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Attorneys for Defendants BG RETAIL,
LLC, a Delaware limited liability company,
dba NATURALIZER, and CALERES,
INC., a New York corporation, erroneously
sued as dba NATURALIZER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

SOPHIA RIVAS, *etc., et al.*,

CASE NO. 5:16-cv-06458-BLF (JCS)

Plaintiff,

v.

CLASS ACTION SETTLEMENT AGREEMENT

BG RETAIL, LLC dba NATURALIZER,
etc., et al.,

Defendants.

This Class Action Settlement Agreement (“Agreement”) is made by and between Plaintiff Sophia Rivas (“Plaintiff”) and Defendants BG RETAIL, LLC, dba NATURALIZER, and CALERES, INC., erroneously sued as dba NATURALIZER (“Defendants”), subject to the approval of the Court.

1. DEFINITIONS

1.1 “Action” means the putative class action lawsuit filed on September 30, 2016, in the Santa Clara Superior Court, entitled *Sophia Rivas v. BG Retail, LLC, et al.*, Case No. 16CV300553, and removed by Defendants to the United States District Court for the Northern District of California, San Jose Division, on November 4, 2016, Case No. 5:16-cv-06458-BLF.

1.2 “Agreement” or “Settlement” as used herein means this Class Action Settlement Agreement.

1.3 “Claims,” “Class Claims” and “Released Claims” as used herein means Plaintiffs’ allegations in the Action and in the Amended Complaint that Defendants (1) failed to pay overtime; (2) failed to pay minimum wages; (3) failed to provide meal periods; (4) failed to provide rest periods; (5) failed to pay wages due timely upon termination of employment; (6) failed to provide itemized wage statements to employees; (7) failed to compensate for split-shifts; (8) failed to reimburse employees for certain business expenses; (9) engaged in unfair business practices; and (10) violated California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, California Business and Professions Code §§ 17200 *et seq.*, as well as claims that could have been brought in the Complaint.

1.4 “Settlement Administrator” as used herein means Ilym.

1.5 “Class Counsel” as used herein means the law firm of Capstone Law APC, subject to approval of the Court.

1.6 “Class Representatives” as used herein means Sophia Rivas, subject to approval of the Court.

1.7 “Class Representative Service Award” as used herein means a request for up to Two Thousand Five Hundred Dollars (\$2,500.00), or such other lesser amount as may be

awarded by the Court, to be paid to Sophia Rivas for her role and service as Class Representative, and for the risk and effort made in that role.

1.8 “Complaint” as used herein means the Complaint filed by Sophia Rivas on September 30, 2016, initiating the Action in the Santa Clara Superior Court, removed by Defendants to the United States District Court for the Northern District of California, San Jose Division, on November 4, 2016, Case No. 5:16-cv-06458-BLF.

1.9 “Effective Date” shall be the date of Final Approval if there are no objections to the Settlement. If objections are made and overruled, and no appeal is taken of the Final Approval order, then the Effective Date of the Settlement shall be thirty-five (35) calendar days after the Judgment entered on Final Approval becomes final and is no longer appealable. If an appeal is taken from the Court’s overruling of objection(s) to the Settlement, then the Effective Date of the Settlement shall be twenty (20) calendar days after the appeal is withdrawn or after an appellate decision affirming the Final Approval order, and from which no further appeal may be had, becomes final.

1.10 “Final Approval” as used herein means the date when the Court enters an order of final approval of this Settlement and Judgment thereon.

1.11 “Fixed Cost Distribution Fund” as used herein means that portion of the Gross Settlement Amount used to pay: (a) attorney’s fees (not to exceed \$78,750) and costs (not to exceed \$20,000) of Class Counsel as approved by the Court; (b) the Class Representative Service Award as approved by the Court up to \$2,500.00; and (c) fees and expenses of the Settlement Administrator as approved by the Court up to \$6,500.00. Defendants shall fund the Fixed Cost Distribution Fund within five (5) business days of the Effective Date.

1.12 “Gross Settlement Amount” as used herein means One Hundred Seventy-Five Thousand Dollars (\$175,000.00). No portion of the Gross Settlement Amount shall revert to Defendants.

