Exhibit B

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:	)	Case No. 19-40883-659
	)	Chapter 11
Payless Holdings LLC, *et al.*,	)	
	)	Jointly Administered
Reorganized Debtors.	)	
	)	**Hearing Date and Time**: March 22, 2023
	)	at 10:00 A.M. (Central Time)
	)	**Objection Deadline**: March 15, 2023 at
	)	4:00 P.M. (Central Time)
	)	**Hearing Location**: Courtroom 7 North

JOINT MOTION SEEKING TO (I) APPROVE A SETTLEMENT, (II) CERTIFY A CLASS OF CALIFORNIA WAGE AND HOUR CLAIMANTS FOR SETTLEMENT PURPOSES ONLY, (III) APPOINT CLASS COUNSEL AND A CLASS REPRESENTATIVE, (IV) PRELIMINARILY APPROVE THE SETTLEMENT AGREEMENT, (V) APPROVE THE FORM AND MANNER OF NOTICE TO CLASS MEMBERS OF THE CLASS CERTIFICATION AND SETTLEMENT, (VI) SCHEDULE A FAIRNESS HEARING TO CONSIDER FINAL APPROVAL OF THE SETTLEMENT, (VII) FINALLY APPROVE THE SETTLEMENT AFTER THE FAIRNESS HEARING, AND (VIII) GRANT RELATED RELIEF

The above-captioned reorganized debtors (collectively, the "Reorganized Debtors" and, prior to the Effective Date, as defined herein, the "Debtors"), META Advisors LLC, as the Liquidating Trustee (as defined herein) of the liquidating trust (the "Liquidating Trust") established to facilitate the implementation of the Plan (as defined herein), and prospective class representative Yaquelin Garcia (the "Plaintiff" and, solely with respect to the Wage and Hour Claims (as defined herein), the "Class Representative"), on behalf of herself and similarly situated prospective class members (together with the Class Representative, and as defined herein and in the Settlement Agreement (excluding Opt Outs), the "Class", and each member within the Class "Class Member(s)", and together with the Class Representative, the Debtors, the Reorganized Debtors, the Liquidating Trust, and the Liquidating Trustee, the "Parties"), by and through their undersigned counsel, hereby move this Court (the "Joint Motion"), pursuant to section 105 of title

11 of the United States Code (the "Bankruptcy Code"), Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 23 of the Federal Rules of Civil Procedure (the "Civil Rules"), made applicable hereto by Bankruptcy Rules 7023 and 9014, for entry of orders (a) approving the *Settlement Agreement and Release* dated as of February 28, 2023 (the "Settlement Agreement"),[1] a copy of which is attached hereto as **Exhibit 1** and incorporated herein by reference, among the Parties pursuant to Bankruptcy Rule 9019; (b) certifying the Class for settlement purposes only; (c) appointing Setareh Law Group, as class counsel ("Class Counsel"), and appointing Yaquelin Garcia as Class Representative; (d) preliminarily approving the Settlement Agreement pursuant to Civil Rule 23; (e) approving the form and manner of notice to Class Members of the conditional class certification and settlement; (f) scheduling a fairness hearing (the "Fairness Hearing") to consider final approval of the Settlement Agreement pursuant to Civil Rule 23; (g) after the Fairness Hearing, finally approving the Settlement Agreement pursuant to Civil Rule 23; and (h) granting related relief. In support of the Joint Motion, the movants respectfully state as follows:

INTRODUCTION

1. This Joint Motion seeks the Court's approval of a Settlement Agreement which resolves putative class action claims brought against Debtor Payless ShoeSource, Inc. (the "Debtor Defendant") asserting numerous violations on a state-wide basis of various California wage and hour statutes dating back to August 10, 2017. If approved, the Settlement Agreement would result in the satisfaction of multiple disputed, contingent, unliquidated proofs of claim in exchange for an allowed priority claim pursuant to Bankruptcy Code section 507(a)(4) in the aggregate amount of $50,000.00 ("Priority Settlement Claim") and an allowed general unsecured claim in the

[1] Capitalized terms not otherwise defined herein have the meanings ascribed to such terms in the Settlement Agreement.

aggregate amount of $125,000 (the "GUC Settlement Claim") against Debtor Defendant, inclusive of Class Professionals' fees and expenses, and the employer's share of taxes due on certain portions of the settlement payments. In addition, the settlement will enable the Plaintiff to continue the Class Action in the District Court solely with respect to the FCRA Claims. With respect to the FCRA Claims, the Plaintiff, the members of any certified class, and the Class Professionals shall be entitled to recovery only from any available insurance coverage and not from the Reorganized Debtors or the Liquidating Trust.

2. The Debtors deny that any class-wide problem existed with respect to its wage and hour employees,[2] or that a state-wide class could be certified if these claims were litigated inside or outside of the bankruptcy process, but the Reorganized Debtors and Liquidating Trustee recognize that that there are significant risks and costs to the estate if these claims were to be litigated. More importantly, a settlement with the Plaintiff will provide certainty and finality with respect to a significant unliquidated and disputed proofs of claim and will allow the Reorganized Debtors and Liquidating Trustee to complete the claims reconciliation process in these chapter 11 cases.

3. The terms of the proposed settlement are fair and reasonable from the perspective of each of the constituencies directly affected by the Settlement Agreement. For the Reorganized Debtors and the Liquidating Trustee, the Settlement Agreement is fair and reasonable as it avoids protracted and expensive litigation and inherent uncertainties associated with the class action and related proofs of claim ("Class Proofs of Claim"), and the Gross Settlement Amount (defined

[2] Generally, the Class Representative alleges that the Debtor Defendant (i) failed to pay premium pay for allegedly unauthorized rest periods, (ii) failed to provide accurate itemized wage statements, (iii) failed to provide required and timely off-duty rest periods, and (iv) failed to provide all wages due at time of termination. Conversely, the Reorganized Debtors maintain that all employees were authorized to take all timely proper rest periods, were given accurate itemized wage statements, and were paid wages at time of termination, and as a result no damages or penalties are owed to Class Members.

below) is certainly within the range of outcomes that could be anticipated if the Class Action and/or Garcia Proofs of Claim were litigated. In light of these factors, the Reorganized Debtors and the Liquidating Trustee have determined that the Settlement Agreement is well within the range of reasonableness. Accordingly, the Court should approve the Settlement Agreement under Bankruptcy Rule 9019 and Civil Rule 23.

4. The Settlement Agreement is also fair and reasonable to Class Members. Absent the settlement, the Reorganized Debtors and Liquidating Trustee would challenge the Plaintiff's ability to assert a class proof of claim or to certify a class as proposed under Civil Rule 23, and would offer evidence refuting the Plaintiff's wage and hour claims on the merits. While the Reorganized Debtors and the Liquidating Trustee dispute the proposed Class Members' ability to certify a class outside of the settlement context, the Reorganized Debtors and Liquidating Trustee request the Court certify the Class for purposes of settlement only to avoid protracted and expensive litigation and avoid appeals. Thus, for the purposes of settlement only, the Parties agree that the Class meets all of the requirements of Civil Rule 23 and that Class Counsel is competent and experienced.

5. The Parties request a two-step approval process to facilitate notice to Class Members. After approval of the proposed class certification, approval of the form of notices to be given to the Class Members (annexed as Exhibit B and Exhibit C to the Settlement Agreement, collectively, the "Class Notice") and preliminary approval of the Settlement Agreement, the Class Notice will be mailed to each Class Member and will describe the Settlement Agreement, inform the Class Members of their right to opt out of the Class or object to the Settlement Agreement and provide the requisite deadlines.

6. After service of the Class Notice, the Parties request that the Court hold a Fairness

Hearing to consider final approval of the Settlement Agreement, which will include approval of Class Professionals' fees, costs and expenses. Assuming final approval is granted, the net settlement proceeds will be distributed to the Class Members who do not timely opt out.

7. Based on the foregoing, and as set forth more fully below, the Parties submit that the Court should approve the Settlement Agreement and the procedures proposed in this Joint Motion.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Rule 81-9.01(B)(1) of the Local Rules of the United States District Court for the Eastern District of Missouri. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

A. General Background

9. On February 18, 2019 (the "Petition Date"), twenty-seven (27) of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code (the "Original Debtors"). On July 7, 2019 (the "July Debtors Petition Date"), two (2) additional Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code (the "July Debtors" and, together with the Original Debtors, the "Debtors"). A comprehensive description of the Debtors' businesses and operations, capital structure and events leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Stephen Marotta, Chief Restructuring Officer of Payless Holdings LLC, in Support of Debtors' Chapter 11 Proceedings and First Day Pleadings* [Docket No. 22] (the "First Day Declaration") and the *Supplemental Declaration of Stephen Marotta in Support of Chapter 11 Petitions of the July Debtors* [Docket No. 1305] (the "Supplemental First Day Declaration") and incorporated herein by reference.

10. On October 23, 2019, the Court entered an order [Docket No. 1701] (the "Confirmation Order") confirming the *Second Amended Joint Plan of Reorganization of Payless Holdings LLC and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code As Modified on October 23, 2019* [Docket No. 1692] (the "Plan"). On January 14, 2020 (the "Effective Date"), the Plan became effective.

11. Pursuant to the Plan, the Liquidating Trust was created on the Effective Date of the Plan. Pursuant to Article VI.B.2 of the Plan, the Liquidating Trustee has the sole authority to file, withdraw or litigate to judgment objections to General Unsecured Claims of Payless ShoeSource Worldwide, Inc. and Collective Brands Logistics Limited in Class 5A and General Unsecured Claims of Remaining Debtors in Class 5B (except for any Factory Claims). With respect to all other Claims (including Factory Claims and Administrative Claims), the Debtors or Reorganized Debtors, as applicable, are responsible for reconciling, resolving, and objecting, if necessary, to Claims. *See* Plan Art. VII.B.

B. The Class Action and the Settlement Agreement

12. Prior to the Petition Date, on November 15, 2018, the Plaintiff, individually and on behalf of others similarly situated, commenced an action, captioned as *Yaquelin C. Garcia v. Payless ShoeSource, Inc.*, Case No. 3:18-cv-07609-JST (the "Class Action"), in the Superior Court of the State of California, County of Alameda (the "California Superior Court"), against, among others,[3] Debtor Payless ShoeSource, Inc. The Plaintiff asserted claims against the Debtor Defendant under the California Labor Code for alleged failure to authorize timely, uninterrupted, off duty, ten-minute rest periods, provide accurate wage statements, and timely pay final wages

[3] The Complaint also names Does 1-50 as defendants and alleges that, upon information and belief, each of these unnamed defendants are responsible in some manner for the occurrences, acts and omissions alleged in the Complaint. *See* Complaint, ¶ 10.

(pursuant to California Labor Code sections 201, 202, 203, 204, 223, 226, 226.7, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198 and 1199) and derivative claims under the California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 *et seq*.) (as set forth in the Fifth, Sixth, Seventh and Eighth Claims for Relief of the Complaint (collectively, the "Wage and Hour Claims"). The Plaintiff also alleged claims against the Debtor Defendant arising under the Fair Credit Reporting Act, the California Investigative Consumer Reporting Agencies Act and the California Consumer Credit Reporting Agencies Act (as set forth in the First through Fourth Claims for Relief of the Complaint, collectively, the "FCRA Claims").

13. On December 19, 2018, the Class Action was removed to the United States District Court for the Northern District of California (the "District Court")."

14. As a result of the commencement of the Debtors' chapter 11 cases, the Class Action was stayed in the District Court. On June 6, 2019, the Plaintiff filed individual proofs of claim, including, but not limited to, Claim Nos. 953-1, 955-1, 959-1, 959-2, and 960-1 filed against Payless ShoeSource, Inc., asserting claims that are duplicative of or subsumed by the claims asserted in the Class Action and/or arise out of the same or similar facts (the "Garcia Proofs of Claim"). The Parties have negotiated in good faith toward a consensual resolution of the Garcia Proofs of Claim. To resolve the Garcia Proofs of Claims and to prevent the costs, delays, and uncertainties of further litigation related to the Class Action, the Parties have agreed to the terms of the Settlement Agreement.

C. The Settlement Agreement

15. If approved, the Settlement Agreement will resolve significant contingent and unliquidated litigation claims asserted in the Debtors' chapter 11 cases and relieve other creditors of the dilution or reduction of their recoveries, and the Court of its administrative burdens in which could result from characterization of the Garcia Proofs of Claim as entitled to priority under

Section 507(a)(4) or entitled to administrative expense status under Section 503(b)(1). The principal terms of the Settlement Agreement are as follows:[4]

- *Certification of the Class*. The Parties have agreed to the certification of the Class, for settlement purposes only, pursuant to Civil Rule 23 as made applicable to these proceedings by Bankruptcy Rules 7023 and 9014. To the best of the Parties' knowledge, information and belief, the proposed Class satisfies the criteria for class certification set forth above. The law firm of Setareh Law Group shall be appointed as Class Counsel for the Class created under the Settlement Agreement. Yaquelin Garcia shall be appointed Class Representative.

- *Settlement Class Claim.* Upon the entry of an order by the Bankruptcy Court approving the Settlement Agreement on a final basis pursuant to Civil Rule 23, the Class shall have, and may assert in accordance with Section 4 of the Settlement Agreement, an allowed priority claim pursuant to Bankruptcy Code section 507(a)(4) in the aggregate amount of $50,000.00 ("Priority Settlement Claim") and an allowed general unsecured claim in the aggregate amount of $125,000 (the "GUC Settlement Claim"). The Settlement Agreement makes further provision for disbursement of cash proceeds of the Priority Settlement Claim and GUC Settlement Claim to Class Professionals, to the Class Representative, to Class Members, and for the generation and distribution of Forms W-2 and other required tax reporting forms.

- *Costs and Fees.* As further described in the Settlement Agreement, the total amount to be distributed to class members (the "Net Settlement Sum") will be the net amount remaining after all other payments and expenses are deducted from the Gross Settlement Amount, including: (i) Class Counsel's attorney's fees, costs and expenses, (ii) fees and expenses of Dundon Advisers LLC, financial adviser to Class Counsel and the Class Representative; (iii) a service award of $2,500 paid to the Class Representative for her service acting as Class Representative; and (v) payment of tax withholdings required to be paid by the Debtor Defendant as an employer, all as provided for in the Settlement Agreement.

- *Deemed Acceptance and Opt Out Procedure.* All known Class Members shall be mailed the Class Notice. Class Members, on an individual basis, may elect to opt out of the Settlement Agreement (each such Class Member an "Opt Out") by following the instructions in the Class Notice and making such election (each an "Opt Out Election") no later than thirty (30) days after the mailing of the Class Notice (the "Opt Out Period"); *provided, however*, nothing in the Settlement Agreement shall be deemed to authorize the filing of proofs of claim after the General Bar Date and Preliminary Approval Order and Final Approval Order shall provide that the General Bar Date is not tolled or otherwise extended for any Class Member. All Class Members who do

[4] The following summary is qualified in its entirety by reference to the provisions of the Settlement Agreement. In the event of any inconsistencies between the provisions of the Settlement Agreement and the terms set forth herein, the terms of the Settlement Agreement shall govern.

not make an Opt Out Election prior to the expiration of the Opt Out Period shall be deemed to have consented to, and shall be bound by, the terms and conditions of the Settlement Agreement, and shall become Class Members for purposes of the Settlement Agreement upon the expiration of the Opt Out Period. Class Counsel is not and shall not become legal counsel to any Opt Outs.

- *Release.* Each Class Member who does not timely opt-out of the Settlement Agreement forever waives, releases and discharges the Debtors, the Reorganized Debtors, the Liquidating Trust, the Liquidating Trustee and all of their past, present or future subsidiaries, parents, affiliates, officers, directors, employees, representatives, insurers, members, shareholders, agents, attorneys, successors, heirs, assigns, executors, administrators, affiliated entities, (each a "Released Party") from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action of whatever kind or nature that were alleged in the Class Action or which could reasonably have been alleged under California or federal law based on the factual allegations contained in the Class Action arising out of or related to all claims for wages, minimum wages, penalties, overtime pay, premium pay, pay for all time allegedly worked but not compensated, and all other claims of any kind for wages, penalties, restitution, declaratory relief, injunctive relief, equitable remedies, pre- or post-judgment interest, costs and attorneys' fees arising from the alleged violation of any provision of common law, California law and/or federal law, which were or could have been raised as part of Plaintiff's claims.

- *Continuation of FCRA Claims Solely Against Insurance.* As set forth in the Settlement Agreement, upon the Settlement Effective Date, the Class Action shall resume in the District Court with respect to the FCRA Claims solely to pursue and potentially recover from any available indemnification coverage under any insurance policies on account of any settlement or judgment in the Class Action consistent with the terms of the Settlement Agreement. The Plaintiff and the putative class(es) in the Class Action agree not to seek recovery on account of the FCRA Claims from the Debtors, the Reorganized Debtors, the Liquidating Trustee, the Liquidating Trustee or any Released Party, and any recovery for Plaintiff or the classes based upon the FCRA Claims shall be limited to that which the insurance carrier(s) pay in settlement or judgment, if any.

- *Bankruptcy Court Approval.* The Settlement Agreement will be binding on the Parties from the date of its execution, but is expressly subject to and contingent upon entry of a final, non-appealable order by the Bankruptcy Court approving the Settlement Agreement pursuant to Civil Rule 23. For the avoidance of doubt, if the Bankruptcy Court denies approval of the Settlement Agreement, the Settlement Agreement, and any other agreement entered into by and/or among the Parties and/or third parties related to the Settlement Agreement, will be null and void, and will be of no force and effect.

RELIEF REQUESTED

16. The Parties request entry of an order, pursuant to Bankruptcy Rule 9019 and

sections 105 and 363 of the Bankruptcy Code, in substantially the form of the proposed orders, approving the Settlement Agreement.

