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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

HERMILA RIOS, on behalf of herself and all
others similarly situated,

Plaintiffs,

v.

NONGSHIM AMERICA, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: CIVDS1807390

[Assigned for all purposes to the Hon.
David Cohn in Dept. S26]

CLASS ACTION

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

Action Filed: March 28, 2018
Trial Date: None Set

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

3 This Joint Stipulation Re: Class Action and Representative Action Settlement
4 ("Settlement," "Agreement," or "Settlement Agreement") is made by and between HERMILA
5 RIOS ("Plaintiff"), individually and on behalf of the Settlement Class, as defined below, on the
6 one hand, and NONGSHIM AMERICA, INC., a California corporation ("Defendant") on the
7 other hand (collectively, the "Parties"), in the lawsuit entitled *Hermila Rios v. Nongshim*
8 *America, Inc., et al.*, filed in the San Bernardino County Superior Court, Case No.
9 CIVDS1807390. This Agreement is intended by the Parties to fully, finally, and forever
10 resolve, discharge, and settle the claims as set forth herein, based upon and subject to the terms
11 and conditions of this Agreement.

12 **1. DEFINITIONS**

13 A. "Action" means *Hermila Rios v. Nongshim America, Inc.*, San Bernardino
14 County Superior Court Case No. CIVDS1807390.

15 B. "Class Counsel" means David Bibiyan, Esq. of Bibiyan Law Group, P.C.

16 C. "Class Period" means the period from March 28, 2014 through February 17,
17 2019.

18 D. "Court" means the Superior Court of the State of California for the County of
19 San Bernardino.

20 E. "Defendant" means Nongshim America, Inc.

21 F. "Enhancement Payment" means monetary amounts to be paid to Plaintiff, of
22 up to Five Thousand Dollars (\$5,000.00), which subject to Court approval, will be paid out of
23 the Gross Settlement Amount.

24 G. "Employer Taxes" means employer-funded taxes and contributions imposed on
25 the wage portions of the Individual Settlement Payments under the Federal Insurance
26 Contributions Act; the Federal Unemployment Tax Act; and any similar state and federal taxes
27 and contributions required of employers, such as for unemployment insurance.
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1 **H. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
2 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
3 objector, sixty (60) calendar days from the date of the Final Approval and Judgment; or (3) to
4 the extent any appeals have been filed, the date on which they have been resolved or exhausted.

5 **I. “Final Approval Hearing”** means the final hearing held pursuant to Rule
6 3.769(g) of the California Rules of Court to ascertain the fairness, reasonableness, and
7 adequacy of the Settlement.

8 **J. “Gross Settlement Amount”** means a non-reversionary fund in the sum of One
9 Million and Eighty Thousand Dollars and Zero Cents (\$1,080,000.00), which shall be paid by
10 Defendant, from which all payments for the Individual Settlement Payments to Participating
11 Class Members and the Court-approved amounts for attorneys’ fees and reimbursement of
12 litigation costs and expenses to Class Counsel, Settlement Administration Costs, the
13 Enhancement Payment, and the LWDA Payment shall be paid. It expressly excludes Employer
14 Taxes. In no event shall Defendant pay more than the total amount of the Gross Settlement
15 Amount plus any employer payroll taxes due thereon absent a further court order requiring
16 Defendant to pay additional amounts of interest on the sum of the unpaid residue or unclaimed
17 or abandoned class member funds to be paid to nonprofit organizations or foundations pursuant
18 to Code of Civil Procedure section 384.

19 **K. “Individual Settlement Payment”** means a payment to a Participating Class
20 Member of his or her net share of the Net Settlement Amount (which share and payment shall
21 be determined by the calculations provided in this Agreement).

22 **L. “Individual Settlement Share”** means the gross amount of the Net Settlement
23 Amount that a Settlement Class Member is eligible to receive if he or she does not submit a
24 timely and valid Request for Exclusion based on the number of Workweeks that he or she
25 worked as a Settlement Class Member during the Class Period.

26 **M. “LWDA Payment”** means the payment to the State of California Labor and
27 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the
28 total amount allocated toward penalties under the California Private Attorneys General Act of

1 2004 ("PAGA"), all of which is to be paid from the Gross Settlement Amount. The Parties have
2 agreed that Thirty Thousand Dollars and Zero Cents (\$30,000.00) shall be allocated toward
3 PAGA penalties ("PAGA Payment"), of which Twenty-Two Thousand, Five Hundred Dollars
4 and Zero Cents (\$22,500.00) will be paid to the LWDA and Seven Thousand Five Hundred
5 Dollars and Zero Cents (\$7,500.00) will remain a part of the Net Settlement Amount for
6 payment to Participating Class Members on a *pro rata* basis.

7 N. "Net Settlement Amount" means the portion of the Gross Settlement Amount
8 that is available for distribution to the Participating Class Members after deductions for the
9 Court-approved allocations for Settlement Administration Costs, an Enhancement Payment to
10 the Plaintiff, an award of attorneys' fees, reimbursement of litigation costs and expenses to
11 Class Counsel, and the LWDA Payment.