1.13 “Notice” as used herein means the Notice of Proposed Class Action Settlement jointly drafted by the Parties and to be mailed by the Settlement Administrator to every member of the putative class, in substantially the form attached hereto as Exhibit A.

1.14 “Parties” as used herein means, collectively, Plaintiff Sophia Rivas and Defendants BG Retail, LLC, dba Naturalizer, and Caleres, Inc., erroneously sued as dba Naturalizer.

1.15 “Preliminary Approval” as used herein means the date when the Court enters an order preliminarily approving the Settlement herein.

1.16 “Released Parties” means Defendants BG Retail, LLC and Caleres, Inc., and each of its past and present parents, affiliates, subsidiaries, divisions, predecessors, successors, and assigns (including but not limited to Naturalizer), and each of their respective officers, directors, board members, trustees, shareholders, employees, agents, insurers, attorneys, auditors, accountants, experts, stockholders, representatives, partners, and any other persons acting on their behalf.

1.17 “Remaining Distribution Fund” as used herein means that sum equal to the Gross Settlement Amount less the Fixed Cost Distribution Fund. The entire Remaining Distribution Fund will be paid to all Class Members who do not opt out of the Settlement Class.

1.18 “Request for Exclusion” means a letter submitted by a Class Member to the Settlement Administrator and postmarked by the exclusion deadline that includes the Class Member’s name and signature and the following statement or something similar thereto: “I request to be excluded from the class action settlement in the matter of *Sophia Rivas et al. v. BG Retail, LLC, et al.*, Case No. 5:16-cv-06458-BLF.”

1.19 “Response Deadline” means the deadline by which Class Members must postmark to the Settlement Administrator valid Requests for Exclusion, or file and serve objections to the settlement. The Response Deadline will be sixty (60) calendar days from the initial mailing of the Notices by the Settlement Administrator, unless the 60th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline for Requests for Exclusion will be extended fifteen (15) days for any Class Member who is re-mailed a Notice, unless the 15th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. Under no circumstances will the Settlement Administrator have the

authority to extend the deadline for Class Members to Request for Exclusion or objection to the settlement.

1.20 “Settlement Class” as used herein means “All persons who are or were employed by Defendants in a non-exempt, hourly-paid position in any of Defendants’ California Naturalizer retail locations from September 30, 2012, until the date of Preliminary Approval.” The number of class members shall not exceed 400 (cut-off at 400 by date of hire).

1.21 “Settlement Period” as used herein means the period beginning September 30, 2012 (four years prior to the filing of the Complaint) and running through the date of Preliminary Approval.

1.22 “Settlement Payment” means each Participating Class Member’s share of the Settlement Fund.

1.23 “Settlement Fund” as used herein means those funds used to pay: (a) each Class Member who does not request exclusion from the settlement (“Participating Class Member”); (b) the employer’s share of any FICA or other tax owed as the employer of any member of the Settlement Class, which shall be paid by the Settlement Administrator from the Settlement Fund; and (c) the employee’s share of any FICA or other tax owed by any member of the settlement class as an employee of BG Retail, LLC dba Naturalizer, which also shall be paid by the Settlement Administrator from the Settlement Fund. The precise amount of the Settlement Fund shall be calculated as follows: Defendants will calculate the total number of Workweeks worked by each Class Member (“Individual Workweeks”) and the total number of Workweeks worked by all Class Members (“Class Workweeks) during the Settlement Period. The Settlement Administrator shall then use the following formula: $\text{Settlement Payment} = \text{Individual Workweeks} \div \text{Class Workweeks} \times \text{Remaining Distribution Fund}$. The total amount of Settlement Payments shall constitute the “Settlement Fund.” Defendants shall fund the Settlement Fund within five (5) business days of the Effective Date. No portion of the Settlement Fund shall revert to Defendants.

1.24 “Workweeks” means the number of weeks of employment for each Class Member as a non-exempt employee during the Settlement Period. Defendants will calculate the number of Workweeks by calculating the number of days each Class Member was employed from

September 30, 2012 to the date of preliminary approval of the Settlement, dividing by seven (7), and rounding up to the nearest whole number.

