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12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF TULARE**

15 EDDIE HERNANDEZ, individually and on
16 behalf of others similarly situated,

17 Plaintiff,

18 vs.
19

20 NEW IMAGE POOL INTERIORS, INC., a
California corporation; and DOES 1 through 50,
21 inclusive,

22 Defendants.
23

Case No.: VCU293400

*Assigned for all purposes to the Honorable
Bret D. Hillman, Dept. 7*

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

Complaint Filed: September 16, 2022
FAC Filed: November 21, 2022
Trial Date: Not set

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

2 This Joint Stipulation of Class Action and PAGA Settlement is entered into by and between
3 Plaintiff Eddie Hernandez, individually and on behalf of the Class, and Defendant New Image Pool
4 Interiors, Inc.

5 **DEFINITIONS**

6 1. “Agreement” or “Settlement Agreement” means this Joint Stipulation of Class Action
7 and PAGA Settlement.

8 2. “Action” refers to the court action entitled *Eddie Hernandez v. New Image Pool*
9 *Interiors, Inc.*, Tulare County Superior Court Case No. VCU293400.

10 3. “Class Counsel” means S. Emi Minne and Jill J. Parker of Parker & Minne, LLP and
11 Benjamin Smith of Smith Law, who will seek to be appointed as counsel for the Class.

12 4. “Class Counsel’s Fees and Costs” means attorneys’ fees for Class Counsel’s litigation
13 and resolution of the Action and their expenses and costs incurred in connection with the Action, which
14 shall be paid from the Gross Settlement Amount. Class Counsel will request attorneys’ fees not to
15 exceed Thirty-Five Percent (35%) of the Gross Settlement Amount (i.e., \$204,750.00), and the
16 reimbursement costs and expenses associated with the litigation and settlement of the Action, not to
17 exceed \$20,000.00, subject to the Court’s approval. Defendant has agreed not to oppose Class
18 Counsel’s request for fees and reimbursement of costs and expenses in the amounts set forth above.

19 5. “Class List” means a complete list of all Class Members and PAGA Members that
20 Defendant will diligently and in good faith compile from their records and provide to the Settlement
21 Administrator within fourteen (14) calendar days after Preliminary Approval of this Settlement. The
22 Class List will be formatted in a readable Microsoft Office Excel spreadsheet and will include all Class
23 Members’ and PAGA Members’: (1) full name; (2) last known home address; (3) last known telephone
24 number; (4) social security number; (5) start and end dates of active employment as a non-exempt
25 employee of Defendant in the State of California; (6) total Workweeks during the Class Period; (7)
26 total Workweeks during the PAGA Period; and (8) any other information required by the Settlement
27 Administrator in order to effectuate the terms of the Settlement.

1 6. “Class” or “Class Members” means all current and former hourly-paid, non-exempt
2 employees of Defendant who were employed by Defendant in the State of California at any time during
3 the Class Period.

4 7. “Class Period” means the period commencing on September 16, 2018, and ending on.
5 October 21, 2023.

6 8. “Class Representative Enhancement Payment” means the amount that the Court
7 authorizes to be paid to Plaintiff Eddie Hernandez, in addition to his Individual Class Payment, in
8 recognition of the efforts and risks he has taken in assisting with the prosecution of the Action.

9 9. “Court” means the Superior Court of the State of California for the County of Tulare.

10 10. “Defendant” refers to New Image Pool Interiors, Inc.

11 11. “Defendant’s Counsel” means Paul J. Bauer of Sagaser, Watkins & Wieland, PC.

12 12. “Effective Date” means the date by when both of the following have occurred: (a) the
13 Court enters the Final Approval Order and Judgment; and (b) the Final Approval Order and Judgment
14 is final. The Final Approval Order and Judgment is final as of the latest of the following occurrences:
15 (a) if no Participating Class Member objects to the Settlement, the day the Court enters Final Approval
16 Order and Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day
17 after the deadline for filing a notice of appeal from the Final Approval Order and Judgment; or (c) if a
18 timely appeal from the Final Approval Order and Judgment is filed, the day after the appellate court
19 affirms the Final Approval Order and Judgment and issues a remittitur.

20 13. “Final Approval” means the date the Court enters an order granting final approval of
21 the Settlement Agreement.

22 14. “Final Approval Order and Judgment” mean the judgment and order entered by the
23 Court upon Final Approval of the Settlement Agreement, which will be a judgment for purposes of
24 California Rule of Court, Rule 3.771(a) and constitute approval pursuant to California Rule of Court,
25 Rule 3.769(a).

26 15. “Gross Settlement Amount” means the sum of Five Hundred Eighty-Five Thousand
27 Dollars and Zero Cents (\$585,000.00) to be paid by Defendant in full satisfaction of all of Defendant’s
28 liabilities in the Action, including Class Counsel’s Fees and Costs, Class Representative Enhancement

1 Payments, Payments to Class Members, PAGA Penalties, and Settlement Administration Costs. The
2 Gross Settlement Amount does not include any employer-side taxes and withholdings, which will be
3 calculated by the Settlement Administrator and separately paid for by Defendant.

4 16. “Individual Class Payment” means a Participating Class Members’ pro-rata share of
5 the Net Settlement Amount.

6 17. “Individual PAGA Payment” means a PAGA Member’s pro-rata share of the 25%
7 portion of PAGA Penalties to be paid to PAGA Members.

8 18. “Net Settlement Amount” means the funds available for payments to Class Members,
9 which shall be the amount remaining after the following amounts are deducted from the Gross
10 Settlement Amount: (1) Class Counsel’s fees, (2) Class Counsel’s costs, (3) Settlement Administration
11 Costs, (4) Class Representative Enhancement Payment to Plaintiff; and (5) the PAGA Penalties to the
12 LWDA and PAGA Members.

13 19. “Notice” means the Notice of Class Action and PAGA Settlement in a form
14 substantially similar to the form attached hereto as Exhibit A, that will be mailed to Class Members’
15 and PAGA Members’ last known addresses and which will provide Class Members and PAGA
16 Members with information regarding the Action and information regarding the settlement of the Action.

17 20. “PAGA” means the California Labor Code Private Attorneys General Act of 2004, Cal.
18 Lab. Code §§ 2698, *et seq.*

19 21. “PAGA Penalties” means the amount that the Parties have agreed to allocate in order
20 to settle claims arising under the Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et*
21 *seq.*) (“PAGA”). The Parties have agreed that Thirty-Five Thousand Dollars (\$35,000.00) of the Gross
22 Settlement Amount will be allocated to the resolution of Plaintiff’s PAGA Claims. Seventy-Five
23 Percent (75%) of this amount (\$26,250.00) will be paid to the California Labor and Workforce
24 Development Agency in accordance with Labor Code §§ 2698 *et seq.* Twenty Five Percent (25%) of
25 this amount (\$8,750.00), will be distributed to PAGA Members. PAGA Members will receive payment
26 from the employee portion of the PAGA Penalties regardless of their decision to participate in the class
27 action if the PAGA Penalties are approved by the Court.
28

1 22. “PAGA Members” means all current and former non-exempt employees of Defendant
2 who were employed by Defendant in the state of California at any time during the PAGA Period.

3 23. “PAGA Notice” refers to the notice letter submitted to the LWDA by Plaintiff on
4 September 15, 2022.

5 24. “PAGA Period” means the period commencing on September 15, 2021, and ending on
6 October 21, 2023.

7 25. “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean either
8 Plaintiff or Defendant, individually.

9 26. “Participating Class Members” means all Class Members who do not submit valid and
10 timely Requests for Exclusion.

11 27. “Plaintiff” means Plaintiff Eddie Hernandez, who will seek to be appointed as the
12 representative for the Class.

13 28. “Preliminary Approval” means the date the Court enters an order granting preliminary
14 approval of the Settlement Agreement.

