

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class and PAGA Action Settlement Agreement and Release (“Settlement” or “Settlement Agreement” or “Agreement”) is made by and between Plaintiffs Monica Fowler (“Plaintiff Fowler”) and Giana Benson (“Plaintiff Benson”) (together “Plaintiffs”), as individuals and on behalf of the Settlement Class and PAGA Employees (defined below), and on behalf of the State of California, and Defendant F21 OpCo, LLC (“Defendant” or “F21”) . The Agreement refers to Plaintiffs and F21 collectively as “Parties,” or individually as “Party.”

1. RECITALS.

1.1. On December 7, 2020, Plaintiff Fowler filed a representative action Complaint in the Los Angeles County Superior Court against F21 titled *Monica Fowler v. F21 OpCo, LLC*, Case No. 20STCV46857, wherein she alleged a single cause of action under the Labor Code Private Attorneys General Act of 2004, Lab. Code § 2698, et seq. (“PAGA”) seeking civil penalties for various alleged Labor Code violations based on Defendant’s alleged failure to pay all wages for hours worked (including overtime and minimum wages), failure to provide rest periods, failure to provide meal periods, failure to provide accurate itemized wage statements, failure to maintain payroll records, failure to reimburse business expenses, failure to timely pay wages during employment, and failure to pay wages at termination. Plaintiff Fowler purports to seek PAGA civil penalties on behalf of allegedly “aggrieved” individuals who are or were employed as hourly, non-exempt employees by F21 in California since February 29, 2020. (the “Fowler PAGA Action”).

1.2 Plaintiff Benson filed two separate lawsuits against F21: a putative class action and a PAGA action. Plaintiff Benson’s putative class action was filed on June 24, 2021 in the San Diego Superior Court against F21 OpCo, LLC, titled *Giana Benson v. F21 OPCO, LLC dba Forever 21*, Case No. 37-2021-00024619-CU-OE-CTL. Plaintiff Benson alleges wage and hour claims for: (1) failure to pay wages (including minimum wages and overtime wages); (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to reimburse business expenses; (5) failure to pay vested vacation pay at termination; (6) failure to timely pay wages during employment and at termination; (7) failure to provide accurate itemized wage statements; and (8) violations of the unfair competition law, BPC §17200 et seq. Plaintiff Benson asserts these claims on behalf of a putative class of all persons who are or have been employed by Defendant in California as non-exempt employees or equivalent positions since February 29, 2020. (the “Benson Class Action”).

1.3 Plaintiff Benson’s PAGA action was filed on August 31, 2021 in San Diego Superior Court titled *Giana Benson v. F21 OpCo, LLC dba Forever 21*, Case No. 37-2021-000372560-CU-OE-CTL, predicated upon the same underlying claims as the Benson Class Action. Plaintiff Benson purports to seek civil penalties on behalf of allegedly “aggrieved” current and former employees that worked for F21 in California since August 31, 2020. (the “Benson PAGA Action”). On or about December 16, 2021, the Court granted the parties’ stipulation and ordered the Benson Class Action and Benson PAGA Action consolidated for all purposes.

1.4 Defendant denies all of the allegations in all of the Actions (defined below) and has asserted a number of affirmative defenses as to each of them.

1.5 On April 19, 2022, the Parties participated in an all-day mediation session with experienced employment law mediator Michael Dickstein. The Parties did not reach an agreement at mediation. After the mediation, however, the Parties continued negotiations with the assistance of the mediator and a global resolution of the Actions (defined below) in their entirety was reached when all Parties accepted the Mediator’s proposal on May 4, 2022. The Mediator’s proposal was memorialized in a Memorandum of Understanding (“MOU”), which was executed on September 16, 2022. The MOU is superseded in all respects by this Agreement upon execution by Plaintiffs and Defendant.

1.6 Prior to and in connection with the anticipated mediation, Plaintiffs asked F21 for extensive informal discovery, including production of time and pay records for its non-exempt California employees. In advance of mediation, F21 provided class-wide redacted time and payroll data for non-exempt California employees since February 29, 2020, relevant policy documents, and information which permitted Plaintiffs

and their lawyers to fully evaluate class-wide exposure. In these and other ways, the Parties investigated the facts and analyzed the relevant legal issues with regard to the claims in the Actions (as defined below) and F21's defenses to them. Plaintiffs believe that their investigation was sufficient to satisfy the criteria for Court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*"). Based on this investigation and analysis, Plaintiffs believe the Actions have merit, while Defendant believes the Actions have no merit.

1.7. The Parties, through their counsel, have engaged in arm's-length negotiations with the assistance of a respected mediator concerning a resolution of the Actions. The Parties have each considered the uncertainties of continued litigation and the benefits to be obtained under the proposed settlement, and have considered the costs, risks, and delays associated with the continued prosecution of these Actions and the likely appeals of any ruling in favor of any of the Plaintiffs or Defendant. It is the Parties' intention and the objective of this Settlement Agreement to avoid the costs of further litigation and trial, and to settle and dispose of, fully and completely and forever, the claims released herein and described below.

1.8. As of the date of this Agreement, the Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

1.9. This Agreement is made in compromise of and embraces all claims against any of the Released Parties (defined below) as enumerated in Paragraph 2.41 below, including, but not limited to, all claims and statutory causes of action that were alleged or could have been alleged in any complaint filed in the Actions and/or the PAGA Notices (defined below), for violations of California's Labor Code and/or Wage Orders, attorney's fees, penalties, costs and interest or otherwise based on any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions or failures to act pled in the Actions and/or PAGA Notices.

1.10. Because the settled matter is a putative class and representative action, this Agreement must receive preliminary and final approval by the Court. Accordingly, Plaintiffs and Defendant enter into this Agreement on a conditional basis. Should the Court, or any other Court taking jurisdiction of this matter, decline to approve all material aspects of the Settlement or make any ruling substantially altering the material terms of the Settlement, the Settlement shall be voidable and unenforceable as to Plaintiffs and Defendant, at the option of any Party and upon giving notice, in writing, to the other Parties and to the Court at any time before final approval by the Court of this Settlement; provided, however, that an award by the Court of a different amount than that sought by Plaintiffs and Class Counsel for the PAGA Payment, Class Representative Service Payments, or the Class Counsel award of attorneys' fees and/or costs, will not constitute a material term of the Settlement. Notwithstanding the foregoing, if the Court conditions approval on any material change to the Settlement, then the Parties shall work together in good faith to address any concerns raised by the Court. In the event that the Effective Date, as defined herein, does not occur, this Agreement shall be deemed null and void *ab initio* and shall be of no force or effect whatsoever, and shall not be referred to or utilized for any purpose. Defendant denies all of Plaintiffs' claims and all class and representative claims as to liability and damages. Defendant expressly reserves all rights to challenge any and all such claims and allegations upon all procedural and factual grounds, including the assertion of all defenses, if the Effective Date of the Settlement does not occur.

1.11. This Settlement contemplates (i) entry of an order preliminarily approving the Settlement, (ii) distribution of the Notice of Class Action and PAGA Settlement to Class Members and PAGA Employees, and (iii) entry of a Final Order and Judgment of the Settlement. The Court shall retain jurisdiction over the Action and Parties for purposes of enforcing the Settlement and resolving any disputes relating to the Settlement.

2. DEFINITIONS.

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective.