2. BACKGROUND

2.1 On September 30, 2016, Plaintiff Sophia Rivas commenced this class action lawsuit against Defendants BG Retail, LLC, dba Naturalizer, and Caleres, Inc., erroneously sued as dba Naturalizer, on behalf of herself and a putative class of similarly situated current and former hourly-paid store employees who worked for Defendants during the Settlement Period alleging: (1) failure to pay overtime; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to pay wages due timely upon termination of employment; (6) failure to provide itemized wage statements to employees; (7) failed to compensate for split-shifts; (8) failed to reimburse employees for certain business expenses; (9) Plaintiff's representative claims under California's Private Attorney General Act ("PAGA"), Labor Code §§ 2698 *et seq.*; (10) engaged in unfair business practices; and (11) violated California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, and 2802, California Business and Professions Code §§ 17200 *et seq.*, all of which gave rise to wage and hour claims for damages, penalties, interest, and attorneys' fees.

2.2 Defendants answered the Complaint, denying Plaintiff's allegations in their entirety and contending that it complied with applicable laws at all times. Defendants removed the Complaint to Federal court.

3. SCOPE, PURPOSE AND BENEFITS OF THE SETTLEMENT

3.1 As detailed below, this Agreement establishes a procedure to resolve all claims for monetary and/or injunctive relief that could be certified by the Court.

3.2 Although neither Plaintiff nor Defendants abandon any position taken in the Action, the Parties believe that continued litigation would be protracted, expensive, uncertain, and contrary to their best interests. In light of these realities, the Parties believe this Settlement is the best way to resolve all disputes between them that are or could have been alleged in the Action or in the Amended Complaint.

4. JURISDICTION

4.1 The Court has jurisdiction over the Parties and the subject matter of the Action. The Action includes claims that would, if proved, authorize the Court to grant relief pursuant to the statutes and laws cited in the Complaint. After the Court has given Final Approval to the Settlement and entered Judgment, the Court is requested to retain jurisdiction over the Parties for a period of one year to enforce this Agreement.

5. STATEMENT

5.1 Defendants deny that they harmed Plaintiff or members of the Settlement Class in any way, and deny wrongdoing of any sort and any liability to Plaintiff or members of the Settlement Class upon any claim or cause of action in the Action. This Agreement does not constitute, and is not intended to constitute, and will not be deemed to constitute, an admission by Defendants as to the merits, validity, and/or accuracy of any of the allegations or claims made against Defendants in the Action. Any judgment herein is not, and is not intended to be, a judgment on the merits, and any Court order and/or judgment in that regard must so state.

5.2 Nothing in this Agreement, nor any action taken in implementation thereof, including any statements, discussions and communications during negotiations, nor any materials prepared, exchanged, issued, or used in connection with this Agreement, is intended by the Parties to be admissible, nor will any of the foregoing be introduced as or be used as admissible evidence in any way in this Action or in any other judicial, arbitral, administrative, investigative, or other forum or proceeding whatsoever, including as evidence of any violation by Defendants of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity. However, this Agreement may be used in a proceeding that has as its sole purpose the enforcement of this Agreement or any orders or judgments of the Court in connection therewith.

5.3 All evidence produced or created by the Parties and/or by any member of the Settlement Class in connection with the claims resolution procedures established herein do not constitute, are not intended to constitute, and will not be deemed to constitute an admission by

Defendants of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

6. DEFINITION OF THE “SETTLEMENT CLASS”

6.1 As noted above, the “Settlement Class” is defined as: “ All persons who are or were employed by Defendants in a non-exempt, hourly-paid position in any of Defendants’ California Naturalizer retail locations from September 30, 2012, until the date of Preliminary Approval.”

6.2 Solely for purposes of this Agreement, and to facilitate preliminary and final approval thereof, Defendants will not object to the Action being certified as a class action. However, if for any reason this Agreement fails to secure the necessary court approvals, or if court approval is for any reason reversed on appeal, then the Parties stipulate that any order by the Court certifying the Action as a class action shall be vacated *nunc pro tunc*, that Plaintiff’s motion for class certification shall remain on (or, if it had been removed from the Court’s calendar, re-added to) the Court’s calendar, and that Defendants then may assert any and all grounds in opposition to Plaintiff’s motion for class certification that Defendants could have pursued and/or asserted if this Agreement had never existed.

