

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

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHERISH NUNNALLY, individually as
an aggrieved employee and private
attorney general, and on behalf of others
similarly situated,

Plaintiff,

vs.

DAVE & BUSTER’S, INC., a Missouri
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No. 8:16-cv-00855-DOC-KES

Assigned to the Hon. David O. Carter

**AMENDED JOINT STIPULATION
OF CLASS ACTION SETTLEMENT
AND RELEASE**

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

**AMENDED JOINT STIPULATION OF
CLASS ACTION SETTLEMENT AND RELEASE**

This Amended Joint Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Cherish Nunnally (“Plaintiff” or “Class Representative”), as an individual and on behalf of all others similarly situated, and Defendant Dave & Buster’s, Inc. (“Defendant”) (collectively with Plaintiff, the “Parties”). This Settlement Agreement replaces and supersedes the Joint Stipulation of Class Action Settlement and Release previously entered into by the Parties on or about April 15, 2016.

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means the action entitled *Cherish Nunnally v. Dave & Buster’s, Inc.*, Case No. 8:16-cv-00855-DOC-KES, currently pending in the United States District Court for the Central District of California.
2. “Attorneys’ Fees and Costs” means attorneys’ fees approved by the Court for Class Counsel’s litigation and resolution of the Action, and all costs incurred and to be incurred by Class Counsel in the Action, including, but not limited to, costs associated with documenting the Settlement, providing any notices required as part of the Settlement or Court order, securing the Court’s approval of the Settlement, administering the Settlement, obtaining entry of the Judgment terminating the Action, and expenses for any experts. Class Counsel will request attorneys’ fees not in excess of Thirty Percent (30%) of the Class Settlement Amount, or Five Hundred Fifty Five Thousand Dollars (\$555,000). The Attorneys’ Fees and Costs will also mean and include the additional reimbursement of any costs and expenses associated with Class Counsel’s litigation and settlement of the Action, up to Twenty-Five Thousand Dollars (\$25,000), subject to the Court’s approval. Any portion of the Attorneys’ Fees and Costs not awarded to Class Counsel will be retained by Defendant.

1 3. “Class Counsel” means Capstone Law APC.

2 4. “Class List” means a complete list of all Class Members that Defendant
3 will diligently and in good faith compile from its records and provide to the Settlement
4 Administrator within fourteen (14) calendar days after Preliminary Approval of this
5 Settlement. The Class List will be formatted in a readable Microsoft Office Excel
6 spreadsheet and will include: each Class Member’s full name; most recent mailing
7 address and, if available, telephone number; Social Security number; dates of
8 employment as a Class Member; and any other relevant information needed to calculate
9 settlement payments.

10 5. “Class Member(s)” or “Settlement Class” means all persons who worked
11 for Defendant in a California “Dave & Buster’s” restaurant as a server at any time during
12 the period from August 2, 2009 until the date of Preliminary Approval.

13 6. “Class Period” means the period from August 2, 2009 until the date of
14 Preliminary Approval.

15 7. “Class Representative Enhancement Payment” means the amounts to be
16 paid to Plaintiff in recognition of her effort and work in prosecuting the Action on behalf
17 of Class Members, and for her general release of all claims. Subject to the Court
18 granting final approval of this Settlement Agreement and subject to the exhaustion of
19 any and all appeals, Plaintiff will request Court approval of a Class Representative
20 Enhancement Payment of Ten Thousand Dollars (\$10,000) to Cherish Nunnally. Any
21 portion of the Class Representative Enhancement Payment not awarded to the Plaintiff
22 will be retained by Defendant.

23 8. “Class Settlement Amount” means the maximum settlement amount of
24 One Million Eight Hundred Fifty Thousand Dollars (\$1,850,000), to be paid by
25 Defendant in full satisfaction of all claims arising from the Action, which includes all
26 Individual Settlement Payments to Participating Class Members, the Class
27 Representative Enhancement Payment to Plaintiff, Settlement Administration Costs to
28 the Settlement Administrator, the Labor and Workforce Development Agency Payment,

1 and the Attorneys' Fees and Costs. No portion of the Class Settlement Amount will
2 revert to Defendant. Defendant will be separately responsible for any employer payroll
3 taxes required by law, including the employer FICA, FUTA, and SDI contributions,
4 which shall not be paid from the Class Settlement Amount.

5 9. "Court" means the United States District Court for the Central District of
6 California, or such other court as may take jurisdiction of the Action.

7 10. "Defendant" means Defendant Dave & Buster's, Inc.

8 11. "Effective Date" means the later of: (a) if any timely objections are filed
9 and not subsequently withdrawn, the 30th day after the Court enters an order granting
10 final approval of the Joint Stipulation of Class Action Settlement and Release; (b) if any
11 timely appeals are filed, the resolution (or withdrawal) of any such appeal in a way that
12 does not alter the terms of the Settlement; or (c) if no timely objections are filed, or if all
13 objections are withdrawn, the date upon which the Court enters an order granting final
14 approval of the Joint Stipulation of Class Action Settlement and Release.

15 12. "Individual Settlement Payment" means each Class Member's share of the
16 Net Settlement Amount.

17 13. "Labor and Workforce Development Agency Payment" means the amount
18 that the Parties have agreed to pay to the Labor and Workforce Development Agency
19 ("LWDA") in connection with the Labor Code Private Attorneys General Act of 2004
20 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA"). The Parties have agreed that Ten Thousand
21 Dollars (\$10,000) of the Class Settlement Amount will be allocated to the resolution of
22 any Class Members' claims arising under PAGA. Pursuant to PAGA, Seventy Five
23 Percent (75%), or Seven Thousand Five Hundred Dollars (\$7,500), of the PAGA
24 Settlement Amount will be paid to the LWDA, and Twenty Five Percent (25%), or Two
25 Thousand Five Hundred Dollars (\$2,500), of the PAGA Settlement Amount will be
26 included in the Net Settlement Amount.

27 14. "Net Settlement Amount" means the portion of the Class Settlement
28 Amount remaining after deducting the approved Class Representative Enhancement

1 Payment, Settlement Administration Costs, Labor and Workforce Development Agency
2 Payment, and the Attorneys' Fees and Costs. The entire Net Settlement Amount will be
3 distributed to Participating Class Members. There will be no reversion of the Net
4 Settlement Amount to Defendant.