12 O. "Complaint" means the First Amended Complaint filed with the Court on or
13 around February 2, 2019.

14 P. "PAGA Period" means the period from March 28, 2017 through February 17,
15 2019.

16 Q. "Participating Class Members" means all Settlement Class Members who do
17 not submit a timely and valid Request for Exclusion.

18 R. "Plaintiff" means Hermila Rios. The term "Plaintiff" shall be used
19 synonymously with the term "Class Representative."

20 S. "Preliminary Approval Date" means the date on which the Court enters an
21 Order granting preliminary approval of the Settlement.

22 T. "Response Deadline" means the deadline for Settlement Class Members to mail
23 or fax any Requests for Exclusion, objections, or Workweeks Disputes to the Settlement
24 Administrator, which is forty-five (45) calendar days from the date that the Class Notice is first
25 mailed in English and Spanish by the Settlement Administrator. The date of the postmark or
26 fax-stamp shall be the exclusive means for determining whether a Request for Exclusion,
27 objection, or Workweeks Dispute was submitted by the Response Deadline.

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1 U. **"Request for Exclusion"** means a written request to be excluded from the
2 Settlement Class pursuant to Section 9.C below.

3 V. **"Settlement Administration Costs"** means all costs incurred by the Settlement
4 Administrator in administering the Settlement, including, but not limited to, translating the
5 Class Notice in Spanish; the distribution of the Class Notice to the Settlement Class in English
6 and Spanish; calculating Individual Settlement Shares and Individual Settlement Payments and
7 associated taxes and withholdings; providing declarations; generating Individual Settlement
8 Payment checks and related tax reporting forms; doing administrative work related to
9 unclaimed checks; transmitting payment to Class Counsel for the Court-approved amounts for
10 attorneys' fees and reimbursement of litigation costs and expenses, to Plaintiff for her
11 Enhancement Payment, and to the LWDA for the LWDA Payment; escheatment processing to
12 the State Controller Unclaimed Property Department; and any other actions of the Settlement
13 Administrator as set forth in this Agreement, all pursuant to the terms of this Agreement. The
14 Settlement Administration Costs are estimated not to exceed \$17,500. If the actual amount of
15 the Settlement Administration Costs is less than \$17,500, the difference between \$17,500 and
16 the actual Settlement Administration Costs shall be a part of the Net Settlement Amount.

17 W. **"Settlement Administrator"** means CPT Group, Inc., which the Parties have
18 agreed will be responsible for the administration of the Settlement including, without
19 limitation, translating the Class Notice in Spanish, the distribution of the Individual Settlement
20 Payments to be made by Defendant from the Gross Settlement Amount, and related matters
21 under this Agreement.

22 X. **"Settlement Class" or "Settlement Class Members"** means all current and
23 former non-exempt, hourly paid employees who worked in California for Defendant at any
24 time during the Class Period.

25 Y. **"Workweeks"** means the number of weeks that a Settlement Class Member
26 was employed by Defendant in a non-exempt, hourly position during the Class Period. For
27 purposes of payment, a week of employment shall be defined as any regular workweek in
28 which the class member actually worked at least one shift.

1 **2. BACKGROUND**

2 A. In the Action, it is alleged that Defendant violated provisions of the California
3 Labor Code, the California Business and Professions Code sections 17200, *et seq.*, and PAGA
4 based on the alleged Labor Code violations.

5 Plaintiff alleges that, during the Class Period, with respect to Plaintiff and the
6 Settlement Class Members, Defendant, *inter alia*, failed to pay its non-exempt, hourly
7 employees overtime wages at the correct overtime rate because it did not calculate
8 nondiscretionary bonuses into the regular rate of pay. Moreover, Plaintiff alleges that
9 Defendant failed to provide compliant meal and rest periods and associated premium payments;
10 failed to issue compliant and accurate itemized wage statements; and failed to timely pay all
11 wages due and owing at the time of termination or resignation. Plaintiff further alleges that
12 Defendant failed to provide reimbursements for necessary work-related expenses and engaged
13 in unfair competition based on the alleged Labor Code violations. Class Counsel conducted
14 informal discovery and investigation, which yielded information concerning the claims set forth
15 in the Action.

16 B. Plaintiff and Class Counsel have engaged in good faith, arm's-length
17 negotiations with Defendant concerning possible resolution of the Action. On January 18,
18 2019, the Parties participated in a mediation before mediator Nikki Tolt, Esq., a well-regarded
19 mediator experienced in mediating complex labor and employment matters. With the aid of the
20 mediator's evaluation, the Parties reached the Settlement to resolve the Action.

21 C. Class Counsel have conducted significant investigation of the law and facts
22 relating to the claims asserted in the Action and have concluded that the Settlement set forth
23 herein is fair, reasonable, adequate, and in the best interests of the Settlement Class, taking into
24 account the sharply contested issues involved, the expense and time necessary to litigate the
25 Action through trial and any appeals, the risks and costs of further litigation of the Action, the
26 risk of an adverse outcome, the uncertainties of complex litigation, and the substantial benefits
27 to be received by the Settlement Class Members.