7. SETTLEMENT AMOUNTS

7.1 **Settlement Amount.** Defendants agree to One Hundred Seventy-Five Thousand Dollars (\$175,000.00) in consideration (the “Gross Settlement Amount”), as provided by this Settlement Agreement. Defendants will not be obligated under any circumstances to pay in excess of the Gross Settlement Amount in connection with this Agreement. The Gross Settlement Amount includes sums for all Class Counsel’s approved attorneys’ fees and costs, the Class Representatives’ Service Award, payments to individual members of the Settlement Class, and the costs of administration (including mailing) of the Settlement Administrator, and the employer’s and employee’s shares of any FICA or other tax owed to or by any member of the Settlement Class. No portion of the Gross Settlement Amount shall revert to Defendants.

7.2 **Class Representatives’ Service Award.** Defendants will not oppose a request by Plaintiff Sophia Rivas seeking a Class Representative Service Award of up to Two

Thousand Five Hundred Dollars (\$2,500.00) for her time and effort in prosecuting this case on behalf of the class. The Class Representative Service Award shall be in addition to the amounts received by each Plaintiff for being a Class Member. An IRS Form 1099 will be issued to each Plaintiff for the Class Representative Service Award. Plaintiff hereby agrees that she is solely responsible for the payment of all taxes and other related contributions, if any, due as a result of the Class Representative Service Award. Any portion of the Class Representative Service Award not awarded to the Class Representative will be retained by Defendants.

7.3 **Class Counsel's Attorneys' Fees and Costs.** Defendants will not oppose a request by Class Counsel for an award of Attorneys' Fees up to 45% of the Gross Settlement Amount (not to exceed \$78,750.00), and for an award of costs up to \$20,000.00. Said awards are intended to cover past and future attorneys' fees and costs to prosecute, settle and administer the Action and the Settlement. The "future" aspect of the attorneys' fees and cost awards include, without limitation, all the time and costs expended by Class Counsel in defending the Settlement and securing Final Approval (including any appeals thereof). There will be no additional charge of any kind to either members of the Settlement Class or to Defendants for such work. Class Counsel agrees not to seek from the Court more than the agreed amounts in fees and costs. Any portion of the Class Counsel's Attorneys' Fees and Costs not awarded to Class Counsel will be distributed to Class Members.

7.4 **Administration Costs.** The Parties agree to appoint Ilym as Settlement Administrator to administer the Settlement. The Settlement Administrator will perform all of the duties described herein, including distribution of Notices and Settlement Checks. The Settlement Administrator will calculate and distribute all amounts to be paid from the Settlement Fund. All fees and expenses associated with administering the settlement shall be paid out of the Fixed Cost Distribution Fund. Ilym agrees to perform all services required by this Settlement Agreement for a fee not to exceed the amount of \$6,500.00. This sum shall include all costs associated with the Settlement Administrator's services, including the costs associated with all mailings required herein.

8. COMPUTATION AND DISTRIBUTION OF PAYMENTS

8.1 **Distribution Formula.** Each member of the Settlement Class that does not timely request exclusion from the Settlement *automatically* shall be entitled to recover a pro-rata share of the settlement funds available for distribution to the class based on the ratio of the number of weeks that any individual Class Member worked for Defendants to the total number of Workweeks that Class Members worked for Defendants. Specific calculation of Settlement Payments will be made as follows:

8.1.1 Defendants will calculate the total number of Workweeks worked by each Class Member (“Individual Workweeks”) and the total number of Workweeks worked by all Class Members (“Class Workweeks”) during the Settlement Period.

8.1.2 To determine each Class Member’s estimated Settlement Payment the Settlement Administrator will use the following formula: Estimated Settlement Payment = Individual Workweeks ÷ Class Workweeks × Remaining Distribution Fund.

8.1.3 The Settlement Payment will be reduced by any required deductions for each Claimant as set forth herein, including employee-side tax withholdings or deductions.

8.2 **Distribution of Payments.** Within twenty (20) calendar days after the Effective Date of the Settlement, the Settlement Administrator shall pay the approved Class Representative Service Award, the Class Counsel’s court-approved attorneys’ fees and costs, the Settlement Administrator’s court-approved fees and expenses, and the Settlement Payments.