15 29. “Objection” means a Class Member’s valid and timely written objection to the
16 Settlement Agreement. For an Objection to be valid, it must include: (a) the objector’s full name,
17 address, telephone number, last four digits of the objector’s social security number or employee ID
18 number and (b) a written statement of all grounds for the objection accompanied by legal support, if
19 any, for such objection.

20 30. “Released Class Claims” means all claims, rights, demands, liabilities and causes of
21 action that are alleged, or reasonably could have been alleged based on the factual allegations and
22 claims asserted in the Action arising during the Class Period, including the following claims: (1)
23 Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California
24 Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor
25 Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197,
26 and 11971. (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final
27 Wages Not Timely Paid); (6) Violation of California Labor Code § 226(a) (Failure to Provide Accurate
28 Wage Statements); (7) Violation of California Labor Code §§ 2800 and 2802 (Failure to Reimburse

Necessary Business Expenses); and (8) Violation of California Business & Professions Code §§ 17200, et seq. based on violations of Labor Code sections 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 2800, and 2802.

31. “Released PAGA Claims” means any and all claims for the recovery for civil penalties, attorneys’ fees and costs permissible under PAGA which Plaintiff, the LWDA, the State of California, and/or the PAGA Members had, or may claim to have, against Released Parties, arising out of the violations alleged in the Complaint or the PAGA Notice during the PAGA Period, including failure to pay overtime compensation, failure to pay minimum wages, failure to provide compliant meal and rest breaks, failure to pay meal and rest period premiums, failure to pay all wages owed at discharge or resignation; failure to timely pay wages during employment; failure to provide complete and accurate wage statements; failure to keep complete and accurate payroll records; failure to reimburse necessary business-related expenses; and violations of Labor Code sections 201, 202, 203, 204, 226(a), 226.3, 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2698, *et seq.*, 2800, and 2802 and the Industrial Welfare Commission Orders.

32. “Released Parties” means Defendant New Image Pool Interiors, Inc., and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

33. “Request for Exclusion” means a valid and timely written statement submitted by a Class Member requesting to be excluded from the Action.

34. “Response Deadline” means the date sixty (60) days after the Settlement Administrator mails Notice to Class Members, which shall be the last date on which Class Members may submit Requests for Exclusion, written objections to the Settlement, or Workweek Disputes to the Settlement Administrator via mail, facsimile, or e-mail. In the event the 60th day falls on a Sunday or Federal holiday, the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline for Requests for Exclusion or objections will be extended fifteen (15) calendar days for any Class Member who is re-mailed a Notice by the Settlement Administrator, unless the 15th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended

1 to the next day on which the U.S. Postal Service is open. The Response Deadline may also be extended
2 by express agreement between Class Counsel and Defendant’s Counsel. Under no circumstances,
3 however, will the Settlement Administrator have the authority to unilaterally extend the deadline for
4 Class Members to submit a Request for Exclusion or objection to the Settlement.

5 35. “Settlement” means the disposition of the Action pursuant to this Agreement.

6 36. “Settlement Administrator” means ILYM Group, Inc. The Parties each represent that
7 they do not have any financial interest in the Settlement Administrator or otherwise have a relationship
8 with the Settlement Administrator that could create a conflict of interest.

9 37. “Settlement Administration Costs” mean the costs payable from the Gross Settlement
10 Amount to the Settlement Administrator for administering this Settlement, including, but not limited
11 to, printing, distributing, and tracking documents for this Settlement, calculating/confirming the class
12 member Workweeks from the information contained in the Class List, calculating each Participating
13 Class Member’s Individual Class Payment, calculating each PAGA Member’s Individual PAGA
14 Payment, tax reporting, distributing the Gross Settlement Amount, providing necessary reports and
15 declarations, and other duties and responsibilities set forth herein to process this Settlement. It is
16 currently estimated that Settlement Administration Costs shall not exceed \$5,000.00.

17 38. “Workweek” shall mean any calendar week (i.e. a week beginning on Sunday and
18 ending on Saturday) in which a Class Member or PAGA Member worked at least 1 day for Defendant.

19 **RECITALS**

20 39. On September 15, 2023, Plaintiff provided written notice to the California Labor &
21 Workforce Development Agency (“LWDA”) and Defendant of his intent to seek civil penalties
22 pursuant to PAGA for Defendant’s alleged violations of California Labor Code §§ 201, 202, 203, 204,
23 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.

24 40. On September 16, 2022, Plaintiff filed a putative class action complaint against
25 Defendant in the Superior Court for the State of California, County of Sacramento entitled *Eddie*
26 *Hernandez v. New Image Pool Interiors, Inc.*, Case No. VCU293400, alleging the following eight (8)
27 causes of action: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime Wages);
28 (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3)

1 Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California
2 Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor
3 Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 226(a)
4 (Failure to Provide Accurate Wage Statements); (7) Violation of California Labor Code §§ 2800 and
5 2802 (Unreimbursed Business Expenses); and (8) Violation of California Business and Professions
6 Code §§ 17200, et seq.

7 41. On November 21, 2023, Plaintiff filed a First Amended complaint in the Action adding
8 an additional cause of action seeking civil penalties under PAGA.

9 42. Defendant filed its answer to the operative complaint and denies the allegations in the
10 complaint in the Action and PAGA Notice, denies any failure to comply with the laws identified in in
11 the operative complaints in the Action and PAGA Notice, and denies any and all liability for any of the
12 causes of action pled and facts asserted in the Action and PAGA Notice.

13 43. Following the filing of the Action, the Parties met and conferred with respect to
14 potential resolution of this Action, and agreed to engage in private mediation. Prior to mediation, Class
15 Counsel diligently investigated the claims against Defendant, including any and all applicable defenses
16 and the applicable law. This investigation included, *inter alia* the exchange of both formal and informal
17 discovery, review of numerous corporate policies and practices, and analysis of a representative
18 sampling of the time and payroll records for the putative class. Class Counsel's investigation was
19 sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48
20 Cal.App.4th 1794, 1801 (1998) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129-130
21 (2008).

22 44. On August 22, 2023, the Parties participated in a private mediation with Henry
23 Bongiovi Esq., a respected mediator with extensive experience in complex wage and hour litigation.
24 Mr. Bongiovi's supervision of the mediation and negotiations was critical in managing the expectations
25 of the Parties, and in providing a useful and neutral analysis of the case to both Parties. After a full day
26 of negotiations, the Parties reached an agreement to settle this matter on a class-wide basis, the material
27 terms of which are now fully memorialized in this Agreement.

45. The settlement discussions during and after mediation were conducted at arms-length, and this Agreement is the result of an informed and detailed analysis of Defendant's potential liability in relation to the costs and risks associated with continued litigation.

46. Based on data produced pursuant to formal and informal discovery, as well as Class Counsel's own independent investigation and evaluation, Plaintiff and Class Counsel believe that the Settlement for the consideration and terms set forth in this Agreement is fair, reasonable and adequate, and is in the best interests of the Class in light of all known facts and circumstances.

47. This Agreement is made and entered into by and between Plaintiff individually and on behalf of the Settlement Class, and Defendant, and is subject to the terms and conditions hereof, and to the Court's approval. The Parties expressly acknowledge that this Agreement is entered solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendant. If for any reason this Agreement is not approved, it will be of no force or effect, and the Parties shall be returned to their original respective positions.

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

48. Class Certification for Settlement Purposes Only: Solely for purposes of Settlement of the Action, the Parties stipulate and agree that the requirements for establishing class certification with respect to the Class have been satisfied, and stipulate and agree to certification of the Class. The Parties further agree to the designation of Parker & Minne, LLP and Smith Law as counsel for the Class. Should the Settlement not be approved or is terminated, the fact that the Parties were willing to stipulate to class certification as part of the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of whether a class should be certified in a non-settlement context in this Action.

