

Exhibit 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

ANGEL MCMILLAN, *on behalf of herself and
others similarly situated,*

Plaintiff,

v.

EUROMARKET DESIGNS, INC. d/b/a CRATE
& BARREL,

Defendant.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and between Angel McMillan (“Named Plaintiff”), individually and on behalf of a putative class of hourly retail employees in New York that she seeks to represent (“Settlement Class Members”), and Euromarket Designs, Inc., d/b/a Crate & Barrel, CB2, Crate & Kids, and Hudson Grace (the “Company” or “Defendant”) (together with Named Plaintiff, the “Parties”).

RECITALS

WHEREAS, on December 9, 2022, counsel for Named Plaintiff informed Crate & Barrel of Named Plaintiff’s interest in resolving class claims for alleged failure to pay timely wages under New York Labor Law § 191, on behalf of herself and all others similarly situated (the “Claims”);

WHEREAS, on March 5, 2023, the Parties entered into a tolling agreement and agreed to engage in discussions regarding the possibility of a resolution of the Claims;

WHEREAS, following an exchange of data and documents, the Parties retained the services of experienced class action mediator Marty Scheinman, who facilitated preliminary settlement negotiations and conducted a mediation session on October 6, 2023;

WHEREAS, at the mediation session on October 6, 2023, the Parties reached an agreement in principle to settle the Claims;

WHEREAS, the purpose of this Agreement is to settle fully and finally the Claims;

WHEREAS, the Company denied and continues to deny any liability or wrongdoing of any kind associated with the Claims, and reserves all defenses and the right to argue that the Complaint should not be certified as a class action in the event this Agreement is not approved;

WHEREAS, the Company is entering into this Agreement solely to avoid further controversy and to fully settle and compromise the Claims, including, without limitation, any and all allegations related to the Claims that have been raised or could have been raised by Named Plaintiff or the Putative Class Members, or that Named Plaintiff or Putative Class Members have, had, or may have on the terms set forth in this Agreement; and

WHEREAS, Plaintiff's Counsel analyzed and evaluated the merits of Named Plaintiff's and Putative Class Members' claims; obtained and reviewed documents relating to the Company's compensation and payroll policies and practices; and analyzed payroll and workweek data; and based upon their analysis and evaluation of a number of factors, and recognizing the substantial risks of litigation, including the possibility that the Claims, if not settled now, might result in no recovery or a less favorable recovery, and that even if there is recovery, it would not occur for several years, Plaintiff's Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that this Agreement is in the best interests of Named Plaintiff and Putative Class Members;

NOW, THEREFORE, in recognition of the foregoing, and in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties agree to a full and complete settlement of the Claims on the following terms and conditions:

1. DEFINITIONS

The following terms, as used in this Agreement, are defined as follows:

- 1.1** "Action" means the civil action to be filed in New York State Court, Nassau County Supreme by Named Plaintiff against Defendant, for purposes of facilitating judicial approval of this Agreement and Settlement.
- 1.2** "Approval Motion" means the motion filed with the Court seeking the Approval Order.
- 1.3** "Approval Order" means an order to be approved and entered by the Court, which approves the terms of this Agreement and Settlement.
- 1.4** "Complaint" means the class action complaint filed to initiate the Action.
- 1.5** "Class Period" means the period between March 5, 2017 and December 31, 2022.
- 1.6** "Defendant's Counsel" means Neal, Gerber & Eisenberg LLP.
- 1.7** "Effective Date" means the first date the Court's approval of the Settlement is no longer appealable, which shall be 31 days after the Parties' Approval Motion is granted by the Court if no timely appeal of such order is filed, or if an appeal is filed, the date on which such appeal is finally resolved.
- 1.8** "Fairness Hearing" means any hearing scheduled at the Court's discretion in connection with the Approval Motion.