8.3 **Returned Checks.** If a Class Member’s check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Class Member at his or her correct address. Settlement checks that are returned a second time and settlement checks not cashed within 180 days of issuance will not be re-issued. Any portion of the Settlement Fund that is not distributed to Settlement Class members due to un-cashed checks shall be reported and delivered to the California State Controller’s Office as “unclaimed property.”

8.4 **Employee Benefit Plans.** This Agreement is not intended by the Parties to modify Defendants’ employee benefit plans.

9. NOTICE, OBJECTIONS, AND OPPORTUNITY TO PARTICIPATE

9.1 **Notice.** Attached as Exhibit A to this Agreement is a proposed Notice of Proposed Class Action Settlement (“Notice”), which the Parties have jointly drafted. The Notice includes information regarding the nature of the Action, a summary of the substance of the proposed Settlement, the definition of the Settlement Class, the number of Workweeks credited to each Class Member and each Class Member’s estimated Settlement Payment, the procedure and time for opting out of or objecting to the Settlement and participating in the Final Approval hearing, a statement that the Court has preliminarily approved the Settlement, and a statement that members of the Settlement Class will be bound and Defendants will be released of all Class Claims with respect to all members of the Settlement Class who do not submit a valid Request for Exclusion of the Settlement.

9.1.1 Within ten (10) calendar days from the date of Preliminary Approval, Defendants will provide to the Settlement Administrator data pertaining to members of the Settlement Class, including names, social security numbers, the most current mailing address information available from Defendants’ payroll records, and change of address forms (if any) provided to Defendants by members of the Settlement Class, and the number of Workweeks worked. Information provided by Defendants pertaining to members of the Settlement Class is confidential and shall not be shared by the Settlement Administrator with the Class Representative, Class Counsel or any other third party. Any inquiries or questions concerning membership in the Settlement Class or the number of Workweeks reflected in Defendants’ records shall be referred to the Settlement Administrator.

9.1.2 Within twenty (20) calendar days following Preliminary Approval, the Settlement Administrator will mail the Notice to each member of the Settlement Class via first class U.S. mail.

9.1.3 The Settlement Administrator will take reasonable steps to ensure that the Notice is sent to all Class Members. For each Class Member who is not the Class Representative, prior to mailing of the Class Notice, the Settlement Administrator shall perform a search based on the National Change of Address Database for information to update and correct for

any known or identifiable address changes. Any notice packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline shall be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator shall indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved, and shall then perform a single re-mailing.

9.1.4 Receipt and Re-mailings. If a Notice is returned undelivered to the Settlement Administrator, there will be one attempt to re-mail the Notice to the addressee.

9.1.5 If the envelope contains a forwarding address label, then the Settlement Administrator shall utilize the address thereon and will re-mail the original via first class regular mail to the addressee within five (5) calendar days along with a brief letter stating that the recipient of the Notice has until the original deadline set forth on the Notice or fifteen (15) calendar days after the re-mailing of the Notice (whichever is later) to submit a Request for Exclusion of the settlement.

9.1.6 If an original Notice is returned as undeliverable without a forwarding address, the Settlement Administrator will make reasonable efforts to locate forwarding addresses, including performing an Experian (or substantially similar service) skip tracing on the Class Member to attempt to ascertain the current address. If it obtains a more recent address, the Settlement Administrator will resend the Notice via first class regular mail within five (5) calendar days along with a brief letter stating that the recipient of the Notice has until the original deadline set forth on the Notice or fifteen (15) calendar days after the re-mailing of the Notice (whichever is later) to submit a Request for Exclusion of the settlement.

9.1.7 In either event, if new address information is obtained, the Settlement Administrator shall forward the original Notice to that new address via first class regular U.S. mail, indicating on the original notice the date of such re-mailing, and giving the addressee an additional fifteen (15) calendar days after such written notification is postmarked to submit a Request for Exclusion.

9.1.8 At least ten (10) calendar days prior to the Final Approval hearing, the Settlement Administrator will provide a declaration of due diligence and proof of mailing with regard to the mailing of the Notice to counsel for all Parties.