49. Settlement Consideration: Defendant shall fund the Gross Settlement Amount and all applicable employer-side payroll taxes following Final Approval by the Court and the occurrence of the Effective Date. The following will be paid out of the Gross Settlement Amount: the sum of the Individual Class Payments, the Class Representative Enhancement Payment, Class Counsel's Fees and

Costs, the PAGA Penalties, and the Settlement Administration Costs, as specified in this Agreement. Except for any employer-side taxes due on the Individual Class Payments, or as a result of an increase in the number of workweeks as set forth in Paragraph 50 below, Defendant shall not be required to pay more than the Gross Settlement Amount. The Gross Settlement Amount is non-reversionary; no portion of the Gross Settlement Amount will revert to Defendant.

50. Potential Increase to the Gross Settlement Amount: The Gross Settlement Amount is based on Defendant's representation that Class Members worked a total of 15,552 Workweeks during the Class Period ("Certified Workweek Amount"). Should the actual number of Workweeks for Class Members during the Class Period exceed the Certified Workweek Amount by more than ten percent (10%) (i.e., final total Workweeks increased by more than 1,555 Workweeks), then Defendant shall elect between of the following two options: (i) increase the Gross Settlement Amount proportionally to the actual percentage increase between the Certified Workweek Amount and the number of actual Workweeks worked by the Class Members (e.g., if the number of Workweeks increases by 11% to 17,262 Workweeks, the Gross Settlement Amount will increase by 1% to \$590,850.00), or (ii) end the Class Period and PAGA Period on the date prior to which the actual number of Workweeks worked by the Class Members exceeded 15,552 by 10% (i.e., the day before the total number of Workweeks is equal to or more than 17,108.)

51. Funding of the Gross Settlement Amount: Within fourteen (14) calendar days of the Effective Date of the Settlement, Defendant will deposit the Gross Settlement Amount (and all applicable employer-side payroll taxes into a Qualified Settlement Fund ("QSF") to be established by the Settlement Administrator. Defendant shall provide all information necessary for the Settlement Administrator to calculate necessary payroll taxes including its official name, 8-digit state unemployment insurance tax ID number, and other information requested by the Settlement Administrator, no later than seven (7) calendar days of the Effective Date.

52. Distribution of the Gross Settlement Amount: Within fourteen (14) calendar days of the funding of the Gross Settlement Amount, the Settlement Administrator will issue payments for: (a) Individual Class Payments; (b) Individual PAGA Payments; (c) the PAGA Penalties to the Labor and

Workforce Development Agency; (d) the Class Representative Enhancement Payments; (e) Class Counsel's Fees and Costs; and (f) Settlement Administration Costs.

53. Attorneys' Fees and Costs: Defendant agrees not to oppose any application or motion by Class Counsel for attorneys' fees of not more than thirty-five percent (35%) of the Gross Settlement Amount, i.e. Two Hundred Four Thousand Seven Hundred Fifty Dollars and Zero Cents (\$204,750.00), plus the reimbursement of costs and expenses associated with the litigation and settlement of the Action in an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00), both of which will be paid from the Gross Settlement Amount. Any portion of the requested fees or costs that are not awarded to the Class Counsel shall be reallocated to the Net Settlement Amount and distributed to Participating Class Members as provided in this Agreement.

54. Class Representative Enhancement Payment: Defendant agrees not to oppose or object to any application or motion by Plaintiff for a Class Representative Enhancement Payment in the amount of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff. The Class Representative Enhancement Payment is to recognize the Plaintiff's time, effort and risk in bringing and prosecuting the Action. Any portion of the requested Class Representative Enhancement Payment that is not awarded to Plaintiff shall be reallocated to the Net Settlement Amount and distributed to Participating Class Members as provided in this Agreement.

55. 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 as further set forth in this Agreement. Settlement Administration Costs are currently estimated not to exceed \$5,000.00. The Parties acknowledge that Settlement Administration Costs may increase above the current estimate of \$5,000.00 and that any such additional Settlement Administration Costs will be taken out of the Gross Settlement Amount. Any portion of the requested Settlement Administration Costs that are not awarded to the Settlement Administrator or which are not ultimately required to complete administration of the Settlement shall be reallocated to the Net Settlement Amount and distributed to Participating Class Members as provided in this Agreement.

56. PAGA Penalties: Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the

PAGA. The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Penalties, or Twenty-Six Thousand Two Hundred Fifty Dollars (\$26,250.00), to the California Labor and Workforce Development Agency (“LWDA”). Eight Thousand Seven Hundred Fifty Dollars (\$8,750.00), will be distributed to PAGA Members on a *pro rata* basis based on the total number of Workweeks worked by each PAGA Member during the PAGA Period. PAGA Members shall receive their portion of the PAGA Penalties even if they request to be excluded from the class settlement.

57. Net Settlement Amount for Payment of Class Claims: The Net Settlement Amount will be used to satisfy the class portion of Participating Class Members’ Individual Class Payments in accordance with the terms of this Agreement. The estimated Net Settlement Amount is as follows:

Gross Settlement Amount	\$	585,000.00
Enhancement Payment:	\$	7,500.00
Class Counsel’s Fees:	\$	204,750.00
Class Counsel’s Costs:	\$	20,000.00
PAGA Penalties	\$	35,000.00
Settlement Administration Costs:	\$	5,000.00
Estimated Net Settlement Amount	\$	312,750.00

58. Individual Class Payment Calculations: Individual Class Payments will be paid from the Net Settlement Amount on a pro-rata basis based on the total Workweeks worked by Participating Class Members during the Class Period. Specifically, the Settlement Administrator will calculate the total Workweeks for all Participating Class Members by adding the number of Workweeks worked by each Participating Class Member during the Class Period. The respective Workweeks for each Participating Class Member will be divided by the total Workweeks for all Participating Class Members, resulting in the payment ratio for each Participating Class Member. Each Participating Class Member’s payment ratio will then be multiplied by the Net Settlement Amount to calculate each Settlement Class Member’s estimated Individual Class Payment.

59. Tax Allocation of Individual Class Payments: Individual Class Payments will be allocated as follows: twenty percent (20%) of each Individual Class Payment will be allocated as wages, forty percent (40%) shall be allocated as interest, and forty percent (40%) shall be allocated as penalties.

The portion of the Individual Class Payment allocated to wages will be reported by the Settlement Administrator on an IRS Form W-2. The remaining non-wage payments will be reported on an IRS Form-1099 by the Settlement Administrator

60. Individual PAGA Payment Calculations: Individual PAGA Payments will be paid on a pro-rata basis based on the total Workweeks worked by PAGA Members during the PAGA Period. Specifically, the Settlement Administrator will calculate the total Workweeks for all PAGA Members by adding the number of Workweeks worked by each PAGA Member during the PAGA Period. The respective Workweeks for each PAGA Member will be divided by the total Workweeks for all PAGA Members, resulting in the payment ratio for each PAGA Member. Each PAGA Member's payment ratio will then be multiplied by the 25% employee portion of the PAGA Penalties to calculate each PAGA Member's estimated Individual PAGA Payment. PAGA Members shall receive an Individual PAGA Payment regardless of whether they submit a Request for Exclusion.

61. Tax Allocation of Individual PAGA Payments: Individual PAGA Payments are not subject to withholdings and will be reported on an IRS Form 1099 by the Settlement Administrator.

62. No Credit Toward Benefit Plans: The Individual Class 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.

63. Settlement 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. The Settlement Administrator will provide the following services:

- a) Establish and maintain a Qualified Settlement Fund.
- b) Calculate the Individual Class Payment each Participating Class Member is eligible to receive.