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

8 E. This Agreement is intended to and does effectuate the full, final, and complete
9 resolution of all Released Claims of Plaintiff and Settlement Class Members, other than those
10 Settlement Class Members who submit a timely and valid Request for Exclusion.

11 **3. JURISDICTION**

12 The Court has jurisdiction over the Parties and the subject matter of this Action. The
13 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
14 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
15 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the
16 judgment pursuant to California Rule of Court, rule 3.769(h).

17 **4. STIPULATION OF CLASS CERTIFICATION**

18 The Parties stipulate to the certification of the Settlement Class under this Agreement
19 for purposes of settlement only. If, for any reason, the Settlement does not become effective,
20 the fact that the Parties were willing to stipulate to class certification as part of a settlement
21 shall have no bearing on, and shall not be admissible in connection with, the issue of whether a
22 class should be certified in a non-settlement context in the Action, and shall have no bearing
23 on, and shall not be admissible in connection with, the issue of whether a class should be
24 certified in this or any other lawsuit. Defendant expressly reserves its right to continue to
25 oppose class certification should this Settlement not become final. Nothing herein shall be
26 construed as a concession that any class can be certified beyond the context of this Settlement.

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1 **5. MOTION FOR PRELIMINARY APPROVAL**

2 Plaintiff will move for an order granting preliminary approval of the Settlement,
3 approving and directing the mailing of the proposed Notice of Class Action Settlement ("Class
4 Notice") attached hereto as Exhibit A, conditionally certifying the Settlement Class for
5 settlement purposes only, and approving the deadlines proposed by the Parties for the
6 submission of Requests for Exclusion, Workweeks Disputes, and objections, the papers in
7 support of Final Approval of the Settlement, and any responses to objections or opposition
8 papers to the Motion for Final Approval. In accordance with section 2699(1)(2) of the
9 California Labor Code, Plaintiff will provide a copy of this Settlement Agreement to the
10 LWDA on the same day she files her motion for preliminary approval.

11 **6. STATEMENT OF NO ADMISSION**

12 Defendant denies any liability to Plaintiff and the Settlement Class with respect to any
13 claims or allegations asserted in the Action. In the event that this Agreement is not approved
14 by the Court, or any appellate court, is terminated, or otherwise fails to be enforceable, Plaintiff
15 will not be deemed to have waived, limited, or affected in any way any claims, rights, or
16 remedies in the Action and Defendant will not be deemed to have waived, limited, or affected
17 in any way any of its objections or defenses in the Action. The Parties shall be restored to their
18 respective positions in the Action prior to the entry of this Settlement.

19 **7. RELEASE OF CLAIMS**

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

21 Upon the Final Approval Date and payment by Defendant of the Gross Settlement
22 Amount to the Settlement Administrator, Plaintiff and all Settlement Class Members, except
23 those who have submitted a timely and valid Request for Exclusion, waive, release, discharge,
24 and promise never to assert in any forum against Defendant, its past or present parents,
25 subsidiaries, predecessors or successors in interest, affiliated and related companies and
26 parents, or the past or present officers, directors, owners, members, partners, shareholders,
27 investors, agents, or employees of any of them (collectively, the "Released Parties"), any and
28 all claims, rights, demands, liabilities, and causes of action that accrued during the Class Period

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1 FMLA/CFRA Action, against Defendant and its officers, directors, supervisors, managers,
2 affiliates, subsidiaries, parents, and/or managing agents.

3 **C. Section 1542 of the California Civil Code.**

4 Upon the Final Approval Date and payment by Defendant of the Gross Settlement
5 Amount to the Settlement Administrator, Plaintiff shall also be deemed to have expressly
6 waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and
7 benefits of Section 1542 of the California Civil Code, which provides as follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
9 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
10 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
11 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
12 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
13 DEBTOR OR RELEASED PARTY.

14 This Section 1542 release by Plaintiff expressly excludes any FEHA claims, FMLA/CFRA
15 claims, claims for Wrongful Termination in Violation of Public Policy, claims for Intentional
16 Infliction of Emotional Distress, and any claims that may be brought as part of a FEHA and/or
17 FMLA/CFRA Action, against the Released Parties, including, without limitation, Defendant
18 and its officers, directors, supervisors, managers, affiliates, subsidiaries, parents, and/or
19 managing agents.

20 **D. Mutual Release.**

21 Plaintiff and Defendant waive any and all claims for fees, costs, indemnity or
22 contribution against Plaintiff, Class Counsel, and/or Defendant or its counsel, other than as
23 provided herein.