9.1.9 All costs associated with the printing, copying and mailing of the Notices and administering the Settlement shall be paid by the Settlement Administrator out of the amount approved by the Court to cover the Settlement Administrator's fees and costs.

9.2 **Disputing Information in Notice.** Class Members will have an opportunity to dispute the information provided in their Notices. To the extent Class Members dispute the number of Workweeks to which they have been credited or the amount of their Settlement Payments, Class Members may produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendants' records, Defendants' records will be presumed determinative. However, if a Class Member produces evidence to the contrary, the Parties will evaluate the evidence submitted by the Class Member and will make the final decision as to the number of eligible Workweeks that should be applied and/or the Settlement Payment to which the Class Member may be entitled.

9.3 **Objections.** All objections to the Settlement must be filed with the Court and postmarked to all counsel of record no later than sixty (60) calendar days after the Settlement Administrator's first mailing of the Notice to members of the Settlement Class. Unless the Court directs otherwise, the 60 day period applies notwithstanding any argument regarding non-receipt of the Notice. If any objector intends to appear at the Final Approval hearing, either in person or through counsel, he or she must include, with the objection, notice of that fact and must state the grounds for his or her objection. The Parties will be permitted to respond in writing to such objections prior to the Final Approval hearing. If any member of the Settlement Class fails to file and serve a timely written objection, he or she will be deemed to have waived any objection to the Settlement. Any Class Member who fails to file and serve a timely written objection to the Settlement shall be precluded from appealing any Order or Judgment approving said Settlement.

9.4 **Opportunity to Participate.** All Class Members who do not submit a valid and timely Request for Exclusion from the Settlement pursuant to Paragraph 9.5 automatically shall

be entitled to receive payment hereunder. *Class Members shall not be required to submit a claim form in order to obtain the benefits of this Settlement.* Any Class Member who submits a Request for Exclusion shall be precluded from objecting to the Settlement (and any objection filed prior to opting out shall be deemed withdrawn), and shall be precluded from appealing any Order or Judgment approving said Settlement.

9.5 **Request for Exclusion.** To request exclusion, the Class Member must submit a Request for Exclusion to the Settlement Administrator that it is signed and postmarked no later than sixty (60) calendar days after the Settlement Administrator's first mailing of the Notice to members of the Settlement Class or ten (10) calendar days after the re-mailing of the Notice (whichever is later).

9.6 **Defective Submissions.** If a Class Member's Request for Exclusion is defective as to the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter within five (5) calendar days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have until the later of (a) the Response Deadline or (b) fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark or fax a revised Request for Exclusion. If a Class Member responds to a cure letter by filing a defective claim, then the Settlement Administrator will have no further obligation to give notice of a need to cure. If the revised Request for Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

9.7 **Withdrawal of the Agreement.** If five percent (5%) or more members of the Settlement Class submit a timely and valid Request for Exclusion, then Defendants may, in its sole discretion, unilaterally withdraw from and terminate this Agreement. Defendants must exercise this right within fifteen (15) calendar days after the Settlement Administrator notifies the Parties of the number of valid and timely Request for Exclusions received, which the Settlement Administrator must do within seven (7) calendar days after the Objection/Exclusion Deadline.

9.8 If Defendants terminates the Agreement, then Defendants will be responsible for the Settlement Administrator's fees and costs incurred as of the date of termination.

9.9 The Final Approval hearing shall be held on a date set by the Court after the sixty (60) calendar days to request exclusion have expired.