- c) Calculate the Individual PAGA Payment each PAGA Member shall receive.
- d) Print and mail the Notice in both Spanish and English.
- e) Conduct additional address searches for mailed Notices that are returned as undeliverable.
- f) Process Objections and Requests for Exclusion.
- g) Field inquiries from Class Members.
- h) Print and issue and issue Settlement Payment Checks.
- i) Prepare IRS W2 and 1099 Tax Forms and any other filings required by any governmental taxing authority.
- j) Provide declarations and/or other information to this Court as requested by the Parties and/or the Court.
- k) Provide weekly status reports to counsel for the Parties.
- l) Posting copies of the operative Complaint, Settlement, Notice, Preliminary Approval Order, and Final Approval Order and Judgment online at Settlement Administrator's website.

64. Delivery of the Class List: Within fourteen (14) calendar days of Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator. This is a material term of the Agreement, and if Defendant fails to comply, Plaintiff shall have the right to void the Agreement.

65. Notice by First-Class U.S. Mail: Within fourteen (14) calendar days after receiving the Class List from Defendant, the Settlement Administrator will mail the Notice to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

66. Confirmation of Contact Information in the Class List: 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 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. If any notice sent to a Class Member by the Settlement Administrator is returned as undeliverable to a current employee, then Defendant shall make all reasonable efforts to obtain the current address from the Class Member and provide the same within seven (7) calendar days of notice from the Settlement Administrator. Those Class Members who receive a re-mailed Notice, whether by skip-trace or by request, will have an additional fifteen (15) calendar days beyond the original Response Deadline to submit a Request for Exclusion or an objection to the Settlement via mail, facsimile, or e-mail.

67. Notice: All Class Members will be mailed a Notice in English and Spanish, substantially in the form attached hereto as Exhibit A. Each Notice will provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's principal terms; (c) the Class definition; (d) the total number of Workweeks each respective Class Member worked for Defendant during the Settlement Class Period; (e) each Class Member's estimated Individual Class Payment and the formula for calculating Individual Class Payments; (f) each PAGA Members' estimated Individual PAGA Payment and the formula for calculating Individual PAGA Payments; (g) the dates which comprise the Class Period; (h) the deadlines by which the Class Member must email, fax, or postmark Requests for Exclusion, Objections to the Settlement, or Workweek Disputes; (i) the claims to be released, as set forth herein; and (j) the date for the Final Approval hearing.

68. Disputed Information on Notice: Class Members will have an opportunity to dispute the information provided in their Notice. To the extent Class Members dispute the number of Workweeks with which they have been credited or the amount of their Individual Class Payments, Class Members may produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's records will be presumed determinative. However, if a Class Member produces evidence to the contrary by the Response Deadline, the Parties will evaluate the evidence submitted by the Class Member and the Parties will make the final decision as to the number of eligible Workweeks that should be applied and/or the Individual Class Payments to which the Class Member may be entitled. If the Parties are unable to

1 resolve the dispute, the Settlement Administrator will be the final arbiter of the Workweeks for each
2 Class Member during the Class Period, based on the information provided to it. Class Members must
3 submit any disputes to the number of Workweeks reported on the Notice to the Settlement
4 Administrator via email, facsimile or mail by the Response Deadline.

5 69. Request for Exclusion Procedures: Any Class Member wishing to opt-out from the
6 Action must sign and return a written Request for Exclusion to the Settlement Administrator by the
7 Response Deadline via email, facsimile or mail. The Request for Exclusion must include (a) the Class
8 Member's name, address, telephone number, and the last four digits of the Class Member's Social
9 Security number and/or the Employee ID number and (b) a clear statement requesting to be excluded
10 from the settlement of the class claims similar to the following: "I wish to exclude myself from the
11 class settlement reached in the matter of *Hernandez v. New Image Pool Interiors*. I understand that by
12 excluding myself, I will not receive money from the settlement of my individual claims." The date of
13 the email, fax, or postmark will be the exclusive means to determine whether a Request for Exclusion
14 has been timely submitted. All Requests for Exclusion will be submitted to the Settlement
15 Administrator, who will certify jointly to Class Counsel and Defendant's Counsel the Requests for
16 Exclusion that were timely submitted. All Class Members who do not request exclusion from the Action
17 will be bound by all terms of the Settlement Agreement if the Settlement is granted final approval by
18 the Court. The Request for Exclusion shall not be effective as to the release of claims arising under the
19 Private Attorneys General Act.

20 70. Defective Submissions: If a Class Member's Request for Exclusion is defective as to
21 the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s).
22 The Settlement Administrator will mail the Class Member a cure letter within three (3) business days
23 of receiving the defective submission to advise the Class Member that his or her submission is defective
24 and that the defect must be cured to render the Request for Exclusion valid. The Class Member will
25 have until the later of (a) the Response Deadline or (b) fourteen (14) calendar days from the date of the
26 cure letter, whichever date is later, to email, fax, or postmark a revised Request for Exclusion. If a Class
27 Member responds to a cure letter by filing a defective claim, then the Settlement Administrator will
28 have no further obligation to give notice of a need to cure. If the revised Request for Exclusion is not

1 emailed, faxed, or postmarked within that period, it will be deemed untimely.

2 71. Defendant's Right to Rescind: If more than five percent (5%) of the Class Members
3 (rounded to the next whole number) elect not to participate in the Settlement, Defendant may, at its
4 election, rescind the Settlement Agreement and all actions taken in furtherance of it will be thereby null
5 and void. Defendant must meet and confer with Class Counsel prior to exercising this right, and must
6 make clear their intent to rescind the Agreement within fourteen (14) calendar days of the Settlement
7 Administrator notifying the Parties of the final number of opt-outs. If Defendant exercises its right to
8 rescind the Agreement, Defendant shall be responsible for all Settlement Administration Costs incurred
9 to the date of rescission.

10 72. Settlement Terms Bind All Class Members Who Do Not Opt-Out: Any Class Member
11 who does not affirmatively opt-out of the Settlement by submitting a timely and valid Request for
12 Exclusion will be bound by all of its terms, including those pertaining to the Released Claims, as well
13 as any Final Approval Order and Judgment that may be entered by the Court if it grants final approval
14 to the Settlement. Class Members who opt-out of the Settlement shall not be bound by such Final
15 Approval Order and Judgment or release. The names of Class Members who have opted-out of the
16 settlement shall be disclosed to the Counsel for both Plaintiff and Defendant and noted in the proposed
17 Final Approval Order and Judgment submitted to the Court.

18 73. Objection Procedures: To object to the Settlement, a Participating Class Member must
19 email, fax, or postmark a valid Objection to the Settlement Administrator on or before the Response
20 Deadline. The Objection must be signed by the Participating Class Member and contain all information
21 required by this Settlement Agreement including the employees full name, address, telephone number,
22 the last four digits of their social security number and/or Employee ID number, and the specific reason
23 including any legal grounds for the Participating Class Members objection. The email, facsimile, or
24 postmark date will be deemed the exclusive means for determining that the Notice of Objection is
25 timely. Participating Class Members who fail to object in the manner specified above will be foreclosed
26 from making a written objection, but shall still have a right to appear at the Final Approval Hearing in
27 order to have their objections heard by the Court. At no time will any of the Parties or their counsel
28 seek to solicit or otherwise encourage Participating Class Members to submit written objections to the

1 Settlement or appeal from the Final Approval Order and Judgment. Class Counsel will not represent
2 any Class Members with respect to any objections to this Settlement.

3 74. Weekly Reports Regarding Settlement Administration: The Settlement Administrator
4 will provide Defendant's Counsel and Class Counsel a weekly report which certifies: (a) the number
5 of Class Members who have submitted valid Requests for Exclusion; (b) the number of Notices returned
6 and re-mailed; and (c) whether any Class Member has submitted any Objections, Requests for
7 Exclusions, or any challenges to any information contained in the Notice. Additionally, the Settlement
8 Administrator will provide to counsel for both Parties any updated reports regarding the administration
9 of the Settlement Agreement as needed or requested.