BASIS FOR RELIEF

A. The Court Should Approve the Settlement Pursuant to Bankruptcy Rule 9019

(i) Standard for Approval

17. Bankruptcy Rule 9019(a) provides that "on motion by the trustee and after a hearing, the bankruptcy court may approve a compromise or settlement." Section 363(b) of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(l). Courts have held that a transaction involving property of the estate should generally be approved so long as the trustee can demonstrate "some articulated business justification for using, selling, or leasing property outside of the ordinary course of business." *Inst. Creditors v. Continental Air Lines, Inc. (In re Continental Airlines, Inc.),* 780 F.2d 1223, 1226 (5th Cir. 1986); *accord Comm. of Equity Sec. Holdersv. Lionel Corp. (In re Lionel Corp.),* 722F.2d 1063, 1071 (2d Cir.1983). Moreover, section 105(a) provides that a bankruptcy court may "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

18. Compromises are favored in the bankruptcy context "[t]o minimize litigation and expedite the administration of a bankruptcy estate." *Martin v. Myers (In re Martin),* 91 F.3d 389, 393 (3d Cir. 1996). "The authority to approve a compromise [or] settlement is within the sound discretion of the bankruptcy court." *In re Northwestern Corp.,* No. 03-12872, 2008 WL 2704341, at *6 (Bankr. D. Del. Jul. 10, 2008) ("In exercising this discretion, the bankruptcy court must determine whether the compromise is fair, reasonable, and in the best interests of the estate.") (quoting *Key3Media Group, Inc. v. Pulver.Com, Inc. (In re Key3Media Group, Inc.),* 336 B.R. 87,

92 (Bankr. D. Del. 2005)).

19. The bankruptcy court is not required to determine that the proposed settlement is the best possible compromise. *Key3Media Group*, 336 B.R. at 92-93 (citing *In re Coram Healthcare Corp.*, 315 B.R. 321, 329 (Bankr. D. Del. 2004)). Rather, the settlement should be approved as long as it does not fall below the lowest point in the range of reasonableness. *Cosoff v. Rodman (In re W. T Grant Co.)*, 699 F.2d 599, 608 (2nd Cir. 1983), *cert. denied*, 464 U.S. 822 (1983). In this respect, it is unnecessary for the court to consider the information necessary to resolve the factual dispute, nor is necessary for the bankruptcy court to "conclusively determine claims subject to a compromise." *Key3Media Group*, 336 B.R. at 92 (quoting *Martin v. Cox (In re Martin)*, 212 B.R. 316, 319 (8th Cir. B.A.P. 1997)).

20. To arrive at the range of reasonableness, the evaluating court should consider the factors laid out in *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 14, 424 (1968). As discussed by the Eighth Circuit in *Tri-State Fin., LLC v. Lovald*, there are four factors described in *TMT* by which courts determine the reasonableness of a settlement:

(a) the probability of success in litigation;

(b) the likely difficulties of collection;

(c) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and

(d) the paramount interest of the creditors.

525 F.3d 649, 654 (8th Cir. 2008) (internal quotation marks and citations omitted); *see also In re Marvel Entm't Grp., Inc.*, 222 B.R. 243, 249 (D. Del. 1998) (in applying Bankruptcy Rule 9019(a), whether a court should approve a settlement depends on several factors, including the probability

of success in the litigation, the complexity of the litigation, the attendant expense and delay, and the interests of the creditors); *In re Geller,* 74 B.R. 685, 688 (Bankr. E.D. Pa. 1987) (generally, a settlement will be approved as long as it clears a threshold of reasonableness); *Official Unsecured Creditors' Comm. v. Pa. Truck Lines, Inc. (In re Pa. Truck Lines, Inc.),* 150 B.R. 595, 598 (E.D. Pa. 1992), *aff'd* 8 F.3d 812 (3d Cir. 1993) (settlement must not fall below the lowest level in the range of reasonableness).

21. While bankruptcy courts are directed to determine whether settlements are in the "best interests of the estate," *In re Energy Coop., Inc.*, 886 F. 2d 921,927 (7th Cir. 1989), the bankruptcy court should not substitute its judgment for that of a trustee or debtor in possession. *See Richmond Leasing Co. v. Capital Bank, NA.,* 762 F. 2d 1303, 1311 (5th Cir. 1985); *In re Curlew Valley Assocs.,* 14 B.R. 506, 511-13 (Bankr. D. Utah 1981). Indeed, the bankruptcy court is not to decide the numerous questions of law or fact raised in the litigation, but rather should canvass the issues to see whether the settlement falls below the lowest point in the range of reasonableness. *See In re Penn Cent. Transp. Co.,* 596 F. 2d 1102, 1114 (3d Cir. 1979); *Cosoffv. Rodman (In re WT Grant Co.),* 699 F.2d 599,608 (2d Cir. 1983). *In re Coram Healthcare Corp.,* 315 B.R. 321, 330 (Bankr. D. Del. 2004) ("In approving a settlement, the court does not have to be convinced that the settlement is the best possible compromise. Rather, the court must only conclude that the compromise or settlement . . . is above the lowest point in the range of reasonableness.") (internal citations and quotation marks omitted).

22. The Settlement Agreement will result in the prompt resolution of the Garcia Proofs of Claim and enable the Reorganized Debtors and the Liquidating Trustee to avoid the costly and burdensome process of litigating the merits of the Class Action, and remove the overhang of exposure to the Class Action of non-debtors who might have recourse to the Debtors' estates if

such exposure were asserted against them. The Reorganized Debtors and the Liquidating Trustee negotiated the amount of the Priority Settlement Claim and the GUC Settlement Claim to be allowed after analyzing the potential claims and defenses on both sides, the costs of continuing litigation, and the risk of an adverse judgment. The settlement embodied in the Settlement Agreement, therefore, is in the best interests of the Debtors' estates and is well above the lowest point in the range of reasonableness.

(ii) The Results of a Trial are Uncertain and the Litigation is Complex[5]

23. While the Reorganized Debtors believe that they have strong arguments against the Class Representative's ability to file a class proof of claim, certify a class under Civil Rule 23, and succeed on the merits, the results of a trial are uncertain and the litigation would be time consuming, expensive, and complex.

24. Prior to deciding the merits of the Class Action/Garcia Proofs of Claim, the Parties would have to litigate (i) whether a class proof of claim is permissible under the specific facts of this case; (ii) whether the Class Representative has satisfied the four requirements for class certification under Civil Rule 23(a) (*i.e.*, numerosity, commonality, typicality, and adequacy of representation); (iii) and whether questions of law or fact common to class members predominated over questions affecting only individual members and whether class treatment would be superior to the claims allowance process under Civil Rule 23(b)(3). The underlying merits of the Class Action/Garcia Proofs of Claim would include litigation over the Debtor Defendant's alleged failure to authorize rest breaks, alleged failure to provide accurate wage statements, and alleged failure to pay all wages upon employment termination. Even if the Reorganized Debtors were

[5] This section discusses the first and third *TMT* factors together – uncertainty of success and the complexity of litigation – because the issues here are intertwined. The second factor – difficulty with collection – is not discussed because the Debtor Defendant is the defendant in the Class Action.

successful on the merits, at each step along the way, the Class Representative would likely appeal, causing additional delay and expense. Thus, litigation would require determinations on numerous complex legal and factual issues.[6]

25. As set forth above, the Debtor Defendant's entry into the Settlement Agreement (a) resolves all claims asserted by the Class Members against the Debtor Defendant in the Class Action with respect to the Wage and Hour Claims and (b) enables the Plaintiff to continue the Class Action in the District Court solely with respect to the FCRA Claims and limits any recovery only from any available insurance coverage and not from the Reorganized Debtors or the Liquidating Trust.

26. The Settlement Agreement is in the best interest of creditors and the Debtors' estates. "When determining whether a compromise is in the best interest of the estate, the Court must 'assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal.'" *Key3Media Group*, 336 B.R. at 93 (quoting *Martin*, 91 F.3d at 393 (citing *TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968))); *see also In re Nationwide Sports Distributors, Inc.*, 227 B.R. 455, 460 (Bankr. E.D. Pa. 1998) ("[I]n deciding whether to approve a particular compromise, courts utilize various criteria designed to achieve the objective of having the Trustee or debtor in possession act in [the] best interests of the estate."). To properly balance these values, the Court should consider all factors "relevant to a full and fair assessment of the wisdom of the proposed compromise." *Marvel*, 222 B.R. at 249 (quoting *TMT Trailer Ferry, Inc.*, 390 U.S. at 424); *see also Key3Media Group*, 336 B.R. at 92 (The bankruptcy court must be "apprised of all relevant information that will enable it to determine what course of action will be in the best interest of the estate.") (quoting *Martin*, 91 F.3d at 393).

[6] In the event that the Settlement Agreement is not approved by the Court on a final basis pursuant to Civil Rule 23, or the Settlement Agreement does not become binding and enforceable for any reason, the Parties reserve all of their rights.

27. Here, as stated above, absent the settlement the Reorganized Debtors would contest the Class Representative's ability to file a class proof of claim, certify a class under Civil Rule 23, the merits of the Class Action, and all subsequent appeals. In light of the extensive litigation required to otherwise resolve the Class Action and related Garcia Proofs of Claim, the Reorganized Debtors believe that this settlement is in the best interest of the estates and their creditors. The Settlement Agreement will not only avoid further litigation and costly appeals, but will also provide certainty and finality with respect sizeable disputed, contingent, unliquidated claims. Against this backdrop, the Reorganized Debtors and Liquidating Trustee believe that a compromise is the best course of action.

28. Accordingly, in light of each of the *TMT* factors, the Settlement Agreement should be approved.

B. For the Purpose of Settlement, the Court Should Certify the Class and Appoint Class Counsel and a Class Representative Pursuant to Civil Rule 23

29. Where, as in this case, the Court has not already certified a class, before approving a class settlement pursuant to Civil Rule 23, the Court must determine whether the proposed settlement class satisfies the certification requirements of Civil Rule 23. *See Amchem v. Windsor*, 521 U.S. 591, 620 (1997); *In re Community Bank of Northern Virginia*, 418 F.3d 277, 300 (3rd Cir. 2005). "[A]ll Federal Circuits recognize the utility of Rule 23(b)(3) settlement classes." *Amchem*, 521 U.S. at 618; *accord Community Bank*, 418 F.3d at 299. "The settlement class action device offers defendants the opportunity to engage in settlement negotiations without conceding any of the arguments they may have against class certification." *Community Bank*, 418 F.3d at 299; *see General Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 786 (3d Cir. 1995) ("By specifying certification for settlement purposes only . . . the court preserves the defendant's ability to contest certification should the settlement fall apart."). Subdivisions (a) and

(b) of Civil Rule 23 "focus court attention on whether a proposed class has sufficient unity so that absent members can fairly be bound by decisions of class representatives." *Amchem,* 521 U.S. at 621.

30. Here, Federal Rule 23 is made applicable to these proceedings by Bankruptcy Rule 7023. Although Bankruptcy Rule 7023 on its face applies only to "adversary proceedings," the Court may "direct that one or more of the other rules in Part VII shall apply" in the context of contested matters. Fed. R. Bankr. P. 9014(c); *see also Gentry v. Siegel*, 668 F.3d 83, 19-20 (4th Cir. 2012) (recognizing that Bankruptcy Rule 7023 can be applied to contested matters through Bankruptcy Rule 9014, which does not first require obtaining an order under Bankruptcy Rule 9014); *In re Kaiser Group Int'l., Inc.*, 278 B.R. 58, 62-63 (Bankr. D. Del. 2002) (noting "Rule 9014 expands [Bankruptcy Rule 7023] to contested matters, at the court's discretion"). The filing of a proof of claim, as contemplated here, constitutes a "contested matter" for purposes of Bankruptcy Rules 7023 and 9014. *See, e.g., Matter of GAC Corp.*, 681 F.2d 1295, 1299 (11th Cir. 1982) (noting that a party may move to make Bankruptcy Rule 7023 "apply to a 'contested matter' such as the filing of, or objection to, a proof of claim").

31. Absent the settlement, it is likely that the Reorganized Debtors and Liquidating Trustee would contest the Class Proofs of Claim and dispute the Class Representative's authority to file such claims on behalf of the Class Members. Thus, the relief requested in this Joint Motion seeks to address and bring full resolution to an otherwise "contested matter" for purposes of Bankruptcy Rules 7023 and 9014. Accordingly, the Parties submit that this Joint Motion and related pleadings constitute a "contested matter" for Bankruptcy Rule 9014 purposes, and the Court should apply Federal Rule 23, made operative by Bankruptcy Rules 7023 and 9014, to the Joint Motion and the Garcia Proofs of Claim.

32. To be certified, a class must satisfy the four requirements of Civil Rule 23(a): (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. FED. R. Civ. P. 23; *see Community Bank,* 418 F.3d at 302. In addition, the class must satisfy the requirements of Civil Rule 23(b)(1), (2) or (3). In this case, the Parties have agreed to request conditional certification under Civil Rule 23(b)(3), "the customary vehicle for damage actions." *Id.* In order to satisfy a class under Civil Rule 23(b)(3), the court must make two additional findings, predominance and superiority. That is, "[i]ssues common to the class must predominate over individual issues, and the class device must be superior to other means of handling the litigation." *Gates v. Rohm & Hass Co.*, 248 F.R.D. 434, 442-43 (E.D. Pa. 2008).

33. While the Reorganized Debtors would otherwise dispute each of the Civil Rule 23(a) and (b) requirements, the Reorganized Debtors believe that the Court should find that the Class meets each of the foregoing elements for settlement purposes.

(i) The Rule 23(a) Criteria[7]

34. Numerosity requires a finding that the putative class is "so numerous that joinder of all members is impracticable." *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 182 (3d Cir. 2001). "No single magic number exists satisfying the numerosity requirement." *Behrend v. Comcast Corp.*, 245 F.R.D. 195, 202 (E.D. Pa. 1989).

35. Absent the settlement, the Reorganized Debtors would argue that the Class does not meet the numerosity requirement because the class definition of non-exempt, non-managerial employees in the state of California since August 10, 2017 is overly broad, resulting in an inflated class size. Class Counsel would argue that the Class is not overly broad and that approximately

[7] The positions expressed in this section in support of the Rule 23(a) criteria being satisfied are those of the Class Representative only and not of the Reorganized Debtors or Liquidating Trustee. The Reorganized Debtors and Liquidating Trustee do not dispute these positions solely for purposes of the proposed Settlement.

3,840 Class Members is sufficient for the numerosity requirement. For the purposes of settlement, the Parties ask the Court to find that approximately 3,840 Class Members under the Proposed Class definition satisfies the numerosity requirement.

36. The commonality requirement requires that the named plaintiff show the existence of at least one question of law or fact common with the Class. Fed. R. Civ. P. 23(a)(2); *Johnston v. HBO Film Management, Inc.*, 265 F.3d 178, 184 (3d Cir. 2001). Absent the Settlement Agreement, the Reorganized Debtors would argue, among other things, that the Class Representative could not show that the multitude of legal theories asserted apply to each Class Member. Class Counsel would argue that that each Class Member was subject to the same general wage and hour policies creating claims sufficient to satisfy the commonality requirement. While the Reorganized Debtors would attempt to refute such arguments, for the purposes of settlement, the Parties request that the Court find that the claims asserted by Class Members satisfy the commonality requirement.

37. Typicality requires that the "named plaintiffs' claims are typical, in common-sense terms, of the class, thus suggesting that the incentives of the plaintiffs are aligned with those of the class." *Beck v. Maximus, Inc.*, 457 F.3d 291, 295-296 (3d Cir. 2006) (quoting *Baby Neal*, 43 F.3d at 55); *see* Fed. R. CIV. P. 23(a)(3). "Typicality requires a strong similarity of legal theories to ensure that the class representatives' pursuit of their own goals will work to benefit the entire class." *Powers*, 245 F.R.D. at 236. Absent the Settlement Agreement, the Reorganized Debtors would argue that the Wage and Hour Claims asserted by each Class Member would require individual legal and factual determinations as to whether each employee located in numerous separate locations with separate managers, received, *inter alia*, adequate rest breaks and accurate wage statements, making each claim unique and the Class Representative not typical. Class

Counsel would allege that none of Class Members received proper breaks or accurate wage statements, making the claims asserted by the Class Representative typical of the Class. Nonetheless, for the purpose of settlement, the Parties request the Court find that the typicality requirement is satisfied.

38. With respect to adequacy, class representatives must "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4); *Gates,* 248 F.R.D. at 441. The adequacy inquiry "assures that the named plaintiffs' claims are not antagonistic to the class and that the attorneys for the class representatives are experienced and qualified to prosecute the claims on behalf of the entire class." *Beck*, 457 F.3d at 296. Thus, the court must determine "whether the representatives' interests conflict with those of the class and whether the class attorney is capable of representing the class." *Johnston*, 265 F.3d at 185. While absent a settlement, the Reorganized Debtors may contest the adequacy of the Class Professionals and the Class Representative, the Class Professionals' reasoning as to why they are well qualified and experienced to represent the Class Members and why the Class Representative is not antagonistic to the Class is detailed in the Declarations of Shaun Setareh and Matthew Dundon, annexed hereto as **Exhibits 2** and **3**, respectively. For the purpose of settlement only, the Parties request that the Court find that the Class Representative and Class Professionals adequately represent the interests of the settlement Class Members.

(ii) The Rule 23(b)(3) Criteria[8]

39. For settlement purposes *only*, the Parties request the Court find that common questions of law and fact predominate. Predominance tests whether the proposed class is

[8] The positions expressed in this section in support of the Rule 23(b)(3) criteria being satisfied are those of the Class Representative only and not of the Reorganized Debtors or the Liquidating Trustee. The Reorganized Debtors and Liquidating Trustee do not dispute these positions solely for purposes of the proposed Settlement.

sufficiently cohesive to warrant adjudication by representation. *Amchem*, 521 U.S. at 623-24; *Community Bank*, 418 F.3d at 308-09. The proper predominance inquiry "trains on the legal and factual questions that qualify each member's case as a genuine controversy, questions that preexist any settlement." *Amchem*, 521 U.S. at 623. "In this vein a predominance analysis is similar to the requirement of Rule 23(a)(3) that claims or defenses of the named representatives must be typical of the claims or defenses of the classes." *Community Bank*, 418 F.3d at 309.