10. RELEASE OF CLAIMS

10.1 **Release by Class Members.** If there are no objections to the proposed Settlement, then upon Final Approval, all members of the Settlement Class who do not submit a timely and valid request for exclusion of the Settlement, will be deemed to have, and will have, released the Released Parties from the Released Claims, as defined in paragraphs 1.17 and 1.4, respectively, herein. Members of the Settlement Class who do not submit a timely and valid Request for Exclusion will fully release the Released Parties from the Released Claims and agree not to sue or otherwise make a claim against any of the Released Parties for the Released Claims. If any objections are filed to the proposed Settlement, then upon Final Approval, all members of the Settlement Class who do not submit a timely and valid request for exclusion of the Settlement, will be deemed to have, and will have, conditionally released the Released Parties from the Released Claims, as defined in paragraphs 1.17 and 1.4, respectively, herein, pending the expiration of the appeal period. If no appeal is timely filed, then the conditional release shall become final. If an appeal is timely filed, then the conditional release shall terminate and, in its place, an injunction shall take effect immediately barring all members of the Settlement Class who do not submit a timely and valid request for exclusion of the Settlement from filing any lawsuit, claim or other proceeding against the Released Parties pending resolution of the appeal. If the appeal is withdrawn or dismissed or the Final Approval order otherwise affirmed, then all members of the Settlement Class who do not submit a timely and valid request for exclusion of the Settlement, will be deemed to have, and will have, released the Released Parties from the Released Claims, as defined in paragraphs 1.17 and 1.4, respectively, herein. If the appeal is successful, then the injunction shall cease to exist based on the appellate court ruling vacating the Final Approval order giving rise to the injunction.

10.2 **Waiver of California Civil Code Section 1542.** As of the Effective Date, the Class Members, including the Class Representatives, release Defendants and the Released Parties from the Released Claims. With respect to the Released Claims only, Class Members stipulate and agree that, upon the Final Effective Date, Class Members shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of California Civil Code Section 1542 (or any other similar provision under federal or state law that purports to limit the scope of a general release), which provides:

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

The release of the Released Parties shall be effective immediately upon entry of Final Approval.

11. TAXATION

11.1 With regard to the Settlement Payments, the Parties agree that, for purposes of IRS Form 1099 reporting, said Settlement Payments shall be allocated as follows: One third (1/3) shall be considered wages subject to normal payroll withholding and IRS Form W-2 reporting, one third (1/3) shall be considered interest, and one third (1/3) shall be considered statutory penalties.

11.2 Class Representatives and members of the Settlement Class shall be responsible individually for remitting to tax authorities any and all applicable taxes they may owe. Consistent with this Agreement, all applicable taxes that Defendants may owe, as employer of members of the Settlement Class, such as the employer's share of FICA, shall be paid by the Settlement Administrator from the Settlement Fund. The Settlement Administrator will be responsible for tax withholding, reporting and remittance of employer payroll taxes, and for the employee's withheld portion of any distribution hereunder.

11.3 For clarification, the Settlement Administrator is and will be responsible for computing, estimating, and paying (out of the Settlement Fund) all appropriate amounts of federal, state, and local taxes, including but not limited to income taxes, due with respect to any amounts paid to Class Members pursuant to this Agreement, as well as any employer share of taxes owed on the amounts paid to Class Members. The Parties agree that the apportionment of wage and non-wage claims shall be one third (1/3) wage claims, one third (1/3) interest, and one third (1/3) penalty payments on the claims for monetary recovery. The Settlement Administrator shall withhold appropriate federal, state, and local income taxes and Class Members' employee and Defendants' employer shares of FICA and Medicare taxes and any other tax owed as the employer of any member of the Settlement Class in accordance with the Settlement Agreement. The Settlement Administrator shall issue a W-2 and/or Form 1099, under the terms set forth in this Settlement Agreement, to Class Members receiving settlement funds. For all purposes, the applicable portion of any Settlement Fund paid shall be deemed compensation to the Class Member in the year the payment is actually made, whether a current or former relationship to Defendants exists.

11.4 As noted above, Rivas will receive a Class Representative Service Award of up to \$2,500, and Defendants shall issue her an IRS Form 1099 for said award. Rivas is solely responsible for the payment of all taxes and other related contributions, if any, due as a result of said award, and shall provide Defendants, within seven (7) days of any request, with any paperwork reasonably requested in connection with said award.

12. COURT APPROVAL

12.1 This Agreement is contingent upon Final Approval by the Court, and full compliance with all the terms and conditions herein.

12.2 The Parties agree to take all steps as may be reasonably necessary to secure approval of the Settlement, to the extent not inconsistent with the terms of this Agreement, and agree not to take any action adverse to each other in obtaining Court approval and, if necessary, appellate approval, of the Settlement in all respects.

13. CONFIDENTIALITY

13.1 Prior to Preliminary Approval of the Settlement, Plaintiff, Defendants, Plaintiff's Counsel and Defendants' Counsel agree that neither Plaintiff nor Plaintiff's Counsel shall engage in publicity of any type, nor will they issue a press release, up to Final Approval of the Settlement.