2.1. “Action(s)” means the Plaintiffs’ three lawsuits alleging individual, class, and representative claims for alleged wage and hour violations against F21 captioned *Monica Fowler v. F21 OpCo, LLC* pending in the Superior Court of the State of California, County of Los Angeles, Case No. 20STCV46857 (“*Fowler PAGA Action*”); *Giana Benson v. F21 OpCo, LLC dba Forever 21* pending in the Superior Court of the State of California, County of San Diego, Case No. 37-2021-00024619-CU-OE-CTL (“*Benson Class Action*”); and *Giana Benson v. F21 OpCo, LLC dba Forever 21* pending in the Superior Court of the State of California, County of San Diego, Case No. 37-2021-00372560-CU-OE-CTL (“*Benson PAGA Action*”). The *Benson Class Action* and *Benson PAGA Action* have been consolidated for all purposes.

2.2. “Attorneys’ Fees and Costs” means reasonable attorneys’ fees agreed upon by the Parties and approved by the Court for Class Counsel’s litigation and resolution of the Actions, and all out-of-pocket costs incurred and to be incurred by Class Counsel to prosecute the Actions. Class Counsel will request attorneys’ fees not in excess of one-third (1/3) of the Gross Settlement Amount, or One Million Five Hundred Sixty Six Thousand Six Hundred and Sixty Six Dollars and Sixty Six Cents (\$1,566,666.66). Moreover, Class Counsel will request costs up to \$30,000, subject to the Court’s approval. Defendant has agreed not to oppose Class Counsel’s request for fees and reimbursement of costs as set forth above.

2.3. “Benson PAGA Notice” means the PAGA notice submitted to the California Labor and Workforce Development Agency (“LWDA”), the agency entitled, under Labor Code section 2699, subd. (i) by Plaintiff Benson on June 4, 2021 (Case Number: LWDA-CM-834112-21).

2.4. “Class Counsel” means James R. Hawkins and Christina M. Lucio of James Hawkins APLC; Jonathan Melmed and Laura Supanich of Melmed Law Group; and Craig Ackermann and Avi Kreitenberg of Ackermann & Tilajef, P.C.

2.5. “Class Fund Settlement Amount” means the amount equal to ninety (90%) of the Net Settlement Amount that will be allocated to Participating Class Members.

2.6. “Class Member(s)” or “Settlement Class” means all individuals who are or were employed as hourly, non-exempt employees by Defendant F21 OpCo, LLC in California at any time during the Class Period.

2.7. “Class and PAGA Employee Data” means a complete list of all Class Members and PAGA Employees that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator no later than twenty-one (21) days after the Court grants Preliminary Approval of the Settlement. The Class and PAGA Employee Data will include each Class Member’s and PAGA Employee’s full name, last-known mailing address, Social Security number, and the respective number of Pay Periods during which each Class Member worked during the Class Period and the respective number of Pay Periods during which each PAGA Employee worked during the applicable PAGA Period.

2.8. “Class Period” means the period from February 29, 2020, to September 16, 2022.

2.9. “Class Representatives” means Plaintiffs Giana Benson and Monica Fowler. They are the named Plaintiffs in the operative complaints in the Actions seeking Court approval to serve as Class Representatives.

2.10. “Class Representative Service Payments” means the amounts to be paid to the Class Representatives for their effort and work in prosecuting the Action, and for their general release of claims as set forth in Paragraph 6.8, which is in addition to whatever payments they may otherwise be entitled as Participating Class Members. Subject to the Court granting final approval of this Settlement Agreement and subject to the exhaustion of any and all appeals, Plaintiffs will request Court approval of Class Representative Service Payments not in excess of Ten Thousand Dollars (\$10,000), each.

2.11. “Consolidated Amended Complaint” means the consolidated amended complaint filed in the Benson Class Action by Plaintiffs for settlement purposes only, pursuant to the terms set forth in Paragraph 3.1, below.

2.12. “Court” means the Superior Court of California, County of San Diego.

- 2.13. “Defendant” means named Defendant F21 OpCo, LLC.
- 2.14. “Defense Counsel” means Jennifer C. Terry and Brittany M. Hernandez of Reed Smith LLP, Mark R. Phillips of Seals Phillips LLP, and Tracy Wei Costantino of Littler Mendelson P.C.
- 2.15. “Effective Date” means either (i) the sixty-first (61) calendar day after the Court enters the Final Approval Order and Judgment granting Final Approval of the Settlement, if no motions for reconsideration and no appeals or other efforts to obtain review have been filed, or (ii) in the event that a motion for reconsideration, appeal, or other effort to obtain review has been finally dismissed and is no longer subject to review, whether by appeal, petition for rehearing, petition for review, or otherwise. In this regard, it is the intention of the Parties that the Settlement shall not be effective until the Court’s Order approving the Settlement has become final, and there is no timely recourse by appellant or challenger who seeks to contest the Settlement.
- 2.16. “Final Approval” means the date on which the Court enters an order granting final approval of the Settlement.
- 2.17. “Final Approval Order and Judgment” or “Judgment” means the order and judgment to be issued and entered by the Court upon granting final approval of the Settlement and this Agreement as binding upon the Parties and the PAGA Employees and Participating Class Members, substantially in the form drafted and approved by counsel for all Parties, or as subsequently modified by the Court or between the Parties with approval of counsel for all Parties.
- 2.18. “Final Fairness Hearing” means the hearing to be requested by Plaintiffs and conducted by the Court after the filing by Plaintiffs of an appropriate motion and following appropriate notice to the Class Members, at which time Plaintiffs shall request that the Court finally approve the fairness, reasonableness, and adequacy of the terms and conditions of the Settlement, enter the Final Approval Order and Judgment, and take other appropriate action.
- 2.19. “Fowler PAGA Notice” means the PAGA notice submitted to the LWDA, the agency entitled, under Labor Code section 2699, subd. (i) by Plaintiff Fowler on October 5, 2020 (Case Number: LWDA-CM-808668-20).
- 2.20. “Gross Settlement Amount” means the maximum total amount that Defendant shall be required to pay, exclusive of the Employer’s Share of Payroll Taxes, for any and all purposes under this Settlement Agreement. The Gross Settlement Amount shall be Four Million Seven Hundred Thousand Dollars and Zero Cents (\$4,700,000.00) to be paid by F21 in full satisfaction of all Released Class Claims and Released PAGA Claims. The following shall be paid from the Gross Settlement Amount pursuant to the Plan of Allocation set forth in Section 4, Paragraphs 4.1-4.4 below: (1) all Individual Class Payments; (2) Attorneys’ Fees and Costs; (3) PAGA Settlement Amount; (4) Class Representative Service Payments; and (5) Settlement Administration Costs. In no event will Defendant be liable for more than the Gross Settlement Amount, except as to its share of Withholdings and Taxes arising from the Individual Class Payments. There will be no reversion of the Gross Settlement Amount to Defendant. Defendant will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions, which shall not be paid from the Gross Settlement Amount.
- 2.21. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Class Fund Settlement Amount. The Individual Class Payment for Participating Class Members shall be calculated as described in Paragraph 4.3 below.
- 2.22. “Individual PAGA Payment” means the PAGA Employee’s pro rata share of the PAGA Fund. The Individual PAGA Payment shall be calculated as described in paragraph 4.3 below.
- 2.23. “Individual Settlement Payment” means each Participating Class Member’s and PAGA Employee’s respective Individual Class Payment and Individual PAGA Payment.
- 2.24. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

2.25. “Net Settlement Amount” means the portion of the Gross Settlement Amount remaining after deducting the following payments in the amounts approved by the Court: Attorneys’ Fees and Costs, Class Representative Service Payments, and the Settlement Administration Costs. Exactly ninety percent (90%) of the Net Settlement Amount will be allocated to Participating Class Members and the remaining ten percent (10%) will be allocated to the PAGA Settlement Amount.