24 **8. SETTLEMENT ADMINISTRATOR**

25 Plaintiff and Defendant, through their respective counsel, have selected the CPT Group,
26 Inc. to administer the Settlement, which includes but is not limited to translating the Class
27 Notice in Spanish, distributing and responding to inquiries about the Class Notice and
28 calculating all amounts to be paid from the Gross Settlement Amount. All charges and

1 and arise from the facts or claims litigated in the Action against Defendant, whether known or
2 unknown, contingent or accrued, arising out of services to Defendant, including but not limited
3 to all claims, rights, demands, liabilities, and causes of action based on any state or local wage-
4 and-hour law and including without limitation statutory, constitutional, contractual, or
5 common-law claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive
6 damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, including
7 claims based on the following categories of allegations: (i) claims for failure to pay overtime
8 wages (Cal. Lab. Code §§ 510, 1194, 1198); (ii) claims for noncompliant meal periods and/or
9 associated premiums (Cal. Lab. Code §§ 226.7, 512(a)); (iii) claims for noncompliant rest
10 periods and/or associated premiums (Cal. Lab. Code § 226.7); (iv) claims for failure to timely
11 pay wages upon termination of employment and associated waiting time penalties (Cal. Lab.
12 Code §§ 201-203); (v) claims for failure to furnish accurate itemized wage statements (Cal.
13 Lab. Code § 226(a)); (vi) claims for unreimbursed business expenses (Cal. Lab. Code § 2802);
14 (vii) claims for violations of California Business & Professions Code section 17200, *et seq.*
15 arising from the facts alleged in the operative pleading; (viii) claims for civil penalties under
16 Labor Code section 226.3; (ix) claims for violation of Labor Code section 558 arising from the
17 facts alleged in the operative pleading; and (x) claims pursuant to the PAGA (Cal. Lab. Code
18 §§ 2698 *et seq.*) arising from the facts alleged in the operative pleading albeit only for the
19 PAGA Period(collectively, the "Released Claims").

20 **B. General Release.**

21 In addition to the Released Claims, Plaintiff makes the additional following General
22 Release: Plaintiff releases the Released Parties from all claims, demands, rights, liabilities and
23 causes of action of every nature and description whatsoever asserted in the Action and arising
24 from her employment through and including the Final Approval Date ("General Release").
25 Plaintiff's release shall expressly exclude any FEHA claims, FMLA/CFRA claims, claims for
26 Wrongful Termination in Violation of Public Policy, claims for Intentional Infliction of
27 Emotional Distress, and any claims that may be brought as part of a FEHA and/or
28

1 expenses of the Settlement Administrator, currently estimated not to exceed \$17,500.00, will be
2 paid from the Gross Settlement Amount. If the actual Settlement Administrator fees are less
3 than \$17,500.00, the difference will remain a part of the Net Settlement Amount.

4 **9. NOTICE, WORKWEEKS DISPUTE, OBJECTION, AND EXCLUSION**
5 **PROCESS**

6 **A. Notice to the Settlement Class Members.**

7 (1) Within fifteen (15) calendar days after the Preliminary Approval Date,
8 Defendant shall provide the Settlement Administrator with information with respect to each
9 Settlement Class Member, including his or her: (1) name and last known address currently in
10 Defendant's possession, custody, or control; (2) Social Security Number; and (3) number of
11 Workweeks ("Class List"). The Settlement Administrator shall perform an address search
12 using the United States Postal Service National Change of Address database and update the
13 addresses contained on the Class List with the newly-found addresses, if any. Within seven (7)
14 calendar days of receiving the Class List from Defendant, the Settlement Administrator shall
15 mail the Class Notice in English and Spanish to the Settlement Class Members via first-class
16 regular U.S. Mail using the most current mailing address information available. The Settlement
17 Administrator shall maintain a list with names and all addresses to which notice was given, and
18 digital copies of all the Settlement Administrator's records evidencing the giving of notice to
19 any Settlement Class Member, for at least four (4) years from the Final Approval Date.

20 (2) The Class Notice will set forth:

- 21 (a) the Settlement Class Member's estimated payment and the basis
22 for it;
23 (b) the information required by California Rule of Court, rule
24 3.766(d);
25 (c) the material terms of the Settlement;
26 (d) the proposed Settlement Administration Costs;
27 (e) the definition of the Settlement Class;

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- 1 (f) a statement that the Court has preliminarily approved the
2 Settlement;
3 (g) how the Settlement Class Member can obtain additional
4 information, including contact information for Class Counsel;
5 (h) information regarding opt-out and objection procedures;
6 (i) the date and location of the Final Approval Hearing; and
7 (j) that the Settlement Class Member must notify the Settlement
8 Administrator no later than the Response Deadline if the
9 Settlement Class Member disputes the accuracy of the number of
10 Workweeks as set forth on his or her Class Notice ("Workweeks
11 Dispute"). If a Settlement Class Member fails to timely dispute
12 the number of Workweeks attributed to him or her in conformity
13 with the instructions in the Class Notice, then he or she shall be
14 deemed to have waived any objection to its accuracy and any
15 claim for additional settlement payment based on different data.