- 1.9** “Gross Fund” means \$4,160,000.00, which is the total amount that Defendant has agreed to pay to fully and finally resolve and settle all state and federal wage and hour claims of Putative Class Members, including any claim for attorneys’ fees and costs approved by the Court, any and all amounts to be paid to Participating Class Members, the Settlement Administrator fees and costs, and any Court-approved Service Award. The Gross Fund does not include Employer Payroll Taxes, which Defendant shall pay separately from the Gross Fund.
- 1.10** “Last Known Contact Information” means the most recently recorded personal mailing address and personal email address (if available) for a Putative Class Member as shown in Defendant’s records.
- 1.11** “Net Fund” means the remainder of the Gross Fund after deductions, payments, and allocations for: (i) any Court-approved attorneys’ fees and costs for Plaintiff’s Counsel, (ii) any Court-approved Service Award, and (iii) the Settlement Administrator fees and costs.
- 1.12** “Notice and Claim Period” shall mean the period during which a Putative Class Member may submit a Claim Form to receive a Settlement Check, submit an objection, or opt out of the Settlement. The “Notice and Claim Period Deadline” shall be the sixty (60)-day period beginning on the date of the initial mailing of the Settlement Notice by the Settlement Administrator to Putative Class Members via first class U.S. Mail and email to the last known mailing and email address of each Putative Class Member, the last day of which shall be the deadline for which any of the following must be postmarked or emailed in order to be timely and effective: (a) a Putative Class Member’s Claim Form; (b) a Putative Class Member’s Opt-out Request; and (c) a Putative Class Member’s written objection to the Settlement.
- 1.13** “Opt-out Request” means the written, signed request that a Putative Class Member submits indicating they have elected to exclude themselves (opt out) from the settlement. Any Putative Class Member who does not submit a timely valid Opt-out Request waives and releases the NYLL Claims described in Section 6.1 against Defendant and Released Parties. An individual who submits an Opt-out Request retains any claims that would otherwise be released pursuant to this Agreement.
- 1.14** “Participating Class Members” means each Putative Class Member who timely executes and returns a valid Claim Form and who does not submit an opt-out request. Named Plaintiff shall be considered a Participating Class Member regardless of whether she returns a Claim Form.
- 1.15** “Plaintiff’s Counsel” means Outten & Golden LLP.
- 1.16** “Proposed Order” means a proposed order to be submitted to the Court to approve this Agreement, or as modified by subsequent mutual agreement of the Parties in writing and approved by this Court.
- 1.17** “Putative Class Member” means the approximately 1,618 individuals employed by Defendant as hourly retail employees in Defendant’s New York locations at some point

during the Class Period who were identified in the dataset produced by Defendant by email on May 23, 2023.

- 1.18** “Reminder Notice” means the document entitled “Important Reminder Regarding Crate & Barrel Settlement,” to be approved by the Court in a form substantially similar to Exhibit C.
- 1.19** “Settlement” means the settlement between the Parties which is embodied and contained in this Agreement.
- 1.20** “Settlement Administrator” means the third-party settlement administrator selected by Plaintiff’s Counsel to administer this Settlement, subject to the approval of Defendant’s Counsel.
- 1.21** “Settlement Check” means the check issued to each Participating Class Member for their proportionate share of the Net Fund calculated in accordance with this Agreement.
- 1.22** “Settlement Notice” or “Notice” means the document entitled Notice of Settlement and Claim Form, to be approved by the Court in a form the same as or substantially similar to the notice and claim form attached hereto as Exhibits A and B.

2. BINDING AGREEMENT

- 2.1** This Agreement is a binding agreement and contains all material terms.

3. APPLICATION FOR SETTLEMENT APPROVAL

- 3.1** Plaintiff’s Counsel shall submit the Complaint and Approval Motion to the Nassau County Supreme Court, with venue agreed to by contract. Plaintiff’s Counsel will prepare the Approval Motion (and relevant settlement approval papers) and share a draft of such documents with Defendant’s counsel within ten (10) days after the execution of this Agreement. Defendant will have seven (7) days for review and comment, and Plaintiff will file the Complaint and Approval Motion (and relevant settlement approval papers) to the Court within seven (7) days from the date that Defendant completes its review. The Parties agree to negotiate in good faith any disagreements about the settlement approval papers prior to submission to the Court. The Parties further agree not to unreasonably withhold consent for reasonable requests for extensions of time to the deadlines set forth in this paragraph, and to work cooperatively towards filing the settlement approval papers in a timely manner. Among other things, the Approval Motion will ask the Court to: (i) certify the action as a class action for settlement purposes only; (ii) enter the Approval Order approving the Settlement as fair, adequate, and reasonable; (iii) approve the proposed Settlement Notice and Claim Form to be sent to Putative Class Members; (iv) incorporate the terms of this Settlement; (v) enter an Order dismissing the case without prejudice; and (vi) retain jurisdiction to enforce the Agreement. Plaintiff’s Counsel will file the Approval Motion as “unopposed,” and Defendant agrees not to oppose such motion. Defendant may file a statement of non-opposition on the docket should the Parties believe such a filing necessary to secure settlement approval.

