

1 DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
2 david@yeremianlaw.com
Alvin B. Lindsay (SBN 220236)
3 alvin@yeremianlaw.com
535 N. Brand Blvd., Suite 705
4 Glendale, California 91203
Telephone: (818) 230-8380
5 Facsimile: (818) 230-0308

6 UNITED EMPLOYEES LAW GROUP, PC
Walter Haines (SBN 71075)
7 whaines@uelg.com
5500 Bolsa Ave., Suite 201
8 Huntington Beach, CA 92649
Telephone: (310) 652-2242

9 Attorneys for Plaintiff HAROUTYOUN KIOUDJIAN
on behalf of himself and others similarly situated

10 BENT CARYL & KROLL, LLP
11 Steven M. Kroll (SBN 216196)
skroll@bcklegal.com
12 6300 Wilshire Boulevard, Suite 1415
13 Los Angeles, California 90048
Telephone: (323) 315-0510
14 Facsimile: (323) 774-6021

15 Attorneys for Defendants BODY VISION JEWELRY, INC.
and BV & CO

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF LOS ANGELES**

18 HAROUTYOUN KIOUDJIAN, an individual,
19 on behalf of himself and others similarly
20 situated,

21 Plaintiff,

22 vs.

23 BODY VISION JEWELRY, INC., a California
corporation; and DOES 1 through 50, inclusive,

24 Defendants.

Case No.: 20STCV13964

CLASS ACTION

Assigned for All Purposes To:

Judge Ann I. Jones

Dept. 11, Spring Street Courthouse

**AMENDED CLASS AND PAGA ACTION
SETTLEMENT AGREEMENT AND
RELEASE**

Complaint Filed: April 9, 2020

First Amended Complaint: August 4, 2020

Trial Date: None set.

1 This Amended Class and PAGA Action Settlement Agreement and Release (“Settlement
2 Agreement”) is entered into by and between Plaintiff HAROUTYOUN KIOUDJIAN (hereinafter
3 “Plaintiff”), on behalf of himself and all other similarly situated Settlement Class Members, and
4 Defendants BODY VISION JEWELRY, INC. and BV & CO, which has been added as a named
5 Defendant under the operative Second Amended Class Action Complaint (collectively
6 “Defendants”). Subject to the approval of the Court, this Action is hereby being settled pursuant to
7 the terms and conditions set forth in this Settlement Agreement. Plaintiff will file approval
8 documents asking the Court to make and enter judgment, subject to the continuing jurisdiction of
9 the Court as set forth below, and subject to the definitions, recitals, and terms set forth herein
10 which by this reference become an integral part of this Agreement. This Settlement Agreement
11 shall be binding and supplant any and all prior versions of agreements entered into by Plaintiff and
12 Defendants.

13 **DEFINITIONS**

14 1. “Action” means the above captioned action entitled *Kioudjian, et al. v. Body Vision*
15 *Jewelry, Inc., et al.*, Superior Court of the State of California for the County of Los Angeles, Case
16 No. 20STCV13964.

17 2. “Class” or “Class Members” means all individuals employed by Defendants at any
18 time during the period of four years prior to the filing of this lawsuit (i.e. April 9, 2016) and
19 ending on the date of preliminary approval (“the Class Period”) and who have been employed as
20 non-exempt, hourly employees at Defendants’ facilities within the State of California.

21 3. “Class Counsel” means David Yeremian & Associates, Inc., and David Yeremian
22 and Alvin B. Lindsay, and United Employees Law Group, PC, and Walter Haines. Plaintiff has
23 agreed to this joint representation in writing.

24 4. “Class Counsel Award” or “Class Counsel Fees and Costs” means attorneys’ fees
25 for Class Counsel’s litigation and resolution of this Action, and Class Counsel’s expenses and
26 costs incurred in connection with this Action. Class Counsel will request that the Court approve
27 an award of attorneys’ fees in an amount not to exceed 33.3% percent of the Gross Fund Value
28 (i.e. \$91,666.67), as well as actual reasonable litigation costs in an amount not to exceed Eight

1 Thousand Dollars (\$8,000.00) to be confirmed by Plaintiff's Counsel in connection with final
2 approval. Defendants will not oppose these requests. Class Counsel's attorneys' fees and costs
3 will be paid out of the Gross Fund Value. To the extent that the Court approves less than the
4 amount of attorneys' fees or costs that Class Counsel requests, the difference between the
5 requested and awarded amounts will be added to the Net Fund Value for distribution to the
6 Settlement Class. Plaintiff and counsel for Plaintiff agreed to an allocation of 65% of the
7 attorneys' fees awarded under this Settlement to David Yeremian & Associates and 35% to United
8 Employees Law Group.

9 5. "Class Information" means information regarding Class Members that Defendants
10 will in good faith compile from its records and provide to the Settlement Administrator. It shall be
11 formatted as a Microsoft Excel spreadsheet or Microsoft Word Document and shall include: each
12 Class Member's full name; last 4 digits of social security number; last known address; and number
13 of Compensable Workweeks. Defendants will diligently and in good faith compile the Class
14 Information list from its records and provide it to the Settlement Administrator within fourteen
15 (14) calendar days of the Preliminary Approval Date. The Settlement Administrator will then mail
16 the Class Notices to the Class Members by no later than twenty-eight (28) calendar days following
17 the Preliminary Approval Date.