16 (3) If a Class Notice from the initial notice mailing is returned as
17 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
18 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
19 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
20 Member by phone (if the Class List provided by Defendant includes a last known telephone
21 number for the Settlement Class Member), and (2) undertaking skip tracing. If the Settlement
22 Administrator is successful in obtaining a new address, it will promptly re-mail the Class
23 Notice to the Settlement Class Member. Further, any Class Notices that are returned to the
24 Settlement Administrator with a forwarding address before the Response Deadline shall be
25 promptly re-mailed to the forwarding address affixed thereto. Class members who are re-
26 mailed a Class Notice shall have an additional fifteen (15) calendar days to submit a Request
27 for Exclusion or objection ("Adjusted Response Deadline").

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1 (4) No later than twenty (20) calendar days from the Response Deadline,
2 the Settlement Administrator shall provide counsel for the Parties with a declaration attesting to
3 the completion of the notice process, including the number of attempts to obtain valid mailing
4 addresses for and re-sending of any returned Class Notices, as well as the number of opt-outs
5 and objections received by the Settlement Administrator.

6 **B. Objections.**

7 Only Settlement Class Members who do not opt out of the Settlement may object to the
8 Settlement. In order for any Settlement Class Member to object to this Settlement, or any term
9 of it, he or she should do so by mailing or faxing a written objection to the Settlement
10 Administrator at the addresses provided on the Class Notice no later than the Response
11 Deadline or, if applicable, the Adjusted Response Deadline. The Settlement Administrator
12 shall email a copy of the objection forthwith to Class Counsel and Defendant's counsel. Class
13 Counsel shall lodge a copy of the objection with the Court. The date of the postmark or fax-
14 stamp shall be the exclusive means for determining whether an objection has been timely
15 submitted. The objection shall set forth in writing: (1) the objector's name and address; (2) the
16 last four digits of the objector's social security number; and (3) the reason(s) for the objection,
17 along with whatever legal authority, if any, the objector asserts supports the objection. If a
18 Settlement Class Member objects to this Settlement, the Settlement Class Member will remain
19 a member of the Settlement Class and if the Court approves this Agreement, the Settlement
20 Class Member will be bound by the terms of the Settlement in the same way and to the same
21 extent as a Settlement Class Member who does not object.

22 **C. Requesting Exclusion.**

23 Any Settlement Class Member may request exclusion from (i.e., "opt out" of) the
24 Settlement by mailing or faxing a written request to be excluded from the Settlement ("Request
25 for Exclusion") to the Settlement Administrator, postmarked or fax-stamped on or before the
26 Response Deadline or, if applicable, the Adjusted Response Deadline. To be valid, a Request
27 for Exclusion must include the Class Member's name, address, the last 4 digits of his or her
28 social security number, signature, and the following statement: "Please exclude me from the

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1 Settlement Class in the *Rios v. Nongshim America, Inc.* matter” or a statement of similar
2 meaning. Should a Request for Exclusion omit any required information, the Settlement
3 Administrator shall, within five (5) business days of receipt of the timely but deficient request,
4 send a deficiency notice to the Settlement Class Member, explaining any irregularity in the
5 request and advising the Settlement Class Member that a fully compliant Request for Exclusion
6 must be sent to the Settlement Administrator and post-marked by the Response Deadline or, if
7 applicable, the Adjusted Response Deadline. The Settlement Administrator shall immediately
8 provide copies of all timely and valid Requests for Exclusion to Class Counsel and Defendant’s
9 Counsel and shall report the Requests for Exclusion that it receives, to the Court, in its
10 declaration to be provided in advance of the Final Approval Hearing. Any Settlement Class
11 Member who requests exclusion using this procedure will not be entitled to receive any
12 payment from the Settlement and will not be bound by the Settlement Agreement or have any
13 right to object to, appeal, or comment on the Settlement. Any Settlement Class Member who
14 does not opt out of the Settlement by submitting a timely and valid Request for Exclusion will
15 be bound by all terms of the Settlement, including those pertaining to the Released Claims, as
16 well as any Judgment that may be entered by the Court if Final Approval of the Settlement is
17 granted.

18 **D. Right to Rescission.**

19 If 10% or more of Settlement Class Members submit valid and timely Requests for
20 Exclusion, Defendant shall have the right, in its sole discretion, to rescind and void this
21 Settlement, before final approval by the Court, by providing written notice to Class Counsel at
22 least five (5) business days prior to the Final Approval Hearing, provided that the Settlement
23 Administrator has furnished Defendant with the number and percentage of valid and timely
24 Requests for Exclusion.

25 **E. Disputes Regarding Settlement Class Members’ Workweeks Data.**

26 Each Settlement Class Member may dispute the number of Workweeks contained on his
27 or her Class Notice (“Workweeks Dispute”). Any such disputes must be mailed or faxed to the
28 Settlement Administrator by the Settlement Class Member, postmarked or fax-stamped on or

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1 before the Response Deadline. The information based on Defendant's records shall be
2 presumed to be correct, unless proof to the contrary is timely provided by the Settlement Class
3 Member to the Settlement Administrator. All disputes will be resolved and decided by the
4 Settlement Administrator, and such determination will be final and binding. The Settlement
5 Administrator shall immediately provide copies of all disputes to Class Counsel and counsel for
6 Defendant and shall immediately attempt to resolve all such disputes directly with relevant
7 Settlement Class Member(s) with the assistance of Defendant and Class Counsel.