5 15. "Notice of Objection" means a Class Member's valid and timely written
6 objection to the Settlement Agreement. For the Notice of Objection to be valid, it must
7 include: (a) the objector's full name, signature, address, and telephone number, (b) a
8 written statement of all grounds for the objection accompanied by any legal support for
9 such objection; and (c) copies of any papers, briefs, or other documents upon which the
10 objection is based.

11 16. "Notice Packet" means the Notice of Class Action Settlement,
12 substantially in the form attached as Exhibit A.

13 17. "Parties" means Plaintiff and Defendant collectively.

14 18. "Participating Class Members" means all Class Members who do not
15 submit timely and valid Requests for Exclusion.

16 19. "Plaintiff" means Cherish Nunnally.

17 20. "Preliminary Approval" means the Court order granting preliminary
18 approval of the Settlement Agreement.

19 21. "Released Claims" means any and all claims for relief, whether suspected
20 or unsuspected, which all Class Members have had, now have, or may have in the future
21 against the Released Parties (defined below) or any of them for any acts occurring on or
22 before the entry of the Preliminary Approval order, consisting of those facts and claims
23 as alleged in the operative Action, as well as all claims that arise out of the facts, matters
24 or occurrences referred to in the Action that could have been alleged as separate claims,
25 causes of action, lawsuits or other theories of relief. "Released Claims" include all types
26 of relief for the above-referenced theories of relief, including, without limitations, any
27 claims for unpaid wages, unpaid overtime, unpaid premium pay, damages,
28 reimbursement, restitution, losses, penalties, fines, liens, attorneys' fees, costs, expenses,

1 debts, interest, penalties, injunctive, or declaratory relief, chargebacks, liquidated
2 damages or similar relief, as well as any claims pursuant to PAGA. “Released Claims”
3 also includes an express waiver of all benefits under Section 1542 of the California Civil
4 Code as to Released Claims only. Section 1542 provides as follows:

5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
6 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
7 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
8 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
9 OR HER SETTLEMENT WITH THE DEBTOR.

10 The judgment entered by the Court in granting Final Approval will provide that it covers
11 and bars all claims of the Class Members (except those who submit a timely and valid
12 Request for Exclusion) for Released Claims. All Class Members who cash their
13 settlement checks will also release any and all causes of action under the Fair Labor
14 Standards Act relating to the facts and claims as alleged in the operative Action.

15 22. “Released Parties” means Defendant and its affiliated companies, parents,
16 members, subsidiaries, related companies, and business concerns, past and present, and
17 each of them, as well as each of their insurers, partners, trustees, directors, shareholders,
18 officers, agents, attorneys, servants and employees, past and present, and each of them.

19 23. “Request for Exclusion” means a timely letter submitted by a Class
20 Member indicating a request to be excluded from the settlement. The Request for
21 Exclusion must: (a) be signed by the Class Member; (b) contain the name, address,
22 telephone number and the last four digits of the Social Security Number of the Class
23 Member requesting exclusion; (c) clearly state that the Class Member does not wish to
24 be included in the settlement; (d) be returned by fax or mail to the Settlement
25 Administrator at the specified address and/or facsimile number; and (e) be faxed or
26 postmarked on or before the Response Deadline. The date of the fax or postmark on the
27 return mailing envelope will be the exclusive means to determine whether a Request for
28 Exclusion has been timely submitted. A Class Member who does not request exclusion

1 from the settlement will be deemed a Class Member and will be bound by all terms of
2 the Settlement Agreement if the settlement is granted final approval by the Court.

3 24. "Response Deadline" means the deadline by which Class Members must
4 (a) postmark to the Settlement Administrator Requests for Exclusion, or (b) file and
5 serve Notices of Objection. The Response Deadline will be thirty (30) calendar days
6 from the initial mailing of the Notice Packet by the Settlement Administrator, unless the
7 30th day falls on a Sunday or State holiday, in which case the Response Deadline will be
8 extended to the next day on which the U.S. Postal Service is open.

9 25. "Settlement Administration Costs" means the costs payable from the Class
10 Settlement Amount to the Settlement Administrator for administering this Settlement,
11 including, but not limited to, printing, distributing, and tracking documents for this
12 Settlement, tax reporting, distributing the Class Settlement Amount, and providing
13 necessary reports and declarations, as requested by the Parties. The Settlement
14 Administration Costs will be paid from the Class Settlement Amount, including, if
15 necessary, any such costs in excess of the amount represented by the Settlement
16 Administrator as being the maximum costs necessary to administer the Settlement.
17 Based on an estimated Settlement Class of approximately 2,350 Class Members, as
18 determined at the time of mediation, the Settlement Administration Costs are currently
19 estimated to be Forty Thousand Dollars (\$40,000).

20 26. "Settlement Administrator" means Simpluris, Inc., or any other third-party
21 class action settlement administrator agreed to by the Parties and approved by the Court
22 for the purposes of administering this Settlement. The Parties each represent that they do
23 not have any financial interest in the Settlement Administrator or otherwise have a
24 relationship with the Settlement Administrator that could create a conflict of interest.

25 27. "Workweeks" means the number of weeks of employment for each Class
26 Member, as that term is defined above, from August 2, 2009 until the date of
27 Preliminary Approval. The Settlement Administrator will determine the number of
28 Workweeks by calculating the number of days each Class Member was employed in

1 non-exempt positions at any time from August 2, 2009 until the date of Preliminary
2 Approval, dividing by seven (7), and rounding up to the nearest whole number.

3 28. "Workweek Value" means the value of each compensable Workweek, as
4 determined by the formula set forth herein.

5 **TERMS OF AGREEMENT**

6 The Plaintiff, on behalf of herself and the Settlement Class, and Defendant agree
7 as follows:

8 29. First Amended Complaint. As a condition of settlement, Plaintiff filed a
9 First Amended Complaint ("FAC") on or about April 19, 2016 to conform the pleadings
10 with the scope of the Released Claims, and specifically, to add claims arising under the
11 Fair Labor Standards Act which relate to the facts and claims alleged in the Complaint.
12 Defendant is not required to file an answer or other responsive pleading to the FAC. If,
13 for any reason, the Court does not approve of the Settlement, or if the Settlement does
14 not become final for any reason, then the FAC will be deemed withdrawn and the
15 Complaint will again become the operative complaint without prejudice to Plaintiff's
16 right to seek leave to file another amended complaint. Defendant does not impliedly or
17 expressly waive any arguments or defenses to the FAC.