18 6. "Class Member" means each person who is a member of the Class defined above
19 and who is eligible to participate in this Settlement.

20 7. "Class Period" means the period of **April 9, 2016** through the date that the court
21 grants preliminary approval of the class action settlement (i.e., "the Preliminary Approval Date").

22 8. "Class Representative Enhancement and Service Award" means the amount that
23 Class Counsel will request that this Court approve as an enhancement award for distribution to
24 Plaintiff as the named Class Representative for the Settlement Class. Defendants will not oppose
25 this request. The amount of the enhancement award will not exceed Seven Thousand Five
26 Hundred Dollars (\$7,500.00), and will be requested in recognition of Plaintiff's efforts and risks in
27 assisting with the prosecution of the Action and in return for executing a General Release of the
28 Released Claims by Plaintiff. To the extent that the Court approves less than the amount of the

1 enhancement award that Class Counsel requests, the difference between the requested and
2 awarded enhancement will be added to the Net Fund Value for distribution to the Settlement
3 Class.

4 9. "Compensable Workweeks" means a reasonable estimate of weeks worked by
5 Class Members during the Class Period based on Defendants' records and used as a value to
6 calculate Individual Settlement Payments. Workweeks shall include only those weeks an
7 employee was actively employed as a non-exempt employee of Defendants.

8 10. "Complaint" means the First Amended Complaint on file in this Action and the
9 Second Amended Complaint the Parties will stipulate to entry of in connection with this
10 Settlement adding the entity BV & CO as a named Defendant.

11 11. "Court" means the Superior Court for the County of Los Angeles, State of
12 California.

13 12. "Defendants" means Body Vision Jewelry, Inc. and BV & CO, and their respective
14 past, present, or future parents, subsidiaries, affiliates, predecessors or successors and each of the
15 foregoing entities' respective members, officers, directors, partners, employees, shareholders,
16 agents and any other successors, assigns or legal representatives.

17 13. "Effective Date" means the date the Court enters an order granting final approval
18 and enters a Final Judgment, if no objections are filed to the Settlement. If objections are filed and
19 overruled, and no appeal is taken of the final approval order, then the effective date of final
20 approval will be sixty-five (65) calendar days after the trial court enters a Final Judgment. If an
21 appeal is taken from the Court's overruling of objections to the settlement, then the effective date
22 of will be thirty (30) calendar days after the appeal is withdrawn or after an appellate decision
23 affirming the Final Judgment becomes final. No money will be distributed unless and until the
24 effective date of final approval occurs.

25 14. "Final Judgment" means the Court's Final Judgment to be entered concurrently
26 with the Court's Order granting final approval to the Settlement.

27 15. "Gross Fund Value" means the non-reversionary payment of Two Hundred and
28 Seventy Five Thousand Dollars (\$275,000.00) that Defendants will provide to the Settlement

1 Administrator to fund the settlement of this Action, and includes the Class Counsel Award,
2 Settlement Administration Costs, payment to the Labor and Workforce Development Agency
3 (“LWDA”) for the alleged PAGA penalties, and the Class Representative Enhancement and
4 Service Award. The third-party administrator will also calculate the total amount of wages paid to
5 the settlement class members and will inform the parties of Defendants’ share of the payroll taxes,
6 which shall also be deducted from the Gross Fund Value. As addressed below, the Administrator
7 estimates that the employer share of payroll taxes will total approximately \$9,847.59. The
8 remaining amount is the Net Settlement Fund, from which the Administrator will pay all
9 individual settlement payments to the Settlement Class Members.

10 16. “Individual Settlement Payment” means the amount payable from the Net
11 Settlement Fund to each Settlement Class Member, less employee portions of state and federal
12 withholding taxes, including FICA, FUTA and SDI contributions and any other applicable payroll
13 deductions required by law as a result of the payment of the amount allocated to such Class
14 Members under the terms of this Settlement.

15 17. “LWDA” means the California Labor and Workforce Development Agency.

16 18. “Net Fund Value” means the Gross Fund Value, less Court-approved Settlement
17 Administration Costs, Attorneys’ Fees and Costs, the Class Representative Enhancement Award,
18 the 25% portion of the PAGA Penalties payable to the Settlement Class Members, and
19 Defendants’ share of the payroll taxes. Each Class Member who fails to opt out will be entitled,
20 provisionally, to a share or shares of the Net Fund Value, which shall be a fixed proportional
21 amount of the Net Fund Value per workweek.

22 19. “Notice of Class Settlement” or “Class Notice” means the notice, substantially in
23 the amended form attached as **Exhibit 1**, approved by the Parties and subject to Court approval
24 that the Settlement Administrator will mail to each Class Member explaining the terms of this
25 Settlement Agreement and the settlement process. The Class Notice will be sent in English only,
26 as the Class members generally are able to read English and it is the main language spoken in
27 performing their job duties for Defendants.

28

1 20. “Parties” means Plaintiff and Defendants, collectively, and “Party” shall mean
2 either Plaintiff or Defendants, individually.

3 21. “Payment Ratio” means the respective Compensable Workweeks for each
4 Settlement Class Member divided by the total Compensable Workweeks for all Settlement Class
5 Members.