2.26. “Notice of Class Action and PAGA Settlement” or “Notice” means the Court approved Notice of Class Action and PAGA Settlement to be mailed to Class Members substantially in the form attached as **Exhibit A** and incorporated by reference into this Agreement or whichever form is approved by the Court.

2.27. “Notice of Objection” means a Class Member’s valid and timely written objections to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the objector’s full name, signature, address, and telephone number; (ii) a written statement of all grounds for the objection accompanied by any legal support for such objections; and (iii) copies of any papers, briefs, or other documents upon which the objection is based.

2.28. “PAGA Employees” means all individuals who are or were employed as hourly, non-exempt employees by Defendant F21 OpCo, LLC in California at any time during the PAGA Period.

2.29. “PAGA Fund” means the sum equal to exactly Twenty-Five (25%) of the PAGA Settlement Amount that will be paid to all PAGA Employees.

2.30. “PAGA Notices” means the Benson PAGA Notice and the Fowler PAGA Notice.

2.31. “PAGA Period” means the period from February 29, 2020, to September 16, 2022.

2.32. “PAGA Settlement Amount” means the sum equal to exactly ten percent (10%) of the Net Settlement Amount, which is the sum that the Parties have agreed to pay to the LWDA and PAGA Employees in connection with Plaintiffs’ claims under the Labor Code Private Attorneys General Act of 2004 (Lab. Code, §§ 2698, et seq., “PAGA”). Pursuant to Labor Code Section 2699(i), the PAGA Payment will be distributed as follows: 25% to the PAGA Employees (PAGA Fund) and 75% to the LWDA (LWDA PAGA Payment). If it should later be determined by the Court that an additional amount is needed to effectuate a full and complete release of all Released PAGA Claims, the amount shall be deducted from the Gross Settlement Amount and such additional amount together with the original amount set forth in this Agreement as the “PAGA Settlement Amount” shall be, after Court’s determination, be referred to as “PAGA Settlement Amount” and such new PAGA Settlement Amount shall be allocated between the PAGA Employees and the LWDA pursuant to the same percentages as set forth in this paragraph.

2.33. “Participating Class Member(s)” means all Class Members who do not submit valid and timely Requests for Exclusion.

2.34. “Pay Period(s)” means the number of pay periods during which each Class Member worked during the Class Period, and the number of pay periods during which each PAGA Employee worked during the applicable PAGA Period. Pay Periods shall be calculated according to Defendant’s records.

2.35. “Plaintiffs” means Monica Fowler and Giana Benson, the named Plaintiffs in the Action.

2.36. “Plan of Allocation” means the manner in which the Class Fund Settlement Amount shall be allocated to Participating Class Members and the manner in which the PAGA Settlement Amount shall be allocated to PAGA Employees, as specified in Section 4, Paragraphs 4.1- 4.4 below.

2.37. “Preliminary Approval” or “Preliminary Approval Order” means the Court’s Order Granting Preliminary Approval of the Settlement, which shall, among other things, provisionally certify the Settlement Class for purposes of this Settlement only; determine that Plaintiffs adequately represent the Settlement Class and shall be its Class Representatives; appoint Class Counsel as counsel for the Settlement Class; approve CPT Group, Inc. as the Settlement Administrator; approve the content and distribution of the Notice of Class Action and PAGA Settlement to the Class Members and PAGA Employees; set the Response Deadline for submitting a Notice of Objection to the Settlement and/or Request for Exclusion;

and set the date of the Final Fairness Hearing, as contemplated in Paragraph 6.1 of this Settlement Agreement.

2.38. "Preliminary Approval Date" means that date upon which the Court enters the Preliminary Approval Order.

2.39. "Released Class Claims" means all claims for wages, statutory and civil penalties, damages and liquidated damages, interest, restitution, injunctive relief, fees and costs under California law that: were alleged in the complaints in the Actions (including the Consolidated Amended Complaint) or the PAGA Notices; or could have been alleged based on the facts alleged in any of the complaints in the Actions (including the Consolidated Amended Complaint) or the PAGA Notices, including (without limitation): claims for failure to pay for all hours worked, including overtime and minimum wage; failure to provide meal periods; failure to pay one hour of premium pay when lawful meal periods were not provided; failure to provide rest periods; failure to pay one hour of premium pay when lawful rest periods were not provided; failure to maintain accurate records of hours worked; failure to timely pay all wages at termination; failure to furnish accurate itemized wage statements; failure to pay all earned wages twice per month; failure to reimburse necessary expenses; Labor Code sections 201, 202, 203, 204, 210, 216, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.7, 227.3, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1195, 1197, 1197.1, 1198, 1199, 2800, 2802; Business and Professions Code sections 17200-17208; all claims under the applicable IWC Wage Orders based on the preceding claims; all claims under the Code of Civil Procedure section 1021.5 as related to the claims specified forth herein; and all claims for interest, costs, and attorneys' fees as related to the claims specified herein. This release shall extend to all such Released Class Claims that accrued at any time during the Class Period. Expressly excluded from the Released Class Claims are claims for wages in Workers' Compensation and Unemployment Insurance benefits cases, and claims for benefits under the Employee Retirement Income Security Act of 1974 (ERISA).

2.40. "Released PAGA Claims" means all claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004, Labor Code Sections 2698, *et seq.*, based on the Labor Code violations that: were alleged in the complaints in the Actions (including the Consolidated Amended Complaint) or the PAGA Notices; or could have been alleged based on the facts alleged in any of the complaints in the Actions (including the Consolidated Amended Complaint) or the PAGA Notices, including (without limitation): claims for failure to pay for all hours worked, including overtime and minimum wage; failure to provide meal periods; failure to pay one hour of premium pay when lawful meal periods were not provided; failure to provide rest periods; failure to pay one hour of premium pay when lawful rest periods were not provided; failure to maintain accurate records of hours worked; failure to timely pay all wages at termination; failure to furnish accurate itemized wage statements; failure to pay all earned wages twice per month; failure to reimburse necessary expenses; Labor Code sections 200, 201, 202, 203, 204, 210, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 246, 248.5, 510, 512, 558, 558.1, 1174, 1174.5, 1182.11, 1182.12, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, *et seq.*, 2800, and 2802, and all claims for interest, costs, and attorneys' fees as related to the claims specified herein, as well as all facts, theories, or claims for civil penalties that would be considered administratively exhausted under applicable law by the PAGA Notices Plaintiffs sent to the LWDA. This release shall extend to all such Released PAGA Claims that accrued at any time during the PAGA Period. This release shall be binding on all PAGA Employees regardless of whether they submit a valid Request for Exclusion (defined below) from the Class.

2.41. "Released Parties" means: Defendant F21 OpCo, LLC and each of its respective former and present parents, affiliates, divisions and subsidiaries, acquired companies, and each of their respective present and former directors, officers, shareholders, agents, representatives, employees, partners, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliated companies and entities, if any, and any other individual or entity which could be liable for any of the Released Class Claims and/or Released PAGA Claims.