13.2 The Parties agree that neither Plaintiff nor Plaintiff's Counsel shall disparage Defendants, and that neither Defendants nor Defendants' Counsel shall disparage Plaintiffs.

14. MISCELLANEOUS PROVISIONS

14.1 **Final Agreement.** The terms and conditions of this Agreement constitute the exclusive and final understanding and expression of all agreements between the Parties with respect to the Action, the Settlement, and the matters noted herein. Plaintiffs, on their own behalf and on behalf of the Settlement Class they represent, and Defendants accept this Agreement based solely upon its terms and not in reliance upon any representations or promises other than those contained in this Agreement. This Agreement may be modified only by a writing signed by the original signatories and approved by the Court.

14.2 **Counterparts.** This Agreement may be executed in one or more actual or telecopied counterparts, all of which will be considered one and the same instrument and all of which will be considered duplicate originals.

14.3 **Authority.** Each individual signing below warrants that he or she has the authority to execute this Agreement on behalf of the Party for whom or for which that individual signs.

14.4 **No Encouragement.** Class Counsel and Plaintiff agrees that they have not, and will not in the future, do anything to encourage any member of the Settlement Class to opt out of the Settlement or object to its terms.

14.5 **No Assignment.** Plaintiff affirms that she has not assigned any claims released hereunder.


14.6 **Construction.** This Agreement shall be interpreted, enforced and construed as a whole in accordance with its fair meaning and in accordance with the laws of the State of

1 California. The language of this Agreement shall not be construed for or against either Party. The
2 headings used herein are for reference only and shall not affect the construction of this Agreement.

3 14.7 **No Inducement.** Plaintiff and Defendants acknowledge that no
4 representations have been made to them to induce them to agree to this Agreement, other than those
5 terms stated herein.

6
7 WHEREOF, the Parties have executed this Agreement the day and year indicated below.

8
9 Dated: April __, 2019

10 
11 _____
12 SOPHIA RIVAS

13 BG RETAIL, LLC

14
15 Dated: April __, 2019

16 _____
17 By: _____
18 Its: _____


19 CALERES, INC.

20
21 Dated: April __, 2019

22 _____
23 By: _____
24 Its: _____

25 APPROVED AS TO FORM AND CONTENT:

26
27 Dated: April 29 2019

28 

Raul Perez
Bevin Allen Pike
Capstone Law APC
Attorneys for Plaintiffs Sophia Rivas

Dated: April __, 2019

Michael J. Hassen
Reallaw, APC
Attorneys for Defendants BG RETAIL, LLC, a
Delaware limited liability company, dba
NATURALIZER, and CALERES, INC., a New York
corporation, erroneously sued as dba NATURALIZER

1 California. The language of this Agreement shall not be construed for or against either Party. The
2 headings used herein are for reference only and shall not affect the construction of this Agreement.

3 14.7 **No Inducement.** Plaintiff and Defendants acknowledge that no
4 representations have been made to them to induce them to agree to this Agreement, other than those
5 terms stated herein.

6
7 WHEREOF, the Parties have executed this Agreement the day and year indicated below.

8
9 Dated: April __, 2019

10 SOPHIA RIVAS

11 BG RETAIL, LLC

12
13 Dated: April 24, 2019

14 By: THOMAS C. BURKE
Its: VICE PRESIDENT, GENERAL COUNSEL &
SECRETARY

15 CALERES, INC.

16
17 Dated: April 24, 2019

18 By: THOMAS C. BURKE
Its: VICE PRESIDENT, GENERAL COUNSEL &
SECRETARY

19
20 APPROVED AS TO FORM AND CONTENT:

21 Dated: April __, 2019

22 Raul Perez
23 Bevin Allen Pike
24 Capstone Law APC
25 Attorneys for Plaintiffs Sophia Rivas

26
27 Dated: April 24, 2019

28 Michael J. Hassen
Reallaw APC
Attorneys for Defendants BG RETAIL, LLC, a
Delaware limited liability company, dba
NATURALIZER, and CALERES, INC., a New York
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