6 22. “Plaintiff” means Haroutyoun Kioudjian.

7 23. “Preliminary Approval Date” means the date, if any, upon which the Court issues
8 an Order granting preliminary approval of the Settlement set forth in this Settlement Agreement.

9 24. “Request for Exclusion” refers to a timely letter submitted by a Class Member
10 setting forth the individual’s name, present address, telephone number, and a clear statement by
11 the Class Member electing to be excluded from the Settlement. The letter must be signed and
12 submitted by the Class Member to the Settlement Administrator at the specified address indicated
13 in the Class Notice. A Request for Exclusion must be postmarked on or before the exclusion
14 deadline. The date of the postmark shall be the exclusive means to determine whether a Request
15 for Exclusion has been timely submitted. A Class Member who does not request exclusion from
16 the Settlement shall be deemed a Settlement Class Member and will be bound by all terms of the
17 Settlement, when the Settlement is granted final approval by the Court.

18 25. “Released Claims by Plaintiff” or “the Plaintiff’s Released Claims” means the
19 following: Plaintiff, as the named Class Representative, agrees to further release the Released
20 Parties from any and all claims, demands, rights, liabilities, and/or causes, of any form
21 whatsoever, including but not limited to, those arising under federal, state or local wage-and-hour
22 laws, rules, or regulations, whether known or unknown, unforeseen, unanticipated, unsuspected or
23 latent, that have been or could have been asserted by Plaintiff, or the heirs, successors and/or
24 assigns of Plaintiff, whether directly, indirectly, representatively, derivatively or in any other
25 capacity, arising at any time prior to the date that the court grants preliminary approval of the class
26 action settlement. This release expressly excludes any workers’ compensation claim that Plaintiff
27 may have.

28

1 a. As to the Plaintiff's Released Claims only, Plaintiff expressly waives all rights and
2 benefits under the terms of section 1542 of the California Civil Code. Section 1542 reads
3 as follows: "A general release does not extend to claims that the creditor or releasing party
4 does not know or suspect to exist in his or her favor at the time of executing the release and
5 that, if known by him or her, would have materially affected his or her settlement with the
6 debtor or released party."

7 b. Notwithstanding the provisions of section 1542, and for the purpose of
8 implementing a full and complete release and discharge of all of his Released Claims,
9 Plaintiff expressly acknowledges that this Settlement is intended to include in its effect,
10 without limitation, all Released Claims which Plaintiff does not know or suspect to exist in
11 his favor at the time of execution hereof, and that the Settlement contemplates the
12 extinguishment of all such Released Claims.

13 26. "Released Claims by Settlement Class Members" means as follows: Aside from
14 those who submit a valid and timely request for exclusion from the settlement, as of the Effective
15 Date, Plaintiff and each member of the Settlement Class releases the Released Parties from any
16 and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees,
17 damages, action or causes of action contingent or accrued for, arising out of the allegations and
18 claims asserted in the operative Complaint (i.e. the Second Amended Class Action Complaint),
19 including without limitation to, any and all claims for alleged unpaid wages (including but not
20 limited to minimum wage, failure to pay overtime, vacation, and final pay upon termination),
21 misclassification leading to unpaid wages and overtime, alleged unpaid meal and rest break
22 premiums, itemized wage statement penalties, waiting time penalties under the California Labor
23 Code, reimbursement of business expenses, claims for restitution and other equitable relief under
24 Business & Professions Code (including Section 17200 *et seq.*), liquidated damages, punitive
25 damages, or penalties; and any other benefit claimed on account of the allegations asserted in
26 Complaint. This release shall apply to all claims arising at any point between **April 9, 2016** and
27 the date that the court grants preliminary approval of the class action settlement.

1 Agency (“LWDA”) a new or amended PAGA claim notice, adding BV & CO, as an additional
2 defendant employer, to his alleged PAGA claims in this action.

3 35. The Parties have conducted significant investigation of the facts and law during the
4 prosecution of this Action. Such discovery and investigation includes but is not limited to the
5 exchange of relevant documents, the agreement to Class numbers, and the production and analysis
6 of detailed time and payroll records for Plaintiff and Class Members and financial records for
7 Defendants. Furthermore, counsel for the Parties have investigated the law as applied to the facts
8 discovered regarding the alleged claims of Plaintiff and the potential defenses thereto.

9 36. The Parties participated in a private mediation session with class action mediator,
10 William Kampf, on **September 17, 2020**. The Parties agreed the general terms for resolution of a
11 proposed class action settlement that would fully resolve this matter, subject to Court approval,
12 and executed a Memorandum of Understanding (“MOU”) to that end. In accordance with their
13 MOU, the Parties stipulated to add BV & CO as a named Defendant, which they have filed and
14 asked the Court to grant. Plaintiff has also filed with the California Labor Workforce &
15 Development Agency (“LWDA”) a supplemental or amended PAGA claim notice, adding BV &
16 CO, as an additional defendant employer, to his alleged PAGA claims in this action.