18 30. Funding of the Class Settlement Amount. Within fourteen (14) calendar
19 days after the Effective Date of the Settlement, Defendant will make a one-time deposit
20 of the Class Settlement Amount into a Qualified Settlement Account to be established by
21 the Settlement Administrator. Within seven (7) calendar days of the funding of the
22 Settlement, the Settlement Administrator will issue payments to (a) Participating Class
23 Members; (b) the Labor and Workforce Development Agency; (c) Plaintiff; and (d)
24 Class Counsel. The Settlement Administrator will also issue a payment to itself for
25 Court-approved services performed in connection with the settlement.

26 31. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any
27 application or motion by Class Counsel for attorneys' fees of not more than Five
28 Hundred Fifty Five Thousand Dollars (\$555,000), plus the reimbursement of costs and

1 expenses associated with Class Counsel's litigation and settlement of the Action, not to
2 exceed Twenty-Five Thousand Dollars (\$25,000), both of which will be paid from the
3 Class Settlement Amount.

4 32. Class Representative Enhancement Payment. In exchange for a general
5 release, and in recognition of her effort and work in prosecuting the Action on behalf of
6 Class Members, Defendant agrees not to oppose or impede any application or motion for
7 a Class Representative Enhancement Payment of Ten Thousand Dollars (\$10,000) to
8 Plaintiff. The Class Representative Enhancement Payment will be paid from the Class
9 Settlement Amount and will be in addition to Plaintiff's Individual Settlement Payment
10 paid pursuant to the Settlement. Plaintiff will be solely and legally responsible to pay
11 any and all applicable taxes on the payment made pursuant to this paragraph and will
12 indemnify and hold Defendant harmless from any claim or liability for taxes, penalties,
13 or interest arising as a result of the payment.

14 33. Settlement Administration Costs. The Settlement Administrator will be
15 paid for the reasonable costs of administration of the Settlement and distribution of
16 payments from the Class Settlement Amount, which are currently estimated to be Forty
17 Thousand Dollars (\$40,000). These costs, which will be paid from the Class Settlement
18 Amount, will include, *inter alia*, the required tax reporting on the Individual Settlement
19 Payments, the issuing of 1099 and W-2 IRS Forms, distributing the Notice Packet,
20 calculating and distributing the Class Settlement Amount, and providing necessary
21 reports and declarations.

22 34. Labor and Workforce Development Agency Payment. Subject to Court
23 approval, the Parties agree that the amount of Ten Thousand Dollars (\$10,000) from the
24 Class Settlement Amount will be designated for satisfaction of Plaintiff's and Class
25 Members' PAGA claims. Pursuant to PAGA, Seventy-Five Percent (75%), or Seven
26 Thousand Five Hundred Dollars (\$7,500), of this sum will be paid to the LWDA and
27 Twenty-Five Percent (25%), or Two Thousand Five Hundred Dollars (\$2,500), will
28 become part of the Net Settlement Amount.

1 35. Net Settlement Amount. The entire Net Settlement Amount will be
2 distributed to Participating Class Members. No portion of the Net Settlement Amount
3 will revert or be retained by Defendant.

4 36. Acknowledgement of Potential Administration Cost Increases. The Parties
5 hereby acknowledge that Settlement Administration Costs may increase above the
6 current estimate of Forty Thousand Dollars (\$40,000) and that any such additional
7 Settlement Administration Costs will be taken out of the Class Settlement Amount. In
8 the event the Settlement Administration Costs are *less* than Forty Thousand Dollars
9 (\$40,000), or in the event that any portion of the estimated or designated Settlement
10 Administration Costs are not in fact required, any remaining and unused amount
11 apportioned to Settlement Administration Costs will become part of the Net Settlement
12 Amount.

13 37. Individual Settlement Payment Calculations. Individual Settlement
14 Payments will be calculated and apportioned from the Net Settlement Amount based on
15 the number of Workweeks a Class Member worked during the Class Period. Specific
16 calculations of Individual Settlement Payments will be made as follows:

17 37(a) The Settlement Administrator will calculate the total number of
18 Workweeks worked by each Class Member (“Individual
19 Workweeks”) and the total number of Workweeks worked by
20 all Class Members (“Class Workweeks”) during the Class
21 Period, pursuant to the definition of “Workweeks,” above.

22 37(b) To determine each Class Member’s Individual Settlement
23 Payment, the Settlement Administrator will use the following
24 formula: Individual Settlement Payment = (Individual
25 Workweeks ÷ Class Workweeks) × Net Settlement Amount.

26 37(c) The entire Net Settlement Amount will be disbursed to all Class
27 Members who do not submit timely and valid Requests for
28 Exclusion. If there are any valid and timely Requests for

1 Exclusion, the Settlement Administrator shall proportionately
2 increase the Individual Settlement Payment for each
3 Participating Class Member according to the number of
4 Workweeks worked, so that the amount actually distributed to
5 the Settlement Class equals 100% of the Net Settlement
6 Amount.

7 37(d) The Individual Settlement Payment will be reduced by any
8 required deductions for each Participating Class Member as set
9 forth herein, including employee side tax withholdings or
10 deductions.

11 38. No Credit Toward Benefit Plans. The Individual Settlement Payments
12 made to Participating Class Members under this Settlement, as well as any other
13 payments made pursuant to this Settlement, will not be utilized to calculate any
14 additional benefits under any benefit plans to which any Class Members may be eligible,
15 including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock
16 purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.
17 Rather, it is the Parties' intention that this Settlement Agreement will not affect any
18 rights, contributions, or amounts to which any Class Members may be entitled under any
19 benefit plans to which any Class Members may be eligible.

20 39. Settlement Administration Process. The Parties agree to cooperate in the
21 administration of the Settlement and to make all reasonable efforts to control and
22 minimize the costs and expenses incurred in administration of the Settlement.

23 40. Delivery of the Class List. Within fourteen (14) calendar days of
24 Preliminary Approval, Defendant will provide the Class List to the Settlement
25 Administrator. Defendant will separately provide to Class Counsel a list containing the
26 names, addresses, telephone numbers, and dates of employment of those Class Members
27 for whom Simpluris already provided contact information to Class Counsel on
28 December 18, 2015 following the *Belaire-West* notice and opt-out process administered

1 by Simpluris.