3.2 Effect of Court's Failure to Approve Settlement. If the Court fails to approve this Agreement, the Parties (a) will attempt to renegotiate the Settlement for the purpose of obtaining Court approval of a renegotiated settlement and agreement, and/or (b) seek reconsideration or appellate review of the decision denying approval of the Agreement. In the event reconsideration and/or appellate review is denied, or a mutually agreed-upon settlement modification is not approved, and the Parties decide to forgo further negotiation of a settlement, the Parties will be in the same positions as if settlement approval had not been attempted. For avoidance of doubt, should this Agreement not be approved or become final for any reason, nothing from the settlement process, including documents created or obtained from the settlement process and settlement administration, shall be admissible evidence or used in any way contrary to the Parties' respective interests. Whether or not the Settlement Agreement is finally approved, neither the Agreement nor any document, statement, proceeding, or conduct related to this Agreement, nor any reports accounts thereof, shall in any event be construed as, offered or admitted as evidence as, received as, or deemed to be evidence for any purpose adverse to the Parties. Specifically, Defendant does not waive, and instead expressly reserves, its rights to challenge the propriety of class certification as if this Agreement had not been entered into by the Parties should the Court fail to approve the Agreement.

4. SETTLEMENT ADMINISTRATION AND NOTICE TO PUTATIVE CLASS MEMBERS

4.1 Duties of the Settlement Administrator. The Settlement Administrator will be responsible for establishing a Qualified Settlement Fund ("QSF") under Section 468B of the Internal Revenue Code and Treas. Reg. § 1.468B-1, 26 C.F.R. § 1.468B-1, et seq. (and will be administered by the Settlement Administrator as such, with all interest accruing thereon to become a part of the Gross Fund); updating Putative Class Members' last known mailing address through the National Change of Address program certified by the United States Postal Service before sending the Notice; preparing, mailing and emailing the Notice to Putative Class Members; performing up to two skip-traces to locate a new mailing if a Notice is returned as undeliverable and re-mailing the Notice promptly; preparing, emailing, and mailing the Reminder Notices to Putative Class Members; emailing confirmation notices to Participating Class Members confirming receipt of claim forms; determining the amount of payments allocated to each Putative Class Member in accordance with this Agreement, along with the amount of any payroll taxes to be paid and deductions to be withheld; providing the Parties with a sortable spreadsheet of all Participating Class Members including all information included on their Claim Forms, except that any updated contact information located by the Settlement Administrator or provided by a Participating Class Member shall be redacted on the version sent to Defendant's Counsel; processing Opt-out Requests and objections; preparing and mailing Settlement Checks; distributing any approved Service Award and attorneys' fees and expenses; calculating and paying any appropriate taxes and complying with all applicable tax reporting obligations, including preparing and filing all applicable tax forms; determining the tax characterization of any Service Award; and retaining and providing a copy of Settlement Checks and redacted Claim Forms signed by the Participating Class Members to Defendant's Counsel, and a copy of Claim Forms signed by Participating Class Members to Plaintiff's Counsel at the conclusion of the Notice and Claim Period.

- 4.2 The Parties will have equal access to the Settlement Administrator and all information related to the administration of the Settlement.
- 4.3 The Settlement Administrator will provide weekly reports to counsel for the Parties regarding the status of the mailing of the Notice, the claims administration process, including the number of Putative Class Members who have returned claim forms and the number of claim forms that have been returned as undeliverable, the number of Opt-out Requests, the number and content of objections, and the current deadline for the return of claim forms, the distribution of the Settlement Checks, the number of Settlement Checks that have been returned as undeliverable, and the number of Settlement Checks that have not been negotiated within the prescribed time period. Prior to mailing any of the settlement documents, including the Notice and Reminder Notice to Putative Class Members, the Settlement Administrator shall provide final formatted versions of these documents for approval by both Parties.
- 4.4 Defendant agrees to cooperate with the Settlement Administrator and provide accurate information to the extent reasonably available and necessary to calculate the Settlement Amounts and locate Putative Class Members.
- 4.5 Within five (5) days of the Effective Date, Defendant will give the Settlement Administrator and Plaintiff's Counsel a list, in electronic form, of the names, Last Known Contact Information, Social Security Numbers, the dates of employment, and total wage compensation in each year of employment during the Class Period ("Class List"). Settlement Administrator and Plaintiff's Counsel will keep this list confidential and use it only for purposes of performing its respective obligations under this Agreement.
- 4.6 Notice will be sent to Putative Class Members via First Class U.S. Mail and email by the Settlement Administrator within fourteen (14) days of the Effective Date. The Notice will advise the Putative Class Member of the Claims raised, that the Parties have agreed to a settlement, advise the Putative Class Member of their pro rata share of the Settlement, and provide instructions on how to submit an Opt-out Request, how to submit an objection, or how to submit a Claim Form to become a Participating Class Member, including the URL for the password-protected online form maintained by the Settlement Administrator to submit their Claim Form. Claim Forms may be submitted by mail, email, or through an on-line form, and must be submitted before the Notice and Claim Period Deadline. The mailed Notices will enclose a postage paid and addressed return envelope.