17 37. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize
18 the expense and length of continued proceedings necessary to litigate their disputes through trial
19 and through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of
20 the outcome of further litigation, and the difficulties and delays inherent in such litigation.
21 Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability
22 for the claims asserted in the Action, both generally and in response to Defendants’ defenses
23 thereto, and the difficulties in establishing damages for the Settlement Class Members. Plaintiff
24 and Class Counsel have also taken into account Defendants’ agreement to enter into a settlement
25 that confers substantial relief upon the members of the Settlement Class. Based on the foregoing,
26 Plaintiff and Class Counsel have determined that the Settlement set forth in this Settlement
27 Agreement is a fair, adequate, and a reasonable settlement, and is in the best interests of the
28 Settlement Class Members.

1 advice (including tax advice) in connection with this Agreement, (b) has not entered into this
2 Agreement based upon the recommendation of any other party or any attorney or advisor to any
3 other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or
4 adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging
5 party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the
6 confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such
7 limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or
8 tax structure of any transaction, including any transaction contemplated by this Agreement.

9 42. Class Certification. The parties stipulate to class certification for purposes of
10 settlement only. Defendant contends that the facts do not justify class certification under the
11 governing legal standards. The trial court has not ruled on class certification in the underlying
12 litigation. Consequently, a "Settlement Class" has been established for purposes of administration
13 and resolution of this matter only. It is not, and it should not be construed as, any admission of fact
14 or law in this matter or any other matter that class certification is appropriate. If the Court does not
15 grant either preliminary or final approval of this settlement, then the parties revert to their previous
16 positions and Defendants will not stipulate to class certification.

17 43. Preliminary Approval of Settlement. Plaintiff will move the Court to grant
18 preliminary approval of this class action Settlement for settlement purposes only, certifying the
19 Settlement Class for settlement purposes only, and setting a date for a final approval hearing.
20 Both Parties agree to work diligently and cooperatively to have this matter presented to the Court
21 for preliminary approval as efficiently as possible.

22 44. Release of Claims by Plaintiff. Pursuant to this Agreement, Plaintiff releases the
23 "Released Claims by Plaintiff" as of the Effective Date.

24 45. Release of Claims by Settlement Class Members. Pursuant to this Agreement,
25 Settlement Class Members will be deemed to have released the "Released Claims by Settlement
26 Class Members" only upon the occurrence of the Effective Date and as of the date Defendants
27 fully fund the Settlement by depositing the Gross Fund Value with the Settlement Administrator.
28

1 46. Settlement Administration. Defendants will diligently and in good faith compile
2 the Class Information list from its records and provide it to the Settlement Administrator within
3 fourteen (14) calendar days of the Preliminary Approval Date.

4 47. Notice by First Class U.S. Mail. Upon receipt of the Class Information, the
5 Settlement Administrator will perform a search based on the National Change of Address
6 Database to update and correct any known or identifiable address changes. The Settlement
7 Administrator will then mail the Class Notices via regular First Class U.S. Mail to the Class
8 Members by no later than twenty-eight (28) calendar days following the Preliminary Approval
9 Date. The Settlement Administrator shall exercise its best judgment to determine the current
10 mailing address for each Class Member. The address identified by the Settlement Administrator as
11 the current mailing address shall be presumed to be the best mailing address for each Class
12 Member.

13 a. Undeliverable Notices. Any Class Notice returned to the Settlement
14 Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the
15 forwarding address affixed thereto within ten (10) calendar days of determining that a Notice was
16 undeliverable. If no forwarding address is provided, the Settlement Administrator shall promptly
17 attempt to determine a correct address by use of skip-tracing, or other search using the name,
18 address and/or last four digits of the Social Security number of the Class Member involved, and
19 shall then perform a re-mailing, if another mailing address is identified by the Settlement
20 Administrator. Class Members who receive a re-mailed Notice of Class Settlement and Summary
21 Sheet shall have their Response Deadline extended ten (10) calendar days from the original
22 Response Deadline.

23 b. Disputes Regarding Individual Settlement Payments. Class Members will
24 have the opportunity, should they disagree with Defendants' records regarding the dates of
25 employment or other information on their Summary of Workweeks and Estimated Payment
26 included in the Class Notice, to provide documentation and/or an explanation to show contrary
27 information by the Response Deadline. If there is a dispute, the Settlement Administrator will
28 consult with the Parties to determine whether an adjustment is warranted. The Settlement

1 Administrator shall then determine the eligibility for, and the amounts of, any Individual
2 Settlement Payments under the terms of this Agreement. The Settlement Administrator's
3 determination of the eligibility for and amount of any Individual Settlement Payment shall be
4 binding upon the Class Member and the Parties. In the absence of circumstances indicating fraud,
5 manipulation or destruction, Defendants' records will be given a rebuttable presumption of
6 accuracy.

7 c. Disputes Regarding Administration of Settlement. Any disputes not
8 resolved by the Settlement Administrator concerning the administration of the Settlement will be
9 resolved by the Court, under the laws of the State of California. Prior to any such involvement of
10 the Court, counsel for the Parties will confer in good faith to resolve the disputes without the
11 necessity of involving the Court.