2 41. Notice by First-Class U.S. Mail. Within ten (10) calendar days after
3 receiving the Class List from Defendant, the Settlement Administrator will mail a Notice
4 Packet to all Class Members via regular First-Class U.S. Mail, using the most current,
5 known mailing addresses identified in the Class List.

6 42. Confirmation of Contact Information in the Class List. Prior to mailing,
7 the Settlement Administrator will perform a search based on the National Change of
8 Address Database for information to update and correct for any known or identifiable
9 address changes. Any Notice Packets returned to the Settlement Administrator as non-
10 deliverable on or before the Response Deadline will be sent promptly via regular First-
11 Class U.S. Mail to the forwarding address affixed thereto and the Settlement
12 Administrator will indicate the date of such re-mailing on the Notice Packet. If no
13 forwarding address is provided, the Settlement Administrator will promptly attempt to
14 determine the correct address using a skip-trace, or other search using the name, address
15 and/or Social Security number of the Class Member involved, and will then perform a
16 single re-mailing. Those Class Members who receive a re-mailed Notice Packet,
17 whether by skip-trace or by request, will have between the later of (a) an additional
18 fifteen (15) calendar days or (b) the Response Deadline to postmark a Request for
19 Exclusion, or file and serve a Notice of Objection to the Settlement.

20 43. Notice Packets. All Class Members will be mailed a Notice Packet. Each
21 Notice Packet will provide: (a) information regarding the nature of the Action; (b) a
22 summary of the Settlement's principal terms; (c) the Settlement Class definition; (d) the
23 total number of Workweeks each respective Class Member worked for Defendant
24 during the Class Period; (e) each Class Member's estimated Individual Settlement
25 Payment and the formula for calculating Individual Settlement Payments; (f) the dates
26 which comprise the Class Period; (g) instructions on how to submit Requests for
27 Exclusion or Notices of Objection; (h) the deadlines by which the Class Member must
28 postmark Requests for Exclusions, or file and serve objections to the Settlement; (i) the

1 claims to be released, as set forth herein; and (j) the date for the Final Approval hearing.

2 44. Disputed Information on Notice Packets. Class Members will have an
3 opportunity to dispute the information provided in their Notice Packets. To the extent
4 Class Members dispute the number of Workweeks to which they have been credited or
5 the amount of their Individual Settlement Payment, Class Members may produce
6 evidence to the Settlement Administrator showing that such information is inaccurate.
7 Absent evidence rebutting Defendant's records, Defendant's records will be presumed
8 determinative. However, if a Class Member produces evidence to the contrary, the
9 Settlement Administrator will evaluate the evidence submitted by the Class Member and
10 will make the final decision as to the number of eligible Workweeks that should be
11 applied and/or the Individual Settlement Payment to which the Class Member may be
12 entitled. All such disputes are to be resolved not later than fourteen (14) calendar days
13 after the Response Deadline.

14 45. Defective Submissions. If a Class Member's Request for Exclusion is
15 defective as to the requirements listed herein, that Class Member will be given an
16 opportunity to cure the defect(s). The Settlement Administrator will mail the Class
17 Member a cure letter within three (3) business days of receiving the defective
18 submission to advise the Class Member that his or her submission is defective and that
19 the defect must be cured to render the Request for Exclusion valid. The Class Member
20 will have until the later of (i) Response Deadline or (ii) fifteen (15) calendar days from
21 the date of the cure letter, whichever date is later, to postmark or fax a revised Request
22 for Exclusion. If the revised Request for Exclusion is not postmarked or received by fax
23 within that period, it will be deemed untimely.

24 46. Request for Exclusion Procedures. Any Class Member wishing to opt-out
25 from the Settlement Agreement must sign and postmark or fax a written Request for
26 Exclusion to the Settlement Administrator within the Response Deadline. The date of
27 the postmark on the return mailing envelope or fax receipt confirmation will be the
28 exclusive means to determine whether a Request for Exclusion has been timely

1 submitted. All Requests for Exclusion will be submitted to the Settlement
2 Administrator, who will certify jointly to Class Counsel and Defendant's Counsel the
3 Requests for Exclusion that were timely submitted.

4 47. Defendant's Right To Opt-Out. If the number of opt-outs pursuant to
5 Paragraph 46, above, exceeds five percent (5%) of the total number of Class Members,
6 Defendant reserves the right to withdraw from the Settlement and make all terms of the
7 Settlement, including this Settlement Agreement, null and void. If Defendant exercises
8 this provision, it shall be solely responsible for all of the Settlement Administrator's
9 costs incurred to date.

10 48. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any
11 Class Member who does not affirmatively opt-out of the Settlement Agreement by
12 submitting a timely and valid Request for Exclusion will be bound by all of its terms,
13 including those pertaining to the Released Claims, as well as any Judgment that may be
14 entered by the Court if it grants final approval to the Settlement.

15 49. Objection Procedures. To object to the Settlement Agreement, a Class
16 Member must file a valid Notice of Objection with the Court and serve copies of the
17 Notice of Objection on the Parties before the Response Deadline. The Notice of
18 Objection must be signed by the Class Member and contain all information required by
19 this Settlement Agreement. The postmark date of the filing and service will be deemed
20 the exclusive means for determining that the Notice of Objection is timely. Class
21 Members who fail to object in the specific and technical manner specified above will be
22 deemed to have waived all objections to the Settlement and will be foreclosed from
23 making any objections and seeking any adjudication or review, whether by appeal or
24 otherwise, to the Settlement Agreement. Class Members who file and serve timely
25 Notices of Objection will have a right to appear at the Final Approval Hearing in order to
26 have their objections heard by the Court. At no time will any of the Parties or their
27 counsel seek to solicit or otherwise encourage Class Members to submit written
28 objections to the Settlement Agreement or appeal from the Order and Judgment. Class

1 Counsel will not represent any Class Members with respect to any such objections to this
2 Settlement.

3 50. Certification Reports Regarding Individual Settlement Payment
4 Calculations. The Settlement Administrator will provide Defendant’s counsel and Class
5 Counsel a weekly report which certifies the number of Class Members who have
6 submitted valid Requests for Exclusion, Notices of Objection to the Settlement, and
7 whether any Class Member has submitted a challenge to any information contained in
8 their Notice Packet. Additionally, the Settlement Administrator will provide to counsel
9 for both Parties any updated reports regarding the administration of the Settlement
10 Agreement as needed or requested.