40. Absent the settlement, the Reorganized Debtors would argue that question of law and fact do not predominate over individual issues. In *In re Bally Total Fitness of Greater N.Y.*, 411 B.R. 142, 146 (S.D.N.Y. 2009), where plaintiffs were also seeking certification of a California wage and hour class based on defendant's "uniform policies and practices," Judge Rakoff rejected class plaintiffs' argument that class wide wage and hour issues predominated because "the Court would have to engage in a series of highly disputed mini-trials" for each employee to resolve their issues, "making class treatment untenable and implausible." *Id.* at 146-47 (internal quotation omitted). In contrast, Class Counsel would argue that all of the claims arise out of the Defendant Debtor's alleged common and systematic wage and hour policies and violations of California labor laws, which satisfies the predominance requirement and which would obviate the necessity for any, to say the least of many, "mini-trials." For the purposes of settlement, the Parties request the Court find that the predominance requirement is satisfied.

41. Civil Rule 23(b)(3) also requires a determination that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3); *Gates*, 248 F.R.D. at 443. In effect, "[t]he superiority requirement asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication." *Krell v. Prudential Inc. Co. (In re Prudential Inc. Co.),* 148

F.3d at 283, 316 (3d Cir. 1998). Civil Rule 23 sets forth several factors relevant to the superiority inquiry: "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of claims in the particular forum; and (D) the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3); *Gates*, 248 F.R.D. at 443. However, when a class certification is being considered for settlement purposes only, the difficulties in managing a class action are not considered. *Gates*, 248 F.R.D. at 443.

42. Absent the settlement the Reorganized Debtors would argue that class treatment is not the most fair and efficient method of adjudicating the controversy. As Judge Rakoff stated in *Bally*, "many of the perceived advantages of class treatment drop away" in bankruptcy proceedings because individual creditors "can participate in the distribution [of the estate] for the price of a stamp," since "[t]hey need only fill out and return the proof of claim." *Bally*, 411 B.R. at 145. *See also Gentry*, 668 F.3d at 85-86 (the Fourth Circuit affirming the bankruptcy court's ruling that, *inter alia*, the named employee wage and hour claimants were not authorized to file class proofs of claim and finding the bankruptcy process superior to the class action process). Class Counsel would argue that the nature of the wage and hour claims makes it well suited for class treatment since liability depends on issues of law and fact that affect a large group of employees in the same way, and whereas here, the amount of each Class Member's individual claim would be relatively small, minimizing the incentives for employees to assert and prosecute their claims, and that generic bankruptcy noticing does not provide a sufficient opportunity to submit a claim in respect of violations which employees often do not know they have suffered given their lack of knowledge of applicable law. For the purposes of settlement only, the Parties request that the Court find that

the superiority requirement is met.

43. Based on the foregoing, the Parties respectfully submit that the Court should certify the Class for settlement purposes, appoint Yaquelin Garcia as the Class Representative, and the Setareh Law Group as Class Counsel.

C. The Court Should Preliminarily Approve the Settlement Agreement Pursuant to Civil Rule 23

44. After class certification, approval of a class settlement generally requires two hearings: one preliminary approval hearing and one final "fairness" hearing. *Gates v. Rohm & Hass Co.*, 248 F.R.D. 434, 442-43 (E.D. Pa. 2008). Once a settlement is preliminarily approved, notice of the proposed settlement and of the fairness hearing is provided to class members. Because the Settlement Agreement in this case will be preliminarily approved pursuant to this Joint Motion, notice of the conditional class certification and proposed settlement can be combined in one notice. *Gates*, 248 F.R.D. at 445; *Collier v. Montgomery County Housing Authority*, 192 F.R.D. 176, 186 (E.D. Pa. 2000) (citing MANUAL FOR COMPLEX LITIGATION § 30.212 (2004)). At the subsequent fairness hearing, Class Members may formally object to the proposed settlement. *Gates*, 248 F.R.D. at 439.

45. "The preliminary approval decision is not a commitment [to] approve the final settlement; rather, it is a determination that there are no obvious deficiencies and the settlement falls within the range of reason." *Id.* at 438 (quoting from *Smith v. Professional Billing & Management Services, Inc.*, 2007 WL 4191749, at * 1 (D. N.J. 2007)). The preliminary approval determination requires the Court to consider whether "(1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected." *In re General Motors Corp. Pick Up Fuel Tank Products Liability Litigation*, 55 F.3d 768, 785-86 (3d Cir. 1995); *Gates*, 248

F.R.D. at 444. When a class certification is sought in conjunction with preliminary approval, then class member objections are not relevant. *Gates*, 248 F.R.D. at 444.

46. First, the Settlement is the result of good faith, arms' length negotiations between capable adversaries. The Settlement Agreement will resolve the Wage and Hour Claims in the Class Action and the Garcia Proofs of Claim, which have been subject to discussion and negotiation among the Parties since shortly after the Debtors' chapter 11 cases were commenced.

47. Second, the Class Representative and Class Counsel engaged in an investigation and obtained relevant records from the Debtors, including the Class Representative's personnel file and wage statements, and other documents related to the Proposed Class and the Wage and Hour Claims. Based on the investigation and analysis of the Wage and Hour Claims, Class Counsel and the Class Representative determined that the settlement was reasonable and appropriate.

48. Third, according to the Declaration of Shaun Setareh (attached hereto as **Exhibit 2**), Class Counsel has significant experience prosecuting wage and hour class actions. They have been appointed class counsel in numerous similar cases, both through contested certification motions and settlements, and have recovered tens of millions of dollars for hundreds of thousands of employees in such cases. Furthermore, as reflected in the Declaration of Matthew Dundon (attached hereto as **Exhibit 3**), Dundon Advisors has served as financial and strategic adviser to clients with representative employment claims in numerous bankruptcy cases as well as out-of-court restructurings. The Class Representative believes that the Class Professionals have the experience and skill to both vigorously litigate the claims asserted in the Class Action and to determine when and to what extent settlement is appropriate, and have exercised that judgment in this case with respect to the Settlement Agreement.

49. Thus, the Settlement Agreement has no obvious deficiencies and, as demonstrated above, falls well within the range of reason. Further, as stated above, approval of the Settlement Agreement is in the best interest of the estates and creditors, and has the support of the Reorganized Debtors and the Liquidating Trustee. Accordingly, the Court should preliminarily approve the Settlement Agreement.

D. The Court Should Approve the Form and Manner of the Proposed Notice of the Settlement

50. Civil Rule 23(c)(2)(B) provides:

> For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B).

51. In addition, Civil Rule 23(e) requires that all members of the class be notified of the terms of any proposed settlement. Fed. R. Civ. P. 23(e). The Rule 23(e) requirement is "designed to summarize the litigation and the settlement and to apprise class members of the right and opportunity to inspect the complete settlement documents, papers, and pleadings filed in the litigation." *Krell v. Prudential Ins. Co. of America (In re Prudential)*, 148 F.3d 283, 326-27 (3d Cir. 1998).

52. The Summary Class Notice, substantially in the form attached as Exhibit B to the Settlement Agreement, will be served by the Settlement Administrator upon each Class Member once this form of notice is approved by the Court. The Parties propose that within twenty (20) days following entry of the order certifying the Class for settlement purposes and preliminarily

approving the Settlement Agreement, the Settlement Administrator will serve the Summary Class Notice upon each Class Member at the last known address of each Class Member according to the Debtor Defendant's books and records (or as updated by the Settlement Administrator based on the National Change of Address Database maintained by the United States Postal Service). The Summary Class Notice will instruct the Class Members to view the settlement website which will contain the long-form Class Notice (attached to the Settlement Agreement as Exhibit C) and other important information related to the Settlement Agreement

53. The Class Notice includes each of the facts required by Civil Rule 23(c)(2)(B). The Class Notice also outlines the terms of the Settlement Agreement, including the fees and out of pocket costs proposed to be paid to Class Professionals, and describes how each Class Member may obtain a copy of the pleadings in the Class Action and a copy of the Settlement Agreement. The Class Notice also states the date, time, location and purpose of the Fairness Hearing, informs each Class Member of their right to appear at the Fairness Hearing, and describes the procedure for opting out of the Class or objecting to the Settlement Agreement.

54. In addition, the Debtors intend to satisfy the requirements of the Class Action Fairness Act, 28 U.S.C. § 1711 et seq., by providing notice to appropriate state and federal officials in the form attached hereto as **Exhibit 4**.

E. The Court Should Finally Approve the Settlement at the Fairness Hearing Pursuant to Civil Rule 23

55. The Parties jointly request that the Court set a Fairness Hearing no earlier than 90 days after the hearing for preliminary approval, which will be after the expiration of any applicable deadlines under 28 U.S.C. § 1715 and in compliance with the Class Action Fairness Act. At the Fairness Hearing, the Court should finally approve the Settlement Agreement.

56. Civil Rule 23 provides that "[t]he claims, issues, or defenses of a certified class

may be settled, voluntarily dismissed or compromised only with the court's approval.' Fed. R. Civ. P. 23(e). Final approval of a settlement pursuant to Civil Rule 23(e) turns on whether the settlement is "fair, reasonable and adequate." Fed. R. Civ. P. 23(e)(2); *In re Cendant Corp. Litig.*, 264 F.3d 201, 231 (3d Cir. 2001). "This inquiry requires the court's independent and objective analysis of the evidence and circumstances before it in order to determine whether the settlement is in the best interest of those whose claims will be extinguished." *Community Bank*, MDL No. 1674, No. 03-0425, 2008 WL 3833271 at *5 (W.D. Pa. Aug. 15, 2008) (quoting *General Motors*, 55 F.3d at 785).

57. The Eighth Circuit has held that the following four factors are relevant in determining whether a proposed class settlement is fair, reasonable, and adequate: (1) the merits of the plaintiff's case, weighed against the terms of the settlement; (2) the defendant's financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement. *Van Horn v. Trickery*, 840 F.2d 604, 607 (8th Cir. 1988). The *Van Horn* factors strongly support approval of the Settlement Agreement.

58. With respect to the first factor, the risk that the Plaintiff would be unable to establish liability is high because of the various defenses that would be offered by the Reorganized Debtors and Liquidating Trustee, such as arguments against the filing of a class proof of claim, arguments against class certification under Civil Rule 23, and evidence in the form of the Debtor Defendant's records and deposition testimony suggesting that employees were authorized to take lawful off-duty rest breaks, not entitled to receive premium pay, and received accurate and compliant wage statements. Pursuant to the terms of the Settlement Agreement, each Class Member will be entitled to a distribution from the Net Settlement Sum, comprised of their respective entitlement to Gross Settlement Amount after deductions, including Class Professionals' fees and expenses, taxes and

costs.

59. The second factor, the financial condition of the defendant, weighs in favor of the settlement. Here, the defendant is a Debtor in chapter 11 proceedings and lengthy litigation regarding the Wage and Hour Claims would impose a significant drain on estate resources. The settlement will allow the Reorganized Debtors to address contingent and unliquidated claims without the expense of litigation.

60. As discussed above, the third factor weighs in favor of the settlement. Litigation of the Wage and Hour Claims in the Class Action will be complicated, protracted, and expensive. The settlement avoids expending the limited resources of the Reorganized Debtors and the Liquidating Trustee and permits a consensual resolution that the Parties believe is fair and reasonable. Finally, the fourth factor, the amount of opposition to the settlement, weighs in favor of the settlement. The Class Representative supports the Settlement Agreement and Class Counsel believes that the bulk of the other Class Members will have a favorable reaction to the Settlement Agreement and will not object to it. Furthermore, Class Members that dislike the agreement have an opportunity to object to the settlement and/or opt out.

61. Based on the foregoing, the Court should approve the Settlement Agreement pursuant to Civil Rule 23 and Bankruptcy Rule 7023.

NOTICE

62. Bankruptcy Rule 2002 requires that the Reorganized Debtors give all creditors not less than twenty-one (21) days' notice of "the hearing on approval of a compromise or settlement of a controversy unless the court for cause shown directs that the notice be not sent . . ." Fed. R. Bankr. P. 2002(a)(3). The Parties propose that notice, together with a copy of this Joint Motion, be provided to all parties which have requested notice pursuant to Bankruptcy Rule 2002. In light

of the nature of the relief requested, the Parties submit that no other or further notice need be given.

NO PRIOR REQUEST

63. No prior request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

64. WHEREFORE, the Parties respectfully request that the Court enter orders, substantially in the proposed forms annexed to the Settlement Agreement: (i) granting the Joint Motion in its entirety; (ii) authorizing the Parties to enter into the Settlement Agreement and all other agreements necessary to effectuate the distributions contemplated in respect of the Gross Settlement Amount; (iii) certifying the Class for settlement purposes only with respect to the Wage and Hour Claims; (iv) appointing Class Counsel and the Class Representative and preliminarily approving the Settlement Agreement; (v) approving the form and manner of Class Notice; (vi) scheduling a Fairness Hearing; (vii) approving Class Professionals' fees and costs; (viii) approving the Settlement Agreement on a final basis at the Fairness Hearing; and (ix) granting such other relief as the Court deems necessary and appropriate.

[Signature Pages Follow]

Dated: March 1, 2023
St. Louis, Missouri

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EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:	)	Case No. 19-40883-659
	)	Chapter 11
Payless Holdings LLC, *et al.*,	)	
	)	Jointly Administered
Reorganized Debtors.	)	

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Settlement Agreement") is made and entered into this the 28th day of February, 2023, by and between Yaquelin Garcia (the "Plaintiff") on behalf of herself and the class she seeks to represent under Federal Bankruptcy Rules 9014 and 7023, and Rule 23 of the Federal Rules of Civil Procedure, by and through her undersigned counsel, Payless ShoeSource, LLC, successor to Payless ShoeSource, Inc. ("Payless" or the "Debtor Defendant"), on behalf of itself and the above-captioned reorganized debtors (collectively, the "Reorganized Debtors" and, prior to the Effective Date (as defined herein), the "Debtors"), the liquidating trust (the "Liquidating Trust") established to facilitate the implementation of the Plan (as defined herein), and META Advisors LLC, as the Liquidating Trustee (as defined herein).

WHEREAS, on November 15, 2018, the Plaintiff, individually and on behalf of others similarly situated, commenced an action, captioned as *Yaquelin C. Garcia v. Payless ShoeSource, Inc.*, Case No. 3:18-cv-07609-JST (the "Class Action"), in the Superior Court of the State of California, County of Alameda (the "California Superior Court") against Debtor Defendant; and

WHEREAS, the Class Action was filed by the law firm of Setareh Law Group, LLP ("Class Counsel"); and

WHEREAS, on December 19, 2018, the Class Action was removed to the United States District Court for the Northern District of California (the "District Court");

WHEREAS, the Plaintiff alleged claims against the Debtor Defendant arising under the Fair Credit Reporting Act, the California Investigative Consumer Reporting Agencies Act and the California Consumer Credit Reporting Agencies Act, and as set forth in the First through Fourth Claims for Relief of the Complaint (collectively, the "FCRA Claims");

WHEREAS, the Plaintiff asserted claims against the Debtor Defendant under the California Labor Code for alleged failure to authorize timely, uninterrupted, off duty, ten-minute rest periods, provide accurate wage statements, and timely pay final wages (pursuant to California Labor Code sections 201, 202, 203, 204, 223, 226, 226.7, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198 and 1199) and derivative claims under the California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq*.) as set forth in the Fifth, Sixth, Seventh and Eighth Claims for Relief of the Complaint (collectively, the "Wage and Hour Claims");

WHEREAS, all claims against Payless alleging violations of the law occurring before August 10, 2017, including alleged violations of the California Labor Code and Business and Professions Code, were discharged by order of the United States Bankruptcy Court for the Eastern District of Missouri, in the prior chapter 11 cases styled *In re Payless Holdings LLC, et al.*, Case No. 17-42267-659, dated July 26, 2017;

WHEREAS, with respect to the Wage and Hour Claims for purposes of this Settlement Agreement, and based on the prior chapter 11 discharge referenced immediately above, the Plaintiff seeks to represent all persons employed by Debtor Defendant in hourly or non-exempt positions in California (the "Proposed Class") during the period beginning August 10, 2017 through July 31, 2019 (the "Settlement Class Period");

WHEREAS, the Plaintiff acknowledges and hereby represents that any claims for civil penalties under the California Private Attorney General Act of 2004, California Labor Code sections 2698 *et seq.*, as amended ("PAGA"), she asserted in a notice to the California Labor Workforce Development Agency ("LWDA") dated November 13, 2018 and could have brought against Payless on behalf of herself individually and the State and/or all other "aggrieved employees" under the PAGA are time-barred, and she will take no further action to pursue such PAGA claims in her individual and/or representative capacity;

WHEREAS, on February 18, 2019 (the "Petition Date"), twenty-seven (27) of the Debtors, including the Debtor Defendant, filed a voluntary petition under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Eastern District of Missouri (the "Bankruptcy Court"), and on July 7, 2019, two (2) additional Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the Bankruptcy Court;

WHEREAS, the Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and

WHEREAS, on May 3, 2019, the Bankruptcy Court entered the *Order Establishing Bar Dates for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [Docket No. 969] (the "Bar Date Order") which, among other things, established June 7, 2019 (the "General Bar Date") as the last date for certain creditors (including without limitation, individuals, partnerships, corporations, joint ventures and trusts), other than governmental units, to file proofs of claim based on all types of claims against the Debtors that arose prior to the Petition Date, including secured claims, unsecured priority claims and unsecured nonpriority claims; and

WHEREAS, on June 6, 2019, the Plaintiff filed individual proofs of claim, including, but not limited to, Claim Nos. 953-1, 955-1, 959-1, 959-2, and 960-1 filed against Payless ShoeSource, Inc., asserting claims that are duplicative of or subsumed by the claims asserted in the Class Action and/or arise out of the same or similar facts (the "Garcia Proofs of Claim"); and

WHEREAS, on October 23, 2019, the Bankruptcy Court entered an order [Docket No. 1701] (the "Confirmation Order") confirming the *Second Amended Joint Plan of Reorganization of Payless Holdings LLC and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code As Modified on October 23, 2019* [Docket No. 1692] (the "Plan");

WHEREAS, the Plan became effective on January 14, 2020 (the "Effective Date");

WHEREAS, the Liquidating Trust was created on the Effective Date of the Plan and, pursuant to the Plan, the Liquidating Trustee has the sole authority to file, withdraw or litigate to judgment objections to general unsecured claims filed against Debtor Defendant;

WHEREAS, the Reorganized Debtors, have the sole authority to file, withdraw or litigate to judgment objections all other Claims (including administrative claims and priority claims) filed against Debtor Defendant;

WHEREAS, the Bankruptcy Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334; this is a core proceeding pursuant to 28 U.S.C. § 157(b); and venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and

WHEREAS, after good faith, arm's-length negotiations, in order to avoid the costly and burdensome process of litigating the claims asserted in the Class Action in these chapter 11 cases, the Reorganized Debtors (including the successor to Debtor Defendant), the Liquidating

Trust, the Liquidating Trustee, the Plaintiff, and Class Counsel (collectively, the "Parties") have agreed to the terms and conditions set forth herein (the "Settlement");

NOW, THEREFORE, in consideration of the mutual covenants, the promises and other good and valuable consideration, the sufficiency of which hereby are acknowledged, the undersigned parties agree as follows:

1. **Joint Motion for Class Certification, Settlement Approval and Class Notice.** Promptly after the execution of this Settlement Agreement, the Parties agree to file a joint motion (the "Joint Motion") seeking the Bankruptcy Court's approval of the Settlement Agreement under procedures considered herein and under Rules 9019, 9014 and 7023 of the Federal Rules of Bankruptcy Procedure. The Joint Motion shall request an initial hearing (the "Initial Hearing") at which time the Parties shall seek entry of an order from the Bankruptcy Court certifying the Proposed Class, solely with respect to the Wage and Hour Claims and for settlement purposes only, preliminarily approving the Settlement Agreement, including, among other things, their right to opt out of the Proposed Class, object to the Settlement Agreement or appear by counsel, and approving the form and manner of notice to the members of the Proposed Class. The Parties shall also request a date for a fairness hearing (the "Fairness Hearing"). The date of the Fairness Hearing shall be no earlier than the earliest date for entry of a binding order under 28 U.S.C. § 171S(a)- (d) and no earlier than 90 days after the Initial Hearing to comply with the Class Action Fairness Act. The Parties will submit with the Joint Motion a form of proposed order granting preliminary approval of the settlement in the form of **Exhibit A,** a proposed postcard Summary Class Notice in the form attached as **Exhibit B**, and a proposed Class Notice in the form attached hereto as **Exhibit C,** and this Settlement Agreement with exhibits.