10 75. Compliance Declaration by Settlement Administrator: Within two weeks of the
11 Response Deadline, the Settlement Administrator will provide a signed declaration to Class Counsel
12 and Defendant's counsel attesting to its due diligence and compliance with all of its obligations under
13 this Agreement, including, but not limited to, the mailing of Notice, the Notices returned as undelivered,
14 the re-mailing of Notices, attempts to locate Class Members, the names of the individuals who
15 submitted timely and valid Requests for Exclusion from Settlement, and the number of written
16 objections to the Settlement. The Administrator shall also provide to Class Counsel and Defense
17 Counsel authenticated copies of every written objection and Request for Exclusion that it received. The
18 Administrator will supplement its declaration as needed or requested by the Parties and/or the Court.

19 76. Payment Schedule for All Court Approved Settlement payments: Within three (3)
20 business days of the Court granting Final Approval of the Settlement, the Settlement Administrator will
21 calculate all payments due, and shall provide Defendant's Counsel and Class Counsel with a report on
22 all disbursements to be made under the Settlement.

23 77. Uncashed Settlement Checks: Any checks issued by the Settlement Administrator to
24 Participating Class Members and PAGA Members will be negotiable for at least one hundred eighty
25 (180) calendar days. If a Participating Class Member or PAGA Member does not cash his or her
26 Individual Class Payment check or Individual PAGA Payment check within 180 days, the uncashed
27 funds, subject to Court approval, shall be distributed to the Controller of the State of California to be
28 held pursuant to the Unclaimed Property Law, California Civil Code §1500, *et. seq.* for the benefit of

1 those Participating Class Members and PAGA Members who did not cash their checks until such time
2 that they claim their property. The Parties agree that this disposition results in no “unpaid residue”
3 under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to
4 Participating Class Members and PAGA Members, whether or not they all cash their Individual Class
5 Payment checks or Individual PAGA Payment checks. Therefore, Defendant will not be required to
6 pay any interest on such amounts. The Individual Class Payment checks provided to Participating Class
7 Members and Individual PAGA Payment checks provided to PAGA Members shall prominently state
8 the expiration date or a statement that the Settlement Check will expire in one hundred eighty (180)
9 days, or alternatively, such a statement may be made in a letter accompanying the Individual Class
10 Payment and/or Individual PAGA Payment. Expired Individual Class Payments and expired Individual
11 PAGA Payments will not be reissued, except for good cause and as mutually agreed by the Parties in
12 writing. The parties agree no unclaimed funds will result from the settlement.

13 78. Administration of Taxes by the Settlement Administrator: The Settlement
14 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and Class
15 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to
16 this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes
17 and penalties to the appropriate government authorities.

18 79. Final Distribution Report and Declaration by Settlement Administrator: Within 10
19 calendar days after the Settlement Administrator disburses all funds in the Gross Settlement Amount,
20 the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its
21 disbursements by employee identification number only of all payments made under this Agreement. At
22 least 14 calendar days before any deadline set by the Court, the Settlement Administrator will prepare,
23 and submit to Class Counsel and Defense Counsel, a signed declaration under oath suitable for filing
24 in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is
25 responsible for filing the Settlement Administrator’s Declaration with the Court.

26 80. Tax Liability: Defendant makes no representation as to the tax treatment or legal effect
27 of the payments called for hereunder, and Plaintiff and Participating Class Members are not relying on
28 any statement, representation, or calculation by Defendant or by the Settlement Administrator in this

1 regard. Plaintiff and Participating Class Members understand and agree that they will be solely
2 responsible for the payment of any taxes and penalties assessed on the payments described herein.
3 Defendant's share of any employer payroll taxes and other required employer withholdings due on the
4 Individual Class Payments, including, but not limited to, Defendant's FICA and FUTA contributions,
5 shall be paid separate and apart from the Gross Settlement Amount.

6 81. Circular 230 Disclaimer: Each Party to this Agreement (for purposes of this section,
7 the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an
8 "other party") acknowledges and agrees that: (1) no provision of this Agreement, and no written
9 communication or disclosure between or among the Parties or their attorneys and other advisers, is or
10 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
11 relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31
12 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its
13 own, independent legal and tax counsel for advice (including tax advice) in connection with this
14 Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party
15 or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or
16 disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed
17 on the acknowledging party, and (3) no attorney or adviser to any other Party has imposed any limitation
18 that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether
19 such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or
20 tax structure of any transaction, including any transaction contemplated by this Agreement.

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

25 83. Release by Participating Class Members: Upon the complete funding of the Gross
26 Settlement Amount and all applicable employer-side payroll taxes by Defendant, Participating Class
27 Members shall fully release and discharge the Released Parties from any and all Released Class Claims
28 for the Class Period. This release shall be binding on all Participating Class Members.

1 84. Release by PAGA Members, the LWDA and the State of California: Upon the complete
2 funding of the Gross Settlement Amount, all PAGA Members, the LWDA, and State of California shall
3 fully release and discharge the Released Parties from any and all Released PAGA Claims for the PAGA
4 Period. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias*
5 *v. Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009), all PAGA Members shall release claims arising under
6 PAGA regardless of their decision to participate in the class settlement. PAGA Members who exclude
7 themselves from the settlement of class claims, shall still receive an Individual PAGA Payment and
8 release all claims for penalties pursuant to the PAGA during the PAGA Period.

9 85. Neutral Employment Reference: Defendant agrees that it will adopt a neutral reporting
10 policy regarding any future employment references related to Plaintiff. Specifically, should Plaintiff
11 seek an employment reference from Defendant, Plaintiff must direct all such inquiries to Defendant's
12 Human Resources department. Defendant shall communication to any prospective employer Plaintiff's
13 title and dates of employment, and no characterization of employment or separation from employment
14 will be provided.

15 86. Preliminary Approval Hearing: Promptly upon execution of this Settlement
16 Agreement, Plaintiff shall file a Motion for Preliminary Approval requesting the entry of an order as
17 follows:

- 18 a. Granting preliminary approval of the Settlement Agreement
- 19 b. Certifying the Class for the purposes of Settlement;
- 20 c. Approving, as to form and content, the proposed Notice;
- 21 d. Approving the manner and method for Class Members to request exclusion from
22 the Stipulation of Settlement as contained herein and within the Notice;
- 23 e. Directing the mailing of the Notice to the Class Members, in accordance with
24 the Agreement; and
- 25 f. Setting a date for a Final Approval/Settlement Fairness Hearing.

26 In conjunction with the Preliminary Approval hearing, Plaintiff will submit this Agreement, which
27 sets forth the terms of the Settlement, and will include the proposed Notice attached as Exhibit A.
28 Defendant agree that they will not oppose Plaintiff's motion for preliminary approval or delay the

1 hearing thereon. This is a material term of the Agreement and any delay or opposition by Defendant
2 will be grounds for Plaintiff to withdraw from the Agreement.

3 87. Final Settlement Approval Hearing and Entry of Judgment: Upon expiration of the
4 deadlines to email, fax, or postmark Requests for Exclusion or objections to the Settlement Agreement,
5 and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted to
6 determine the Final Approval of the Settlement Agreement along with the amounts properly payable
7 for: (a) Individual Class Payments; (b) PAGA Penalties; (c) the Attorneys' Fees and Costs; (d) the Class
8 Representative Enhancement Payments; and (e) the Settlement Administration Costs. Class Counsel
9 will be responsible for drafting all documents necessary to obtain Final Approval. Class Counsel will
10 also be responsible for drafting the attorneys' fees and costs application to be heard at the final approval
11 hearing and shall submit to the Court a Proposed Final Approval Order as follows:

- 12 a. Approving the Agreement, adjudging the terms thereof to be fair, reasonable and
13 adequate, and directing consummation of its terms and provisions;
- 14 b. Approving Class Counsel's application for an award of attorneys' fees and costs;
- 15 c. Approving the Class Representative Enhancement Payments to Plaintiff;
- 16 d. Setting a date when the parties shall report to the Court the total amount that was
17 actually paid to the Class Members; and
- 18 e. Entering Final Approval Order and Judgment in this Action consistent with this
19 Agreement.