8 **10. INDIVIDUAL SETTLEMENT PAYMENTS TO PARTICIPATING CLASS**
9 **MEMBERS**

10 Individual Settlement Payments will be calculated and distributed to Participating
11 Class Members from the Net Settlement Amount on a *pro rata* basis, based on the
12 Participating Class Members' respective number of Workweeks during the Class Period.
13 Specific calculations of the Individual Settlement Payments will be made as follows:

14 A. The Settlement Administrator will determine the total number of Workweeks
15 worked by each Settlement Class Member and the aggregate number of Workweeks worked
16 by all Settlement Class Members during the Class Period ("Class Workweeks"), as reflected
17 on the Class List provided by Defendant.

18 B. To determine each Settlement Class Member's Individual Settlement Share,
19 the Settlement Administrator will use the following formula: Individual Settlement Share =
20 (Settlement Class Member's Workweeks ÷ Class Workweeks) × Net Settlement Amount.

21 C. To determine each Participating Class Member's Individual Settlement
22 Payment, the Settlement Administrator will determine the aggregate number of Workweeks
23 worked by all Participating Class Members during the Class Period ("Participating Class
24 Workweeks") and use the following formula: Individual Settlement Payment = (Participating
25 Class Member's Workweeks ÷ Participating Class Workweeks) × Net Settlement Amount.
26 This net amount is to be paid out to Participating Class Members by way of check and is
27 referred to as "Individual Settlement Payment(s)."

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1 **11. DISTRIBUTION OF PAYMENTS**

2 **A. Distribution of Individual Settlement Payments.**

3 Class Members will have one hundred eighty (180) calendar days from the date of
4 issuance of the check to cash their check. Thereafter, checks for such payments shall be
5 canceled and funds associated with such checks shall be considered unpaid, unclaimed or
6 abandoned cash residue pursuant to Code of Civil Procedure section 384 ("Unpaid Residue").
7 The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure
8 section 384, shall be transmitted as follows: to Legal Aid at Work, 180 Montgomery St., Suite
9 600, San Francisco, California 94104 for use in San Bernardino County. The Settlement
10 Administrator shall prepare a report regarding the distribution plan pursuant to Code of Civil
11 Procedure section 384 and the report shall be presented to the Court by Class Counsel along
12 with a proposed amended judgment that is consistent with the provisions of Code of Civil
13 Procedure section 384.

14 **B. Funding of Settlement.**

15 Defendant shall, within fifteen (15) calendar days of the Final Approval Date, make
16 payment to the Settlement Administrator for deposit in an interest-bearing qualified settlement
17 account ("QSF") with an FDIC insured banking institution, for distribution in accordance with
18 this Agreement and the Court's orders and subject to the conditions described herein.
19 Individual Settlement Payments for Participating Class Members shall be paid exclusively from
20 the QSF, pursuant to the settlement formula set forth herein, and shall be mailed within seven
21 (7) calendar days after Defendant delivers the sum of One Million and Eighty Thousand
22 Dollars and Zero Cents (\$1,080,000.00), representing the Gross Settlement Amount as required
23 by this Stipulation. Upon request by the Settlement Administrator, Defendant shall have an
24 additional five (5) business days to provide any additional Employer Taxes necessary to
25 effectuate the settlement. Payments from the QSF shall be made for (1) the Enhancement
26 Payment, as specified in this Agreement and Approved by the Court; (2) the attorneys' fees and
27 cost award to be paid to Class Counsel, as specified in this Agreement and approved by the
28 Court; (3) the Settlement Administration Costs; and (4) the LWDA Payment. The balance

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1 remaining shall constitute the Net Settlement Amount from which Individual Settlement
2 Payments shall be made to Participating Class Members, less applicable taxes and
3 withholdings. All interest accrued shall be for the benefit of the Participating Class Members
4 and distributed in a pro-rata basis.

5 **C. Time for Distribution.**

6 Within seven (7) calendar days after payment of the full Gross Settlement Amount by
7 Defendant, the Settlement Administrator shall distribute all payments due under the Settlement,
8 including the Individual Settlement Payments to Participating Class Members, as well as the
9 Court-approved payments for the Enhancement Payment to Plaintiff, attorneys' fees and
10 litigation costs and expenses to Class Counsel, Administration Costs to the Settlement
11 Administrator, and the LWDA Payment. If the Settlement is not effectuated for any reason, the
12 Settlement Administrator shall, upon request by Defendant, transfer any and all funds in the
13 QSF back to Defendant with all accrued interest.

14 **D. Certification of Compliance.**

15 Within two hundred and ten (210) calendar days after the Final Approval Date, the
16 Settlement Administrator shall file with the Court a declaration or declarations certifying that
17 all procedures required by this Settlement have been followed.