- 4.7 Any Notice or Settlement Check returned as undeliverable shall be skip-traced up to two times to obtain a new address and be re-mailed promptly by First Class United States Mail. The Settlement Administrator shall take all reasonable steps to obtain the correct address for any Putative Class Member for whom the Notice or Settlement Check is returned by the post office or by email as undeliverable, including using Social Security numbers to obtain better address information. The Settlement Administrator shall attempt re-mailings of Notices until seven (7) days prior to the close of the original Notice and Claim Period. No Notice shall be re-mailed after seven (7) days prior to the close of the Notice and Claim Period. If after this re-mailing the Notice is again returned as undeliverable, and if no other forwarding address is available, the Notice process shall end for the Putative Class Member who will be deemed not to have opted out of the Settlement and who shall be bound by this Agreement.
- 4.8 The Settlement Administrator will also send a Reminder Notice (Exhibit C) via First-Class U.S. Mail and email thirty (30) days after the initial mailing of the Notice to any Putative Class Member who, at the time of mailing the Reminder Notice, has not returned an executed Claim Form. The format of the Reminder Notice shall be approved by both Parties prior to mailing.
- 4.9 Opt-out Requests. Putative Class Members who elect to opt out of the Settlement must submit a valid Opt-out Request by mail or email. In order to be valid, the Opt-out Request must include the name and contact information of the Putative Class Member, and a statement indicating their intention to opt out. To be effective, an Opt-out Request must be postmarked on or before the Notice and Claim Period Deadline. No Putative Class Member shall purport to exercise any exclusion rights of any other person, or purport to opt-out other Putative Class Members as a group, aggregate, or class involving more than one Putative Class Member, or as an agent or representative. Any such purported opt-outs shall be void. The Settlement Administrator shall notify the Parties of any valid Opt-out Requests received in its weekly status reports to the Parties.
- 4.10 Objections. Putative Class Members who wish to present objections to the Settlement must first do so in writing and properly file a valid Claim Form on or before the Notice and Claim Period Deadline. To be deemed a valid objection, such statement must be mailed or emailed to the Settlement Administrator. The statement must set forth, in clear and concise terms, the legal and factual arguments supporting the objection, and any supporting documentation. The statement must also include the name, address, and telephone number of the Putative Class Member making the objection (the "Objector"). The Settlement Administrator will send copies of each objection, supporting documents, as well as a copy of the Notice and Claim Form mailed to the Objector, to Plaintiff's Counsel and Defendant's Counsel by email no later than three (3) days after receipt of the objection. Plaintiff's Counsel shall promptly file the date-stamped objections, including any requests for a hearing, with the Court. It is in the Court's discretion whether to schedule a hearing and allow the Objector or Objector's counsel to appear and/or speak at the hearing. If the Court schedules such a hearing, Plaintiff's Counsel shall notify the Objector via first class U.S. Mail and email of the date, time, and location of the hearing. The Parties may file with the Court written responses to any filed objections no later than three (3) days before the hearing. Any reasons for the objections not included in the written objection shall not

be considered by the Court. Any Putative Class Member who has elected to opt-out may not submit objections to the Settlement.