2.42. "Request for Exclusion" means a Class Member's submission of a timely written request to be excluded from the Settlement Class and the Released Class Claims. The Request for Exclusion must: (i) set forth the name, address, telephone number and last four digits of the Social Security Number of the Class Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the Settlement Administrator; (iv) clearly state that the Class Member does not wish to be included in the Settlement; and (v) be faxed, emailed, or postmarked on or before the Response Deadline.

2.43. "Response Deadline" means the deadline by which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement; (b) fax, email, or mail Notices of Objection to the Settlement; or (c) fax, email, or postmark disputes concerning the calculation of Individual Class Payments and Individual PAGA Payments. The Response Deadline will be forty-five (45) calendar days from the initial mailing of the Notice by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a Sunday or State holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. If a Notice of Class Action and PAGA Settlement is returned as undeliverable with a forwarding address provided by the United States Postal Service on or by the Response Deadline, the Settlement Administrator will promptly resend the Notice to that forwarding address along with a brief letter stating that the recipient of the Notice has until the original deadline set forth on the Notice, or ten (10) calendar days after the date of re-mailing of the Notice of Class Action and PAGA Settlement (whichever is later) to object or submit a Request for Exclusion. In no event shall this be more than 10 days after the Response Deadline.

2.44. "Settlement Administrator" means CPT Group, Inc., or any other neutral third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purpose of administering this Settlement pursuant to the terms of this Settlement Agreement, the Notice of Class Action and PAGA Settlement, the Preliminary Approval Order, and the Judgment. The Settlement Administrator shall agree to confidentiality terms as may be required by Defendant regarding personnel and payroll data provided to the Settlement Administrator and shall work with Class Counsel and Defense Counsel to implement and administer appropriate fraud-prevention polices.

2.45. "Settlement Administration Costs" means the amount approved by the Court to be paid to the Settlement Administrator for administering this Settlement. The Settlement Administration Costs will be paid from the Gross Settlement Amount, including, if necessary and reasonable, any such fees and costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement as set forth in the "not to exceed" bid submitted to the Court in connection with Preliminary Approval of the Settlement.

2.46. "Settlement Agreement" means this Class and PAGA Action Settlement Agreement and Release, including all Exhibits referred to herein and attached hereto.

2.47. "Withholdings and Taxes" means all withholdings from the Individual Settlement Payments required by law plus all federal, state, and local employment payroll taxes due in regards to the Individual Settlement Payments, whether owed by a Participating Class Member or by Defendant. Defendant shall provide the Settlement Administrator with an amount sufficient to cover its share of Withholdings and Taxes arising from the portion of the Individual Settlement Payments that constitute wages. The Settlement Administrator shall handle the calculation of the taxes owed, payment of such amounts to the appropriate agencies and reporting.

3. TERMS OF AGREEMENT.

The Plaintiffs, on behalf of themselves and the Settlement Class and the State of California, and Defendant agree as follows:

3.1. Consolidated Amended Complaint in the Benson Class Action. For the sole purpose of effectuating Settlement, Plaintiffs prepared a draft Consolidated Amended Complaint to be filed in the Benson Class Action to amend the operative pleading in order to consolidate the Actions for purposes of Settlement approval. The Consolidated Amended Complaint was filed in the Benson Class Action on January 23, 2023. Defendant stipulated to the filing of the Consolidated Amended Complaint, likewise for the sole purpose of effectuating the Settlement. The Consolidated Amended Complaint serves to (i) add a PAGA cause of action asserting all of the claims asserted in the Fowler PAGA Notice and the Benson PAGA Notice; (ii) name Plaintiff Fowler, in addition to Plaintiff Benson, as Plaintiffs and PAGA representatives in the Benson Class Action; and (iii) assert the added PAGA cause of action on behalf of all PAGA Employees during the PAGA Period, all with the intent of consolidating the Actions for settlement purposes. Upon the filing of the Consolidated Amended Complaint, Defendant concurrently shall be deemed to deny all of the allegations contained in it and to raise all affirmative defenses, without the need to file an answer thereto. In the event the Court does not grant preliminary or final approval of the Settlement, the

Consolidated Amended Complaint shall be immediately withdrawn and the Parties in the Actions shall return to their respective positions as if the Settlement had not been entered into.

3.2. Conditional Class Action Certification for Settlement Purposes Only. For purposes of settlement and the proceedings contemplated by this Settlement Agreement only, the Settlement Class shall be provisionally certified, in the Benson Class Action only, and consist of Plaintiffs and all Class Members. If, for any reason, the Settlement is not approved, the stipulation to certification will be void. The Parties further agree that certification for purposes of the Settlement is not an admission that class action certification is proper under the standards applied to contested certification motions and that this Settlement Agreement will not be admissible in this or any other proceeding as evidence that either: (i) a class action should be certified; or (ii) Defendant is liable to Plaintiffs or any Class Member, other than according to the Settlement's terms. Defendant does not consent to certification of the Settlement Class in this Action or any settlement class for any purpose other than to effectuate the Settlement of the Actions. If, for any reason, the Settlement does not become final, any certification of any Settlement Class will be vacated and the Parties will be returned to their positions with respect to the Actions as if the Agreement had not been entered into. In the event that Final Approval is not achieved: (a) any Court order preliminarily approving the certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the Settlement reflected in this Agreement, that Defendant did not oppose the certification of the Settlement Class under this Agreement, or that the Court preliminarily approved the certification of the Settlement Class, shall not be used or cited thereafter by any person or entity in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class.

3.3. Funding of the Gross Settlement Amount. In full settlement of the Released Class Claims and Released PAGA Claims and following the Effective Date, Defendant will transmit the Gross Settlement Amount of Four Million Seven Hundred Thousand Dollars (\$4,700,000) into a Qualified Settlement Account to be established by the Settlement Administrator. Defendant will deposit one-half (1/2) of the Gross Settlement Amount in the sum of Two Million Three Hundred and Fifty Thousand Dollars (\$2,350,000) within fifteen (15) business days of the Effective Date ("Initial Funding Date"). Defendant will deposit the remainder of the Gross Settlement Amount in the sum of Two Million Three Hundred and Fifty Thousand Dollars (\$2,350,000) within ninety (90) days of the Initial Funding Date ("Second Funding Date"). Concurrently with its delivery of the remainder of the Gross Settlement Amount on the Second Funding Date, Defendant shall deliver its share of Withholdings and Taxes separately, as calculated by the Settlement Administrator based on the wage portion of the Individual Class Payments. The Gross Settlement Amount will be used for: (i) all Individual Settlement Payments; (ii) the PAGA Settlement Amount; (iii) all Class Representative Service Payments; (iv) Attorneys' Fees and Costs; and (v) Settlement Administration Costs. This is a non-reversionary settlement.