20 Defendant agrees that it will not oppose Plaintiff's Motion for Final Approval and Attorneys' Fees
21 and Costs.

22 88. Judgment and Continued Jurisdiction: Upon Final Approval of the Settlement by the
23 Court or after the Final Approval/Settlement Fairness Hearing, Plaintiff will present the Final Approval
24 Order and Judgment to the Court for its approval. After entry of the Final Approval Order and
25 Judgment, the Court will have continuing jurisdiction pursuant to Code of Civil Procedure section 664.6
26 and California Rules of Court, Rule 3.769 for purposes of addressing: (a) the interpretation and
27 enforcement of the terms of the Settlement, (b) Settlement administration matters, and (c) such post-
28 judgment matters as may be appropriate under court rules or as set forth in this Settlement.

1 89. Nullification of Settlement Agreement: The Parties, Class Counsel and Defendant's
2 counsel pledge their good faith and fair dealing in supporting the approval of the Settlement by the
3 Court. In the event that: (a) the Court does not grant preliminary or final approval of the Settlement as
4 provided herein; (b) the Court strikes or does not approve any material term of this Settlement
5 Agreement; or (c) the Settlement does not become final as written and agreed to by the Parties for any
6 other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will
7 be null and void, all amounts deposited into the QSF will be returned to Defendant, and the Parties shall
8 be returned to their original respective positions prior to the Settlement and shall proceed in all respects
9 as if this Settlement Agreement had not been executed. Any order or judgment entered by the Court in
10 furtherance of this Settlement Agreement will likewise be treated as void from the beginning.
11 Notwithstanding this provision, the Parties agree that they shall make a good faith effort to resolve any
12 issues raised by the Court prior to invoking their right to nullify the Settlement under this provision.
13 The Parties further agree that they will return to and attend mediation with Henry Bongiovi, Esq. in an
14 effort to reach a settlement that may be approved by the Court.

15 90. Exhibits Incorporated by Reference: The terms of this Settlement include the terms set
16 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein.
17 Any Exhibits to this Settlement are an integral part of the Settlement.

18 91. Entire Agreement: This Settlement Agreement and any attached Exhibits constitute the
19 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
20 may be deemed binding on the Parties.

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

23 93. Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
24 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
25 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
26 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
27 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with
28 each other and use their best efforts to affect the implementation of the Settlement. If the Parties are

1 unable to reach agreement on the form or content of any document needed to implement the Settlement,
2 or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement,
3 the Parties may seek the assistance of the Court to resolve such disagreement.

4 94. Binding on Successors and Assigns: This Settlement Agreement will be binding upon,
5 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

6 95. California Law Governs: All terms of this Settlement Agreement and Exhibits hereto
7 will be governed by and interpreted according to the laws of the State of California.

8 96. Execution and Counterparts: This Settlement Agreement is subject only to the
9 execution of all Parties. However, the Settlement Agreement may be executed in one or more
10 counterparts. All executed counterparts and each of them, including facsimile and scanned copies of
11 the signature page, will be deemed to be one and the same instrument provided that counsel for the
12 Parties will exchange among themselves original signed counterparts.

13 97. Acknowledgement that the Settlement is Fair and Reasonable: The Parties believe this
14 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at
15 this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into
16 account all relevant factors, present and potential. The Parties further acknowledge that they are each
17 represented by competent counsel and that they have had an opportunity to consult with their counsel
18 regarding the fairness and reasonableness of this Settlement.

19 98. Invalidity of Any Provision: Before declaring any provision of this Agreement invalid,
20 the Court will first attempt to construe the provision as valid to the fullest extent possible consistent
21 with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

22 99. Waiver of Certain Appeals: The Parties agree to waive appeals and to stipulate to class
23 certification for purposes of this Settlement only; except, however, that either party may appeal any
24 court order that materially alters the Settlement Agreement's terms.

25 100. Class Action Certification for Settlement Purposes Only: The Parties agree to stipulate
26 to class action certification only for purposes of the Settlement. If, for any reason, the Settlement is not
27 approved, the stipulation to certification will be void. The Parties further agree that certification for
28 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 Agreement will not be admissible in this or any other proceeding as evidence that either: (a) a class action should be certified or (b) Defendant is liable to Plaintiff or any Class Member, other than according to the Settlement's terms.

101. Non-Admission of Liability: The Parties enter into this Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, it has 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 their employees. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall 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 Agreement, this Agreement and its terms and provisions shall 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.

102. Captions: The captions and section numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Agreement.

103. 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.

104. Enforcement Action: In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

1 105. Mutual Preparation: The Parties have had a full opportunity to negotiate the terms and
2 conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly against
3 one Party than another merely by virtue of the fact that it may have been prepared by counsel for one
4 of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all
5 Parties have contributed to the preparation of this Settlement Agreement.

6 106. Representation By Counsel: The Parties acknowledge that they have been represented
7 by counsel throughout all negotiations that preceded the execution of this Agreement, and that this
8 Agreement has been executed with the consent and advice of counsel and reviewed in full. Further,
9 Plaintiff and Class Counsel warrant and represent that there are no liens on the Agreement.

10 107. All Terms Subject to Final Court Approval: All amounts and procedures described in
11 this Settlement Agreement herein will be subject to final Court approval.

12 108. Cooperation and Execution of Necessary Documents: The Parties agree to cooperate to
13 promote participation in the Settlement, and in seeking court approval of the Settlement. The Parties
14 and their counsel agree not to take any action to encourage any Class Members to opt out of and/or
15 object to the Settlement. Defendant agrees not to obtain any settlement agreement waivers or Pick Up
16 Stix agreements from any Class Member prior to the funding of the Gross Settlement Amount
17 concerning claims released via this Agreement, or enter into any arbitration agreement with any Class
18 Member that covers the claims released via this Agreement during the Settlement approval process
19 prior to the funding of the Gross Settlement Amount and that the Parties will work in good faith to
20 reach an agreement approved by the Court.

21 109. Confidentiality: The Parties and their counsel agree to keep the terms of the Settlement
22 confidential until the filing of Plaintiff's Motion for Preliminary Approval. Plaintiff, Class Counsel,
23 Defendant and its counsel agree that they will not issue any press releases, initiate any contact with the
24 press, respond to any press inquiry or have any communication with the press about the fact, amount
25 or terms of the Settlement Agreement. Nothing in this Settlement Agreement shall limit Defendant's
26 ability to fulfill disclosure obligations reasonably required by law or in furtherance of business
27 purposes, including the fulfillment of obligations stated in this Settlement Agreement or limit Class
28 Counsel's communications with the Class Members in furtherance of approval of this Settlement.

Furthermore, nothing in this provision shall be construed as preventing Class Counsel from referring to the Settlement or the Action in support of their adequacy as counsel for putative class or to justify an award of attorneys' fees.

110. Binding Agreement: The Parties warrant that they understand and have full authority to enter into this Settlement, 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 settlement confidentiality provisions that otherwise might apply under federal or state law.

APPROVED AS TO FORM AND CONTENT:

Dated: 10/12/2023

By: Eddie Hernandez
Eddie Hernandez (Oct 12, 2023 16:50 PDT)
Plaintiff Eddie Hernandez

Dated:

By: _____
Name: Lee Valenzuela
Title: President
For Defendant New Image Pool Interiors, Inc.

APPROVED AS TO FORM ONLY:

Dated: October 12, 2023

By: PARKER & MINNE, LLP
S. Emi Minne
S. Emi Minne
Attorneys for Plaintiff
EDDIE HERNANDEZ

Dated:

By: SAGASER, WATKINS & WIELAND, PC
Paul J. Bauer
Attorneys for Defendant
NEW IMAGE POOL INTERIORS, INC.