12 d. Exclusions. The Notice of Class Settlement shall state that Class Members
13 who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a
14 Request for Exclusion by the Response Deadline. The Request for Exclusion: (1) must contain the
15 name, address, and telephone number of the person requesting exclusion, as well as a clear
16 statement by the Class Member electing to be excluded; (2) must be signed by the Class Member;
17 and (3) must be postmarked by the Response Deadline. The date of the postmark on the return
18 mailing envelope on the Request for Exclusion shall be the exclusive means used to determine
19 whether it has been timely submitted. The Request for Exclusion will be deemed invalid if it does
20 not contain the Class Member's name, address and telephone number, as well as a clear statement
21 by the Class Member electing to be excluded, and the Class Member's signature. Any Class
22 Member who requests to be excluded from the Settlement Class will not be entitled to any
23 recovery under the Settlement and will not be bound by the terms of the Settlement or have any
24 right to object, appeal or comment thereon. Class Members who receive a Notice of Class
25 Settlement but fail to submit a valid and timely Request for Exclusion on or before the Response
26 Deadline shall be bound by all terms of the Settlement and any Final Judgment entered in this
27 Action. The Settlement Administrator shall provide the Parties with regular updates regarding the
28 status of any requests for exclusion.

1 e. Objections. The Notice of Class Settlement shall state that Class Members
2 who wish to object to the Settlement must mail to the Settlement Administrator a written statement
3 of objection (“Notice of Objection”) by the Response Deadline. The date of the postmark on the
4 return mailing envelope on the Notice of Objection shall be the exclusive means used to determine
5 whether the Objection has been timely submitted. The Settlement Administrator will notify all
6 Parties of any objection within five (5) business days of receipt of the Objection. Plaintiff will file
7 any such Objection(s) with the Court in advance of the Final Approval Hearing. The Notice of
8 Objection must be signed by the Class Member and state: (1) the full name of the Class Member;
9 (2) the dates of employment of the Class Member; (3) the basis for the objection; (4) if the Class
10 Member intends to appear at the final approval hearing; and (5) any legal briefs, papers or
11 memoranda the objecting Class Member proposes to submit to the Court. Class Members who fail
12 to make objections in the manner specified above shall be deemed to have waived any objections
13 and shall be foreclosed from making any objections (whether by appeal or otherwise) to the
14 Settlement. Class Members who submit a timely Notice of Objection will have a right to appear at
15 the final approval hearing in order to have their objections heard by the Court. At no time shall
16 any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to file or
17 serve written objections to the Settlement or appeal from the Order granting final approval and/or
18 Final Judgment. Class Counsel shall not represent any Class Members with respect to any such
19 Objections.

20 f. The Parties have the right to monitor and review administration of the
21 Settlement to verify that the monies allocated to the Settlement Class are distributed in a correct
22 amount.

23 g. The Parties agree to use their best efforts to carry out the terms of this
24 Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise
25 encourage Class Members to submit either written objections to the Settlement or requests for
26 exclusion from the Settlement, or to appeal from the Court’s Final Judgment.

27 48. Funding Gross Settlement Fund. This is a non-reversionary Settlement in which
28 Defendants are required to pay the entire Gross Settlement Fund. No portion of the Gross Fund

1 Value will revert to Defendants. Any employer payroll taxes owed as a result of this Settlement
2 Agreement shall be paid from the Gross Settlement Fund. As of the date this Settlement is fully
3 executed, and presuming the Court approves all awards and allocations as requested and individual
4 settlement payments to the estimated 94 Class members, the Settlement Administrator estimates
5 that Defendants' share of any payroll taxes owed to the Settlement Class members totals
6 approximately \$9,847.59. Within thirty (30) calendar days of the Effective Date, Defendants will
7 deposit money, in an amount equal to the Gross Fund Value, to pay (1) the Settlement Class per
8 the terms of the final settlement agreement, and (2) court approved attorneys' fees and costs,
9 administration costs, and the enhancement payment, and (3) PAGA penalties to be paid to the
10 Labor Workforce Development Agency ("LWDA") into an interest-bearing account, through the
11 Settlement Administrator. Any interest accrued will be distributed to the Settlement Class except
12 that if final approval is reversed on appeal, then Defendants are entitled to prompt return of the
13 principal and all interest accrued. As addressed above, the effective date of the Release provided
14 by the Settlement Class members will be the date Defendants fully fund the Settlement.

15 49. Allocation of Settlement. Individual Settlement Payments will be paid from the
16 Net Settlement Amount and shall be paid pursuant to the settlement formula set forth herein.
17 Individual Settlement Payments shall be mailed by the Settlement Administrator by regular First
18 Class U.S. Mail to Settlement Class Members' last known mailing address within forty-five (45)
19 calendar days after the Effective Date of the settlement. Each Class Member who fails to opt out
20 will be entitled, provisionally, to a share or shares of the Net Fund Value, which shall be a fixed
21 proportional amount of the Net Fund Value per workweek.

22 a. Defendants and the Settlement Administrator will calculate the total
23 Compensable Workweeks for all Settlement Class Members. The respective Compensable
24 Workweeks for each Settlement Class Member will be divided by the total Compensable
25 Workweeks for all Settlement Class Members, resulting in the Payment Ratio for each Settlement
26 Class Member. Each Settlement Class Member's Payment Ratio is then multiplied by the Net
27 Settlement Amount to determine his or her Individual Settlement Payment. Workweeks shall
28 include only those weeks an employee was actively employed as a non-exempt employee with

1 Defendants during the Class Period. Defendants' payroll records shall control, but Class Members
2 will have the right to challenge their number of workweeks. The parties will work together in good
3 faith with the Settlement Administrator to resolve any disputes regarding workweeks.