3.3.1. Class Representative Service Payments To Plaintiffs: In exchange for the general releases as set forth in Paragraph 6.8 below, and in recognition of Plaintiffs' effort and work in prosecuting the Actions, Defendant agrees not to oppose or impede any application or motion for Class Representative Service Payments ("Service Payments") to the Class Representatives of not more than \$20,000 (\$10,000 to Plaintiff Fowler and \$10,000 to Plaintiff Benson). The Service Payments will be paid from the Gross Settlement Amount and will be in addition to Plaintiffs' Individual Settlement Payments paid pursuant to the Settlement. As part of the motion for Class Counsel Attorneys' Fees and Costs, Plaintiffs will seek Court approval for any Service Payments no later than 16 Court days prior to the Final Approval Hearing. An award by the Court of Service Payments in amounts less than the amounts applied for by Plaintiffs, or any of them, will not be grounds for Plaintiffs or Class Counsel, or any of them, to challenge or withdraw from the Settlement, and any amounts not awarded as Service Payments will be included in the Net Settlement Amount. Each Service Payment shall be reported by the Settlement Administrator on IRS Form 1099-HISC as non-wage income and provided by it to the Plaintiff receiving the Service Payment as well as applicable governmental authorities. Plaintiffs will be solely and legally responsible and assume full responsibility and liability to pay any and all applicable taxes owed on the Class Representative Service Payment.

3.3.2. Attorneys' Fees and Costs: Defendant agrees not to oppose or impede any application or motion by Class Counsel for Attorneys' Fees of not more than 1/3 (33.33%) of the Gross Settlement Amount, which is currently estimated to be \$1,566,666.66 and a reimbursement of all out-of-pocket costs

and expenses of not more than \$30,000, both of which will be paid from the Gross Settlement Amount, subject to Court approval. The Attorneys' Fees and Costs shall represent payment for all claims for Class Counsel's Attorneys' Fees and Costs, past and future, incurred in the Actions. Plaintiffs agree not to petition to the Court for more than \$1,566,666.66 for attorneys' fees or more than \$30,000 for costs. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Attorneys' Fees and Costs no later than 16 Court days prior to the Final Approval Hearing. An award by the Court of Attorneys' Fees and Costs that is less than the amounts applied for will not be grounds for Plaintiffs or Class Counsel, or any of them, to challenge or withdraw from the Settlement, and any amounts not awarded in attorneys' fees or costs will be included in the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Attorneys' Fees and Costs. Class Counsel and Defendant agree that such awards of Attorneys' Fees and Costs are reasonable under the circumstances. Nothing in this Agreement shall restrict Plaintiffs' or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorneys' Fees and Costs or Class Representative Service Payments. A decision by the Court to award less than the requested Attorneys' Fees and Costs or Class Representative Service Payments, however, is not a material change to the Settlement or this Agreement. Any order relating to the award of attorney's fees, costs or Class Representative Service Payments, or any appeal from any order relating thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement or to give rise to any right to terminate this Agreement, however, the Effective Date shall not occur until any such appeal is resolved. If the amount of, Class Representative Service Payments, attorneys' fees and/or costs awarded by the Court is less than the requested amounts, the difference shall serve to increase the Net Settlement Amount to be distributed to Settlement Class Members as part of their Individual Settlement Payments. Nothing in this Agreement will require Defendant to pay more than the Gross Settlement Amount under any circumstances.

3.3.3. Settlement Administration Costs: The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments from the Gross Settlement Amount, which is currently estimated not to exceed \$100,000.00 except for a showing of good cause and as approved by the Court. If the actual cost of settlement administration is less or more than the amount approved by the Court, those funds shall be added to or subtracted from the Net Settlement Amount. All costs associated with settlement administration shall come out of the Gross Settlement Amount. These costs, which will be paid from the Gross Settlement Amount, will include, *inter alia*: (i) printing and mailing and re-mailing (if necessary) of Notices of Class Action and PAGA Settlement to Class Members and PAGA Employees and receiving Requests for Exclusion and Objections from Class Members and Objections from PAGA Employees; (ii) preparing and submitting to Settlement Class Members, PAGA Employees, and government entities all appropriate tax filings and forms; (iii) computing the amount of and distributing Individual Settlement Payments, Class Representative Service Payments, and Class Counsel Attorneys' Fees, Costs and Expenses; (iv) processing and validating disputes concerning the calculation of Individual Settlement Payments; (v) establishing a Qualified Settlement Fund, as defined by the Internal Revenue Code; and (vi) calculating and remitting to the appropriate government agencies all employer and employee payroll tax obligations arising from the Settlement and preparing and submitting filings required by law in connection with the payments required by the Settlement; (vii) performing a National Change of Address (NCOA) search and a skip trace in order to obtain the best possible address for Class Members and PAGA Employees; and (viii) providing necessary reports and declarations, as requested by the Parties.

3.3.4. Website, Email Address and Toll-Free Number. The Settlement Administrator will also establish and maintain a dedicated website that Class Members and PAGA Employees can access to obtain information about the Settlement, Court filings, and contact information. The Settlement Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

3.4. PAGA Settlement Amount: Subject to Court approval, the Parties agree that the PAGA Settlement Amount will be designated for satisfaction of Plaintiffs' PAGA claims. Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Settlement Amount will be paid to the LWDA and Twenty-Five Percent (25%) of the PAGA Settlement Amount will be paid to PAGA Employees in proportion to the number of Pay Periods worked during the applicable PAGA Period, as reflected in Defendant's records.

3.5. No Right to Exclusion or Objections by PAGA Employees. Because this settlement resolves claims and actions brought pursuant to PAGA by Plaintiffs acting as proxies and as Private Attorneys General of,

and for, the State of California and the LWDA, the Parties agree that no PAGA Employee has the right to exclude himself or herself from the release of the Released PAGA Claims. PAGA Employees will be bound by the release of the Released PAGA Claims upon its approval by the Court at the Final Fairness Hearing, regardless of whether he or she requested exclusion as a Class Member, and regardless of whether he or she cashes the Individual PAGA Payment. The Parties also agree that no PAGA Employee has the right to object to the terms of the Settlement Agreement in his/her capacity as a PAGA Employee.

3.6. Interim Stay of Proceedings and Dismissal: The Parties agree to the entry of a formal stay of all proceedings in all of the Actions, except such proceedings as may be necessary to implement and complete the Settlement, pending the Final Fairness Hearing to be conducted by the Court. Within ten (10) calendar days after notice of entry of the Court's Judgment, Plaintiff Fowler shall take any and all actions necessary to secure the complete dismissal with prejudice of the *Fowler* PAGA Action, in its entirety, that is pending and currently stayed in the Los Angeles Superior Court.

4. PLAN OF ALLOCATION

4.1. Plan of Allocation. Calculation of All Individual Settlement Payments. Ninety Percent (90%) of the Net Settlement Amount shall be allocated to Participating Class Members through the Class Fund Settlement Amount, and the remaining Ten Percent (10%) will be allocated to the PAGA Settlement Amount. No portion of the Net Settlement Amount will revert to or be retained by Defendant. Plaintiffs and Defendant recognize and agree that the asserted claims in the Actions are extremely difficult to quantify with any certainty for any given year, or at all, and are subject to a myriad of differing calculations and formulas. Plaintiffs and Defendant agree that the formulas for allocating Individual Class Payments and Individual PAGA Payments provided herein are reasonable and designed to provide a fair settlement, despite the uncertainties of the amounts alleged to be owed to Participating Class Members and PAGA Employees and the calculation of them.