- 4.11** The proceeds of the Net Fund shall be disbursed (pursuant to Section 5.4 below) to Participating Class Members.
- 4.12** To be timely, a Claim Form must be completed and provide the information as instructed on the Claim Form and be either postmarked, emailed, or submitted online on or before the last day of the Notice and Claim Period. Claim Forms that are not timely are null and void, unless otherwise agreed to in writing by the Parties. In the event a Claim Form is timely but is not materially complete, such as it is submitted without a date, the Settlement Administrator shall immediately notify the Class Member, via U.S. Mail and email, about the deficiency. The Participating Class Member shall have fourteen (14) days following the date of mailing of the deficiency notice to cure the deficiency and resubmit the Claim Form. Defendant may, in its sole discretion, choose to honor any late but otherwise valid Claim Form returned by any Participating Class Member within fourteen (14) days after the Claim Deadline, in which case such Participating Class Member will be deemed to have timely submitted the Claim Form for purposes of this Agreement. Absent Defendant's consent – which shall be exercised in good faith and will not be unreasonably withheld -- any Participating Class Member who fails to return the materially complete Claim form by the Claim Deadline will not be eligible to receive any Settlement Payment without Court approval.
- 4.13** The Settlement Administrator shall be bound by the terms of this Agreement. In the event that an issue arises that the Settlement Administrator must resolve that is not specifically addressed in the Agreement or is ambiguously addressed, the Settlement Administrator shall report to the Parties for guidance.

5. SETTLEMENT TERMS

5.1 SETTLEMENT PAYMENTS

- i. Defendant agrees to pay a maximum of four million, one hundred sixty thousand dollars (\$4,160,000.00), which shall fully resolve and satisfy any and all amounts to be paid to Participating Class Members, any Court-approved Service Award as more fully set forth herein, the Settlement Administrator's fees and costs, and any claim for Plaintiff's Counsel's fees and costs. This amount does not include the Employer Payroll Taxes, which Defendant will pay separately from the Gross Fund.
- ii. This Settlement covers and includes only the 1,618 individuals identified in Crate & Barrel's data production. If any individuals come forth following the mailing of the Settlement Notice who meet the definition of a Putative Class Member but were not included on the 1,618 individuals identified in Crate & Barrel's data production, they will be dealt with separately from this Agreement.

- iii. Within seven (7) days of the Effective Date, Defendant shall pay the Gross Fund by wire transfer into the QSF. The Parties and Settlement Administrator shall elect to treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date set forth in 26 CFR§ 1.468B-1(j)(2)(i), and such election statement shall be attached to the appropriate returns as required by 26 CFR § 1.468B-1(j)(2)(ii). The QSF shall be deposited into an interest-bearing account controlled by the Settlement Administrator at a federally-insured bank into which the Gross Fund shall be deposited. No other funds shall be comingled within the QSF.
- iv. The Settlement Administrator will distribute the money in the QSF by making the following payments:
 - (a) Paying the Court-approved costs of Plaintiff's Counsel's fees and costs as described in Section 5.2, and Settlement Administrator fees and costs, within twenty-one (21) days of the Effective Date.
 - (b) Paying the Court-approved Service Award as described in Section 5.3, within fourteen (14) days of the Effective Date.
- v. Within twenty-one (21) days of the Notice and Claim Period Deadline, the Settlement Administrator will distribute the money in the QSF by issuing checks to Participating Class Members who submitted valid Claim Forms for their Settlement Amounts, as described in Section 5.4.

5.2 SETTLEMENT AMOUNTS PAYABLE AS ATTORNEYS' FEES AND COSTS.

- i. In the Approval Motion, Plaintiff's Counsel shall ask the Court to approve payment of up to one-third of the Gross Fund as an award of attorneys' fees, in addition to an award of reasonable out-of-pocket costs and expenses, of no more than \$7,700.00. Defendant shall not oppose this application. The amount awarded by the Court as an award of attorneys' fees shall constitute full satisfaction of any claim for attorneys' fees or costs, and Named Plaintiff and Participating Class Members agree that they shall not seek, nor be entitled to, any additional attorneys' fees or costs under any theory or from any source, incurred in relation to this case, other than fees and costs incurred in any effort to enforce the terms of this Agreement, and they irrevocably and unconditionally release, acquit, and forever discharge any claim they may have against Defendant or Released Parties for attorneys' fees or costs arising from or relating to the individuals and matters identified in this Agreement. .
- ii. The substance of Plaintiff's Counsel's application for attorneys' fees and costs is not part of this Agreement and is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the Settlement and this Agreement. The outcome of any proceeding related to Plaintiff's Counsel's application for attorneys' fees

and costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Approval Motion. Any attorneys' fees and costs described in Section 5.2(i) not approved by the Court shall become a part of the Net Fund.