4 b. Payments to the class will be allocated 33% wages and 67% interest and
5 penalties. Class members will be responsible for paying any personal income taxes owed on the
6 amounts they receive. The Administrator will issue Form W2s to the Class members for wage
7 payments and Form 1099s for allocated funds to penalties and interest.

8 c. Checks issued to Settlement Class Members pursuant to this Agreement
9 shall remain negotiable for One Hundred Eighty (180) calendar days. Any settlement checks that
10 are not claimed or not negotiated within 180 calendar days after the distribution of Individual
11 Settlement Payments to Settlement Class Members shall be void and the funds not disbursed as a
12 result, and will instead be paid to the State Controller's Office Unclaimed Property Fund to be
13 held in the name of the Class Member and in accordance with the procedures set forth in Code of
14 Civil Procedure section 1520.

15 d. Certification By Settlement Administrator. Upon completion of
16 administration of the distributions, the Settlement Administrator shall provide written certification
17 of such completion to the Court and counsel for all Parties.

18 e. Settlement Awards Do Not Trigger Additional Benefits. All monies
19 received by Settlement Class Members shall be deemed to be income to such Settlement Class
20 Members solely in the year in which such awards actually are received by the Settlement Class
21 Members. It is expressly understood and agreed that the receipt of such Settlement Awards will
22 not entitle any Settlement Class Member to additional compensation or benefits under any
23 company compensation or benefit plan or agreement in place during the period covered by the
24 Settlement, nor will it entitle any Settlement Class Member to any increased pension and/or
25 retirement, or other deferred compensation benefits. It is the intent of this Settlement that any
26 Settlement Awards provided for in this Agreement are the sole payments to be made by
27 Defendants to the Settlement Class Members in connection with this Settlement, and that the
28 Settlement Class Members are not entitled to any new or additional compensation or benefits as a

1 result of having received the Settlement Awards (notwithstanding any contrary language or
2 agreement in any benefit or compensation plan document that might have been in effect during the
3 period covered by this Settlement).

4 f. Class Representative Enhancement and Service Award. Class Counsel will
5 request that the Court approve an enhancement award for distribution to Plaintiff as the named
6 Class Representative for the Settlement Class. Defendants will not oppose this request. The
7 amount of the enhancement award will not exceed Seven Thousand Five Hundred Dollars
8 (\$7,500.00). At the time of execution of the settlement agreement, Plaintiff will sign a full release
9 of all claims against Defendants, i.e. the Released Claims by Plaintiff. Defendants agree not to
10 oppose or object to a Class Representative Enhancement and Service Award of up to \$7,500.00 to
11 Plaintiff, subject to Court approval. The Class Representative Service Award shall be paid to
12 Plaintiff no later than forty-five (45) calendar days following the Effective Date. The Settlement
13 Administrator shall issue an IRS Form 1099 – MISC to Plaintiff in connection with the Class
14 Representative Service Award. Plaintiff shall be solely and legally responsible to pay any and all
15 applicable taxes on his Class Representative Service Award and shall hold harmless Defendants
16 and Class Counsel from any claim or liability for taxes, penalties, or interest arising as a result of
17 the Class Representative Service Awards. Any amount requested by Plaintiff for the Class
18 Representative Enhancement and Service Award not granted by the Court shall return to the Net
19 Fund Value and be distributed as provided in this Agreement.

20 g. Class Counsel Award of Attorneys' Fees and Costs. Class Counsel will
21 request that the Court approve an award of attorneys' fees in an amount not to exceed 33.3%
22 percent of the Gross Fund Value (i.e. \$91,666.67), as well as actual reasonable litigation costs in
23 an amount not to exceed Eight Thousand Dollars (\$8,000.00) to be confirmed by Plaintiff's
24 Counsel in connection with final approval. Defendants will not oppose these requests. Class
25 Counsel's attorneys' fees and costs will be paid out of the Gross Fund Value. To the extent that
26 the Court approves less than the amount of attorneys' fees or costs that Class Counsel requests, the
27 difference between the requested and awarded amounts will be added to the Net Fund Value for
28 distribution to the Settlement Class. Court approved Attorneys' Fees and Costs shall be paid by

1 the Administrator to Class Counsel no later than forty-five (45) calendar days following the
2 Effective Date. Class Counsel shall be solely and legally responsible to pay all applicable taxes on
3 the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS
4 Form 1099 – MISC to Class Counsel for the payments made pursuant to this paragraph. This
5 Settlement is not contingent upon the Court awarding Class Counsel any particular amount in
6 attorneys’ fees and costs.

7 h. Settlement Administration Costs. The Settlement Administrator shall be
8 paid for the costs of administration of the Settlement from the Gross Fund Value no later than
9 forty-five (45) calendar days following the Effective Date. The costs of administration for the
10 disbursement of the Gross Fund Value shall not exceed \$10,000.00. The Settlement Administrator,
11 on Defendants’ behalf, shall have the authority and obligation to make payments, credits and
12 disbursements, including payments and credits in the manner set forth herein, to Settlement Class
13 Members calculated in accordance with the methodology set out in this Agreement and orders of
14 the Court. The Parties agree to cooperate in the Settlement Administration process and to make all
15 reasonable efforts to control and minimize the cost and expenses incurred in administration of the
16 Settlement.