11 51. Settlement Checks. Any checks issued by the Settlement Administrator to
12 Participating Class Members will be negotiable for at least one hundred eighty (180)
13 calendar days. On the back of each check, the Settlement Administrator will print the
14 following: “By endorsing or otherwise negotiating this check, I consent to join in the
15 Fair Labor Standards Act (“FLSA”) portion of the *Nunnally v. Dave & Busters* action,
16 elect to participate in the settlement of the FLSA claims, and agree to release all of my
17 FLSA claims that are covered by the Settlement.” Those funds represented by
18 settlement checks returned as undeliverable and those settlement checks remaining un-
19 cashed for more than one hundred eighty (180) calendar days after issuance will be
20 tendered to the California Department of Industrial Relations Unpaid Wage Fund (*see*
21 Cal. Lab. Code § 96.6). Following the check cashing period, the Settlement
22 Administrator will file with the Court a declaration that will include: (1) an exhibit listing
23 all Class Members who cashed their settlement checks; (2) a sample of the settlement
24 check, showing the FLSA release language; and (3) an affirmation that all settlement
25 checks were formatted the same way.

26 52. Certification of Completion. Upon completion of administration of the
27 Settlement, the Settlement Administrator will provide a written declaration under oath to
28 certify such completion to the Court and counsel for all Parties.

1 53. Tax Treatment of Individual Settlement Payments. All Individual
2 Settlement Payments will be allocated as follows: Twenty Percent (20%) of each
3 Individual Settlement Payment will be allocated as wages and Eighty Percent (80%) will
4 be allocated as non-wages. The portion allocated to wages will be reported on an IRS
5 Form W-2 and the portions allocated to non-wages will be reported on an IRS Form-
6 1099 by the Settlement Administrator.

7 54. Administration of Taxes by the Settlement Administrator. The Settlement
8 Administrator will be responsible for issuing to Plaintiff, Participating Class Members,
9 and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all
10 amounts paid pursuant to this Settlement. The Settlement Administrator will also be
11 responsible for calculating, withholding from the Individual Settlement Payments, and
12 remitting to applicable government agencies sufficient amounts as may be owed by
13 Participating Class Members for applicable employee taxes. The Settlement
14 Administrator will also calculate and remit to applicable government agencies sufficient
15 amounts as may be owed by Defendant for applicable employer taxes in relation to the
16 wage portion of Individual Settlement Payments to Participating Class Members (the
17 “Employer Share”). The Settlement Administrator will collect from Defendant as part
18 of the administration process such amount as it calculates to be sufficient to cover the
19 Employer Share. Any amount collected from Defendant in this regard that is over the
20 amount actually due in Employer Share will be refunded to Defendant by the Settlement
21 Administrator.

22 55. Tax Liability. Defendant makes no representation as to the tax treatment
23 or legal effect of the payments called for hereunder, and Plaintiff and Participating Class
24 Members are not relying on any statement, representation, or calculation by Defendant
25 or by the Settlement Administrator in this regard. Plaintiff and Participating Class
26 Members understand and agree that, except for Defendant’s payment of the employer’s
27 portion of any payroll taxes, they will be solely responsible for the payment of any taxes
28 and penalties assessed on the payments described herein.

1 56. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
2 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH
3 PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
4 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
5 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION
6 OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
7 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
8 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
9 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
10 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230
11 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY
12 (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN,
13 INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
14 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT
15 ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION
16 OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER
17 PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION
18 OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY
19 TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
20 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY
21 OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
22 CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX
23 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY
24 BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE
25 TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION,
26 INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

27 57. Remedial Measures. In addition to the Class Settlement Amount as set
28 forth herein, although Defendant contends it was in full compliance with the law at all

1 times throughout the Class Period, it has also agreed for purposes of this Settlement to
2 internally evaluate and find ways to improve upon its current policies and practices in
3 California including, but not limited to, its meal and rest break policies and its issuance
4 of pay stubs.

5 58. No Prior Assignments. The Parties and their counsel represent, covenant,
6 and warrant that they have not directly or indirectly assigned, transferred, encumbered,
7 or purported to assign, transfer, or encumber to any person or entity any portion of any
8 liability, claim, demand, action, cause of action or right herein released and discharged.

9 59. Release of Additional Claims and Rights by Plaintiff. Upon the Effective
10 Date, and as a condition of receiving any portion of her Class Representative
11 Enhancement Payment, Plaintiff will agree to the additional following General Release:
12 In consideration of Defendant's promises and agreements as set forth herein, Plaintiff
13 hereby fully releases the Released Parties from any and all Released Claims and also
14 generally releases and discharges the Released Parties from any and all claims, demands,
15 obligations, causes of action, rights, or liabilities of any kind which have been or could
16 have been asserted against the Released Parties arising out of or relating to Plaintiff's
17 employment by Defendant or termination thereof, whether known or unknown,
18 including but not limited to claims for wages, restitution, penalties, retaliation,
19 defamation, discrimination, harassment or wrongful termination of employment. This
20 release specifically includes any and all claims, demands, obligations and/or causes of
21 action for damages, restitution, penalties, interest, and attorneys' fees and costs (except
22 provided by the Settlement Agreement) relating to or in any way connected with the
23 matters referred to herein, whether or not known or suspected to exist, and whether or
24 not specifically or particularly described herein. Specifically, Plaintiff waives all rights
25 and benefits afforded by California Civil Code Section 1542, which provides:
26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
27 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
28 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN

1 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
2 SETTLEMENT WITH THE DEBTOR.

3 60. Proportionality of Relief. The Class Settlement Amount was calculated
4 based on the understanding at the time of the Parties' mediation that there are
5 approximately Two Thousand Three Hundred Fifty (2,350) Class Members. If the total
6 number of Class Members hired on or before December 1, 2015 is more than Ten
7 Percent (10%) larger than that number, or Two Thousand Five Hundred Eighty Five
8 (2,585) total Class Members, the Parties agree that the Net Settlement Amount will be
9 proportionally increased.

10 61. Nullification of Settlement Agreement. In the event that: (a) the Court
11 does not finally approve the Settlement as provided herein; (b) Defendant exercises the
12 opt-out provision set forth in Paragraph 47, above; or (c) the Settlement does not become
13 final for any other reason, then this Settlement Agreement, and any documents generated
14 to bring it into effect, will be null and void, and all amounts deposited into the QSF will
15 be returned to Defendant.