(a) CAFA Notice. Within ten (10) days of filing the Joint Motion, the Settlement Administrator shall send out notice to all departments of labor of every state where California and FCRA Class Members reside according to the Reorganized Debtors' records pursuant to the Class Action Fairness Act and to the United States Department of Labor.

(b) At the Fairness Hearing, the Bankruptcy Court will consider the final approval of the Settlement Agreement, including the award of Class Professionals' fees and Plaintiff's service award as Class Representative as well as the authority of the Reorganized Debtors and the Liquidating Trust to enter into the Settlement Agreement. The Parties agree that this Settlement Agreement is only valid if the Court certifies the Proposed Class for settlement purposes pursuant to Federal Bankruptcy Rules 7023 and 9014. The Parties will submit with the Joint Motion a form of proposed order granting final approval of the settlement (the "Final Approval Order") in the form of **Exhibit D.**

(c) The Parties will jointly seek a further postponement of proceedings and stay in the District Court of any and all pending deadlines related to the Class Action, pending final approval by the Bankruptcy Court of this Settlement Agreement.

2. Class Certification.

(a) Upon execution of this Settlement Agreement, the Parties consent to the certification of the Proposed Class solely with respect to the Wage and Hour Claims, *i.e.*, all non-exempt, employees who worked at any time for Payless ShoeSource, Inc. within California from and including August 10, 2017 through and including July 31, 2019 (each employee within the Proposed Class, "Class Members"), *provided, however*, that such Proposed Class shall be certified for ***settlement purposes only*** pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedures

as made applicable to these proceedings by Rules 7023 and 9014 of the Federal Rules of Bankruptcy Procedure, and is conditioned upon this Settlement Agreement's final approval.

(b) The law firm of Setareh Law Group shall be appointed as Class Counsel for the Proposed Class created under the Settlement Agreement.

(c) Yaquelin C. Garcia shall be appointed Class Representative for the Proposed Class created under this Settlement Agreement.

3. Settlement Administrator.

(a) The settlement administrator (the "Settlement Administrator") shall be Simpluris or another company or firm chosen by the Reorganized Debtors, in its sole discretion, to administer the settlement contemplated by this Settlement Agreement. The Reorganized Debtors shall be responsible for all reasonable and documented costs related to the administration of the settlement up to a maximum amount of $25,000.00 (twenty-five thousand dollars and no cents) (the "Settlement Administration Costs"). The Parties agree to work together to minimize the Settlement Administration Costs.

(b) The information provided by the Reorganized Debtors to the Settlement Administrator shall be considered confidential, shall not be disclosed to anyone other than the Reorganized Debtors' counsel and the Settlement Administrator. The Settlement Administrator shall not provide the Class Professionals with Class Members' names, last known addresses, telephone numbers, social security numbers or any other personal contact information, absent express written approval from the Reorganized Debtors' counsel.

(c) Not later than ten (10) days prior to the date of the Fairness Hearing, the Settlement Administrator will provide the Parties for filing with the Bankruptcy Court a declaration of due diligence setting forth its compliance with its obligations under this

Settlement Agreement and detailing the requests to opt out of the Settlement that it has received (including the number of valid and deficient forms) and detailing any objections that it has received (including objections to Settlement and/or objections to Class Professionals' fees and expenses payment). Prior to the Fairness Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

4. Settlement Amounts.

(a) The Parties' obligations under the terms of this Settlement Agreement are contingent upon approval and final confirmation by the Bankruptcy Court of this Settlement Agreement, *provided, however,* an award by the Bankruptcy Court of a lesser amount than that sought by Plaintiff for the Service Award or the Class Professionals' fees and expenses will not nullify the obligations of the Parties pursuant to this Settlement Agreement.

(b) In consideration for the settlement of the Wage and Hour Claims asserted in the Class Action, upon the entry of an order by the Bankruptcy Court approving this Settlement Agreement on a final basis pursuant to Federal Rule of Civil Procedure 23, the Class Members collectively shall have an allowed priority claim pursuant to Bankruptcy Code section 507(a)(4) in the aggregate amount of $50,000.00 ("Priority Settlement Claim") and an allowed general unsecured claim in the aggregate amount of $125,000 (the "GUC Settlement Claim"). The amounts for distribution on account of the Priority Settlement Claim and the GUC Settlement Claim pursuant to the Plan shall be the "Gross Settlement Amount" and the Parties agree that the GUC Settlement Claim shall be entitled to a distribution of $3,750.

(c) Subject to Bankruptcy Court approval, the Gross Settlement Amount will be allocated towards the following: (i) payment of Class Professionals' (as defined below) fees,

costs, and expenses (to the extent provided for below); (ii) service award of $2,500 paid to the Plaintiff in exchange for the releases specified in this Settlement Agreement; and (iii) any employer-side taxes, including the employer FICA, FUTA, and SDI contributions relating to the portion of Class Members' settlement proceeds that constitutes wages. The remainder of the Gross Settlement Amount after the deductions in the foregoing sentence shall be paid to the Class Members ("Net Settlement Sum"). If the Bankruptcy Court reduces any or all of the amounts stated in subsections (i) and (ii) of this paragraph, the funds from such reduction shall be re-distributed to the Class Members under the formula set forth in the following paragraph.

(i) **Allocation of Net Settlement Sum to Class Members.** The general formula for determining a Class Member's individual award ("Individual Settlement Payments") is:

1. Each Class Member who does not opt out will be a "Claimant." Individual Settlement Payments shall be treated as one third wages for tax purposes. The balance shall be treated as penalties and interest.

2. Within ten (10) days of preliminary approval of this Settlement Agreement by the Bankruptcy Court, the Reorganized Debtors shall provide a report of the names, addresses, and social security numbers for each Class Member to the Settlement Administrator. The Settlement Administrator will allocate the Individual Settlement Payments to the Class Members on a pro rata basis. Claimants are entitled to 100% of the Net Settlement Sum and the Reorganized Debtors, the Liquidating Trust, and the Liquidating Trustee shall not retain any reversionary right to any portion of the Net Settlement Sum. If there are any timely submitted requests to opt out of the settlement, such amounts will be redistributed to the Claimants on a pro rata basis. Any failure of a Claimant to deposit a check

shall not affect the enforceability of the release of all Released Claims (as defined below), as the Parties jointly agree that valid consideration for same is the offer of monetary consideration by means of the offer of settlement and mailing of settlement checks.

3. If a Class Member timely disputes the Reorganized Debtors' records as to the proper amount of his or her Individual Settlement Payment, the Settlement Administrator will have the final authority to resolve all disputes concerning the calculation of the Individual Settlement Payment, subject to the dollar limitations and calculations set forth in this Settlement Agreement. In the event that any questions or disputes arise regarding an individual's membership in the Proposed Class, or regarding the period of employment with Debtor Defendant during the Settlement Class Period, the records of the Reorganized Debtors shall control and will be presumptively determinative to resolve the dispute unless the Reorganized Debtors agree otherwise in a particular instance. In any event, the Settlement Administrator, to the extent possible, will make every effort to assist in resolving such disputes prior to final approval of the Settlement Agreement. A Class Member may also object to the Settlement Agreement before it is approved by the Bankruptcy Court or may opt out of the Class as provided for herein. Class Members will *not* have to submit proofs of claim to receive their Individual Settlement Payment.

(ii) **Class Professionals' Fees and Costs.** Class Counsel's fees and costs are to be paid solely out of the Gross Settlement Amount and, subject to Bankruptcy Court approval, shall be equal to thirty-three and one third percent (33 1/3%) of the Gross Settlement Amount ($17,916.67). Furthermore, the professional fees of Dundon Advisers, LLC ("Dundon" and together with Class Counsel, the "Class Professionals"), as financial and strategic adviser to the Plaintiff and Class Counsel, are to be paid solely out of the Gross

Settlement Amount and, shall be equal to ten percent (10%) of the Gross Settlement Amount ($5,375.00). To obtain fees, costs and expenses associated with this Settlement, the Class Professionals shall file, as exhibits to the Joint Motion, declarations detailing their expertise and indicating why they are qualified to serve as a Class Professional, and supporting the attorneys' and other professional fees and expenses sought. The Class Professionals agree to be bound by the Bankruptcy Court's determination as to the terms of payment and the final and complete amount of Class Professionals' fees and expenses associated with the Class Action. For the avoidance of doubt, neither the Reorganized Debtors nor the Liquidating Trustee shall be liable to the Class Professionals for any fees, costs or expenses other than those expressly approved by the Bankruptcy Court, and the Class Professionals agree that their fees, costs and expenses as set forth herein shall have recourse only to the Gross Settlement Amount. The Class Professionals agree that the Bankruptcy Court's determination as to their fees, costs, and expenses is final and non-appealable, and the Class Professionals agree not to seek approval of their application for fees and costs from any other source, including any other court. To the extent Class Professionals' fees and expenses comply with this paragraph, the Reorganized Debtors and the Liquidating Trustee agree not to oppose the Class Professionals' application to the Bankruptcy Court for Class Professionals' fees and expenses in the amounts specified in this paragraph. The Settlement Administrator shall distribute the Class Professionals' fees and expenses pursuant to this paragraph.

(iii) **Plaintiff Service Award.** In addition to receiving a distribution as calculated under Section 4(d)(i) above, subject to Bankruptcy Court approval, the Plaintiff shall receive a payment of up to $2,500 (the "Service Award") to be paid out of the Gross Settlement Amount, subject to approval by the Bankruptcy Court, for her service acting as

named representative in the Class Action with respect to the Wage and Hour Claims. The Settlement Administrator shall distribute the Service Award to Plaintiff no later than thirty (30) days after the Settlement Effective Date (as defined herein). The Settlement Administrator (and not the Reorganized Debtors) shall issue an IRS Form 1099 to Plaintiff reflecting the payment of the Service Award.

(iv) **Tax Allocation.** The Parties agree that the Individual Settlement Payments which, for the avoidance of doubt, shall be distributed only from the Gross Settlement Amount, are to be allocated as one-third (1/3) wages, which are subject to the withholding of all applicable local, state and federal, and two-thirds (2/3) penalties and interest, which are not subject to wage withholdings. The Service Award paid to the Plaintiff is to be characterized as 100% non-wages, and the Plaintiff shall be responsible for correctly characterizing this additional compensation for tax purposes and for payment of any taxes owing on said amounts. Because the Service Award does not constitute alleged wage loss, payroll tax withholding and deductions will not be taken from the Service Award and a Form 1099 will be issued to the Plaintiff with respect to such payment. Payment of the employer's portion of payroll and withholding taxes for Claimants will be paid out of the Gross Settlement Amount, thereby reducing the Individual Settlement Payments. The Parties further agree that individual Class Members shall be responsible for any and all personal tax liability incurrent by receiving any Individual Settlement Payments.

5. Disbursement of the Gross Settlement Amount.

(a) The Reorganized Debtors and the Liquidating Trustee shall fund the Gross Settlement Amount within ten (10) days after the Settlement Effective Date (as defined herein) by wire transfer and as agreed upon with the Settlement Administrator into an escrow

account to be established by the Settlement Administrator, which funds shall be held in trust for this Settlement and created as a Qualified Settlement Fund. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1 and section 468B of the Internal Revenue Code of 1986, as amended (the "Code"). The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall be treated as an "administrator" as defined at Treasury Regulation section 1.468B-2(k) for purposes of federal and state income tax reporting with respect to the distributions from the Net Settlement Amount. Accordingly, Forms 1099 will be distributed by the Settlement Administrator at times and in the manner required by the Code and consistent with this Settlement Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed after the date of this Settlement Agreement, the processes set forth in this section may be modified in a manner to comply with any such changes.

(b) The Settlement Administrator shall be responsible for the preparation and mailing of the individual settlement checks to Class Members within twenty (20) days of the Settlement Effective Date (as defined below) in accordance with this Settlement Agreement, net of any employer-side taxes withheld or otherwise allocated to the employer (not net of taxes owed by the employee).

(c) Following the Settlement Effective Date (as defined herein), the Settlement Administrator shall notify the Reorganized Debtors, the Liquidating Trustee and

Class Counsel of checks that have been (i) returned as undeliverable or (ii) remain uncashed, or unnegotiated. Upon receipt of a corrected address, the Settlement Administrator shall mail the returned, uncashed or unnegotiated settlement check to the Claimant at such corrected address. Any distributions which are not deposited, endorsed or negotiated within one hundred eighty (180) days of their date of issuance shall be deemed residual funds (the "Residual Funds") on the hundred and eighty-first day (181) following the settlement distribution as described below. Residual Funds will be distributed by the Settlement Administrator to the *cy pres*, National Association of Consumer Advocates.

(d) The Settlement Administrator will pay the amounts for Class Professionals' fees and expenses approved by the Bankruptcy Court out of the Gross Settlement Amount. Payroll tax withholding and deductions will not be taken from the payments of fees and expenses to the Class Professionals and one or more Forms 1099 will be issued to Class Counsel and Dundon as appropriate under applicable regulations with respect to such payments.

(e) Withholding Taxes and Related Filings

(i) The Settlement Administrator shall report the pre-tax payment amounts (the "Pre-Tax Payment Amount"), net of the employer's tax portion, to each Class Member receiving payment under this Settlement Agreement, in a proportion of wages to penalties as described in Section 4(d)(iv), to the United States Internal Revenue Service and to other appropriate taxing authorities ("Taxing Authority" or "Taxing Authorities") on a Form W-2 issued to the Class Member with his or her taxpayer identification number. The Pre-Tax Payment Amount shall be subject to deductions for applicable taxes as required by federal, state, and local law. Any employee payroll tax withholdings required by federal, state

or local law shall be withheld from the distributions to the Class Members receiving payments under this Settlement Agreement and the Class Members shall be issued a Form W-2 reflecting such payment. These amounts shall include the employee portion of all applicable federal, state and local taxes, including, without limitation, Federal Insurance Contribution Act ("FICA") taxes, as well as any other taxes and employment compensation contributions which are required to be withheld from the Class Members' distributions based on the treatment of those distributions as wages. The Settlement Administrator shall determine the amount of any employee taxes that will become due and owing and shall be withheld. All such employee taxes shall be deducted by the Settlement Administrator out of the Gross Settlement Amount and paid promptly to the appropriate Taxing Authorities. The Settlement Administrator shall be responsible for the reporting of same, as well as the provision of Forms W-2 and other required tax reporting forms. The Settlement Administrator shall be responsible for paying out of the Gross Settlement Amount the employer portion of FICA taxes, state disability insurance, and any required federal and state unemployment taxes.

(ii) In the event that it is subsequently determined by any Taxing Authority that any Class Member owes any additional taxes with respect to any money distributed under this Settlement Agreement, it is agreed that the determination of any tax liability is between the Class Member(s) and the Taxing Authority, and that the Reorganized Debtors, the Liquidating Trustee, and the Settlement Administrator shall not be responsible for the payment of such taxes, including any interest and penalties. The Settlement Administrator shall be responsible for filing the appropriate employment tax returns arising from disbursement of the Gross Settlement Amount. In the event of an audit of the Reorganized Debtors, the Liquidating Trustee, or the Settlement Administrator by any state

or federal governmental agency, the Reorganized Debtors, the Liquidating Trustee, and the Settlement Administrator reserve all rights to indemnification permitted by law, which indemnification rights shall not extend to third parties that have contributed the Gross Settlement Amount on account of such contributions.

6. Treatment of Class Members Who Opt Out. If a Class Member elects to opt out of the Settlement Agreement, as provided in Section 9 below, his or her outstanding claim(s) are subject to the jurisdiction of and must be resolved by the Bankruptcy Court; *provided, however*, nothing in this Settlement Agreement shall be deemed to authorize the filing of proofs of claim after the General Bar Date and Preliminary Approval Order and Final Approval Order shall provide that the General Bar Date is not tolled or otherwise extended for any Class Member. The Reorganized Debtors and Liquidating Trustee reserve all rights and defenses related to any late filed proof of claim. All Class Members who elect to opt out will be stayed or enjoined from pursuing claims that are subject to this Settlement Agreement in state court or any other court that would otherwise have competent jurisdiction.,.