17 1. The Parties each represent they do not have any financial interest in
18 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator
19 that could create a conflict of interest.

20 2. The Settlement Administrator shall be responsible for: processing
21 and mailing payments to Plaintiff, Class Counsel, the LWDA, and Settlement Class Members;
22 performing any translations required for the Class Notice, printing, and mailing the Class Notice
23 and tax forms to Class Members if directed by the Court; receiving and reporting the requests for
24 exclusion and objections submitted by Class Members; providing declaration(s) as necessary in
25 support of preliminary and/or final approval of this Settlement; and other tasks as the Parties
26 mutually agree or the Court orders the Settlement Administrator to perform. The Settlement
27 Administrator shall keep the Parties timely apprised of the performance of all Settlement
28 Administrator responsibilities.

1 i. Payment to the LWDA. The Parties allocate Ten Thousand Dollars
2 (\$10,000.00) to PAGA penalties the Labor Code Private Attorneys General Act of 2004, with 75%
3 of this amount to be paid directly to the LWDA (\$7,500.00) and 25% of this amount (\$2,500.00)
4 to be included in the Net Fund Value and paid to the Settlement Class. This PAGA Payment is
5 made pursuant to Labor Code section 2699(i), and shall also be paid within forty-five (45)
6 calendar days of the Effective Date.

7 j. No person shall have any claim against Defendants, Defendants' Counsel,
8 Plaintiff, Settlement Class Members, Class Counsel, or the Settlement Administrator based on
9 distributions and payments made in accordance with this Agreement.

10 50. Plaintiff and all Settlement Class Members agree that their releases under the
11 present Amended Settlement Agreement generally foreclose them from filing or prosecuting any
12 other cases, claims, suits or administrative proceedings (including filing claims with the Division
13 of Labor Standards Enforcement of the California Department of Industrial Relations) regarding
14 claims released by the Settlement unless and until such Class Members have mailed or otherwise
15 provided valid and timely Requests for Exclusion to the Settlement Administrator.

16 51. Final Settlement Approval Hearing and Entry of Final Judgment. Upon expiration
17 of the Response Deadline, with the Court's permission, a final approval hearing shall be
18 conducted to determine final approval of the Settlement along with the amount properly payable
19 for: (i) the Class Counsel Award; (ii) the Class Representative Enhancement and Service Award;
20 (iii) payment to the LWDA; and (iv) the Settlement Administration Costs.

21 52. Class Size Differential. Additionally, the parties estimate that there are currently
22 approximately 94 Class Members. If the number of Class members increases by more than 10%
23 (i.e. more than 10 additional Class Members), then Defendants agree to increase the Total
24 Settlement Amount in an amount that is proportional to the increase beyond 10%.

25 53. Nullification of Settlement Agreement. In the event: (i) the Court does not enter
26 the Order for preliminary approval of the Settlement; (ii) the Court does not finally approve the
27 Settlement; (iii) the Court does not enter a Final Judgment as provided herein; or (iv) the
28 Settlement does not become final for any other reason, this Settlement Agreement shall be null

1 and void and any order or judgment entered by the Court in furtherance of this Settlement shall be
2 treated as void from the beginning. All signatories and their counsel must not encourage opt-outs.
3 Counsel for the Class Members and Defendants specifically agree not to solicit opt-outs, directly
4 or indirectly, through any means. Defendants also retain the right, in the exercise of their sole
5 discretion, to nullify the settlement within thirty (30) calendar days after expiration of the opt out
6 period if ten percent (10%) or more of Class Members opt out of this Settlement.

7 54. Notice of Final Judgment. Notice of final judgment will be given to the Class by
8 posting notice to the case website maintained by the Settlement Administrator.

9 55. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement
10 Class Members pursuant to this Agreement shall be deemed not to be pensionable earnings and
11 shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g.,
12 vacations, holiday pay, retirement plans, etc.) of Plaintiff or Settlement Class Members.

13 56. No Admission by Defendants. Defendants deny any and all claims alleged in this
14 Action and deny all wrongdoing whatsoever. This Agreement is not a concession or admission,
15 and shall not be used against Defendants as an admission or indication with respect to any claim of
16 any fault, concession, or omission by any Defendant.

17 57. Exhibits and Headings. The terms of this Agreement include the terms set forth in
18 any attached Exhibits, which are incorporated by this reference as though fully set forth herein.
19 Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of
20 any paragraphs or sections of this Agreement are inserted for convenience of reference only and
21 do not constitute a part of this Agreement.

22 58. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the
23 Action, except such proceedings necessary to implement and complete the Settlement, in abeyance
24 pending the Final Approval Hearing to be conducted by the Court.

