withholdings, is estimated to be \$ [REDACTED].

Individual PAGA Payment: A total of \$60,000.00 of the Gross Settlement Amount has been allocated to PAGA Penalties. Of this amount, 75% (i.e., \$45,000.00) will be paid to California's LWDA ("LWDA PAGA Payment"), and 25% (i.e., \$15,000.00) ("Individual PAGA Payment") will be paid on a *pro rata* basis to Aggrieved Employees. Each such payment is an "Individual PAGA Payment" and will be calculated as follows:

1. The Administrator will determine the number of pay periods worked by each Aggrieved Employee during the PAGA Period ("PAGA Pay Periods") based on Defendant's business records;
2. The Administrator will determine the value of a single PAGA Pay Period by dividing the Individual PAGA Payment by the total number of PAGA Pay Periods worked by all Aggrieved Employees; and
3. Each Aggrieved Employee shall receive an Individual PAGA Payment equal to his or her PAGA Pay Periods multiplied by the value of a single PAGA Pay Period.

You have been credited with [REDACTED] PAGA Pay Periods based on Defendant's business records of your employment. Based on these PAGA Pay Periods, your Individual PAGA Payment is estimated to be \$ [REDACTED].

If you dispute the above information, you may submit a written dispute to the number of Workweeks and/or PAGA Pay Periods allocated to you ("Dispute") to the Administrator. Your Dispute must (1) contain your name, address, and telephone number and the case name and number of the action (i.e., *Dontay Henderson v. Front St., Inc., Superior Court of the State of California, County of Santa Cruz, Case Number 21CV02059*); (2) be signed by you; (3) be postmarked or fax stamped on or before [Response Deadline] and returned to the Administrator at the address or fax number listed below; (4) clearly state the number of Workweeks and/or PAGA Pay Periods you believe is correct; and (5) attach any documentary evidence you have to prove the number of contended Workweeks and/or PAGA Pay Periods.

[Administrator]
[contact info including e-mail address]

Twenty percent (20%) of each Individual Class Payment will be allocated to wages and subject to all applicable employee state and federal tax withholdings; and eighty percent (80%) of each Individual Class Payment will be considered penalties, liquidated damages, interest and any other non-wage related payments. The amount allocated as wages will be reported on an IRS form W-2, and the remaining amount allocated as penalties, liquidated damages, interest and other non-wage payments will be reported on an IRS form 1099. One hundred percent (100%) of each Individual PAGA Payment will be allocated as penalties and reported on an IRS form 1099.

In addition to the Gross Settlement Amount, Defendant will pay all employer payroll taxes and contributions in connection with the portion of the Settlement allocated towards wages. Class Members are responsible for paying taxes on other amounts received. This Notice is not tax advice and you should consult your tax advisor if you have any questions. Checks will be valid and negotiable for one hundred and eighty (180) days. After that, checks will become void and a stop payment will be placed on the uncashed checks. Settlement checks that are not cashed within one hundred and eighty (180) days of mailing, or are returned to the Administrator, will be cancelled, and the Administrator shall send the funds associated with uncashed checks to the California Controller's Unclaimed Property Fund in the name of the Class Member. Class Members who do not timely cash their checks should contact the Administrator to determine how they can obtain their payment. **Class Members will be bound by the Settlement even if they do not cash their settlement checks.**

4. WHAT CLAIMS AM I RELEASING AS A CLASS MEMBER UNDER THE SETTLEMENT?

If and when the Court grants final approval of the Settlement, as of the Effective Date (as defined in the Agreement), all Class Members who do not opt out of the Settlement (*i.e.*, Participating Class Members) do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all Released Class Claims against any and all Released Parties.

“Released Parties” means Defendant and all related companies, subsidiaries, owners, shareholders, members, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees), predecessors, successors, and assigns.

“Released Class Claims” means all claims alleged in the Operative Complaint, including unpaid wages, overtime, missed meal and rest periods, waiting time penalties, and payroll stub violations through the date the Court preliminarily approves of the Settlement.

5. WHAT CLAIMS AM I RELEASING AS AN AGGRIEVED EMPLOYEE UNDER THE SETTLEMENT?

If and when the Court grants final approval of the Settlement, as of the Effective Date (as defined in the Agreement), and after payment of all funds due under the terms of the Settlement, all Aggrieved Employees do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all of the Released Parties of and from any and all Released PAGA Claims. Released Parties is defined in Section 4 of this Notice, above.

“Released PAGA Claims” means all claims for civil penalties under PAGA alleged in the Operative Complaint, including PAGA penalties through the date the Court preliminarily approves of the Settlement.