16 62. Preliminary Approval. Plaintiff will request Preliminary Approval of the
17 Settlement Agreement, and the entry of a Preliminary Approval Order for: (a)
18 conditional certification of the Settlement Class for settlement purposes only, (b)
19 Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for a
20 Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will
21 provide for the Notice Packet to be sent to all Class Members as specified herein. In
22 conjunction with seeking Preliminary Approval, Plaintiff will submit this Settlement
23 Agreement, which sets forth the terms of this Settlement, and will include the proposed
24 Notice Packet; i.e., the proposed Notice of Class Action Settlement document, attached
25 as Exhibit A. Class Counsel will be responsible for drafting all documents necessary to
26 obtain Preliminary Approval. Pursuant to the order entered by the Court on August 17,
27 2016, a hearing may not be necessary in order to obtain Preliminary Approval.

28 63. Final Settlement Approval Hearing and Entry of Judgment. Upon

1 expiration of the deadlines to postmark Requests for Exclusion or objections to the
2 Settlement Agreement, and with the Court's permission, a Final Approval/Settlement
3 Fairness Hearing will be conducted to determine the Final Approval of the Settlement
4 Agreement along with the amounts properly payable for: (a) Individual Settlement
5 Payments; (b) the Labor and Workforce Development Agency Payment; (c) the
6 Attorneys' Fees and Costs; (d) the Class Representative Enhancement Payment; and (e)
7 all Settlement Administration Costs. The Final Approval/Settlement Fairness Hearing
8 will not be held earlier than thirty (30) calendar days after the Response Deadline. Class
9 Counsel will be responsible for drafting all documents necessary to obtain final approval.
10 Class Counsel will also be responsible for drafting the attorneys' fees and costs
11 application to be heard at the final approval hearing.

12 64. Judgment and Continued Jurisdiction. Upon final approval of the
13 Settlement by the Court or after the Final Approval/Settlement Fairness Hearing, the
14 Parties will present the Judgment to the Court for its approval. After entry of the
15 Judgment, the Court will have continuing jurisdiction solely for purposes of addressing:
16 (a) the interpretation and enforcement of the terms of the Settlement, (b) Settlement
17 administration matters, and (c) such post-Judgment matters as may be appropriate under
18 court rules or as set forth in this Settlement.

19 65. Entire Agreement. This Settlement Agreement constitutes the entirety of
20 the Parties' settlement terms. No other prior or contemporaneous written or oral
21 agreements may be deemed binding on the Parties.

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

26 67. Amendment or Modification. This Settlement Agreement may be
27 amended or modified only by a written instrument signed by counsel for all Parties or
28 their successors-in-interest.

1 68. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
2 warrant and represent they are expressly authorized by the Parties whom they represent
3 to negotiate this Settlement Agreement and to take all appropriate action required or
4 permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate
5 its terms and to execute any other documents required to effectuate the terms of this
6 Settlement Agreement. The Parties and their counsel will cooperate with each other and
7 use their best efforts to effect the implementation of the Settlement. If the Parties are
8 unable to reach agreement on the form or content of any document needed to implement
9 the Settlement, or on any supplemental provisions that may become necessary to
10 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to
11 resolve such disagreement.

12 69. Binding on Successors and Assigns. This Settlement Agreement will be
13 binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto,
14 as previously defined.

15 70. California Law Governs. All terms of this Settlement Agreement will be
16 governed by and interpreted according to the laws of the State of California.

17 71. Execution and Counterparts. This Settlement Agreement is subject only to
18 the execution of all Parties. However, the Settlement Agreement may be executed in
19 one or more counterparts. All executed counterparts and each of them, including
20 facsimile and scanned copies of the signature page, will be deemed to be one and the
21 same instrument provided that counsel for the Parties will exchange among themselves
22 original signed counterparts.

23 72. Acknowledgement that the Settlement is Fair and Reasonable and Counsel
24 Representations. The Parties believe this Settlement Agreement is a fair, adequate, and
25 reasonable settlement of the Action and have arrived at this Settlement after arm's-length
26 negotiations and in the context of adversarial litigation, taking into account all relevant
27 factors, present and potential. The Parties further acknowledge that they are each
28 represented by competent counsel and that they have had an opportunity to consult with

1 their counsel regarding the fairness and reasonableness of this Settlement, and to fully
2 review this Settlement with their counsel. In addition, the Mediator may execute a
3 declaration supporting the Settlement and the reasonableness of the Settlement and the
4 Court may, in its discretion, contact the Mediator to discuss the Settlement and whether
5 or not the Settlement is objectively fair and reasonable. Further, Plaintiff and Class
6 Counsel warrant and represent that there are no liens on the Settlement Agreement.

7 73. Invalidity of Any Provision. Before declaring any provision of this
8 Settlement Agreement invalid, the Court will first attempt to construe the provision as
9 valid to the fullest extent possible consistent with applicable precedents so as to define
10 all provisions of this Settlement Agreement valid and enforceable.

11 74. Waiver of Certain Appeals. The Parties agree to waive appeals and to
12 stipulate to class certification for purposes of this Settlement only; except, however, that
13 Plaintiff or Class Counsel may appeal any reduction in the Attorneys' Fees and Costs
14 below the amount they request from the Court, and either party may appeal any court
15 order that materially alters the Settlement Agreement's terms.

16 75. Class Action Certification for Settlement Purposes Only. The Parties
17 agree to stipulate to class action certification only for purposes of the Settlement. If, for
18 any reason, including but not limited to the provisions set forth in Paragraph 61, above,
19 the Settlement is not approved, the stipulation to certification will be void. The Parties
20 further agree that certification for purposes of the Settlement is not an admission that
21 class action certification is proper under the standards applied to contested certification
22 motions and that this Settlement Agreement will not be admissible in this or any other
23 proceeding as evidence that either: (a) a class action should be certified or (b) Defendant
24 are liable to Plaintiff or any Class Member, other than according to the Settlement's
25 terms.

26 76. Non-Admission of Liability. Defendant denies the allegations asserted in
27 the Action and any pendant or related charges, and Defendant has denied and continues
28 to deny each of the claims asserted by Plaintiff and the Class Members. Defendant has

1 asserted and continues to assert defenses to Plaintiff's and the Class Members' claims,
2 and expressly denies and continues to deny any wrongdoing whatsoever. Neither this
3 Agreement nor any action taken to carry out this Agreement may be construed as an
4 admission by Defendant of any fault, wrongdoing, or liability whatsoever.