25 59. Publicity. While the Parties understand that the fact of this settlement will be of
26 public record in the Courts, the Parties also understand that Defendants wish to keep it as
27 confidential as possible. Accordingly, Plaintiff agrees not to publicize this settlement in any way,
28 including but not limited to communications with other class members by text, social media, or

1 otherwise; any representations to the public about this settlement, or his role as Class Plaintiff, or
2 his Enhancement Award. Class Counsel also agrees not to publicize this settlement in any way,
3 including but not limited to naming Defendants on their firms' or individual attorneys' websites,
4 or in any firm or attorney promotional materials, notice of settlement periodicals, or social media
5 posts; and communications about this settlement involving Defendants' name with any media
6 outlet or social media platform. Nothing in this provision shall prevent Class Counsel from
7 communicating with Class Members to effectuate the settlement or from including information
8 about the lawsuit in future applications for attorneys' fees.

9 60. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning
10 the interpretation, calculation or payment of Settlement claims, or other disputes regarding
11 compliance with this Agreement shall be resolved as follows:

12 a. If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class
13 Member, or Defendants' Counsel, on behalf of Defendants, at any time believe that the other Party
14 has breached or acted contrary to the Agreement, that Party shall notify the other Party in writing
15 of the alleged violation.

16 b. Upon receiving notice of the alleged violation or dispute, the responding
17 Party shall have ten (10) calendar days to correct the alleged violation and/or respond to the
18 initiating Party with the reasons why the Party disputes all or part of the allegation.

19 c. If the response does not address the alleged violation to the initiating
20 Party's satisfaction, the Parties shall negotiate in good faith for up to ten (10) calendar days to
21 resolve their differences.

22 d. If Class Counsel and Defendants' Counsel are unable to resolve their
23 differences after twenty (20) calendar days, either Party shall first contact the mediator to try to
24 resolve the dispute. If that proves unsuccessful, the party may file an appropriate motion for
25 enforcement with the Court. The briefing of such motion should be in letter brief form and shall
26 not exceed five (5) single-spaced pages (excluding exhibits).

27
28

1 e. Reasonable attorneys' fees and costs for work done in resolving a dispute
2 under this Section may be recovered by any Party that prevails under the standards set forth within
3 the meaning of applicable law.

4 61. Amendment or Modification. This Agreement may be amended or modified only
5 by a written instrument signed by counsel for all Parties or their successors-in-interest.

6 62. Entire Agreement. This Agreement and any attached Exhibits constitute the entire
7 Agreement among these Parties, and no oral or written representations, warranties, or inducements
8 have been made to any Party concerning this Agreement or its Exhibits other than the
9 representations, warranties, and covenants contained and memorialized in the Agreement and its
10 Exhibits.

11 63. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
12 and represent they are expressly authorized by the Parties whom they represent to negotiate this
13 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
14 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
15 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each
16 other and use their best efforts to effectuate the implementation of the Settlement. In the event the
17 Parties are unable to reach agreement on the form or content of any document needed to
18 implement the Settlement, or on any supplemental provisions that may become necessary to
19 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court or the
20 mediator to resolve such disagreement. The persons signing this Agreement on behalf of
21 Defendants represent and warrant that they are authorized to sign this Agreement on behalf of
22 Defendants. Plaintiff represents and warrants that he is authorized to sign this Agreement and that
23 he has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

24 64. Binding on Successors and Assigns. This Agreement shall be binding upon, and
25 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

26 65. California Law Governs. All terms of this Agreement and the Exhibits hereto shall
27 be governed by and interpreted according to the laws of the State of California.

28

1 66. Counterparts. This Agreement may be executed in one or more counterparts. All
2 executed counterparts and each of them shall be deemed to be one and the same instrument.

3 67. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this
4 Settlement is a fair, adequate, and reasonable settlement of this Action and have arrived at this
5 Settlement after extensive arms-length negotiations, taking into account all relevant factors,
6 present and potential.

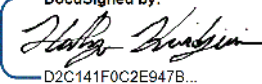
7 68. Jurisdiction of the Court. Pursuant to California Code of Civil Procedure section
8 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and
9 enforcement of the terms of this Agreement and all orders and judgments entered in connection
10 therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for
11 purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement
12 and all orders and judgments entered in connection therewith. All terms of this Agreement are
13 subject to approval by the Court.

14 69. Invalidity of Any Provision. Before declaring any provision of this Agreement
15 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
16 consistent with applicable precedents so as to define all provisions of this Agreement valid and
17 enforceable.

18
19
20
21
22
23
24
25
26
27
28

PLAINTIFF

Date: 7/16/2021

DocuSigned by:

D2C141F0C2E947B...
HAROUTYOUN KIOUDJIAN

DEFENDANT

Date: _____

BODY VISION JEWELRY, INC.

Name: _____

Title: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEFENDANT

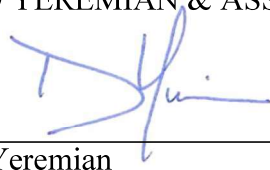
Date: _____

BV & CO

Name: _____

Title: _____

PLAINTIFF'S COUNSEL
DAVID YEREMIAN & ASSOCIATES, INC.



Date: July 16, 2021

David Yeremian
Alvin B. Lindsay

PLAINTIFF'S COUNSEL
UNITED EMPLOYEES LAW GROUP



Date: July 16, 2021

Walter Haines

DEFENDANTS' COUNSEL
BENT CARYL & KROLL, LLP

Date: _____

Steven M. Kroll