5.3 SERVICE AWARD TO NAMED PLAINTIFF.

- i. In the Approval Motion, the Named Plaintiff will apply to the Court to receive ten thousand dollars (\$10,000) from the Gross Fund for the services she rendered to the Putative Class Members (the "Service Award"). Defendant shall not oppose this application.
- ii. The Service Award and any requirements for obtaining any such payment are separate and apart from, and in addition to, Named Plaintiff's recovery from the Net Fund as a Putative Class Member. The substance of Named Plaintiff's application for a Service Award is not part of this Agreement and is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy and good faith of the Settlement and this Agreement. The outcome of the Court's ruling on the application for a Service Award shall not terminate this Agreement or otherwise affect the Court's ruling on the Approval Motion. Any Service Award money not approved by the Court shall become part of the Net Fund.
- iii. The Parties agree that they have come to no determination regarding the tax treatment of the Service Award. The Parties agree that the Settlement Administrator alone will have the discretion to determine the tax treatment of the Service Award; provided, however, that the Named Plaintiff promises to indemnify, defend, and/or reimburse Defendant for any tax consequences, penalties, or other costs (including reasonable attorneys' fees) incurred or owed by Defendant as a result of the Named Plaintiff's failure to remit any and all taxes owed by her to federal, state, and/or local tax authorities in connection with her receipt of the Service Award.

5.4 PAYMENTS TO PARTICIPATING CLASS MEMBERS.

- i. Payments to Participating Class Members will be made from the Net Fund and in accordance with Section 5.1(v) above. To be a Participating Class Member and receive a Settlement Check, each Putative Class Member must fill out and timely submit a Claim Form, as outlined in Section 4.12. The Settlement Amount for each Participating Class Member will be determined by the Settlement Administrator pursuant to the following formula:
 - (a) To determine each Participating Class Member's Settlement Amount:
 1. Sum together all Putative Class Members' total wage compensation during the Class Period to determine the Denominator;

2. For each Putative Class Member, divide their respective total wage compensation during the Class Period by the Denominator to obtain their Portion of the Net Fund;
 3. Multiply each Putative Class Member's Portion of the Net Fund by the Net Fund to determine each Putative Class Member's Settlement Amount.
 4. A Participating Class Member's Settlement Amount shall be the equivalent of the amount calculated for that Participating Class Member as a Putative Class Member, in accordance with the above formula.
- ii. The Settlement Administrator shall mail to all Participating Class Members who submitted valid Claim Forms their Settlement Checks, less any proper tax withholdings, as required by Section 5.1(v) of this agreement. The Settlement Administrator shall use reasonable efforts to make an additional mailing to Participating Class Members whose checks are returned because of incorrect addresses. Such efforts shall include: (a) obtaining correct addresses as described in Section 4.7; (b) using Social Security numbers to obtain better address information; and/or (c) attempting to reach Participating Class Members by email.
- iii. Participating Class Members who submitted a valid Claim Form shall have one hundred twenty (120) days following the issuance of Settlement Checks, or one hundred twenty (120) days following the re-mailing of any Settlement Check, to negotiate their Settlement Checks. Sixty (60) days following the issuance of any Settlement Checks, the Settlement Administrator shall mail and email a reminder notice to any Participating Class Member who has not negotiated their Settlement Check reminding the Participating Class Member of the date by which they must negotiate the check prior to it becoming void. Settlement Checks will be void if not negotiated within one hundred twenty (120) days following their mailing or re-mailing. When non-negotiated checks become void, the amounts of the non-negotiated checks will revert to Defendants. The Settlement Administrator will return these funds to Defendant as soon as practicable following the date the non-negotiated Settlement Checks become void, but at the latest, no later than sixty (60) days following the date when the non-negotiated checks become void.
- iv. All amounts not claimed by any Putative Class Member who did not submit a Claim Form or who submitted a timely Opt-out Request shall revert to Defendant within twenty-one (21) days from the expiration of the Notice and Claim Period, and all amounts remaining in the QSF following one hundred twenty (120) days from the date of the mailing or re-mailing of the last Settlement Check to a Participating Class Member shall revert to Defendant. If applicable, the Settlement Administrator shall issue a wire to

Defendant for any remaining amounts in the QSF within seven (7) days after the expiration of the one hundred twenty (120)-day period after the mailing or re-mailing of the last Settlement Check to a Participating Class Member. Such Participating Class Member shall be bound by this Agreement.