4.2. PAGA Fund. The PAGA Fund is equal to exactly Twenty-Five (25%) of the PAGA Settlement Amount, and represents the portion of the PAGA Settlement Amount that will be paid to all PAGA Employees allocated to the Individual PAGA Payments. The Parties have agreed to allocate 10% of the Net Settlement Amount to the PAGA Settlement Amount. The entire PAGA Fund will be distributed based on the PAGA Employees' pro rata number of Pay Periods worked during the applicable PAGA Period as a percentage of all PAGA Employees' total number of Pay Periods worked during the applicable PAGA Period as reflected in Defendant's records. No portion of the PAGA Fund will revert to or be retained by Defendant.

4.3. Individual Settlement Payment Calculations. Individual Settlement Payments will be calculated and apportioned from the Class Fund Settlement Amount and PAGA Fund based on the number of Pay Periods a Class Member worked during the Class Period, and number of Pay Periods a PAGA Employee worked during the applicable PAGA Period. Specific calculations of Individual Settlement Payments will be made as follows:

4.3.1. Payment Allocation of the Class Fund Settlement Amount. To determine each Class Member's share of the Class Fund Settlement Amount, the Settlement Administrator will use the following formula: Individual Class Payment = individual Class Member's total Pay Periods during the Class Period ÷ all Class Members' total Pay Periods during the Class Period × Class Fund Settlement Amount. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionally increase each Participating Class Member's share of the Class Fund Settlement Amount so that the amount actually distributed to the Settlement Class equals 100% of the Class Fund Settlement Amount. Governmentally-required employee tax withholdings shall be deducted from that portion of each Individual Class Payment allocated as wages (as set forth below in Paragraph 5.11). No portion of the Class Fund Settlement Amount will revert to or be retained by Defendant.

4.3.2. Payment Allocation of the PAGA Fund. To determine each PAGA Employee's share of the PAGA Fund, the Settlement Administrator will use the following formula: Individual PAGA Payment = individual PAGA Employee's total Pay Periods during the PAGA Period ÷ all PAGA Employees' total Pay Periods during the PAGA Period × PAGA Fund. PAGA Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment (as set forth below in Section 5).

4.4. No Credit Towards Benefit Plans. The Individual Settlement Payments made to Participating Class Members under this Settlement, as well as any other payments made pursuant to this Settlement, 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.

5. PROCEDURES FOR SETTLEMENT ADMINISTRATION.

5.1 Administration Process. The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement.

5.2 Notices to the LWDA. Plaintiffs shall submit this Settlement to the LWDA at the same time it is submitted to the Court in compliance with Labor Code section 2699(1)(2). Plaintiffs shall submit a copy of the Court's Judgment to the LWDA within ten (10) calendar days after notice of entry of the Judgment in compliance with Labor Code section 2699(1)(3).

5.3 Delivery of the Class and PAGA Employee Data. Within twenty-one (21) calendar days following entry of the Preliminary Approval Order, Defendant will deliver the Class and PAGA Employee Data to the Settlement Administrator, in a secure format to be determined by the Settlement Administrator and Defendant. The information Defendant provides to the Settlement Administrator, along with any updated contact information identified by the Settlement Administrator as set forth in Paragraph 5.4.1 below, shall be used solely to administer the Notice of Class Action and PAGA Settlement and Plan of Allocation process described herein, shall remain confidential, and shall not be disclosed to anyone, except pursuant to the express written authorization of Defendant or the individual in question, by order of the Court, or to the extent necessary to fulfill the Settlement Administrator's reporting obligations hereunder. The Settlement Administrator shall be responsible for following all privacy laws and taking appropriate steps to ensure that Class Members' and PAGA Employees' personal information is safeguarded and protected from improper disclosure or use.

5.4. Notice of Class Action and PAGA Settlement by First-Class U.S. Mail. Within thirty (30) calendar days after receiving the Class and PAGA Employee Data from Defendant, the Settlement Administrator shall mail the Notice of Class Action and PAGA Settlement ("Notice") in the form approved by the Court in its Preliminary Approval Order to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class and PAGA Employee Data.

5.4.1. Confirmation of Contact Information in the Class and PAGA Employee Data. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Notice of Class Action and PAGA Settlement ("Notice") returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved, and will then perform a single re-mailing. Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or by request, will have either: (i) an additional fifteen (15) calendar days from the date of the re-mailing of the Notice Packet; or (ii) until the Response Deadline, whichever is later, to submit a Request for Exclusion or an objection to the Settlement.

5.4.2. Each Notice will provide: (i) information regarding the nature of the Actions; (ii) a summary of the Settlement's principal terms; (iii) the Settlement Class definition; (iv) the total number of Pay Periods each Class Member worked for Defendant during the Class Period based on Defendant's records; (v) each Class Member's estimated Individual Class Payment and the formula for calculating Individual Class Payments; (v) each PAGA Employee's estimated Individual PAGA Payment and the formula for calculating Individual PAGA Payments (vi) the dates which comprise the Class Period and PAGA Period;

(vii) instructions on how to submit Requests for Exclusion or Notices of Objection; (viii) the Response Deadline by which the Class Member may postmark or fax a Request for Exclusion, or postmark a Notice of Objection to the Settlement; and (ix) the claims to be released.

5.5 Disputed Information on Notices. If a Class Member or PAGA Employee wishes to contest the number of Pay Periods assigned to him or her by the Settlement Administrator, the Class Member or PAGA Employee may produce evidence to the Settlement Administrator showing that such information is inaccurate. Defendant's records will be presumed correct, but the Settlement Administrator shall contact Defense Counsel regarding any dispute and Defendant will work in good faith to resolve it. All disputes must be submitted to the Settlement Administrator by the Response Deadline, and will be decided within ten (10) business days after the Response Deadline. All decisions regarding whether an adjustment to the number of Pay Periods worked by a Class Member or PAGA Employee is warranted shall be final and not appealable or otherwise susceptible to challenge.

5.6 Requests for Exclusion (Opt-outs) Procedures. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Settlement Administrator, by fax, email, or mail, a signed written Request for Exclusion within the Response Deadline. In the case of Requests for Exclusion that are mailed to the Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. The Request for Exclusion must be personally signed by the Class Member who seeks to opt out. No Class Member may opt out by having a Request for Exclusion submitted by an actual or purported agent or attorney acting on behalf of the Class Member. No Request for Exclusion may be made on behalf of a group of Class Members. In the event more than ten (10) percent of Class Members request to be excluded from the Settlement Agreement, Defendant may terminate the settlement in its sole discretion, in which case all of Defendant's obligations under this Settlement Agreement and the Memorandum of Understanding executed on September 16, 2022 shall cease to be of any force or effect, and this Settlement Agreement and the Memorandum of Understanding shall be null and void. If Defendant exercises this option, it shall: (i) provide Plaintiffs with written notice of its election within thirty (30) days of the Response Deadline, with a copy to the Settlement Administrator, at which point the Parties shall return to their respective positions with respect to the Actions as if the Agreement had never been entered into; and (ii) pay for all Settlement Administration Costs incurred up to the date of rescission. Class Members shall be bound by this Agreement unless they submit a completed, signed and timely Request for Exclusion. However, the Released PAGA Claims shall be binding on all PAGA Employees regardless of whether they submit a valid Request for Exclusion from the Class (as set forth below in Paragraph 6.7).