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APPROVED AS TO FORM AND CONTENT:

Dated:

By:

Plaintiff Eddie Hernandez

Dated: 10-12-2023

By:

Name: Lee Valenzuela

Title: President

For Defendant New Image Pool Interiors, Inc.

APPROVED AS TO FORM ONLY:

Dated:

PARKER & MINNE, LLP

By:

S. Emi Minne

Attorneys for Plaintiff

EDDIE HERNANDEZ

Dated: October 13, 2023

SAGASER, WATKINS & WIELAND, PC

By:

Paul J. Bauer

Attorneys for Defendant

NEW IMAGE POOL INTERIORS, INC.

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION AND PAGA SETTLEMENT

Eddie Hernandez v. New Image Pool Interiors, Inc.

Tulare County Superior Court, Case No. VCU293400

**THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION.
PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**

To:	All current and former non-exempt or hourly-paid employees who are or were employed by New Image Pool Interiors, Inc. in the State of California at any time from September 15, 2018, through October 21, 2023
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BASIC INFORMATION

1. What is this settlement about?

A lawsuit was commenced by a former employee of New Image Pool Interiors, Inc. (“Defendant”) on September 16, 2022 in the Tulare County Superior Court, Case No. VCU293400 (“Lawsuit”). The Lawsuit claims that Defendant violated sections of the California Labor Code and California Business and Professions Code. Specifically, the Lawsuit alleges that Defendant failed to provide meal and rest periods and associated premium pay, did not timely pay employees all wages owed upon termination of their employment, did not provide accurate wage statements, failed to reimburse employees for necessary business expenses, and engaged in unfair business practices. The Lawsuit claims that the Defendant violated the California Labor Code and the California Business and Professions Code, entitling Class Members to, *inter alia*, damages, statutory penalties, and restitution. The Lawsuit also seeks to recover civil penalties pursuant to the California Private Attorneys General Act of 2004 (“PAGA”). Defendant denies all alleged violations and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the case.

2. Why is this a class action?

In a class action, one or more people called the Class Representative (in this case, Eddie Hernandez, also known as “Plaintiff”), sue on behalf of people who appear to have similar claims (in this case all current and former non-exempt or hourly-paid employees who are or were employed by Defendant in the State of California at any time from September 16, 2018 through October 21, 2023). All these people are referred to in this Notice as Class Members. In a class action one court resolves the issues for all Class Members in one Lawsuit, except for those who exclude themselves from the Class. The Tulare County Superior Court is in charge of this class action.

3. Why is there a settlement?

The Court has not decided in favor of the Plaintiff or Defendant. Instead, both sides agreed to a settlement which is memorialized in the Joint Stipulation of Class Action and PAGA Settlement (“Agreement” or “Settlement”). On **[Date of Preliminary Approval]** the Court granted preliminary approval of the Settlement, appointed Plaintiff Eddie Hernandez as the Class Representative, and appointed his attorneys at Parker & Minne, LLP and Smith Law as counsel for the Class (“Class Counsel”). The Class Representatives and Class Counsel think the Settlement is best for the Class.

WHO IS PART OF THE SETTLEMENT?

4. How do I know if I am part of the settlement?

You are part of the Settlement, and a Class Member, if you were employed by Defendant as a non-exempt or hourly-paid employee in the state of California at any time between September 16, 2018 through October 21, 2023.

WHAT DO I GET FROM THE SETTLEMENT?

5. What does the settlement provide?

The Settlement provides that Defendant will pay a maximum of Five Hundred Eighty-Five Thousand Dollars (\$585,000.00) (“Gross Settlement Amount”). This includes all costs and attorneys’ fees for Class Counsel.

The “Net Settlement Amount” is the portion of the Class Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Amount is the Class Settlement Amount less the following amounts (which are subject to Court approval):

- A. **Attorneys’ Fees to Class Counsel** not to exceed 35% of the Class Settlement Amount or Two Hundred Four Thousand Seven Hundred Fifty Dollars (\$204,750.00);
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Twenty Thousand Dollars (\$20,000.00);
- C. **Class Representative Enhancement Payment** in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) to the Plaintiff;
- D. **Settlement Administration Costs** which are currently estimated not to exceed Five Thousand Dollars (\$5,000.00); and
- E. **PAGA Penalties** in the amount of Thirty-Five Thousand Dollars (\$35,000.00) for the settlement of claims arising under the Private Attorney’s General Act of 2004 (PAGA). Seventy-Five percent (75%) of this amount, (\$26,250.00) shall be paid to the LWDA. The remaining twenty-five percent (25%) (\$8,750.00) will be distributed to hourly-paid, non-exempt employees of Defendant in the state of California at any time from September 15, 2021, to October 21, 2023 (“PAGA Members”) for the release of their claims arising under PAGA.

Class Members are entitled to receive an Individual Class Payment from the Net Settlement Amount, which is determined on a *pro rata* basis based on the number of weeks each Class Member worked for Defendant as an hourly-paid, non-exempt employee of Defendant from September 16, 2018 through October 21, 2023 (“Workweeks”). Your Individual Class Payment will be apportioned as twenty percent (20%) wages, forty percent (40%) interest and forty percent (40%) penalties. The wage portion of the Individual Class Payment will be subject to withholding for the employee taxes and will be reported on a W-2 Form. Employer-side payroll taxes shall be paid separately from and in addition to the Gross Settlement Amount. The penalties and interest portions of each class member’s settlement payment will not be subject to any withholdings and will be reported on an IRS Form 1099.

PAGA Members are eligible to receive an Individual PAGA Settlement from the 25% portion of the PAGA Penalties allocated towards payment of employees, which is determined on a *pro rata* basis based on the number of weeks each PAGA Member worked for Defendant as an hourly-paid, non-exempt employee of Defendant from September 15, 2021, to October 21, 2023. Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, which will be reported on an IRS Form 1099 (if applicable). PAGA Members will receive an Individual PAGA Settlement even if they submit a Request for Exclusion.

5. How Much Will I Receive From the Settlement?

According to Defendant’s records, you worked:

- workweeks during the Class Period (September 16, 2018 through October 21, 2023); and
- workweeks during the PAGA Period (September 15, 2021 through October 21, 2023).

Based on the number of Workweeks credited to you, your Individual Class Payment is estimated to be \$ [REDACTED], and your Individual PAGA Payment (if applicable) is estimated to be \$ [REDACTED].

The settlement approval process may take multiple months. Your Individual Class Payment and/or Individual PAGA Payment (if applicable) reflected in this Notice is only an estimate. Your actual Individual Class Payment and/or Individual PAGA Payment (if applicable) may be higher or lower. Payments will be distributed only after the Court grants final approval of the Settlement, and after the Settlement goes into effect.

Your Individual Class Payment and/or Individual PAGA Payment was determined based on Defendant's record of your employment, and are presumed correct. If you dispute the accuracy of Defendant's records as to the number of weeks worked during the Class Period, you must contact the Settlement Administrator and provide any documentation you have supporting such dispute by [DATE]. All disputes regarding your workweeks will be resolved and decided by the Parties or if the Parties cannot agree, the Settlement Administrator, after you submit evidence to the Settlement Administrator.

If the Court grants final approval of the Settlement, Individual Class Payments and Individual PAGA Payments will be mailed to at the address that is on file with the Settlement Administrator. **If the address to which this Class Notice was mailed is not correct, or if you move after you receive this Class Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure your receipt of payment that you may be entitled to under the Settlement.**

The Settlement Administrator's contact information is listed below:

ILYM
[Address]
[Telephone No]
[Fax No.]
[E-mail address]

6. How can I get a payment?

You do not have to do anything to receive payment of your portion of the Settlement.

7. What am I giving up if I do not request to be excluded from the Settlement?

Upon the funding of the Gross Settlement Amount, in exchange for the consideration set forth by the Settlement, Plaintiffs and all Class Members who do not submit a timely request for exclusion shall release the "Released Parties" from the "Released Class Claims" for the Class Period.