7. Acceptance and Effectiveness of the Settlement.

(a) The effectiveness of this Settlement Agreement and any and all obligations and/or releases hereunder shall be subject to and contingent upon the entry of an order of the Bankruptcy Court at or after the Fairness Hearing, reasonably satisfactory to each of the Parties hereto, approving this Settlement Agreement, allowing the Priority Settlement Claim as a priority claim against Debtor Payless ShoeSource, Inc. pursuant to Bankruptcy Code section 507(a)(4) in the liquidated amount of $50,000.00, allowing the GUC Settlement Claim as an unsecured, nonpriority claim against Debtor Payless ShoeSource, Inc. in the liquidated amount of $125,000, and upon such order having become final and non-appealable.

(b) The effective date of this Settlement Agreement (the "Settlement Effective Date") shall be the latest of the following dates: (i) 31 calendar days after final approval by the Bankruptcy Court; or (ii) if there are objections to the settlement which are not withdrawn, and if an appeal, review or writ is not sought from the final order of the Bankruptcy Court, the day after the time for appeal of such final order has expired; or (iii) if an appeal, review or writ is sought from the final order of the Bankruptcy Court, the day after such final order is affirmed or the appeal, review or writ is dismissed or denied, and the final order is no longer subject to further judicial review, provided the Final Approval Order has remained intact in all material respects.

(c) If the Settlement Effective Date does not occur, then this Settlement Agreement shall be *void ab initio* and the Parties shall revert to their respective positions, and in such event the Parties shall not rely on this Settlement Agreement or any of the negotiations with the Reorganized Debtors and/or any other parties (as applicable) that resulted in this Settlement Agreement in any further proceedings in connection with the matters that are being settled in connection with this Settlement Agreement.

(d) In the event the Bankruptcy Court fails to approve any economic term or term related to the scope of the release in this Settlement Agreement, the Reorganized Debtors, at their option, may void the Settlement Agreement and the Settlement Agreement shall be of no further force or effect. If the Reorganized Debtors void the Settlement Agreement, the Reorganized Debtors shall be responsible for any Settlement Administration Costs incurred to such date.

8. The Class Notice.

(a) Class notice shall be in substantially the form annexed hereto as Exhibit B or such substantially similar form as may be approved by the Bankruptcy Court (the "Summary Class Notice"). Upon receipt of Class Member information from the Reorganized Debtors, the Settlement Administrator shall perform a search based on the National Change of Address Database maintained by the United States Postal Service to update and correct any known or identifiable address changes. The Summary Class Notice will be sent by the Settlement Administrator to the last known address of each Class Member as determined by the Settlement Administrator. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the most current mailing address for each Class Member. The Summary Class Notice shall instruct the Class Members to view the settlement website which will contain the long-form Class Notice (**Exhibit C)**, this Settlement Agreement, and the Preliminary Approval Order. Prior to the dissemination of the Summary Class Notice, the Settlement Administrator shall establish an Internet website that will inform Class Members of the terms of this Settlement Agreement, their rights, dates and deadlines, and related information. The website shall include, in .pdf format the following: (i) this Settlement Agreement; (ii) the Preliminary Approval Order (**Exhibit A** to this Agreement); (iii) the Summary Class Notice (**Exhibit B** to this Agreement); (iv) the long form Class Notice (**Exhibit C** to this Agreement); (v) the proposed Final Approval Order (**Exhibit D** to this Agreement); (vi) the most recent Complaint filed in the Action; and (vii) any other materials agreed upon by the Parties and/or required by the Bankruptcy Court. The Parties agree that this procedure for notice provides the best notice practicable to Class Members and fully complies with due process.

(i) Within twenty (20) days of receipt of Class Member information after preliminary approval of this Settlement Agreement, the Settlement Administrator will mail the Summary Class Notice to the Class Members.

(ii) For any Summary Class Notice returned as non-deliverable within the time frames set forth by that Summary Class Notice, the Settlement Administrator will promptly re-mail the Summary Class Notice to the addressee via First Class U.S. mail if the returned Summary Class Notice contains a forwarding address. If no forwarding address is provided, the Settlement Administrator will use skip-tracing, or other method of automated search using the social security number of the Class Member for a more current address and, if an address is not found, no further action shall be required. Those Class Members who receive a re-mailed Summary Class Notice will have between the later of (a) an additional ten (10) days or (b) the response deadline stated in the Summary Class Notice to opt out or object to the settlement. If the Settlement Administrator does not receive a new address for any Summary Class Notice returned as non-deliverable within twenty-one (21) calendar days of the return of the Summary Class Notice, the Parties will be deemed to have satisfied the requirement of due process and the obligation to provide the Class Notice to the Class Member through the original mailing.

9. Right to Opt Out of Class.

(a) Any Class Member who elects not to participate in the Settlement Agreement (each an "Opt Out") must make that election by following the procedure set forth in the Class Notice. Any Class Member who elects to opt out of the Settlement Agreement, if any, shall be subject in all respects to the Bar Date Order and nothing in this Settlement Agreement shall be deemed to authorize the filing of proofs of claim after the General Bar Date. All Class Members who elect to opt out will be stayed or enjoined from pursuing

claims that are subject to this Settlement Agreement in state court or any other court that would otherwise have competent jurisdiction, unless the Bankruptcy Court determines otherwise. Class Members cannot opt out of the release of any claims pursuant to the PAGA.

(b) Unless the timeline set forth in the Class Notice is otherwise modified by the Bankruptcy Court, Class Members, on an individual basis, may elect to opt out of the Settlement Agreement by submitting a request to be excluded from the settlement (each an "Opt Out Election") in accordance with the instructions in the Class Notice no later than thirty (30) days after the date of the mailing of the Class Notice (the "Opt Out Period"). All Class Members who do not submit an Opt Out Election prior to the expiration of the Opt Out Period shall be deemed to have consented to, and shall be bound by, the terms and conditions of the Settlement Agreement, and shall become Class Members for purposes of the Settlement Agreement upon the expiration of the Opt Out Period.

(c) Except as provided herein, no requests to opt out will be honored if such Opt Out Election is postmarked after expiration of the Opt Out Period. Opt Out Election forms representing a Class Member's desire to opt-out of the Settlement Agreement shall be sent directly to the Settlement Administrator. The Reorganized Debtors shall represent to Class Counsel and to the Bankruptcy Court at least ten days before the Fairness Hearing which Class Members elected to be excluded from the Settlement Agreement.

(d) The Settlement Administrator will send a deficiency notice to Class Members for any irregularities with respect to any Opt Out Elections that are timely submitted. The deficiency notice will provide the Class Members no less than ten (10) days from the mailing of the deficiency notice to cure the deficiency.

(e) The claim of any Opt Out will be subject in all respects to the Bar Date Order and nothing in this Settlement Agreement shall be deemed to authorize the filing of proofs of claim after the General Bar Date. The Reorganized Debtors and Liquidating Trustee, as applicable, reserve all rights with respect to claims of any Class Member exercising the right to opt out and who did not timely file a proof of claim prior to the General Bar Date.

(f) Notwithstanding anything to the contrary in this Settlement Agreement, nothing contained herein shall release or impair the rights and claims, if any, of any Opt Out, nor shall anything contained herein affect the defenses and offsets that the Debtors, their estates, the Reorganized Debtors, the Liquidating Trustee and each of their respective subsidiaries, affiliates, any successors or assigns thereto, or any of the present or former officers, directors, employees, agents, attorneys, consultants, stockholders, or the Debtors' vendors, may have against any such rights or claims.

(g) Class Members who filed timely proofs of claim related to the alleged Wage and Hour Claims in the Debtors' chapter 11 cases prior to receiving the Class Notice and who do not opt out of the Settlement Agreement by submitting an Opt Out Election consent to have their previously filed proofs of claim reduced, withdrawn, and/or expunged and to accept instead the amount distributed on such individual Class Member's account under this Settlement Agreement.

10. Objection to Settlement Procedures. Unless the timelines set forth in the Class Notice are otherwise modified by the Bankruptcy Court, Class Members will have thirty (30) calendar days from the mailing of the Class Notice to object to this Settlement Agreement by filing written notice of such objection (a "Notice of Objection") with the Bankruptcy Court

before the end of the objection period. A Notice of Objection shall clearly specify the grounds for the objection, the name of the objector, and the case name and number. Only Class Members who do not opt-out may submit objections. To the extent a timely objection is withdrawn before final approval, such an objection shall be treated as though no objection has been made. Only Class Members who make objections in the manner described in this Paragraph 10 will be permitted to be heard at the Fairness Hearing; Class Members who fail to make objections in the manner specified in this Paragraph 10 shall be deemed to have waived any objections, shall be foreclosed forever from seeking review or making any objection to the settlement or the terms of the Agreement, and shall not be permitted to be heard at the Fairness Hearing without court order.

11. Released Claims by All Class Members, Excluding Timely Opt Outs, if the Settlement Becomes Effective.

(a) Upon the Settlement Effective Date and in exchange for the consideration provided, and except as to such rights or claims as may be created by this Settlement Agreement, the Plaintiff and all Class Members (excluding timely Opt Outs), regardless of whether they have submitted a timely and valid proof of claim in the Debtors' bankruptcy cases, and their respective heirs, beneficiaries, devisees, executors, administrators, trustees, conservators, guardians, personal representatives, successors-in-interest and assigns (the "Releasing Person(s)"), shall hereby fully and forever completely release and discharge the Debtors, the Reorganized Debtors, the Liquidating Trust, the Liquidating Trustee and all of their past, present or future subsidiaries, parents, affiliates, officers, directors, employees, representatives, insurers, members, shareholders, agents, attorneys, successors, heirs, assigns, executors, administrators, affiliated entities, (each a "Released Party") from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action of whatever kind or nature

that were alleged in the Class Action or which could reasonably have been alleged under California or federal law based on the factual allegations contained in the Class Action arising out of or related to all claims for wages, minimum wages, penalties, overtime pay, premium pay, pay for all time allegedly worked but not compensated, and all other claims of any kind for wages, statutory and/or civil penalties, restitution, declaratory relief, injunctive relief, equitable remedies, pre- or post-judgment interest, costs and attorneys' fees arising from the alleged violation of any provision of common law, California law and/or federal law, which were or could have been raised as part of Plaintiff's claims, including but not limited to claims under California Labor Code sections 201, 202, 203, 204, 223, 226, 226.7, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198 and 1199, the California Industrial Wage Commission Wage Orders, and Business and Professions Code sections 17200 *et seq*., and the California PAGA, California Labor Code sections 2698 *et seq*. (collectively, "Released Claims"). Each Class Member (excluding Opt Outs) acknowledges and agrees that his or her claims for wage statement and/or rest period violations and any other Wage and Hour Claims alleged in the Class Action, or claims that could have been alleged arising out of the facts pled in the Class Action with respect to the Wage and Hour Claims, are disputed and that California Labor Code section 206.5 is therefore not applicable.

(b) For the avoidance of doubt, upon the Settlement Effective Date, the Releasing Person agrees that the execution of this Settlement Agreement and the Bankruptcy Court's final approval will fully, completely and finally resolve any and all issues, disputes or controversies the Releasing Persons have asserted or may assert either inside or outside of the Debtors' bankruptcy cases that are alleged in the Class Action with respect to the Wage and Hour Claims or that could have been alleged under California or federal law based on the alleged facts related to the Wage and Hour Claims filed in the Class Action.

(c) Contingent upon final approval by the Bankruptcy Court of this Settlement Agreement, Plaintiff hereby agrees to not take any action to bring, assert, commence, or prosecute any claims under the PAGA, or in any other manner seek any relief or otherwise pursue civil penalties under the PAGA against Debtor and/or the Released Parties in her representative capacity in any forum, and hereby fully releases and relinquishes all such individual and representative PAGA claims against Debtor and/or the Released Parties with prejudice. To comply with California Labor Code section 2699(l)(2), Plaintiff hereby agrees to provide notice to the LWDA of this Settlement on the same day that the Joint Motion is filed with the Bankruptcy Court in compliance with California Labor Code section 2699(l)(2).

(d) **Waiver of California Civil Code Section 1542.** With respect to the Released Claims only, each Releasing Person, including Plaintiff, expressly warrants that he or she has read, understands and intends to waive the rights described in Section 1542 of the California Civil Code, which provides as follows:

> **"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her would have materially affected his or her settlement with the debtor or the released party."**

Thus, notwithstanding the provision of Section 1542, and for the express purpose of implementing a full and complete release and discharge of each Released Party, Releasing Persons expressly acknowledge that this Settlement Agreement is intended to include within its effect, without limitation, all Released Claims that Releasing Persons do not know or suspect to exist in his/her favor at the time of execution of this Settlement Agreement, and that this Settlement Agreement contemplated the extinguishment of any and all such Released Claim(s).

12. Solicitation and Confidentiality Restrictions.

(a) The Class Professionals agree that that they will not solicit Class Members to participate in the settlement or opt out of this settlement, and further agree that they will not initiate contact or have any communications with the Class Members during the settlement approval process. Nothing will prevent the Class Professionals from responding to inquiries from Class Members. The Reorganized Debtors and Liquidating Trustee agree that they shall not discourage Class Members from participating in the settlement and shall refer any questions regarding the settlement to the Settlement Administrator.

(b) The Class Professionals agree not to publish the facts or terms of this Settlement Agreement, any other agreement entered into in connection with this Settlement Agreement, written or otherwise, or of any negotiations or discussions with the Debtors, the Reorganized Debtors, the Liquidating Trustee, or other third parties, either directly or indirectly, that led up to, or underlie this Settlement Agreement. The Class Professionals shall not report the settlement contained herein in any medium or in any publication, shall not post or report anything regarding the claims of Class Members or the individual claimants or the settlement contained herein on their website or any form of social media, and shall not initiate or respond to any media outlet regarding the settlement contained herein; *provided, however,* the Class Professionals shall be permitted to post publicly-filed documents on its own website.

13. Prosecution of FCRA Claims. Upon the Settlement Effective Date, and notwithstanding any stay or injunction as a result of the Debtors' chapter 11 cases or the Plan, the Class Action shall resume in the District Court solely with respect to the FCRA Claims on the terms set forth below:

(a) Within five (5) days of the Settlement Effective Date, Plaintiff shall seek and the Debtor Defendant shall stipulate to dismissal of the Fifth, Sixth, Seventh and Eighth

Claims for Relief of Causes of Action in the Class Action with prejudice. Plaintiff shall not seek recovery in the Class Action of any attorney's fees, costs or expenses.

(b) The Class Action and any Indemnity Litigation may proceed with respect to the FCRA Claims against Debtor Defendant solely to pursue and recover from any available indemnification coverage under the Insurance Policies on account of any settlement or judgment in the Class Action consistent with the terms of this Settlement Agreement. For purposes of this Settlement Agreement, (i) "Indemnity Litigation" shall mean all litigation, actions, and proceedings seeking indemnity coverage to indemnify the insureds for any settlement or judgment of the FCRA Claims under the Insurance Policies, but does not include the Class Action identified in this Agreement, and (ii) "Insurance Policies" shall mean any and all insurance policies under which the Debtor Defendant is a named insured and which provides insurance coverage for the FCRA Claims.

(c) Plaintiff and the putative class(es) in the Class Action agree not to seek recovery from any Released Party, and any recovery for Plaintiff or the classes based upon the FCRA Claims shall be limited to that which the insurance carrier(s) pay in settlement or judgment, if any. Furthermore, Plaintiff shall be solely responsible for pursuing any Indemnity Litigation and satisfying any attorney's fees and costs in connection with Indemnity Litigation. Debtor Defendant assigns all rights to indemnity coverage it has with respect to any Indemnity Litigation to Plaintiff upon final court approval of any class settlement or entry of final judgment and will execute any documents necessary to effectively assign such rights. Debtor Defendant will also cooperate in any Indemnity Litigation by providing upon request access to unprivileged insurance polic(ies) and reservation of rights letters pertaining to coverage for the FCRA Claims to the extent relevant to the Indemnity

Litigation. For the avoidance of doubt, no Released Party shall have any liability for settlement or judgment related to the FCRA Claims regardless of whether indemnification coverage is available to satisfy such judgment or settlement. Any disclosure of documents or information pursuant to this Agreement shall not be deemed a waiver of attorney-client privilege or attorney work product doctrine for Debtor Defendant or its insurers. This assignment does not waive any rights Debtor Defendant's insurers may have.

(d) The Garcia Proofs of Claim shall be disallowed for purposes of any distributions pursuant to the Plan, without prejudice to, and without impacting in any way, the rights of the Plaintiff, individually and/or on behalf of any class, to (i) continue to prosecute the FCRA Claims against the Debtor Defendant, (ii) commence, continue, prosecute, and/or defend, as applicable, any Indemnity Litigation, and/or (iii) pursue and recover from any available indemnity coverage under the Insurance Policies on account of any settlement or judgment in the Class Action, in each instance subject to and consistent in all respects with this Settlement Agreement.

(e) Other than any available indemnity coverage under any Insurance Policies, the Plaintiff, individually and/or on behalf of any class, will not seek or receive any distribution with respect to the FCRA Claims under the Plan.

(f) The Reorganized Debtors and Liquidating Trustee agree to cooperate in the resumption and continuation of the Class Action with respect to the FCRA Claims and to accept any settlement that is acceptable to the insurance carrier(s) and the District Court. If it is determined that Plaintiff is not entitled to any recovery on account of the FCRA Claims, including if judgment is entered against Plaintiff before or after any class certification, then

the Class Action shall be dismissed with prejudice. This section does not waive any appellate rights Plaintiff may have.

(g) The Plaintiff waives any argument that the Debtors, the Reorganized Debtors, the Liquidating Trust or the Liquidating Trustee shall be required to pay or otherwise satisfy (1) any self-insured retention or deductible liability, (2) any obligation to post any security or deposit with any insurer pursuant to the terms of the Insurance Policies, (3) any defense costs, (4) any portion of a judgment or settlement that exceeds the aggregate available coverage under the Insurance Policies, or (5) any other costs of any kind, including, without limitation, any claims by any insurer against the Debtors, the Reorganized Debtors, the Liquidating Trust or the Liquidating Trustee arising from the Class Action, *provided, however*, the Plaintiff does not undertake, and shall not have, any obligation to (i) satisfy any self-insured retention or deductible liability or (ii) pay any defense costs on behalf, or in the place, of the Debtors, the Reorganized Debtors, their insurers, the Liquidating Trust, or the Liquidating Trustee and the Plaintiff reserves all rights with respect to (including but not limited to the rights to contest and defend against) any such claim asserted by any insurer or any other person or entity.