5.7. Objection Procedures. To object to the Settlement Agreement, a Class Member may either postmark a valid Notice of Objection to the Settlement Administrator on or before the Response Deadline, or appear in person at the Final Approval Hearing. Class Members who fail to object either by submitting a valid Notice of Objection or appearing in person at the Final Approval Hearing will be deemed to have waived all objections to the Settlement and will be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement Agreement. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement Agreement or appeal from the Final Approval Order and Judgment. Class Counsel will not represent any Class Members with respect to any such objections to this Settlement. If a Class Member timely submits both a Notice of Objection and a Request for Exclusion, the Request for Exclusion will be given effect and considered valid, the Notice of Objection shall be rejected, and the Class Member shall not participate in or be bound by the Settlement. However, the Released PAGA Claims shall be binding on all PAGA Employees regardless of whether they submit a valid Request for Exclusion from the Class (as set forth below in Paragraph 6.7).

5.8. Weekly Reports. The Settlement Administrator will provide Weekly Reports to Class Counsel and Defense Counsel that, among other things, certifies the number of: Notices mailed or re-mailed, Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, and the number of disputes to Pay Periods received and/or resolved ("Weekly Report"). Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement Agreement as needed or requested.

5.8.1. Administrator's Declaration. Not later than 21 days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class

Counsel and Defense Counsel, a declaration attesting to its due diligence and completion of the notice process set forth in this Agreement including, but not limited to, its mailing of Notice of Class Action and PAGA Settlement, the total number and names of the Requests for Exclusion (opt outs), any objections to the Settlement, and a summary of any disputes raised by any Class Members and/or PAGA Employees. This declaration shall be filed with the Court by Class Counsel along with a motion requesting final approval of the Settlement. Any written objections submitted by Class Members shall be turned over to Class Counsel, who shall then file them with the Court at the time of their Motion for Final Approval.

5.8.2. Certification of Completion. Upon completion of administration of the Settlement, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

5.9. Timing of Distribution of Gross Settlement Amount. Within ten (10) calendar days of the Second Funding Date as set forth in Paragraph 3.3, the Settlement Administrator will issue payments from the Gross Settlement Amount to: (i) Participating Class Members and PAGA Employees; (ii) the LWDA; (iii) Plaintiffs; and (iv) Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-approved Settlement Administration Costs for services performed in connection with the Settlement. The payments to Class Counsel for Attorneys' Fees and Costs and the Class Representative Service Payments shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

5.10. Negotiation of Individual Settlement Payment Checks. Any checks tendered to Participating Class Members or PAGA Employees shall remain valid and negotiable for one hundred and eighty (180) days from the date of mailing. Any Individual Class Payment checks or Individual PAGA Payment checks that remain uncashed after One Hundred Eighty (180) days from issuance shall be void and the Settlement Administrator shall transmit any amounts from such uncashed checks to the California Controller's Office Unclaimed Property Division, with an identification of the person to whom the funds belong, in accordance with California Code of Civil Procedure Section 384, to be held in trust for those Participating Class Members and/or PAGA Employees who did not cash their checks. Funds represented by Individual Settlement Payment checks returned as undeliverable will also be tendered to the State Controller's Office, Unclaimed Property Division with an identification of the person to whom the funds belong, in accordance with California Code of Civil Procedure Section 384, to be held in trust for those persons. In such event, the Participating Class Member and/or PAGA Employee shall nevertheless remain bound by the Settlement's Released Class Claims and/or Released PAGA Claims, as applicable. The Parties agree that this disposition results in no "unpaid residue" under Code of Civil Procedure section 384, as the entire Net Settlement Amount will be paid out to Participating Class Members and PAGA Employees, whether or not they all cash their Individual Class Payment and/or Individual PAGA Payment checks. Therefore, Defendant will not be required to pay any interest on such amounts.

5.11. Treatment of Individual Settlement Payments. The Individual Class Payments are payments for all Released Class Claims for the Participating Class Members. The Individual PAGA Payments are payments for the Released PAGA Claims for the PAGA Employees. The Settlement Administrator shall be authorized to establish a Qualified Settlement Fund ("QSF") pursuant to Internal Revenue Service ("IRS") rules and regulations in which the Gross Settlement Amount shall be placed and from which payments required by the Settlement shall be made. All Individual Settlement Payments will be allocated as follows: (i) twenty percent (20%) of the portion of each Participating Class Member's Individual Class Payment derived from the Class Fund Settlement Amount will be allocated as wages for which IRS Forms W-2 will be issued and all applicable withholdings shall be made; and (ii) eighty percent (80%) of the portion of each Participating Class Member's Individual Class Payment derived from the Class Fund Settlement Amount will be allocated as non-wages, for which IRS Forms 1099-MISC will be issued. The portion of all Individual PAGA Payments derived from the PAGA Fund will be allocated as penalties, for which IRS Forms 1099-MISC will be issued. The Parties recognize that the Individual Settlement Payments reflect settlement of a dispute over the Released Class Claims and the Released PAGA Claims. The Parties agree that except for the PAGA Settlement Amount, which is a civil penalty, all other portions of the Gross Settlement Amount are not, and are not intended to be made as amounts paid or incurred to, or at the direction of, a government, governmental entity, or non-governmental entity in relation to the violation of law, or investigation or inquiry into a potential violation of such law within the meaning of section 162(f) of the Internal Revenue Code of 1986, as amended. With the exception of the PAGA Settlement Amount, all payments under the

Gross Settlement Amount are considered restitution, remediation, or are being paid to come into compliance with the law.

5.12. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will be responsible for issuing to Plaintiffs, Participating Class Members, PAGA Employees, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes and penalties to the appropriate government authorities.

5.13. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiffs, Participating Class Members, PAGA Employees, and Class Counsel are not relying on any statement, representation, or calculation by Defendant or by the Settlement Administrator in this regard.

5.14. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISOR’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

6. ENTRY OF JUDGMENT AND RELEASES.

6.1 Preliminary Approval Hearing. Plaintiffs will obtain a hearing date before the Court in Benson Class Action to request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order for: (i) provisional certification of the Settlement Class for settlement purposes only, (ii) Preliminary Approval of the proposed Settlement Agreement, and (iii) setting a date for a Final Fairness Hearing. The Preliminary Approval Order will provide for the Notice of Class Action and PAGA Settlement to be sent to all Class Members and PAGA Employees as specified therein. In conjunction with the Preliminary Approval hearing, Plaintiffs will submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed Notice of Class Action and PAGA Settlement, attached as **Exhibit A**. Class Counsel will be responsible for drafting all documents necessary to obtain Preliminary Approval. Class Counsel will provide Defense Counsel a draft of the papers for review and approval at least three (3) days prior to filing.

6.2. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 45 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval Order to the Settlement Administrator.

6.3. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the Court's permission, a Final Fairness Hearing will be conducted to determine the Final Approval of the Settlement Agreement along with the amounts properly payable for: (i) Attorneys' Fees and Costs; (ii) the Class Representative Service Payments; (iii) Individual Settlement Payments; (iv) the LWDA PAGA Payment; and (v) all Settlement Administration Costs. The Final Fairness Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class Counsel will be responsible for drafting all documents necessary to obtain final approval, which Class Counsel will provide Defense Counsel a draft of for review and approval at least three (3) days before they are filed. Class Counsel will also be responsible for drafting the Attorneys' Fees and Costs application to be heard at the Final Fairness Hearing.