- v. Defendant's Payroll Tax Responsibility and Tax Characterization of Payments.
- (a) One hundred (100%) of each payment made to Participating Class Members from the Net Fund shall be treated as penalties, liquidated damages, and other non-wage relief.
 - (b) The Settlement Administrator shall be responsible for determining the appropriate number of exemptions to be used in calculating any payroll tax and withholding, deciding the appropriate tax rate, issuing the Settlement Checks and Service Award and issuing any IRS Forms W-2 and Form 1099. Payments of attorneys' fees and costs pursuant to Section 5.2 shall be made without withholding and shall be reported to the IRS and to Plaintiff's Counsel on an IRS Form 1099.
 - (c) The employee portion of all applicable income and payroll taxes will be the sole responsibility of the individual Participating Class Member receiving a Settlement Check or Service Award. The Parties make no representations, and it is understood and agreed that the Parties have made no representations, as to the taxability of any portions of the Settlement Payments to any Participating Class Members or any payments to the Named Plaintiff. The Settlement Notice will advise Putative Class Members to seek their own tax advice prior to acting in response to that Settlement Notice. Neither Plaintiff's Counsel nor Defendant's Counsel intend anything contained herein to constitute legal advice regarding the taxability of any amount paid hereunder, nor will it be relied upon as such.
 - (d) To the extent permitted by law, in no event shall any Settlement Check (or Service Award) create any credit or otherwise affect the calculation of or eligibility for any compensation, bonus, deferred compensation or benefit under any compensation, deferred compensation, pension or other benefit plan, nor shall any such Settlement Check (or Service Award) be considered as "compensation" under any pension, retirement, profit sharing, incentive, or deferred compensation benefit or plan, nor shall any such payment or award require any contribution or award under any such plan, or otherwise modify any benefits, contributions or coverage under any other employment compensation or benefit plan or program.

6. RELEASE AND DISMISSAL OF CLAIMS

6.1 NYLL Release by Putative Class Members Who Do Not Opt Out. In exchange for the monetary consideration recited in this Agreement, each Putative Class Member who does not opt out, on behalf of themselves and each of their heirs, representatives, successors, assigns, and attorneys, forever waives, releases and discharges the Company and its affiliated persons or entities, including without limitation, its past and present owners, employees, shareholders, directors, officers, managers, investors, representatives, agents, predecessors, successors, attorneys, parents, sister entities, and subsidiaries (the “Released Parties”), from any and all claims under New York Labor Law that relate to or accrued during their employment as hourly employees through the date of this Agreement, including but not limited to claims under the New York Labor Law relating to timeliness or frequency of pay and related claims for penalties, interest, liquidated damages, attorneys’ fees, costs, and expenses, whether known or unknown, asserted or that might have been asserted against the Released Parties.

6.2 FLSA Release by Participating Class Members. In exchange for the monetary consideration recited in this Agreement, each Participating Class Member who submits a valid and timely claim form, on behalf of themselves and each of their heirs, representatives, successors, assigns, and attorneys, forever waives, releases and discharges the Company and its affiliated persons or entities, including without limitation, its past and present owners, employees, shareholders, directors, officers, managers, investors, representatives, agents, predecessors, successors, attorneys, parents, sister entities, and subsidiaries (the “Released Parties”), from any and all claims under the federal Fair Labor Standards Act that relate to or accrued during their employment as hourly employees through the date of this Agreement, including related claims for penalties, interest, liquidated damages, attorneys’ fees, costs, and expenses, whether known or unknown, asserted or that might have been asserted against the Released Parties.

6.3 Within fourteen (14) days of the satisfaction of the Settlement Terms set forth in Section 5 herein, Plaintiff shall submit an order dismissing the Action with prejudice.

7. PARTIES’ AUTHORITY

7.1 The signatories hereto hereby represent that they are fully authorized to enter into this Agreement and to bind the Parties hereto to the terms and conditions hereof.

8. MUTUAL COOPERATION

8.1 The Parties agree to reasonably cooperate with each other and to take all steps as may be reasonably necessary and appropriate to obtain the Court’s approval of this Agreement and all of its terms and to effectuate the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their commercially reasonable efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by award of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein.