5 77. Defendant's Reasons for Settlement. Defendant has concluded that any
6 further defense of this litigation would be protracted and expensive for all Parties.
7 Substantial amounts of time, energy and resources of Defendant have been and, unless
8 this Settlement is effectuated, will continue to be devoted to the defense of the claims
9 asserted by Plaintiff and the Class Members. Defendant has also taken into account the
10 risks of further litigation in reaching its decision to enter into this Settlement. Despite
11 continuing to contend that it is not liable for any of the claims set forth by Plaintiff in the
12 Action, Defendant has, nonetheless, agreed to settle in the manner and upon the terms set
13 forth in this Agreement to put to rest the claims as set forth in the Action. Defendant has
14 claimed and continues to claim that the Released Claims have no merit and do not give
15 rise to liability. This Agreement is a compromise of disputed claims. Nothing contained
16 in this Agreement, no documents referred to herein, and no action taken to carry out this
17 Agreement may be construed or used as an admission by or against Defendant as to the
18 merits or lack thereof of the claims asserted.

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

22 79. Waiver. No waiver of any condition or covenant contained in this
23 Settlement Agreement or failure to exercise a right or remedy by any of the Parties
24 hereto will be considered to imply or constitute a further waiver by such party of the
25 same or any other condition, covenant, right or remedy.

26 80. Enforcement Action. In the event that one or more of the Parties institutes
27 any legal action or other proceeding against any other Party or Parties to enforce the
28 provisions of this Settlement or to declare rights and/or obligations under this Settlement,

1 the successful Party or Parties will be entitled to recover from the unsuccessful Party or
2 Parties reasonable attorneys' fees and costs, including expert witness fees, if any,
3 reasonably incurred in connection with any enforcement actions.

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

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

12 83. Cooperation and Execution of Necessary Documents. All Parties will
13 cooperate in good faith and execute all documents to the extent reasonably necessary to
14 effectuate the terms of this Settlement Agreement.

15 84. Binding Agreement. The Parties warrant that they understand and have
16 full authority to enter into this Settlement, and further intend that this Settlement
17 Agreement will be fully enforceable and binding on all parties, and agree that it will be
18 admissible and subject to disclosure in any proceeding to enforce its terms,
19 notwithstanding any mediation confidentiality provisions that otherwise might apply
20 under federal or state law.

21
22
23
24
25
26
27
28

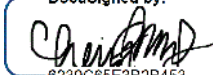
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIGNATURES

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 9/1/2016

DocuSigned by:

6239C65E3B2B453...

Cherish Nunnally

DEFENDANT: Dave & Buster's, Inc.

Dated: _____

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

CAPSTONE LAWYERS APC

Dated: 9/1/2016



Raul Perez

Attorneys for Plaintiff Cherish Nunnally

LITTLER MENDELSON, P.C.

Dated: _____

Alaya B. Meyers

Attorneys for Defendant Dave & Buster's, Inc.

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

SIGNATURES

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: _____
Cherish Nunnally

DEFENDANT: Dave & Buster's, Inc.

Dated: August 31, 2016 _____
JAY L. TOBIN, SR. VICE PRESIDENT
Please Print Name of Authorized Signatory

APPROVED AS TO FORM

CAPSTONE LAWYERS APC

Dated: _____
Raul Perez
Attorneys for Plaintiff Cherish Nunnally

LITTLER MENDELSON, P.C.

Dated: _____
Alaya B. Meyers
Attorneys for Defendant Dave & Buster's, Inc.

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

SIGNATURES

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: _____
Cherish Nunnally

DEFENDANT: Dave & Buster's, Inc.

Dated: _____

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

CAPSTONE LAWYERS APC

Dated: _____
Raul Perez
Attorneys for Plaintiff Cherish Nunnally

LITTLER MENDELSON, P.C.


Dated: 8/31/16

Alaya B. Meyers
Attorneys for Defendant Dave & Buster's, Inc.

Exhibit A

NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully.

To: All persons who worked for Dave & Buster's in a California Dave & Buster's restaurant as a server at any time during the period from August 2, 2009 [insert the date of Preliminary Approval].

On _____, the Honorable David O. Carter of the United States District Court for the Central District of California granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members about the settlement. Based on Dave & Buster's records, you may be entitled to receive money under this settlement. Because your rights may be affected, it is important that you read this Notice carefully.

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at 8:30 a.m. on _____, 2016 in Courtroom 9D located at 411 West Fourth Street, Room 1053, Santa Ana, CA 92701. You are not required to attend the Hearing, but you may do so at your own expense.

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT ABOUT THE MERITS OF ANY OF THE CLAIMS OR DEFENSES ASSERTED BY EITHER SIDE IN THIS LITIGATION. THE SOLE PURPOSE OF THIS NOTICE IS TO INFORM YOU OF THE SETTLEMENT OF THE LAWSUIT SO THAT YOU CAN MAKE AN INFORMED DECISION ABOUT PARTICIPATING IN THIS SETTLEMENT.

Summary of the Litigation

Plaintiff Cherish Nunnally alleges that Dave & Buster's violated the California Labor Code and the Business and Professions Code, and the Fair Labor Standards Act ("FLSA") due to its alleged failure, among other things, to: (1) pay minimum and overtime wages; (2) pay meal and rest period premiums; (3) timely pay wages during employment; (4) timely pay wages upon discharge or termination of employment; (5) provide accurate, itemized wage statements; (6) and reimburse for necessary business expenses. Plaintiff's complaint sought to certify her lawsuit as a class action. A class action, if certified and permitted to continue as a certified class, allows the Court to resolve the claims of all Class Members at the same time, except for those that choose to exclude themselves from the class.

After the exchange of relevant information and evidence, the parties agreed to enter into private mediation in an attempt to resolve the claims in the case. With the guidance of Mark Rudy, an experienced and respected class action mediator, the parties were eventually able to negotiate a settlement of Plaintiff's claims.