18 **E. Purpose of Payments.**

19 The payments from the Gross Settlement Amount are not being made for any purpose
20 other than to effectuate the terms of this Settlement, and shall not be construed as compensation
21 for purposes of determining eligibility for any health or welfare benefits or unemployment
22 compensation. Settlement Class Members are not entitled to any new or additional
23 compensation or benefits as a result of having received an Individual Settlement Payment
24 (notwithstanding any contrary language or agreement in any benefit or compensation plan
25 document that might have been in effect during the period covered by this Settlement).

26 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

27 Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys'
28 fees not in excess of Three Hundred Sixty Thousand Dollars and Zero Cents (\$360,000.00), or

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1 approximately one third of the Gross Settlement Amount. Class Counsel shall further apply
2 for, and Defendant shall not oppose, an application or motion by Class Counsel for
3 reimbursement of costs associated with Class Counsel's prosecution of this matter not in excess
4 of Fifteen Thousand Dollars and Zero Cents (\$15,000.00). Awards of attorneys' fees and costs
5 shall be paid out of the Gross Settlement Amount, for all past and future attorneys' fees and
6 costs necessary to prosecute, settle, and obtain Final Approval of the settlement in the Action.
7 The "future" aspect of the amounts stated herein includes, without limitation, all time and
8 expenses expended by Class Counsel (including any appeals therein). There will be no
9 additional charge of any kind to either the Settlement Class Members or request for additional
10 consideration from Defendant for such work. Should the Court approve attorneys' fees and/or
11 litigation costs and expenses in amounts that are less than the amounts provided for herein, then
12 the unapproved portion(s) shall be a part of the Net Settlement Amount.

13 **13. ENHANCEMENT PAYMENT TO PLAINTIFF**

14 Plaintiff shall seek, and Defendant shall not oppose, an Enhancement Payment in an
15 amount not to exceed Five Thousand Dollars (\$5,000), for her participation in and assistance
16 with the Action. Any Enhancement Payment awarded to Plaintiff shall be paid from the Gross
17 Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves an
18 Enhancement Payment to Plaintiff in less than the amount sought herein, then the unapproved
19 portion(s) shall be a part of the Net Settlement Amount.

20 **14. TAXATION AND ALLOCATION**

21 A. Each Individual Settlement Payment shall be allocated as follows: 25% as wages
22 (to be reported on an IRS Form W2), and 75% as interest and penalties (to be reported on an
23 IRS Form 1099). The Parties agree that the employee's share of taxes and withholdings with
24 respect to the wage-portion of the Individual Settlement Payment will be withheld in order to
25 yield the Individual Settlement Payment. The amount of federal income tax withholding will
26 be based upon a flat withholding rate for supplemental wage payments in accordance with
27 Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will
28 also be made pursuant to applicable state and/or local withholding codes or regulations.

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

7 C. All Employer Taxes shall be paid by Defendant separate, apart, and above from
8 the Gross Settlement Amount. Defendant shall remain liable to pay the employer's share of
9 payroll taxes.

10 D. Neither Class Counsel nor Defense Counsel intend anything contained herein to
11 constitute legal advice regarding the tax consequences of any amount paid hereunder, nor shall
12 it be relied upon as such. The tax issues for each Settlement Class Member are unique, and
13 each Settlement Class Member is advised to obtain tax advice from his or her own tax advisor
14 with respect to any payments resulting from this Settlement.

15 **15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

16 The Parties agree to allocate Thirty Thousand Dollars and Zero Cents (\$30,000.00) of
17 the Gross Settlement Amount toward penalties recoverable pursuant to the Private Attorneys'
18 General Act, California Labor Code sections 2698, *et seq.* ("the PAGA Payment"). Pursuant to
19 the PAGA, seventy-five percent (75%) of the PAGA Payment (\$22,500.00) will be paid to the
20 LWDA, and twenty-five percent (25%) of the PAGA Payment (\$7,500.00) will remain a part of
21 the Net Settlement Amount to be distributed to Participating Class Members on a *pro rata*
22 basis, based upon their respective Workweeks.

23 **16. COURT APPROVAL**

24 This Agreement is contingent upon an order by the Court granting Final Approval of the
25 Settlement. In the event it becomes impossible to secure approval of the Settlement, the Parties
26 shall be restored to their respective positions in the Action prior to entry of this Settlement.

27 / / /

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1 **17. MISCELLANEOUS PROVISIONS**

2 **A. Notice of Final Approval.**

3 Within ten (10) calendar days of the Court's entry of Final Approval, the Settlement
4 Administrator shall post the Final Approval Order and Judgment on its website.