9. NO ADMISSION OF LIABILITY

- 9.1 Defendant denies all of the allegations made by Named Plaintiff, denies that it is liable or owes damages to anyone with respect to the alleged facts or causes of action asserted herein, and denies that it violated any law or public policy. Nonetheless, without admitting or conceding any liability or damages whatsoever, Defendant has agreed to settle these claims on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of litigation. Named Plaintiff agrees to not state that Defendant or Released Parties made any such admission, in any way, to any person or entity.
- 9.2 The Parties stipulate and agree that, for settlement purposes only, the requisites for establishing class action certification under N.Y. C.P.L.R. § 901 are met. Should this Settlement not become final, such stipulation to class certification shall become null and void and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not class certification would be appropriate in a non-settlement context. The Parties further agree that this Agreement does not constitute an adjudication of the merits of the Action or any other matters released in this Agreement. Accordingly, the Parties agree that none of them have prevailed on the merits, nor shall this Agreement serve or be construed as evidence that any party has so prevailed or that Defendant or Released Parties have engaged in any wrongdoing.

10. INTERPRETATION AND ENFORCEMENT/MISCELLANEOUS TERMS

- 10.1 Inadmissibility of Settlement Agreement. Except for purposes of settling this Action, or enforcing its terms (including that claims were settled and released), resolving an alleged breach, or for resolution of other tax or legal issues arising from a payment under this Settlement Agreement, neither this Agreement, nor its terms, nor any document, statement, proceeding or conduct related to this Agreement, nor any reports or accounts thereof, shall be construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to the Parties, including, without limitation, evidence of a presumption, concession, indication or admission by any of the Parties of any liability, fault, wrongdoing, omission, concession or damage.
- 10.2 Further Acts. Each party, upon the request of any other party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.
- 10.3 No Assignment and No Pending Claims. Named Plaintiff represents and warrants that she has not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim against Defendant or the Released Parties or any portion thereof or interest therein, including, but not limited to, any interest in her claims, or any related action, and any attempt to do so shall be of no force or effect. Named Plaintiff further represents that neither she nor anyone acting on her behalf has filed any claim against the Company as of the date of this Agreement.
- 10.4 Confidentiality. To the extent permissible under governing ethical rules or laws, counsel for the Parties agree that they will not publicize the existence or terms of this Agreement

to a third party, but shall retain all other rights to discuss the settlement with their client and Putative Class Members via non-public means. Nothing herein shall prohibit the parties from responding to a media inquiry about the dispute by stating that the dispute was resolved to the mutual satisfaction of the Parties. Plaintiff's Counsel agrees that they will not name the Company in their personal or firm biographies, personal or firm websites, or other marketing materials, and that they will describe Defendant only as a "nationwide retailer of home goods." Defendant expressly agrees and understands that Plaintiff's Counsel may make all necessary representations in their motions requesting approval of their fees in this, or other, litigations, including the name and style of the case. Nothing in this Section 10.4 prevents the Parties from discussing the Settlement privately with any of the following: one another; the Court, their respective counsel; tax consultants; and spouses/domestic partners.

- 10.5** Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the class action claims referenced herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement as to those claims except that the Parties' separate tolling agreement remains in full force and effect and is not merged with this Agreement; provided, however, that the Parties' separate tolling agreement shall be automatically terminated upon the filing of the Action.
- 10.6** Binding Effect. This Agreement shall be binding upon the Parties and, with respect to Defendant, its affiliates, parents, subsidiaries, predecessors, successors, employees, and agents; and, with respect to Named Plaintiff, their spouse, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys, and assigns.
- 10.7** Arms' Length Transaction; Materiality of Terms. The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise expressly stated.
- 10.8** Captions. The captions or headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 10.9** Construction. The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.
- 10.10** Governing Law. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of New York, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

- 10.11** Continuing Jurisdiction. The Court shall retain jurisdiction over the implementation and enforcement of this Agreement.
- 10.12** Waivers, etc. to Be in Writing. No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court’s approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties. Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement.
- 10.13** Counterparts. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same original instrument.
- 10.14** Electronic Signatures. Any party may execute this Agreement by signing by electronic means, including, without limitation, DocuSign, and such electronic signature shall be of the same binding force and effect as an inked signature.
- 10.15** Signatories. This Agreement is valid and binding if signed by Defendant’s authorized representative, and the Named Plaintiff and Plaintiff’s Counsel.

WE AGREE TO THESE TERMS.

DATED: 11/29/2023

EUROMARKET DESIGNS, INC.

By: 
DocuSigned by:
 Victoria L. Donati
EPZD3384E3004CO...
 SVP, General Counsel & Corporate Secretary

DATED: 11/30/2023

ANGEL MCMILLAN



DATED: 12/5/2023

OUTTEN & GOLDEN

BY:

MOLLY BROOKS