The "Released Parties" include Defendant New Image Pool Interiors, Inc. and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, joint venturers, and any individual or entity that could be jointly or severally liable for any of the Released Class Claims or Released PAGA Claims .

The "Released Class Claims" means all claims, rights, demands, liabilities and causes of action that are alleged, or reasonably could have been alleged based on the factual allegations and claims asserted in the operative Complaint in this action, including the following claims: (i) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 11971. (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 226(a) (Failure to Provide Accurate Wage Statements); (7) Violation of California Labor Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business Expenses); and (8) Violation of California Business & Professions Code §§ 17200, et seq. based on violations of Labor Code sections 201, 202, 203, 226(a), 226.7,

510, 512(a), 1194, 1197, 1197.1, 2800, and 2802. The Released Class Claims pertains to the period of September 16, 2018 through October 21, 2023.

In addition, all PAGA Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged all claims, rights, demands, liabilities and causes of actions for civil penalties under the California Labor Code Private Attorneys General Act of 2004, Cal. Labor Code §§ 2698, et seq. which Plaintiffs and/or the PAGA Members had, or may claim to have, against Released Parties, based on the facts and legal theories contained the PAGA Notice, including claims for civil penalties based on unpaid overtime, failure to provide rest periods and associated premium wages, failure to provide rest periods and associated premium wages, unpaid minimum wages, failure to timely pay final wages, failure to timely pay wages during employment, failure to keep requisite payroll records, and failure to reimburse business expenses, including violations under California Labor Code sections 201, 202, 203, 204, 226, 226.7, 501, 512, 1174, 1194, 1197, 1197.1, 2800 and 2802 and the Industrial Welfare Commission Orders (“Released PAGA Claims.”) The Released PAGA Claims pertains to the period of September 15, 2021, to October 21, 2023. All PAGA Members will have been deemed to have released the Released PAGA Claims against the Released Parties irrespective of whether they submit a request for exclusion from the Class settlement.

EXCLUDING YOURSELF FROM THE RELEASE OF NON-PAGA CLAIMS

If you want to keep the right to sue or continue to sue Defendant with respect to the Released Class Claims, then you must submit a request for exclusion in conformity with the requirements set forth herein. If you exclude yourself, you will not receive payment from the Net Settlement Amount. However, if eligible, you will still receive a payment in an amount equal to your estimated *pro rata* share of the PAGA Penalties because the Request for Exclusion does not apply to the PAGA claim.

8. How can I not participate in the Settlement?

To exclude yourself from the release of Released Class Claims you must submit a written request for exclusion. You must include your name, address, telephone number and the last four digits of your social security number and/or Employee ID number. Your request for exclusion must also include a statement that you do not wish to be included in this action similar to the following: I wish to exclude myself from the class action settlement reached in the matter of *Hernandez v. New Image Pool Interiors, Inc.* I understand that by excluding myself I will not receive money from the class portion of the settlement.”

The written request for exclusion must be mailed, emailed, or faxed to the Settlement Administrator at the address listed below, by U.S. mail, facsimile, or e-mail by **[Response Deadline]**. You cannot exclude yourself by phone.

ILYM
[Address]
[Telephone No.]
[Fax No.]
[E-mail address]

If you ask to be excluded, you will not receive payment of any portion of the Net Settlement Amount and you cannot object to the Settlement. You will not be legally bound by the release of Released Class Claims. You may be able to sue Defendant and/or the Released Parties or continue any suit you have pending against Defendant and/or the Released Parties, regarding the Released Class Claims.

9. If I don’t exclude myself, can I sue Defendant for the same thing later?

No. Unless you submit a request for exclusion, you give up the right to sue Defendant and the Released Parties for the Released Class Claims. If you have a pending lawsuit involving the Released Class Claims, speak to your lawyer in that lawsuit immediately.

10. If I exclude myself, can I get money from the Settlement?

No (except if you worked between September 15, 2021, to October 21, 2023, in which case you will still receive your Individual PAGA Payment for Released PAGA Claims). But if you submit a timely and valid request for exclusion, you retain any right that you may have to sue, continue to sue, or be part of a different lawsuit against and/or the Released Parties for Released Class Claims.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

The Court has approved PARKER & MINNE, LLP and SMITH LAW as counsel for the Class for Settlement purposes. The firms' contact information is:

PARKER & MINNE, LLP
S. Emi Minne
Jill J. Parker
700 South Flower Street, Suite 1000
Los Angeles, California 90017
Telephone: (310) 882-6833
Facsimile: (310) 889-0822

SMITH LAW
Benjamin Smith
8605 Santa Monica Boulevard
PMB 97638
West Hollywood, California 90069
Telephone: (818) 839-9700
Facsimile: (818) 824-4975

Class Counsel will ask the Court for attorneys' fees of up to \$204,750.00 and reimbursement of litigation cost/expenses of up to \$20,000.00. These amounts are subject to Court approval and the Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

12. How do I tell the Court if I don't like the settlement?

If you are a Class Member, you can object to the Settlement and you can give reasons for why you think the Court should not approve it. The Court will consider your views. To object, you must mail, email, or fax your objection to the Settlement Administrator no later than [DATE]. Your objection must include your full name, address, telephone number, the last four digits of your social security number or employee ID number, and the specific reason for your objection. You may also come to the Final Approval Hearing on [DATE] and make an objection at that time, regardless of whether you submitted a written objection.

13. What is the difference between objecting and requesting to be excluded?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to grant final approval of the Settlement ("Final Approval Hearing"). You may attend, but you do not have to attend.

14. When and where will the Court decide whether to approve the settlement?

The Court will hold the Final Approval Hearing at [] a.m./p.m. on [], 2024, in Department 7 of the Tulare County Superior Court, located at 221 S. Mooney Boulevard, Visalia, California 93291. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them.

15. Do I have to come to the hearing?

No. If you agree to the Settlement you do not have to come to Court to talk about it. However, you may attend. You may also retain your own lawyer at your expense to attend on your behalf. A copy of the Court's tentative ruling on the Motion for Final Approval may be posted on the Court's website at <https://www.tulare.courts.ca.gov/general-information/tentative-rulings>. Tentative rulings are typically posted the day before the hearing.

16. How will I learn if the settlement was approved?

A notice of final judgment will be posted on the Settlement Administrator website located at [\[INSERT URL\]](#).

IF YOU DO NOTHING

17. What happens if I do nothing at all?

If you do nothing, you will receive your share of the Settlement, and you will release the Released Class Claims. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant and/or the Released Parties about the Released Claims, ever again. Your Individual Class Payment and Individual PAGA Payment (if applicable) will be mailed to you and remain valid and negotiable for 180 days. If you do not cash the check for your Individual Class Payment and Individual PAGA Payment (if applicable) within 180 days, these funds will be transferred to the Controller of the State of California's Unclaimed Property Fund. You may then claim these funds from there.

GETTING MORE INFORMATION

18. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by viewing the settlement located on the Settlement Administrator's website at [\[INSERT URL\]](#), or by contacting the Settlement Administrator or Class Counsel by phone or email. You may also request copies of the Settlement Agreement from the Court in person, by appointment, online, or by mail. Instructions on how to request records from the court can be found on the Court's website at <https://www.tulare.courts.ca.gov/online-services/records-request>. If you obtain copies through the Court, the Settlement Agreement is attached as Exhibit 1 to the Declaration of S. Emi Minne in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

WHAT IF MY INFORMATION CHANGES?

19. What if my contact information changes?

It is your responsibility to inform the Settlement Administrator of your updated information to ensure receipt of settlement payments or communications regarding this matter. You can change or update your contact information by contacting the Settlement Administrator.

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LAWSUIT TO THE CLERK OF THE COURT OR THE JUDGE