AGGRIEVED EMPLOYEES CANNOT OPT-OUT OF THE PAGA SETTLEMENT OR THE RELEASE OF RELEASED PAGA CLAIMS, AND THEY WILL RECEIVE AN INDIVIDUAL PAGA PAYMENT EVEN IF THEY OPT-OUT OF THE CLASS SETTLEMENT.

6. WHAT IF I DO NOT WANT TO PARTICIPATE IN THE CLASS SETTLEMENT?

You have the right to request exclusion from the Settlement as a Class Member and with regards to the settlement of Released Class Claims, but you are not able to exclude yourself as an Aggrieved Employee or with regards to the Released PAGA Claims. To exclude yourself from the release of Released Class Claims, you should submit a written request for exclusion to the Settlement Administrator (“Opt Out Request”) at the address or fax number listed in Section 3 of this Notice, above.

A valid and complete Opt Out Request must (1) contain the name, address, and telephone number of the Class Member requesting exclusion and the case name and number of the Action (i.e., *Dontay Henderson v. Front St., Inc., Superior Court of the State of California, County of Santa Cruz, Case Number 21CV02059*); (2) be signed by the Class Member; (3) be postmarked, e-mailed, or fax stamped on or before **Response Deadline** and returned to the Settlement Administrator at the specified address or fax number listed in Section 3 of this Notice, above; and (4) contain a statement substantially similar to:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT OF CLASS CLAIMS IN *DONTAY HENDERSON V. FRONT ST., INC.* I UNDERSTAND THAT THE PAGA CLAIMS WILL STILL BE RELEASED AND SETTLED.”

It is your responsibility to ensure that the Administrator timely receives your request to be excluded from the Settlement. Unless you timely request to be excluded from the Settlement, you will be bound by the judgment upon final approval. Class Members who request to be excluded from the Settlement will NOT receive their Individual Class Payment and will not release any of the Released Class Claims. However, Class Members who are Aggrieved Employees will receive their Individual PAGA Payment and will release the Released PAGA Claims regardless of whether they submit a request to be excluded from the Settlement.

7. WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

Any Participating Class Member may object to the Settlement or to any settlement term. If you wish to object, you may submit your objection in writing to the Administrator (“Objection”) at the specified address, e-mail address, or fax number listed in Section 3 of this Notice, above. A valid and timely Objection should (1) contain the name, address, and telephone number of the Participating Class Member objecting and the case name and number of the Action (i.e., *Dontay Henderson v. Front St., Inc., Superior Court of the State of California, County of Santa Cruz, Case Number 21CV02059*); (2) be signed by the Participating Class Member; (3) be postmarked or fax stamped on or before **Response Deadline** and returned to the Settlement Administrator at the specified address or fax number listed in Section 3 of this Notice, above; and (4) give the legal and factual basis for their objection.

Filing an objection will **not** exclude you from the Settlement. If the Court grants final approval of the Settlement, you will still receive an Individual Class Payment and you will be barred from pursuing the Released Class Claims. **Do not file both an Objection and Opt Out Request. You may file one or neither.** If you file neither, then you will be automatically included in the Settlement and do not need to take any further action to receive a payment.

8. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Final Approval Hearing is scheduled to take place on _____, at _____ a.m. in the Superior Court of the State of California, County of Santa Cruz, Department 10, located at 701 Ocean Street, Room 110, Santa Cruz, California 95060.

9. WHO ARE THE ATTORNEYS?

<p><u>Attorneys for Plaintiff and the Class are:</u></p> <p style="text-align: center;">Kane Moon Allen Feghali Lannie Pham MOON LAW GROUP, P.C. 1055 West Seventh Street, Suite 1880 Los Angeles, California 90017 Telephone: (213) 232-3128</p>	<p><u>Attorney for Defendant is:</u></p> <p style="text-align: center;">Rona P. Layton LAYTON LAW FIRM 111 N. Market Street, #300 San Jose, CA 95113 Telephone: (408) 892-9870</p>
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The Court has decided that the Attorneys for Plaintiff and the Class are qualified to represent the Participating Class Members. Other than the Class Counsel Fees Payment and Class Counsel Expenses Payment approved by the Court, to be paid out of the Gross Settlement Amount, you will not be charged for their services.

10. SHOULD I GET MY OWN LAWYER?

You do not need to get your own lawyer. If you want your own lawyer to speak for you or appear in Court, you have the right to hire one, but you will have to pay for that lawyer yourself.

11. FURTHER INFORMATION

The foregoing is only a summary of the Settlement. For the precise terms and conditions of the Settlement and other important case documents, please see the settlement agreement available at www._____.com, by contacting Class Counsel at the address or telephone number provided in Section 9, above, or by visiting the office of the Clerk of the Superior Court of the State of California, County of Santa Cruz, Department 10, located at 701 Ocean Street, Room 110, Santa Cruz, California 95060, or the Court's website: <https://www.santacruz.courts.ca.gov/>.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.