(h) Plaintiff shall be deemed to have withdrawn any and all election forms opting out of any releases under the Plan (on behalf of herself or any class).

(i) The Parties agree not to seek, suggest or advocate for remand of the Class Action with respect to the FCRA Claims from the District Court to California Superior Court or any other court of competent jurisdiction. The Parties also agree not to seek summary judgment or oppose class certification on the basis that due to Article III standing the Court lacks jurisdiction over some or all of Plaintiff's claims for statutory damages. Any challenge

by Payless, the Reorganized Debtors, and/or the defendant(s) in the Class Action to Plaintiff's and/or the Class' request for actual damages and/or restitution or other equitable relief under one or more of the FCRA Claims (as defined on page 2, *supra*) is not an argument that the Court lacks jurisdiction over some or all of these claims or causes of action due to the absence of Article III standing for purposes of this Settlement Agreement. However, should the District Court remand the Class Action to the California Superior Court, this subdivision (Paragraph 13(i)) of this Agreement becomes null and void and of no further force or effect; the Parties are returned to the *status quo* as existed at the date of execution of this Agreement and preserve all arguments, defenses and contentions with regard to jurisdiction, venue, injury-in-fact and standing, except that Plaintiff agrees to waive or forego any arguments that any transfer of venue for the convenience of witnesses and in the interests of justice requested by Payless, the Reorganized Debtors and/or the defendant(s) in the Class Action is untimely in any respect.

14. No Admission of Liability/Waiver.

(a) This Settlement Agreement does not constitute any admission or acknowledgement by any of the Parties or their relevant contract counterparties, of any facts, including but not limited to any acknowledgement of wrongdoing, culpability, or liability by the Debtors, their bankruptcy estates, the Reorganized Debtors or their present and former parents, subsidiaries, divisions, affiliates, predecessors, successors, employees, representatives, insurers, and agents, or any acknowledgement that in the absence of this Settlement Agreement any class could have been properly certified in the Bankruptcy Court or any other court of competent jurisdiction.

(b) This Settlement Agreement, whether or not consummated, and any facts, negotiations, discussions or proceedings in connection herewith, shall not be offered as evidence in any court proceeding relating to the merits of the claims asserted in or relating to the Class Action.

(c) Nothing in this Settlement Agreement, or negotiations thereto, is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, attorney/client privilege, joint defense privilege, or work product immunity or any other applicable obligation of confidentiality pursuant to any applicable agreement.

15. Miscellaneous Provisions.

(a) **Entire Agreement.** This Settlement Agreement, including any exhibits attached hereto, contains the entire understanding of the Parties hereto with respect of the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Settlement Agreement other than those expressly set forth or referred to herein. This Settlement Agreement supersedes all prior agreements.

(b) **Modification.** This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties, and approved by the Bankruptcy Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

(c) **Integration Clause.** This Settlement Agreement contains the entire agreement between the Parties relating to the Class Action, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether

by a party or such party's legal counsel, are merged in this Settlement Agreement. No rights under this Settlement Agreement may be waived except in writing.

(d) **Construction.** The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any party.

(e) **Parties' Authority.** The respective signatories to the Settlement Agreement represent that they are fully authorized to enter into this Settlement Agreement and bind the respective Parties to its terms and conditions.

(f) **Class Signatories.** It is agreed that because the members of the Class are so numerous, it is impractical to have each Class Member execute this Settlement Agreement. The Class Notice will advise all Class Members of the binding nature of the releases set forth herein. Excepting only the Class Members who timely opt out of the Settlement Agreement pursuant to the opt out procedure approved by the Bankruptcy Court, the Class Notice shall have the same force and effect as if this Settlement Agreement was executed by each Class Member.

(g) **Counterparts.** This Settlement Agreement may be executed in counterparts, and when each party through their counsel has signed and delivered at least one such counterpart (including signatures sent in electronic or PDF form), each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties; provided, however, Plaintiff shall provide an original signature to the Settlement Agreement within seven (7) days of execution of the Settlement Agreement to Class Counsel and Littler Mendelson, P.C. to be maintained in accordance with each firm's respective document retention procedures.

(h) **Governing Law.** This Settlement Agreement shall be governed by, construed, and interpreted, and the rights of the Parties determined in accordance with the laws of the State of California, except to the extent bankruptcy laws apply to the Debtors' chapter 11 cases, irrespective of the State of California's choice of law principles. This Settlement Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto.

(i) **Notices.** If not otherwise specified, all notices, requests, demands and communications required or permitted to be given pursuant to this Settlement Agreement shall be in writing and shall be delivered personally or mailed overnight to Class Counsel, Reorganized Debtors' counsel, and the Liquidating Trustee.

(j) **Binding on Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

(k) **Costs and Attorney's Fees.** Other than as set forth above, all Parties hereto shall bear their own costs and attorneys' fees in connection with the disputes and the claims raised in the Class Action that are the subject of this Settlement Agreement.

(l) **Jurisdiction.** Each of the Parties (a) consents to the exclusive jurisdiction of the Bankruptcy Court over the approval, implementation, interpretation, and enforcement of this Settlement Agreement and (b) acknowledge and agree that, upon the Settlement Effective Date, the District Court retains exclusive jurisdiction with respect to the FCRA Claims except to the extent of a change in jurisdiction consistent with Paragraph 13(i) hereof.

(m) **Severability.** The invalidity of any particular provision of this Settlement Agreement shall not affect the other provisions hereof, which nevertheless shall continue in full force and effect.

(n) **Descriptive Headings.** The descriptive headings of the various sections hereof were formulated and inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

(o) **No Reliance.** Each of the Parties represents and declares that in executing this Settlement Agreement, each relied solely upon their own judgment, belief and knowledge, and that they have not been influenced to any extent whatsoever in executing the same by any Party or by any person representing them. Each of the Parties further represents and declares that they have carefully read this Settlement Agreement and know the contents hereof, and that they signed the same freely and voluntarily.

(p) **No Waivers.** The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed a waiver by any other Party or a waiver of any other prior or subsequent breach of this Settlement Agreement.

(q) **Best Efforts.** The Parties agree to use their best efforts to expeditiously obtain Bankruptcy Court approval of the Settlement Agreement and comply with all of the provisions contained herein. The Parties shall also use their best efforts to obtain a dismissal or agreement not to proceed further of any lawsuit, administrative charge with any public agency, or other filed or threatened claim of any type, including an asserted or alleged putative class or collection action that duplicates or is subsumed by any claim asserted in the Class Action which has been released as part of this Settlement Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed and delivered this Settlement Agreement as of the date first written above.

Dated: November 17, 2022

YAQUELIN GARCIA

/s/ Yaquelin Garcia
Yaquelin Garcia

Dated: February 28, 2023

PAYLESS SHOESOURCE, LLC, successor to PAYLESS SHOESOURCE, INC.

By */s/ Justor Pastor Fuentes*
Justor Pastor Fuentes

Its Chief Executive Officer

Dated: February 28, 2023

META ADVISORS LLC, as Liquidating Trustee of the Liquidating Trust

By /s/ *Dana Kane*
Dana Kane

Its Chief Compliance Oficer

APPROVED AS TO FORM:

Dated: November 17, 2022

SETAREH LAW GROUP

/s/ Shaun Setareh
Shaun Setareh (CA State Bar No. 204514)
SETAREH LAW GROUP
9665 Wilshire Blvd, Suite 430
Beverly Hills, California 90212
shaun@setarehlaw.com
Telephone: (310) 888.7771
Facsimile: (310) 888.0109

Attorneys for Plaintiff
YAQUELIN C. GARCIA

Dated: February 28, 2023

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Kevin Zuzolo
Abid Qureshi (admitted *pro hac vice)*
Meredith Lahaie (admitted *pro hac vice)*
Kevin Zuzolo (admitted *pro hac vice*)
AKIN GUMP STRAUSS HAUER & FELD LLP
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Telephone: (212) 872.1000
Facsimile: (212) 872.1002

Attorneys for Debtor
PAYLESS SHOESOURCE, INC.

Dated: February 28, 2023

ARMSTRONG TEASDALE LLP

/s/ John G. Willard

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Attorneys for Debtor
PAYLESS SHOESOURCE, INC.

Dated: February 28, 2023

LITTLER MENDELSON, P.C.

/s/ Angela Rafoth

Angela Rafoth (CA State Bar No. 241966)
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Attorneys for Debtor
PAYLESS SHOESOURCE, LLC, successor to
PAYLESS SHOESOURCE, INC.

EXHIBIT A

For a copy of the proposed *Preliminary Approval Order,* please visit "Proposed Orders" at https://cases.ra.kroll.com/pss/

EXHIBIT B

If you worked for Payless ShoeSource, Inc. in hourly or non-exempt positions in California any time beginning August 10, 2017 up to and through July 31, 2019**, you may be entitled to a payment from a class action settlement.**

A federal court directed this notice. This is not a solicitation from a lawyer.

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO PAYLESS, THE CLERK OF THE COURT, OR THE JUDGE.

Garcia v. Payless ShoeSource, Inc.,
Payless ShoeSource Class Action Administrator
P.O. Box x
City, State Zip Code

«ScanString»
Postal Service: Please do not mark barcode

Reference #: «ID_____»
Confirmation Code: «Random#»
«FirstName» «LastName»
«Address1»
«Address2»
«City», «StateCd» «Zip»
«CountryCd»

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

If you are the named recipient of this postcard, you may be entitled to receive a payment from a Settlement in a bankruptcy proceeding resulting in part a class action lawsuit against Debtor Defendant Payless ShoeSource, LLC, successor to Payless ShoeSource, Inc. ("Payless"), alleging Payless failed to authorize timely, uninterrupted, off duty, ten-minute rest periods, provide accurate wage statements, and timely pay final wages to its hourly employees employed in California at any time beginning August 10, 2017 up to and including July 31, 2019. To be eligible to receive a payment from this Settlement, you do not need to do anything.

What will the Settlement fund be used for? As approved by the Court, the Gross Settlement Sum of $53,750 will be used to pay (1) Class Members who do not timely opt out; (2) the named Plaintiff for her service in the case; (3) Attorneys' Fees and Expenses; and (4) Professional Fees. Approximately $27,958.33 will be distributed evenly among all Class Members who did not exclude themselves after the Court grants "final approval" of the Settlement and after any appeals are resolved. If there are appeals, resolving them can take time. Please be patient and check the website for updates.

What are my options? You may (1) submit a timely and valid Opt-Out by **Month XX, 2023**, to exclude yourself from the Settlement and preserve all of your rights, if any, against Payless, subject to Payless'' rights; (2) submit a timely and valid Objection by **Month XX, 2023**; or (3) do nothing, in which case you will be bound by the terms of the settlement and will receive a settlement payment. If you do not Opt Out you may also raise any objections you have to the settlement. If you do not timely Opt Out, all released claims shall be waived.

To exclude yourself from the settlement, you must send a letter by mail saying simply that you want to be excluded from the *In Re: Payless Holdings LLC* case. Give your name, address, telephone number, and print and sign your name and mail to *In Re: Payless Holdings LLC.* Settlement Administrator, Simpluris, <<INSERT ADDRESS>> postmarked no later than **Month XX, 2023.**

To object, and to have the Court hear your views, you must file your objection in the United States Bankruptcy Court for the Eastern District of Missouri, 111 S. 10th St., 4th Floor, St. Louis, MO 63102, in the matter of *In Re: Payless Holdings LLC,* Case No. 19-40883-659, specifying your name and the grounds for your objection to the *In Re: Payless ShoeSource, Inc.* settlement. You can object only if you stay in the Class.

When is the Court's Final Fairness Hearing? The Court will hold a hearing in the case, ***In re Payless Holdings LLC,*** *et al.* Case No. 19-40883-659, on **Month XX, 2023**, at ___ m. to consider whether to approve the Settlement, and consider the requests by Class Counsel for reasonable attorneys' fees, professional fees, and for a Service Award for the Class Representatives. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www._____.com for updates. You (or your own lawyer, if you have one), may ask to appear and speak at the hearing at your own cost, but you do not have to.

Your legal rights are affected whether you act or do not act.

How can I get more information? You are encouraged to review the detailed Notice relating to this proposed class action settlement and review other information by visiting_____.com. You can also call 1-8**-***-**** to hear more about the Settlement or contact Class Counsel at 1-8**-***-****.

EXHIBIT C

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT
UNITED STATE BANKRUPTCY COURT, EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Re: Payless Holdings LLC, et al., Case No. 19-40883-659

If you worked for Payless ShoeSource in a non-exempt or hourly-paid position in California at any time from August 10, 2017 through July 31, 2019, you could get a payment from a class action settlement.

The United States Bankruptcy Court for the Eastern District of Missouri, Eastern Division, authorized this notice. This is not a solicitation from a lawyer.

This document describes your rights with respect to the *Payless* class action. Please read it carefully. The details of the action and settlement are described below, but the relevant points are as follows:

- A settlement of a class action lawsuit for $53,750.00, will provide approximately $27,958.33 to all current and former nonexempt or hourly employees of Payless ShoeSource, Inc. ("Payless") within California at any time beginning August 10, 2017 through and including July 31, 2019 ("Class Members");
- The settlement resolves certain claims in a lawsuit in which Plaintiff asserted claims against the Payless under the California Labor Code for alleged failure to authorize timely, uninterrupted, off duty, ten-minute rest periods, provide accurate wage statements, and timely pay final wages, and derivative claims under the California Unfair Competition Law;
- Payless denied all liability and vigorously defended its employment practices;
- The parties agreed that the settlement was reasonable to avoid the costs and risks associated with continuing the lawsuit in the Bankruptcy Court;
- The settlement pays money to current and former non-exempt employees like you and releases Payless from liability;
- Court-appointed lawyers for the Class Members will ask the Court for up to $17,916.67 from the settlement as fees and costs (33-1/3% of the total settlement amount), and up to $5,375.00 from the settlement for the lawyers' financial and strategic adviser (10% of the total settlement amount);
- The two sides disagree on whether or not Plaintiff could have prevailed at trial and, if so, how much money could have been won;
- The Bankruptcy Court overseeing this case still has to decide whether the settlement is fair and whether to approve the settlement. Payments will be made if the Bankruptcy Court approves the settlement and after appeals are resolved. *Please be patient*.
- The settlement does not fully resolve certain claims asserted by Plaintiff against Payless arising under the Fair Credit Reporting Act, the California Investigative Consumer Reporting Agencies Act and the California Consumer Credit Reporting Agencies Act. Such claims will be adjudicated by the United States District Court for the Northern District of California, but any recovery on such claims will be available solely to the extent there is indemnification coverage under any insurance policies on account of any settlement or judgment in the Class Action.
- Your legal rights are affected whether you act, or do not act. These rights and options—**and the deadlines to exercise them**—are explained in this notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You will be a part of the settlement and be bound by its terms. You will receive payment.
EXCLUDE YOURSELF (OPT OUT)	You may elect to opt out of the Settlement. If you do so, you will get no payment, but will not be bound by the Settlement. However, please note that claims and causes of action against Payless arising prior to January 14, 2020 have been released and discharged through Payless' chapter 11 plan or reorganization if you have not previously filed a proof of claim in Payless' bankruptcy cases. Therefore, your claim may be time barred if you elect to opt out of the Settlement. Your request for exclusion must be postmarked or fax stamped on or before ____, 2023.
OBJECT	Write to the Court about why you do not like the settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why did I get this notice package?

The records of Payless ShoeSource, Inc. ("Payless") indicate you worked in an hourly or non-exempt position in California for Payless during the period at any time between August 10, 2017 and July 31, 2019. You were sent this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options before the Court decides whether to finally approve the settlement. If the Court approves it and after any objections and appeals are resolved, an administrator appointed by the Court will make the payments that the settlement allows.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States Bankruptcy Court for the Eastern District of Missouri, Eastern Division, and the case is known as *In Re: Payless Holdings LLC, et al.,* Case No. 19-40883-659. The person who sued is called Plaintiff, and the company she sued, Payless, is called Defendant.

2. What is this lawsuit about?

This lawsuit was initiated in the California Superior Court of the County of Alameda and removed to federal court in Oakland, California, by a former associate in a retail store. The action was paused when Payless filed for bankruptcy protection in Missouri. The associate who brought the suit claimed that Payless failed to authorize timely, uninterrupted, off duty, ten-minute rest periods, provide accurate wage statements, and timely pay final wages to her and other non-exempt or hourly paid employees.

Payless denied that it did anything wrong. Payless contended that it properly paid all wages owed, properly authorized rest periods, provided lawful itemized wage statements, and properly paid all wages upon separation of employment. Payless contended that none of the claims alleged by Plaintiff had or have merit. Payless believes that it would have

succeeded in Court.

3. Why is this a class action?

In a class action, one or more people called Class Representatives (in this case, Yaquelin Garcia), sue on behalf of people who have similar claims. All these people comprise a Class and are referred to as Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

4. Why is there a settlement?

In order to avoid the costs and risks associated with trial, the parties agreed to resolve certain claims through settlement. The Court did not decide in favor of the employees or in favor of Payless. There has been no finding that Payless did anything wrong, and there has been no trial. Rather, the Class Representative and the attorneys think the settlement is best for all Class Members and the Court has agreed.

The Court has given its preliminary approval to the settlement, and confirms that Yaquelin Garcia is the Class Representative and attorney Shaun Setareh of Setareh Law Group is the attorney for the Class Members (the "Class Counsel").

WHO IS IN THE SETTLEMENT

To see if you will get money from this settlement, you first have to decide if you are a Class Member.

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

The Judge decided that everyone who fits this description is a Class Member:

> "All persons employed by Payless ShoeSource, Inc. in hourly or non-exempt positions in California anytime during the period beginning August 10, 2017 through and including July 31, 2019."

This means that if you worked as an hourly or non-exempt employee for Payless in California any time during the period beginning August 10, 2017 through and including July 31, 2019 (the "Class Period"), you are a Class Member. If you were on leave of absence during the Class Period, or if you were living or working outside of California during any or all of the Class Period, you are not a Class Member during that time.