5 **B. Interpretation of the Agreement.**

6 This Agreement constitutes the entire agreement between Plaintiff and Defendant with
7 respect to its subject matter. Except as expressly provided herein, this Agreement has not been
8 executed in reliance upon any other written or oral representations or terms, and no such
9 extrinsic oral or written representations or terms shall modify, vary, or contradict its terms. In
10 entering into this Agreement, the Parties agree that this Agreement is to be construed according
11 to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will
12 be interpreted and enforced under the laws of the State of California, both in its procedural and
13 substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of
14 or relating to the Agreement, or the subject matter hereof, will be resolved solely and
15 exclusively in the Superior Court of the State of California for the County of San Bernardino,
16 and Plaintiff and Defendant hereby consent to the personal jurisdiction of the Court over it
17 solely in connection therewith. The foregoing is only limited to disputes concerning this
18 Agreement and in no way limits or negates the enforceability and effect of any underlying
19 arbitration agreements signed by employees of Defendant obligating them to arbitrate any and
20 all claims on an individual (and not on a class, collective, or representative) basis. Plaintiff, on
21 behalf of herself and on behalf of the Settlement Class, and Defendant participated in the
22 negotiation and drafting of this Agreement and had available to them the advice and assistance
23 of independent counsel. As such, neither Plaintiff nor Defendant may claim that any ambiguity
24 in this Agreement should be construed against the other. The Agreement may be modified only
25 by a writing signed by counsel for the Parties and approved by the Court.

26 **C. No Discouragement.**

27 Neither Plaintiff nor Defendant, nor their respective agents, counsel, or employees, shall
28 discourage any Settlement Class Member from participating in the Settlement.

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1 **D. Further Cooperation.**

2 Plaintiff, Defendant, and their respective attorneys shall proceed diligently to prepare
3 and execute all documents, to seek the necessary approvals from the Court, and to do all things
4 reasonably necessary to consummate the Settlement as expeditiously as possible. As soon as
5 practicable after execution of this Agreement, Class Counsel shall, with the assistance and
6 cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's
7 preliminary and final approvals of this Settlement.

8 **E. Counterparts.**

9 This Agreement may be executed in any number of counterparts, which may be
10 transmitted via facsimile or digital form, with the same effect as if all Parties had signed the
11 same agreement. All counterparts shall be construed as and shall constitute one and the same
12 agreement. Facsimile or digital signatures shall be binding as if each were an original inked
13 signature. In proving this Agreement, it will not be necessary to produce or account for the
14 original counterpart signed by the Party against whom the proof is being presented. Executed
15 copies of this Agreement sent by e-mail or facsimile transmission from one party to the other,
16 shall be binding on the party sending the e-mail or the facsimile transmission.

17 **F. Authority.**

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

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

21 Plaintiff, Participating Class Members, Class Counsel, and Defendant are direct
22 beneficiaries of this Agreement, but there are no third-party beneficiaries.

23 **H. No Prior Assignments.**

24 The Parties hereto represent, covenant, and warrant that they have not, directly or
25 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber, to
26 any person or entity, any portion of any liability, claim, demand, action, cause of action, or
27 rights herein released and discharged except as set forth herein.

1 **I. Force Majeure.**

2 The failure of any party to perform any of its obligations hereunder shall not subject
3 such party to any liability or remedy for damages, or otherwise, where such failure is
4 occasioned in whole or in part by acts of God, fires, accidents, earthquakes, other natural
5 disasters, explosions, floods, wars, interruptions or delays in transportation, power outages,
6 labor disputes or shortages, shortages of material or supplies, governmental laws, restrictions,
7 rules or regulations, sabotage, terrorist acts, acts or failures to act of any third parties, or any
8 other similar or different circumstances or causes beyond the reasonable control of such party.

9 **J. Deadlines Falling on Weekends or Holidays.**

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

12 **K. Titles and Captions.**

13 Paragraph titles or captions contained herein are inserted as a matter of convenience and
14 for reference, and in no way define, limit, extend, or describe the scope of this Settlement or
15 any provision hereof. Each term of this Settlement is contractual and not merely a recital.

16 **L. Notices.**

17 Any notices or other documents that must or may be transmitted to the Parties or their
18 counsel pursuant to any section of this Agreement shall be transmitted to the following:

19 **For Documents to Plaintiff or Class Counsel:**

20 David D. Bibiyan (Cal. Bar No. 287811)

david@tomorrowlaw.com

21 Diego Aviles (Cal. Bar No. 315533)

diego@tomorrowlaw.com

22 1801 Century Park East, Suite 2600

23 Los Angeles, California 90067

24 **For Documents to Defendant or Defense Counsel:**

25 Eric Nelson Lindquist (Cal. Bar No. 40918)

eric.l@enllaw.com

26 2419 James M. Wood Boulevard

 Los Angeles, California 90006-2004

27 Julie Capell (Cal. Bar No. 226662)

juliecapell@dwt.com

28 865 S. Figueroa St., Ste. 2400

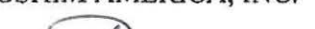
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IT IS SO AGREED:

Dated: 3/19/2019, 2019

NONGSHIM AMERICA, INC.

By: 

Its Youngchang Kim
Printed Name of Authorized Signatory

Defendant

APPROVED AS TO FORM:

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