6.3.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than three (3) Court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

6.4. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by the Court or after the Final Fairness Hearing, the Parties will present the Judgment to the Court for its approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under Court rules or as set forth in this Settlement Agreement. A copy of the Judgment will be posted to the Settlement Administrator's website. Pursuant to California Rules of Court, Rule 3.771(b), the Settlement Administrator shall post on its website a copy of the Judgment for a period of thirty days from the date the Court signs the Judgment.

6.5. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the Released Class Claims and Released PAGA Claims, as well as any Judgment that may be entered by the Court if it grants Final Approval to the Settlement and Defendant fully funds the Gross Settlement Amount and its share of Withholdings and Taxes.

6.6. Releases by Participating Class Members. Upon the Second Funding Date, and except as to such rights or claims as may be created by this Settlement Agreement, each Participating Class Member, together and individually, on their behalf and on behalf of their respective heirs, executors, administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released Parties, or any of them, from each of the Released Class Claims (defined in Paragraph 2.39 above) arising during the Class Period.

6.7. Releases by PAGA Employees. Upon the Second Funding Date, and except as to such rights or claims as may be created by this Settlement Agreement, each PAGA Employee, together and individually, on their behalf and on behalf of their respective heirs, executors, administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released Parties, or any of them, from each of the Released PAGA Claims (as defined in Paragraph 2.40 above) during the PAGA Period. The Released PAGA Claims shall be binding on all PAGA Employees regardless of whether they submit a valid Request for Exclusion from the Settlement Class.

6.8. General Release by Plaintiffs. Upon the Second Funding Date, in addition to the claims being released by all Participating Class Members and PAGA Employees, Plaintiffs Gianna Benson and Monica Fowler, will release and forever discharge the Released Parties, to the fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and not asserted, which Plaintiffs have or may have against the Released Parties as of the date of execution of this Settlement Agreement. To the extent the foregoing release is a release to which Section 1542 of the California Civil Code or similar provisions of other applicable law may apply, Plaintiffs Gianna Benson and Monica Fowler expressly waive any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable law which are as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT

THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

7. ADDITIONAL PROVISIONS.

7.1. Non-Admission of Liability. The Parties enter into this Settlement to resolve the disputes that have arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Settlement, Defendant does not admit, and specifically denies, that it violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

7.2. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

7.3. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning.

7.4. Entire Agreement. The Exhibits to this Agreement are integral parts of this Agreement and are hereby incorporated and made a part of the Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' settlement terms. Any inconsistency between this Settlement Agreement and the attached Exhibits will be resolved in favor of this Agreement. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or contradict the terms of this Settlement Agreement.

7.5. Amendment or Modification. No amendment, change, or modification to this Settlement Agreement will be valid unless in writing and signed, either by the Parties or their counsel. Notwithstanding the foregoing, the Parties authorize their counsel to make all non-material changes ordered by the Court as a prerequisite to obtaining approval through their counsel's signatures on any necessary and non-material amendment or modification to this Agreement.

7.6. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

- 7.7. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.
- 7.8. Settlement Agreement Constitutes a Complete Defense. To the extent permitted by law, this Settlement Agreement may be pleaded as a full and complete defense to any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Settlement Agreement.
- 7.9. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.
- 7.10. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.
- 7.11. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this Settlement only. Notwithstanding the foregoing, Class Counsel reserve the right to appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court. If, however, Class Counsel, or any of them, appeals any reduction to the Attorneys' Fees and Costs, then the Effective Date shall not occur until after the conclusion of any such appeal(s).
- 7.12. No Public Comment: The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about the fact, amount, or terms of the Settlement. Unless they first obtain Defendant's express written consent, Class Counsel and Plaintiffs shall not discuss, reveal, disclose, publicize, or promote the terms of this Settlement, or the negotiations leading to the Settlement, to any third party (including but not limited to the media, the legal community, or the public at large, including on Class Counsel's respective websites or otherwise). Nothing in this Agreement is intended to prevent Plaintiffs or Class Counsel from disclosing or discussing the terms of this Settlement: (i) with the Court; (ii) with any Class Member; (iii) with the Settlement Administrator; (iv) in Court filings to establish adequacy of counsel or for purposes of obtaining Court approval of comparable wage and hour settlements; or (v) as otherwise required by law.
- 7.13. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right, or remedy.
- 7.14. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.
- 7.15. Voluntary Agreement. This Settlement Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any Party, or of any other person, first or entity. Each Party has made such investigation of the facts pertaining to this Agreement and of all other matters pertaining hereto as she, he, or it deems necessary.
- 7.16. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel. Further, Plaintiffs and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.
- 7.17. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement herein will be subject to final Court approval.
- 7.18. Mutual Full Cooperation. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement Agreement, including but not

limited to execution and delivery of any and all additional papers, documents, and other assurances and taking such other action that may be reasonably necessary to implement the terms of this Settlement Agreement. The Parties and their counsel shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, to effectuate this Settlement Agreement and the terms set forth herein.

7.19. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

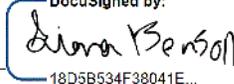
7.20. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned copies of the signature page, will be deemed to be one and the same instrument.

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

Dated: 2/15/2023

GIANA BENSON

DocuSigned by:



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Dated: _____

MONICA FOWLER

Dated: _____

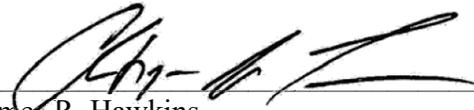
F21 OPCO, LLC dba FOREVER 21

Name: _____

Title: _____

Dated: 02/15/2023

JAMES HAWKINS APLC



James R. Hawkins

Christina M. Lucio

Attorneys for Plaintiffs

GIANA BENSON and the Settlement Class

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Dated: _____

GIANA BENSON

Dated: 2/15/2023

MONICA FOWLER


23A810CA3170405...

Dated: _____

F21 OPCO, LLC dba FOREVER 21

Name:

Title:

Dated: _____

JAMES HAWKINS APLC

James R. Hawkins
Christina M. Lucio

Attorneys for Plaintiffs
GIANA BENSON and the Settlement Class

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Dated: _____

GIANA BENSON

Dated: _____

MONICA FOWLER

Dated: 2/16/2023 | 5:59:05 PM PST

F21 OPCO, LLC dba FOREVER 21

DocuSigned by:

Scott Hampton

3C19500986F2449...

Name: Scott A. Hampton

Title: Vice-President & General Counsel

Dated: _____

JAMES HAWKINS APLC

James R. Hawkins

Christina M. Lucio

Attorneys for Plaintiffs

GIANA BENSON and the Settlement Class

Dated: February 15, 2023

ACKERMANN & TILAJEF, P.C.
MELMED LAW GROUP P.C.



Jonathan Melmed
Laura Supanich
Craig J. Ackermann

Attorneys for Plaintiffs
MONICA FOWLER

Dated: _____

REED SMITH LLP
SEALS PHILLIPS LLP

Jennifer C. Terry
Brittany M. Hernandez
Mark R. Phillips

Attorneys for Defendant
F21 OpCo, LLC in *Benson* Class Action and
Benson PAGA Action

Dated: _____

LITTLER MENDELSON P.C.

Tracy Wei Costantino

Attorney for Defendant
F21 OpCo, LLC dba Forever 21 in *Fowler* PAGA Action

Dated: _____

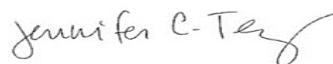
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MONICA FOWLER

Dated: 2/20/2023

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Attorneys for Defendant
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