6. Are there exceptions to being included?

Yes. If you are a Class Member, you have the option of excluding yourself as stated in Section 13 below. If you do nothing, you will be a Class Member.

7. I am still not sure if I am included.

If you are still not sure whether you are included, you can call the Settlement Administrator at <<INSERT>> or Class

Counsel at <<INSERT>> for more information.

THE SETTLEMENT BENEFITS—WHAT YOU GET

8. What does the settlement provide?

Payless has agreed to pay up to $53,750 to settle certain claims in this lawsuit. Out of the settlement fund, the Class Representative Yaquelin Garcia will ask for additional compensation for her service as a Class Representative of up to $2,500. Class Counsel will ask for up to $17,916.67 for attorneys' fees and costs (33-1/3% of the total settlement amount), and up to $5,375.00 for financial and strategic adviser costs. Payless will pay the expense incurred by the Claims Administrator of up to $25,000 for administering the settlement in addition to the total of $53,750. The money remaining in the settlement fund, up to approximately $27,958.33 (the "Net Settlement Amount") will be available for *pro rata* distribution.

The settlement does not fully resolve certain claims asserted by Plaintiff against Payless arising under the Fair Credit Reporting Act, the California Investigative Consumer Reporting Agencies Act and the California Consumer Credit Reporting Agencies Act (the "Background Check Claims"). The Background Check Claims will be adjudicated by the United States District Court for the Northern District of California, but any recovery on such claims will be available solely to the extent there is indemnification coverage under any insurance policies on account of any settlement or judgment in the Class Action. Class Counsel will continue to prosecute the Background Check Claims and Payless and its insurers will continue to defend against the Background Check Claims.

9. How much will my payment be?

Your share of the fund will depend on the total number of Class Members minus those who request exclusion ("Qualified Claimants"), and how much the Court approves in attorneys' fees, costs, financial adviser fees, and service award.

If the settlement is approved as proposed, Class Members will share up to $27,958.33 of the settlement amount, divided on a *pro rata* basis among all Class Members who do not opt out. Your settlement amount will be partially paid as wages, for which you will receive an IRS Form W-2, and partially paid as expenses, interest and penalties. You are responsible for paying your taxes on any amount you receive. This Notice is not tax advice and you should consult your tax advisor. Checks will be valid for 90 days. The proceeds of any uncashed checks will be paid to the State of California pursuant to California's Unclaimed Property law in the name of the Class Member.

HOW YOU GET A PAYMENT

10. How can I get a payment?

If you do nothing, you will automatically participate in the Settlement and receive a Settlement Payment.

If you are a Class Member and do not exclude yourself from the Settlement Class, you will be bound by all of the provisions of the Settlement, including a full release of claims that will prevent you from separately suing or bringing claims against Payless, its employees or any other related persons or entities for the matters being settled in this Action, as described in more detail below.

11. When would I get my payment?

The Court will hold a hearing on <<INSERT>>, 2023, to decide whether to approve the settlement. If the Court approves the settlement after that, there may be appeals. It is always uncertain when these appeals can be resolved, and resolving them can take time, perhaps more than a year. To check on the progress of the settlement, call the Settlement Administrator at <<INSERT>>, or contact Class Counsel. *Please be patient*.

12. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself, you are part of the Class. This means that you cannot sue Payless, nor can you continue to sue, or be part of any other lawsuit against Payless about the legal issues in or related to *this* case. It also means that all of the Court's orders will apply to you and legally bind you. If you do nothing you agree to the following "Release" of your claims, which describes exactly the legal claims that you give up if you do not exclude yourself.

You will fully and forever completely release and discharge Payless Shoesource, the Debtors, the Reorganized Debtors, the Liquidating Trust, the Liquidating Trustee and all of their past, present or future subsidiaries, parents, affiliates, officers, directors, employees, representatives, insurers, members, shareholders, agents, attorneys, successors, heirs, assigns, executors, administrators, affiliated entities, (each a "Released Party") from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action of whatever kind or nature that were alleged in the Class Action or which could reasonably have been alleged under California or federal law based on the factual allegations contained in the Class Action arising out of or related to all claims for wages, minimum wages, penalties, overtime pay, premium pay, pay for all time allegedly worked but not compensated, and all other claims of any kind for wages, penalties, restitution, declaratory relief, injunctive relief, equitable remedies, pre- or post-judgment interest, costs and attorneys' fees arising from the alleged violation of any provision of common law, California law and/or federal law, which were or could have been raised as part of Plaintiff's claims, including but not limited to claims under California Labor Code sections 201, 202, 203, 204, 223, 226, 226.7, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198 and 1199, the California Industrial Wage Commission Wage Orders, and Business and Professions Code sections 17200 *et seq*. (collectively, "Released Claims"). Each Class Member (excluding Opt Outs) acknowledges and agrees that his or her claims for wage statement and/or rest period violations and any other Wage and Hour Claims alleged in the Class Action, or claims that could have been alleged arising out of the facts pled in the Class Action with respect to the Wage and Hour Claims, are disputed and that California Labor Code section 206.5 is therefore not applicable.

You will fully, completely and finally resolve any and all issues, disputes or controversies you have asserted or may assert either inside or outside of the Debtors' bankruptcy cases that are alleged in the Class Action with respect to the Wage and Hour Claims or that could have been alleged under California or federal law based on the alleged facts related to the Wage and Hour Claims filed in the Class Action.

You will waive the rights described in Section 1542 of the California Civil Code, which provides as follows:
"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her would have materially affected his or her settlement with the debtor or the released party."

You will release all such Released Claims that you do not know or suspect to exist in your favor at the time of execution of the Settlement Agreement.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to be bound by the settlement and do not want a payment from this settlement, then you must take steps to get out of this case. This is called excluding yourself - or is sometimes referred to as "opting out" of the settlement Class.

13. How do I get out of the settlement?

To exclude yourself from the settlement, you must send a letter by mail saying simply that you want to be excluded from the *In Re: Payless Holdings LLC* case. No special language is required. Be sure to include your name, address, telephone number, and print and sign your name. You must mail your exclusion request to the Settlement Administrator at the address below, postmarked no later than <<INSERT>> to:

In Re: Payless Holdings LLC. Settlement Administrator
c/o <<INSERT>>

If you ask to be excluded, you will not get any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. However, please note that claims and causes of action against Payless arising prior to January 14, 2020 have been released and discharged through Payless' chapter 11 plan or reorganization if you have not previously filed a proof of claim in Payless' bankruptcy cases. Therefore, your claim may be time barred if you elect to opt out of the Settlement.

14. If I do not exclude myself, can I sue Payless for the same thing later?

No. Unless you follow the procedure to exclude yourself, you give up any right to sue Payless for the claims that this settlement resolves. If you have a pending lawsuit or claims against Payless, you are advised to speak to your lawyer in that case immediately. You must exclude yourself from *this* Class to continue your own lawsuit if it involves the same or related issues. Remember, the exclusion deadline is <<INSERT>>.

15. If I exclude myself, can I get money from this settlement?

No. If you exclude yourself, you will not receive any money as part of this Settlement, as you can only get money from this settlement if you do not exclude yourself from its terms.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court has appointed Shaun Setareh of Setareh Law Group located in Beverly Hills, California to represent you and other Class Members. These lawyers are called Class Counsel. You will not be charged for these lawyers, although they will be compensated from the Settlement Fund as discussed in Section 8 and 17. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers and financial advisers be paid?

Class counsel will ask the Court to approve payment of up to $17,916.67 for attorneys' fees and costs (33-1/3% of the total settlement), and up to ten (10%) percent or $5,375.00 for financial advice. The attorney's fees pay Class Counsel for investigating the facts and negotiating the settlement. The $5,375.00 will compensate the financial adviser for professional advice. These amounts will reduce the approximately $53,375.00 available for Class Members. In the event the Court approves a lesser amount of fees, those amounts will become part of the pool the class will share.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the settlement or some part of it.

18. How do I tell the Court that I do not like the settlement?

If you are a Class Member, you can object to the settlement if you do not like it. You can give reasons why you think the Court should not approve the settlement and the Court will consider your views. To object, and to have the Court hear your views, you must file a letter in the Bankruptcy Court saying that you object to the *In Re: Payless Shoesource, Inc.* settlement. You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and any supporting papers must be filed in the matter of *In Re: Payless Holdings LLC,* Case No. 19-40883-659, with the Court at 111 S. 10th St., 4th Floor, St. Louis, MO 63102, electronically or in person no later than <<insert date>>.

Be sure to include your name, address, telephone number, your printed and signed name, and the legal and factual reasons you object to the settlement.

19. What is the difference between objecting and excluding?

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, and even if you object you are entitled to a portion of the settlement.

Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. You will receive no money under the settlement if you exclude yourself.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you do not have to. ***You may only speak at the hearing if you follow the instructions below.***

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

The Court will hold a Fairness Hearing at <<INSERT>> on <<INSERT, 2023>>, at the United States Bankruptcy Court for the Eastern District of Missouri, Eastern Division, at 111 S. 10th St., 4th Floor, St. Louis, MO 63102. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections and they have been properly lodged, the Court will consider them. The Judge will listen to people who have asked to speak at the hearing. At or after the hearing, the Court will decide whether to approve the settlement.

21. Do I have to come to the hearing?

No. Class Counsel will answer questions the Judge may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

22. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear" in the *In Re: Payless Holdings LLC* settlement. Be sure to include your name, address, telephone number, and your printed and signed name. Your Notice of Intention to Appear must be postmarked no later than <<INSERT>>, and be sent to the Settlement Administrator at the address listed in question 18 and the Clerk of the Court for the United States Bankruptcy Court for the Eastern District of Missouri, Eastern Division, at 111 S. 10th St., 4th Floor, St. Louis, MO 63102. You cannot speak at the hearing if you excluded yourself, and you will not be able to speak unless you timely file a Notice of Intention to Appear.

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing, you will receive money from this settlement and release Payless from the claims in this lawsuit as outlined above in this notice. Unless you exclude yourself, you will not be able to pursue these claims in bankruptcy, start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Payless about the legal issues in this case ever again.

GETTING MORE INFORMATION

24. Are there more details about the settlement?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please access the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.moeb.uscourts.gov, or by visiting the office of the Clerk of the Court for the United States Bankruptcy Court for the Eastern District of Missouri, Eastern Division, 111 S. 10th St., 4th Floor, St. Louis, MO 63102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays and ask to view the Court

file in *In Re: Payless Holdings LLC, et al.,* Case No. 19-40883-659 or by contacting Class Counsel Setareh Law Group, at 315 South Beverly Drive, Suite 315, Beverly Hills, California 90212, telephone (310) 888-7771. **PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT PROCESS.**

Date: <<INSERT, 2023>>

This Notice has been approved by the United States Bankruptcy Court for the Eastern District of Missouri

EXHIBIT D

For a copy of the proposed *Final Approval Order,* please visit
"Proposed Orders" at https://cases.ra.kroll.com/pss/

EXHIBIT 2

SETAREH DECLARATION

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Farrah Grant (SBN 293898)
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Attorneys for Plaintiff
Yaquelin Garcia

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re: Payless Holdings LLC, *et al.*, Reorganized Debtors.	Case No. 19-40883-659 Chapter 11 Jointly Administered **DECLARATION OF SHAUN SETAREH IN SUPPORT OF MOTION TO APPROVE SETTLEMENT**

DECLARATION OF SHAUN SETAREH

I, Shaun Setareh, declare as follows:

1. I am an attorney in good standing duly admitted to the State Bar of California, the principal attorney at Setareh Law Group, counsel of record for Plaintiff Yaquelin Garcia ("Plaintiff") in this action against Defendant Payless ShoeSource, Inc. (Plaintiff and Defendant, collectively, the "Parties"). This declaration is made in support of the Joint motion Seeking to (I) Approve a settlement, (II) Certify a class of California Wage and Hour claimants for settlement purposes only, (III) Appoint class counsel and a class representative, (IV) Preliminarily approve the settlement agreement, (V) Approve the form and manner of notice to class members of the class certification and settlement, (VI) Schedule a fairness hearing to conder final approval of the settlement, (VII) Finally approve the settlement after the fairness hearing, and (VIII) Grant related relief.

2. Except for those matters stated on information and belief, which I am informed and believe are true and correct, I have personal knowledge of all matters set forth herein. If called as a witness, I could and would competently testify thereto.

3. I received my undergraduate degree from UCLA in 1996 and my law degree from Loyola Law School in 1999. Since being admitted to the State Bar of California in 1999, I have actively practiced civil litigation for the entirety of that time period.

4. Setareh Law Group and I, as its principal attorney, are well-experienced class action attorneys. I, along with the senior attorney assigned to this case, Thomas Segal, have considerable experience in class action litigation. I, and the attorneys at Setareh Law Group, have been involved as lead class counsel, co-lead class counsel, and other levels of involvement in over 100 wage-and-hour, consumer, and antitrust class action cases. Because of this, Setareh Law Group has more than 250 Westlaw citable opinions, including the following noteworthy appellate decisions:

State Appellate Decisions

a. *Troester v. Starbucks Corporation, et al.*, 5 Cal.5th 829 (2018) (reversed summary judgment in favor of Defendants, issuing a landmark published decision that clarified and rejected the application of the widely adopted federal *de minimis* doctrine to California's wage-and-hour laws). Due to the significance and importance of this seminal victory before the California

Supreme Court, I received the California Lawyer of the Year or "CLAY" award from the Daily Journal for my work on the case.

b. *Allen v. Labor Ready Southwest, Inc.* (Cal.App. 2 Dist., 2013) 2013 WL 1910293 (reversing an Order from the Superior Court of Los Angeles County compelling Plaintiff's claims to arbitration, finding that Defendant waived the right to compel arbitration by litigating the merits of Plaintiff's arbitrable federal and state claims).

Setareh Law Group has prevailed in its six most recent Ninth Circuit appeals. Five of the seven cases resulted in reversals of the trial court decision, with the remaining two cases (*Harris* and *Parsittie*) affirming a decision favorable to the Plaintiff. These six cases are listed below:

Ninth Circuit Decisions

c. *Troester v. Starbucks Corp.,* 738 Fed. Appx. 562 (9th Cir. 2018) (Ninth Circuit opinion following the California Supreme Court answering the Ninth Circuit's certified question).

d. *Gilberg v. California Check Cashing Stores, LLC*, 913 F.3d 1169 (9th Cir. 2019) (vacated district court's summary judgment in favor of Defendants and remanded for further proceedings, holding that Defendants' Fair Credit Reporting Act disclosure form lacked sufficient clarity in a published opinion).

e. *Rodriguez v. U.S. Healthworks*, 813 Fed.Appx. 315 (9th Cir. 2020) (reversed district court's summary judgement in favor of Defendants with instructions to remand the action to state court).

f. *Harris v. KM Industrial, Inc.,* 980 F.3d 694 (9th Cir. November 13, 2020) (affirmed the district court's granting of Plaintiff's motion to remand, holding in a published opinion that Defendants had failed to establish by a preponderance of the evidence that the amount in controversy exceeded $5 million as required under the Class Action Fairness Act for removal).

g. *Parsittie v. Schneider Logistics, Inc. et al.*, Case No. 20-55470 (9th Cir. June 9, 2021) (reversed the district court's dismissal of Plaintiff's meal and rest break claims, holding that Plaintiff's security check allegations were sufficient to state a claim for break-time violations and remanding for further proceedings).

h. *Ahlstrom v. DHI Mortg. Co., Ltd., L.P.*, 21 F.4th 631 (9th Cir. December 29, 2021) (reversed the district court's ruling compelling claims to arbitration, holding that parties cannot delegate issues

of formation of an arbitration agreement to the arbitrator for determination).

i. *Allen v. Bedolla*, 787 F.3d 1218 (9th Cir. June 2, 2015) (affirming the district court's Order denying objector's motion to intervene and remanding to the district court where settlement was granted final approval. Final approval was upheld on a subsequent appeal in the 9th Cir. [*see Bedolla v. Allen*, 736 Fed.Appx. 614 (9th Cir. May 18, 2018)]).

Class Counsel Appointments. The following is a sampling of class actions in which the Setareh Law Group and I have been appointed as class counsel:

Federal Cases

j. *Cerdenia v. USA Truck, Inc.*, U.S. District Court, Central District of California, Case No. 10-CV-1489-JVS (granted final approval in an action on behalf of truck drivers for meal and rest period violations, off-the-clock pre- and post-shift work, and unauthorized wage deductions).

k. *Fronda v. Staffmark*, U.S. District Court, Northern District of California, Case No. 15-CV-02315-MEJ (granted final approval in a case involving alleged uncompensated security checks for warehouse workers).

l. *Garcia v. Am. Gen. Fin. Mgmt. Corp.*, U.S. District Court, Central District of California, Case No. 09-CV-1916 (granted final approval in a case filed on behalf of account managers in case involving, among other things, alleged overtime miscalculations and meal and rest period violations).

m. *Jones v. Shred-It USA, Inc.*, U.S. District Court, Central District of California, Case No. 11-CV-00526 (granted final approval in a case brought on behalf of customer service representatives and balers for alleged off-the-clock work and meal and rest period violations).

n. *O'Neill v. Genesis Logistics, Inc.*, U.S. District Court, Northern District of California, Case No. 08-CV-4707 (granted final approval in a case involving claims for failure to provide meal periods to employees who worked as drivers delivering goods to 7-11 stores throughout California and failure to pay final wages in a timely manner to terminated employees).

o. *Padilla v. UPS*, U.S. District Court, Central District of California, Case No. 08-CV-1590 (granted final approval in a case involving claims for failure to provide meal periods to part time employees engaged in sort operations and failure to pay final wages in a timely manner to

terminated employees).

p. *Pitre v. Wal-Mart Stores, Inc.*, U.S. District Court, Central District of California, Case No. 17-cv-01281-DOC (granting class certification in a highly contested Action against Wal-Mart for a class of almost 5,000,000 in a Fair Credit Reporting Act action).

q. *Utne v. Home Depot U.S.A., Inc.*, U.S. District Court, Northern District of California, Case No. 16-cv-01854-RS (granting class certification in a highly contested Action against Home Depot in connection with uncompensated off-the-clock work occurring at the start of all employee shifts and at the end of closing shifts).

r. *Vang v. Burlington Coat Factory Warehouse Corp.*, U.S. District Court, Central District of California Case No. 09-CV-8061 (granted final approval in a case involving, among other things, vacation pay forfeitures, failures to provide meal and rest periods, and failures to pay overtime wages based on employee misclassification).

s. *Wilson v. TE Connectivity*, Northern District of California Case No. 3:14-cv-04872-EDL (granted class certification through contested motion in case on behalf of manufacturing facility employees subject to auto-deduction of meal breaks).