Counsel for Plaintiff, and the attorneys appointed by the Court to represent the class, Capstone Law APC ("Class Counsel"), have investigated and researched the facts and circumstances underlying the issues raised in the case and the law applicable. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Dave & Buster's has denied and continues to deny the factual and legal allegations in the case and believes that it has valid defenses to Plaintiff's claims. By agreeing to settle, Dave & Buster's is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Dave & Buster's has agreed to settle the case as part of a compromise with Plaintiff. Nothing about this settlement should be viewed as an admission by Dave & Buster's of any fault, wrongdoing, or liability whatsoever.

Summary of Settlement Terms

Plaintiff and Dave & Buster's have agreed to settle the underlying class claims in exchange for a gross settlement fund of \$1,850,000, which includes: (1) individual settlement payments to Class Members; (2) a Class Representative Enhancement Payment of \$10,000 to Cherish Nunnally for her services on behalf of the class; (3) up to \$550,000 in attorneys' fees and \$25,000 in costs subject to Court

approval; (4) a \$7,500 payment to the California Labor and Workforce Development Agency (“LWDA”) pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”); and (5) reasonable Settlement Administrator’s fees and expenses, currently estimated to be \$40,000. After deducting the Class Representative Enhancement Payment, attorneys’ fees and costs, the payment to the LWDA, and the Settlement Administrator’s fees and expenses, a total of approximately \$1,217,500 (“Net Settlement Amount”) will be allocated to Class Members who do not opt out of the settlement.

Each Class Member’s settlement payment will be based on the number of Workweeks each Class Member worked in a non-exempt position during the period from August 2, 2009 to [the date on which the Court grants preliminary approval of the Settlement] (“Class Period”). The formula for calculating settlement payments is as follows:

- (a) The Settlement Administrator will calculate, based on the information provided by Dave & Buster’s, the total aggregate number of Workweeks that all Class Members worked during the applicable Class Period (“Total Workweeks”).
- (b) The value of each individual Workweek shall then be determined by dividing the proceeds of the Net Settlement Amount by the Total Workweeks amount, resulting in the “Workweek Point Value.”
- (c) An “Individual Settlement Payment” amount for each Class Member will then be determined by multiplying the individual Class Member’s number of Workweeks by the Workweek Point Value.
- (d) The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion.

According to Dave & Buster’s records, you worked during the Class Period in a non-exempt position for a total of ____ Workweeks. Accordingly, your estimated payment is approximately \$____. If you believe the information provided above is incorrect, please contact the Settlement Administrator at _____. If you dispute the information stated above, Dave & Buster’s records will control unless you are able to provide documentation that establishes otherwise.

IRS Forms W-2 and 1099 will be distributed to participating Class Members and the appropriate taxing authorities reflecting the payments they receive under the settlement. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, 20% of each Class Member’s Individual Settlement Payment will be treated as wages and 80% will be treated as non-wages.

Your Options Under the Settlement

Option 1 – *Automatically Receive a Payment from the Settlement*

If want to receive your payment from the settlement, then **no further action is required on your part.** You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

Option 2 – *Opt Out of the Settlement*

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement (for example, “I request to be excluded from the class action settlement in the matter of *Cherish Nunnally v. Dave & Buster’s, Inc.*, No. 8:16-cv-00855-DOC-KES.”). The written request for exclusion must set forth your name, address, telephone number, and last four digits of your Social Security Number. Sign, date, and fax or mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Settlement Administrator
c/o _____

The written request to be excluded must be postmarked or faxed not later than _____, 2016. If you submit a request for exclusion which is not postmarked or faxed by _____, 2016, your request for exclusion will be rejected, and you will be included in the settlement class.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Option 3 – File an Objection with the Court

If you wish to object to the settlement because you find it unfair or unreasonable, you may file with the Court an objection stating why you object to the settlement. For the objection to be valid, it must include: (i) your full name and signature; (ii) a written statement of all grounds for the objection accompanied by any legal support for such objection; and (iii) copies of any papers, briefs, or other documents upon which the objection is based. The objection must be filed with the Court and served on the attorneys listed below:

Capstone Law APC
Raul Perez
1840 Century Park East, Suite 450
Los Angeles, California 90067
1 (888) 841-1794

Little Mendelson, P.C.
Alaya B. Meyers
2050 Main Street, Suite 900
Irvine, California 92614

All objections must be filed with the Court not later than _____2016. Late objections will not be considered. By filing an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Approval Hearing set for _____ at 8:30 a.m. and discuss your objection with the Court and the parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose Option 1, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the following claims (“Released Claims”): any and all claims for relief, whether suspected or unsuspected, which all Class Members have had, now have, or may have in the future against the Released Parties (as defined in the Parties’ Settlement Agreement) or any of them for any acts occurring on or before the entry of the Preliminary Approval order, consisting of those facts and claims as alleged in the operative Action, as well as all claims that arise out of the facts, matters or occurrences referred to in the Action that could have been alleged as separate claims, causes of action, lawsuits or other theories of relief. “Released Claims” include all types of relief for the above-referenced theories of relief, including, without limitations, any claims for unpaid wages, unpaid overtime, unpaid premium pay, damages, reimbursement, restitution, losses, penalties, fines, liens, attorneys’ fees, costs, expenses, debts, interest, penalties, injunctive, or declaratory relief, chargebacks, liquidated damages or similar relief, as well as any claims pursuant to PAGA. “Released Claims” also includes an express waiver of all benefits under Section 1542 of the California Civil Code as to Released Claims only. Section 1542 provides as follows:

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

In addition, all Class Members who cash their settlement checks will also release any and all causes of action under the Fair Labor Standards Act relating to the facts and claims as alleged in the operative Action (the “FLSA Released Claims”).

If you choose Option 2, you will no longer be a Class Member and will: (1) be barred from participating in the settlement, but you will not have released the Released Claims or the FLSA Released Claims; (2) be barred from filing an objection to the settlement; and (3) not receive a payment from the settlement.

If you choose Option 3, you will still be entitled to the money from the settlement. However, if the Court overrules your objection, you will be deemed to have released the Released Claims and, if you cash your settlement check, you will be deemed to have released the FLSA Released Claims.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Additional Information

This Notice of Class Action Settlement is only a summary of the cases and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the Settlement Agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Claims Administrator or Class Counsel. PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DAVE & BUSTER'S, OR DAVE & BUSTER'S ATTORNEYS WITH INQUIRIES.

No Retaliation

Your participation in, request for exclusion from, or objection to the Settlement will not be held against you in any way with regard to your current or future employment with Dave & Buster's.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******