State Cases

t. *Sandoval v. Rite Aid Corp.*, Los Angeles County Superior Court, Case No. BC431249 (granted class certification through contested motion in case on behalf of former pharmacy employees based on late final wage payments in violation of Labor Code §§ 201–203; subsequently granted final approval of class action settlement).

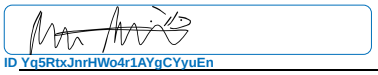
u. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case No. BC421485 (granted class certification through contested motion in case on behalf of former security workers based on late final wage payments in violation of Labor Code §§ 201–203; subsequently granted preliminary approval of proposed class action settlement).

5. I am the owner and managing attorney of Setareh Law Group. All strategic decisions regarding the selection of clients to represent and the major strategic decisions for each client fall to me to make or approve. I bear all of the risk associated with the operation of a law firm. As a result, my scope of responsibility is substantially greater than an attorney of equal years of experience who does not

bear these additional obligations.

6. As the above shows, the Setareh Law Group and I have substantial experience in wage-and-hour class action litigation, including actions alleging failure to provide meal and/or rest periods, failure to pay wages, failure to provide accurate wage statements, failure to provide timely final wage payments, and other related claims. We are knowledgeable about the applicable law and have worked diligently to investigate and identify the potential claims in this action. I will continue to commit my firm's resources to further the interests of the Class. Setareh Law Group and I have no known conflicts of interest with Plaintiff or with absent Class Members.

I declare under the penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct to the best of my knowledge. Executed this 1st day of December 2022 in Beverly Hills, California.



Shaun Setareh

EXHIBIT 3

DUNDON DECLARATION

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Attorneys for Plaintiff
Yaquelin Garcia

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re: Payless Holdings LLC, *et al.*, Reorganized Debtors.	Case No. 19-40883-659 Chapter 11 Jointly Administered **DECLARATION OF MATTHEW DUNDON IN SUPPORT OF MOTION TO APPROVE SETTLEMENT**

DECLARATION OF MATTHEW DUNDON

I, Matthew Dundon, declare as follows:

1. I am a principal at Dundon Advisers LLC ("Dundon"), bankruptcy financial and strategic adviser to Plaintiff Yaquelin Garcia ("Plaintiff") in this action against Defendant Payless ShoeSource, Inc. (Plaintiff and Defendant, collectively, the "Parties"). This declaration is made in support of the Joint motion Seeking to (I) Approve a settlement, (II) Certify a class of California Wage and Hour claimants for settlement purposes only, (III) Appoint class counsel and a class representative, (IV) Preliminarily approve the settlement agreement, (V) Approve the form and manner of notice to class members of the class certification and settlement, (VI) Schedule a fairness hearing to conder final approval of the settlement, (VII) Finally approve the settlement after the fairness hearing, and (VIII) Grant related relief.

2. Except for those matters stated on information and belief, which I am informed and believe are true and correct, I have personal knowledge of all matters set forth herein. If called as a witness, I could and would competently testify thereto.

3. I received my undergraduate degree from UC Berkeley in 1993 and my law degree from the University of Chicago Law School in 1998. I am admitted to practice law in the State of New York and the Commonwealth of Massachusetts. I have been a bankruptcy professional since 2003, in a variety of trading, investment, and advisory capacities. I founded Dundon in February 2016.

4. Dundon and I, as a principal thereof, are well-experienced financial and strategic advisers to stakeholders in bankruptcy. Among a number of other focuses, Dundon Advisers and I have long advised lead plaintiffs of class and other representative actions, mass tort plaintiffs, and their attorneys, having acted for such clients, or creditor committees in which such clients had a substantial role, in a very large number of Chapter 11 cases and out of court restructurings.

5. I, and my colleagues at Dundon, have been engaged by the Official Committee of Unsecured Creditors of 1 Global (SD FL), Agera Energy (SDNY), All American Oil and Gas (WD TX), Aralez Pharmaceuticals (SDNY), Congoleum (NJ), Cred (Delaware), Endo Pharmaceuticals (SDNY), Jagged Peak/Trade Global (Nevada), Loot Crate (Delaware), Madison Square Boys & Girls Clubs (SDNY), Maines Paper & Food (Delaware), Mallinckrodt (Delaware), McClatchy (SDNY), NewAge (Delaware), Proteus Heath (Delaware), Remnant Oil Company (WD Texas), SIW Holdings (Delaware),

Slidebelts (ED CA), Sunergy (ED CA), Valmiera Glass (ND GA), and Wave Technologies (ND CA), the Ad Hoc Noteholder Group in the Woodbridge Group of Companies (Delaware), the Ad Hoc Group of Consumer and Worker Litigation Claimants in Hertz (Delaware), the Official Committee of Tort Claimants in PG&E (ND CA), the Ad Hoc Group of Individual Victims in Purdue (SDNY), the Ad Hoc Group of Second Lien Bondholders in CalPlant (Delaware), the Ad Hoc Group of Retirees in Ruby Tuesday (Delaware), the Official Committee of Unsecured Commercial Creditors of the Roman Catholic Archdiocese of New Orleans (ED LA), the Ad Hoc Group of Equity Security Holders in RAIT (Delaware), the Ad Hoc Group of Equity Security Holders in Washington Prime Group (ED MO), the Ad Hoc Group of Equity Interest Holders in Voyager (SDNY), litigation creditors (typically class action or mass torts, and very often wage and hour representative action creditors) who were appointed to Official Committees in 21st Century Oncology (SDNY), A1 Express (ND GA), Alta Mesa Energy (SD TX), American Addiction Centers (Delaware), Ascena Retail (ED VA), Better 4 You Breakfast (CD CA), Brazos Electric Cooperative (SD TX), Brookstone (Delaware), California Resources (SD TX), Claim Jumper (WD TX), Color Spot Nurseries (Delaware), Cumulus (SDNY), Ditech (2019) (SDNY), Exide Technologies (2019) (Delaware), Figueroa Mountain (CD CA), FirstEnergy (ND OH), Francesca's (Delaware), Frontier Communications (SDNY), Global Brands Group (SDNY), GNC (Delaware), Gulfport Energy (SD TX), GWG (SD TX), HVI Cat Canyon (successively SDNY, SD TX, CD CA), Ignite Restaurants (SD TX), J & M Sales (Delaware), Jack Cooper (ND GA), Katerra (SD TX), Kona Grill (Delaware), Le Pain Quotidien (Delaware), Maison Kayser (SDNY), New York & Co. (NJ), Pacific Sunwear (Delaware), Ratner Companies (MD), Petersen-Dean (NV), PetroQuest (SD TX), Punch Bowl Social (Delaware), Remington Arms (2020) (ND AL), Rex Energy (WE PA), Romano's Macaroni Grill (Delaware), Samuels Jewelers (Delaware), Sarar (NJ), Sears (SDNY), Sheikh Shoes (CD CA), Southland Royalty Co. (Delaware), Tailored Brands (SDNY), Toys R Us (ED VA), and Verity Health (CD CA), litigation creditors (typically mass tort or class action, and very often wage and hour representative action creditors) who were not appointed to Official Committees (including cases where no Official Committee was formed) in 24 Hour Fitness (Delaware), Acosta (Delaware), Advantage Rent-a-Car (Delaware), American Blue Ribbon Holdings (Delaware), American Apparel (2016) (Delaware), Art Van (Delaware), Avadim Health (Delaware), AVR (SD CA), Avaya (SDNY), Bebe Stores (out of

court), Basic Energy (SD TX), Bon-Ton Stores (Delaware), Boy Scouts of America (Delaware), Buffets LLC (2016) (WD TX), Buffets LLC (2020) (ND TX), Bumble Bee (Delaware), California Pizza Kitchen (SD TX), Centric Stores (SDNY), Cineworld (SD TX), Chuck E. Cheese (SD TX), Coast Dental and Orthodontics (Out of Court), CraftWorks (Delaware), Crossmark (out of court), David's Bridal (Delaware), Dean Foods (SD TX), Entrust Energy (SD TX), Exco (SDTX), First Guaranty Mortgage (Delaware), Forever 21 (Delaware), Fred's (Delaware), GEO Group (out of court), Glansaol (SDNY), Gold Standard Baking (Delaware), Insys (Delaware), iHeart Media (SD TX), JC Penney (SD TX), J. Crew (ED VA), Just Energy (SD TX Chapter 15 & CCAA), Key Energy (Delaware), LCF (CD CA), Liberty Power (SD FL), Lucky Brand (Delaware), M&G (Delaware), Mattress Firm (Delaware), Memorial Production (SD TX), MudTech Services (SD TX), Nalu's (CD CA), NinePoint Energy (Delaware), OnTrac (out of court), Pennysaver (Delaware), Perkins/Marie Callender's (Delaware), Pogo Energy (ND TX), Real Water (NV), Retrieval-Masters (SDNY), Revlon (SDNY), Rubio's Coastal Grill (Delaware), Sabre (New York state receivership), Sanchez Energy (SD TX), Secure Home (Delaware), Senior Care Centers (ND TX), Stage Stores (SD TX), StarWorks (SDNY), Steak 'n Shake (out of court), Stearns Home Loans (SDNY), Stein Mart (SD FL), Superior Energy Services (SD TX), Takata (Delaware), Talen Energy (SD TX), Town Sports (Delaware), Tri-State Security and Patrol (CD CA), US Tobacco (ED NC), Venoco (Delaware), and White Star Petroleum (ED OK).

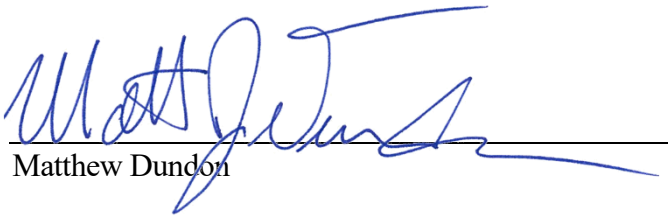
6. I am the majority owner and presiding principal of Dundon. Most strategic decisions regarding proposing or accepting engagements by clients and many strategic decisions regarding each such client engagement fall to me to make or approve. I bear the majority of the risk associated with the operation of Dundon. As a result, my scope of responsibility is substantially greater than an financial professional of equal years of experience who does not bear these additional obligations.

7. As the above shows Dundon and I have substantial experience in the bankruptcy litigation and/or restructuring of class action and mass tort liabilities, including wage-and-hour class action litigation alleging failure to provide meal and/or rest periods, failure to pay wages, failure to provide accurate wage statements, failure to provide timely final wage payments, and other related claims. We are knowledgeable about the applicable financial principals and modes of analysis. I will continue to commit my firm's resources to further the interests of the Class. Dundon and I have no

known conflicts of interest with Plaintiff or with absent Class Members.

I declare under the penalty of perjury of the laws of the State of New York and the United States that the foregoing is true and correct to the best of my knowledge.

Executed this 2nd day of December 2022 in White Plains, New York.



Matthew Dundon

EXHIBIT 4

CAFA NOTICE

Yaquelin Garcia v. Payless ShoeSource, Inc.
c/o Settlement Administrator
[Address]
[City, State Zip]

PLEASE NOTE, THE FOLLOWING CONFIDENTIAL NOTICE DOES NOT REQUIRE ANY ACTION ON YOUR PART AND IS PROVIDED FOR INFORMATIONAL PURPOSES PURSUANT TO SECTION 1715(a) OF THE CLASS ACTION FAIRNESS ACT OF 2005 ("CAFA"), SECTION 1715(a). SECTION 1715(f) OF THE CLASS ACTION FAIRNESS ACT OF 2005 STATES THAT "[N]OTHING IN THIS SECTION SHALL … IMPOSE ANY OBLIGATIONS, DUTIES, OR RESPONSIBILITIES UPON, FEDERAL OR STATE OFFICIALS." 28 U.S.C. § 1715(f). AS A RESULT, THIS NOTICE DOES NOT REQUIRE YOU TO TAKE ANY AFFIRMATIVE ACTION INCLUDING ANY WRITTEN RESPONSE.

_____, 2023

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

<<Addressee>>
<<Title Position>>
<<Address 1>>
<<Address 2>>
<<City, ST Zip>>

Re: Notice of Class Action Settlement Pursuant to Class Action Fairness Act of 2005
Yaquelin Garcia v. Payless ShoeSource, Inc.
Case No. 19-40883-659
(United States Bankruptcy Court, Eastern District of Missouri, Eastern Division)

To Whom It May Concern:

Pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §1715, Payless ShoeSource, Inc. ("Payless") hereby provides notice of a proposed settlement regarding certain wage and hour claims in this matter.

On March 1, 2023, class counsel filed a motion for preliminary approval of a settlement resolving certain claims in the chapter 11 bankruptcy cases captioned *In re Payless Holdings LLC*, Case No. 19-40883-659 in the United States Bankruptcy Court for the Eastern District of Missouri, Eastern Division. The proposed settlement covers certain wage and hour claims pled, or that could have been pled, on the facts asserted in the Complaint filed in the litigation known as *Yaquelin Garcia v. Payless ShoeSource, Inc.,* Case No. 4:18-cv-07609-JST, United States District Court, Northern District of California (the "Litigation").

The background of this dispute is as follows. On November 15, 2018, Plaintiff Yaquelin Garcia filed a Complaint in the Superior Court of the State of California, County of Alameda, against Payless, alleging violations of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681b(b)(2)(A), the California Investigative Consumer Reporting Agencies Act and the California Consumer Credit Reporting Agencies Act in the First through Fourth causes of action ("Background Check Claims"), and violations of the California Labor Code and the California Business and Professions Code, sections 17200 *et seq*., in the Fifth through Eighth causes of action ("Wage and Hour Claims"). The Wage and Hour Claims allege failure to authorize timely, uninterrupted, off duty, ten-minute rest periods; provide accurate wage statements; and timely pay final wages (pursuant to California Labor Code sections 201, 202, 203, 204, 223, 226, 226.7, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198 and 1199) and assert derivative claims for restitution under the California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq*.)

The Litigation was removed to the United States District Court for the Northern District of California (the "District Court") on December 19, 2018 (Case No. 4:18-cv-07609-JST, United States District Court, Northern District of California).

On February 18, 2019, Payless and other related debtors filed a voluntary petition under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Eastern District of Missouri (the "Bankruptcy Court"), and on July 7, 2019, two additional debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. As a result of the bankruptcy petition, the District Court stayed this action.

As a result of the parties' negotiations, the parties entered into a Settlement Agreement and Release to settle the Wage & Hour Claims raised by Plaintiff on behalf of herself and the Wage and Hour Class Members. On March 1, 2023, the parties filed a Joint Motion for preliminary approval of the class settlement ("Joint Motion for Preliminary Approval"), and supporting declarations.

The hearing on the parties' Joint Motion for Preliminary Approval of the class settlement is scheduled to be held on March 22, 2023, at 10:00 a.m. before the Honorable Kathy A. Surratt-States, in Courtroom 7 North at the United States Bankruptcy Court, Thomas F. Eagleton Federal Building, 111 S. 10th Street, St. Louis, Missouri 63102.

Information regarding the proposed settlement will be sent to putative class members in the Class Notice and will also be available to them by contacting the Settlement Administrator. The final approval hearing will be scheduled for a date and time not yet determined by the Bankruptcy Court in 2023.

The Settlement Agreement would result in the satisfaction of multiple disputed, contingent, unliquidated proofs of claim in exchange for an allowed priority claim pursuant to Bankruptcy Code section 507(a)(4) and an allowed general unsecured claim against Payless, inclusive of Class Professionals' fees and expenses. Providing the complete list of class members and their estimated proportionate share of the claims along with this Notice is not feasible at this time as the exact amount due each class member cannot be determined until the court has ruled on class counsel's motion for attorney and professional fees, costs, service awards and settlement administration costs. Payless estimates there are approximately 3,840 class members. All Class Members are believed to be residents of California, except for two residents of Arizona and one resident in each of the following states:

Colorado	Missouri
Indiana	Nebraska
Idaho	Nevada
Kansas	West Virginia

Should this settlement receive final approval, the stay on the action pending in the United States District Court will be lifted solely for the purpose of pursuing the Background Check Claims, and with the proviso that only insurance proceeds can be pursued.

The following documents and relevant pleadings have been filed and/or lodged with the Court in this action, true and correct copies of which are contained on the CD-ROM enclosed with this Notice. Copies of all pleadings in this action, including the Complaint, are also available on the "PACER" website at: http://pacer.moeb.uscourts.gov. Information regarding how to access the information using the PACER website is available at: https://www.pacer.gov/help/faqs.html. This notice includes the following documents in accordance with the CAFA requirements:

1. **Exhibit A** on the CD-ROM is the Complaint filed in the Litigation in the California Superior Court for the County of Alameda on November 15, 2018, removed to the District Court (Case No. 4:18-cv-07609-JST, United States District Court, Northern District of California).

2. **Exhibit B** on the CD-ROM is the Joint Motion for Preliminary Approval filed in the Bankruptcy Court on March 1, 2023. Attached to the Joint Motion for Preliminary Approval are the following exhibits: (1) the Settlement Agreement executed by the parties; (2) the proposed Notice of Class Settlement; (3) Declaration of Shaun Setareh; (4) Declaration of Matthew Dundon, and (5) the proposed CAFA Notice.

3. **Exhibit C** on the CD-ROM is the proposed Preliminary Approval Order.

4. **Exhibit D** on the CD-ROM is the proposed Final Approval Order.

5. At this time, there are no written, judicial opinions relating to items listed above.

If you have questions about this notice, the Litigation, the settlement, or the enclosed materials, or if you did not receive any of the listed materials, please contact counsel for Payless, identified below.

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Enclosures