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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN DIEGO**
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14 EVELYN FLORES, individually and on
15 behalf of others similarly situated, and as an
16 Aggrieved Employee and Private Attorney
General,

17 Plaintiff,

18 vs.

19 BARRIOS FOODS, INC., a California
20 Corporation; and DOES 1 through 50,
inclusive,

21 Defendants.
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Case No.: 37-2020-00022485-CU-OE-CTL

*Assigned for all purposes to: Honorable
Richard E. L. Strauss, Department C-75*

**JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT**

Complaint Filed: June 30, 2020
Trial: None Set

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

This Joint Stipulation of Class Action and PAGA Settlement is entered into by and between Plaintiff Evelyn Flores individually and on behalf of the Class and Defendant Barrios Foods, Inc.

DEFINITIONS

1. “Agreement” or “Settlement Agreement” means this Joint Stipulation of Class Action and PAGA Settlement.

2. “Action” represents all causes of action, claims, and allegations in the operative complaint filed in *Flores v. Barrios Foods, Inc.*, Case No. 37-2020-00022485-CU-OE-CTL, pending before the San Diego County Superior Court.

3. “Class Counsel” means Protection Law Group, LLP.

4. “Class Counsel’s Fees and Costs” means attorneys’ fees for Class Counsel’s litigation and resolution of this Action and their expenses and costs incurred in connection with the Action, which shall be paid from the Gross Settlement Amount. Class Counsel will request attorneys’ fees not to exceed thirty-five percent (35%) of the Gross Settlement Amount, Two-Hundred Sixty-Two Thousand Five Hundred Dollars and Zero Cents (\$262,500.00), and the reimbursement of any costs and expenses associated with Class Counsel’s litigation and settlement of the Action, not to exceed Twenty Five Thousand Dollars (\$25,000.00), subject to the Court’s approval. Defendant has agreed not to oppose Class Counsel’s request for fees and reimbursement of costs and expenses in the amounts set forth above.

5. “Class List” means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide on a confidential basis to the Settlement Administrator within fourteen (14) calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in a readable, password-protected Microsoft Office Excel spreadsheet and Defendant will use their best efforts to include the following information for each Class Member: (1) full name; (2) last known home address; (3) last known telephone number; (4) social security number; (5) start and end dates of active employment as a non-exempt employee of Defendant in the State of California; (6) total Workweeks during the Class

Period; (7) total Workweeks during the PAGA Period; and (8) any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement.

6. “Class Members,” “Putative Class Members,” “Class,” and “Putative Class” means all current and former hourly-paid, non-exempt employees of Defendant who were employed by Defendant in the state of California at any time during the Class Period.

7. “Class Notice” means the Notice of Proposed Class Action Settlement in a form substantially similar to the form attached hereto as Exhibit A, as approved by the Court, and in both English and Spanish, that will be mailed to Class Members’ last known addresses and which will provide Class Members with information regarding the Action and information regarding the settlement of the Action.

8. “Class Period” means the period commencing on June 30, 2016 and ending on August 11, 2021.

9. “Class Representative” means Plaintiff Evelyn Flores in her capacity as representative of the Participating Class Members.

10. “Class Representative Incentive Payment” means the amount that the Court authorizes to be paid to Plaintiff Evelyn Flores, in addition to her Individual Settlement Payment, in recognition of the efforts and risks she has taken in assisting with the prosecution of the Action and in exchange for the General Release of her claims as provided herein.

11. “Court” means the Superior Court of the State of California for the County of San Diego, or any other court taking jurisdiction of the Action.

12. “Defendant” means Barrios Foods, Inc.

13. “Effective Date” means the later of the following: (a) if no timely objections are filed or if all objections are withdrawn, the date upon which the Court enters Final Approval; (b) if an objection is filed and not withdrawn, the date for filing an appeal and no such appeal being filed; (c) if any timely appeals are filed, the date of the resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the Settlement.

14. “Final Approval” means the Court entering an order granting final approval of the Settlement Agreement.

1 15. “Gross Settlement Amount” means the sum of Seven Hundred Fifty Thousand
2 Dollars (\$750,000.00). The Gross Settlement Amount includes all Individual Settlement
3 Payments to Participating Class Members, the Class Representative Incentive Payment,
4 Settlement Administration Costs, Class Counsel’s Fees and Costs, and PAGA Penalties in the
5 amount of Thirty-Five Thousand Dollars (\$35,000) of which 75% or Twenty-Six Thousand
6 Two Hundred Fifty Dollars (\$26,250) will be paid to the Labor Workforce Development
7 Agency (“LWDA”) and 25% or Eight Thousand Seven Hundred Fifty Dollars (\$8,750) to
8 Participating Class Members. The Gross Settlement Amount does not include any employer-
9 side taxes and withholdings, which will be calculated by the Settlement Administrator and
10 separately paid for by Defendants. The Gross Settlement Amount is non-reversionary; no
11 portion of the Gross Settlement Amount will return to Defendant.

12 16. “Individual Settlement Payment” means the amount payable from the Net
13 Settlement Amount to each Participating Class Member and any payment a PAGA Member is
14 eligible to receive from the employee portion of the PAGA Penalties. Individual Settlement
15 Payments shall be paid by a settlement check made payable to Participating Class Members
16 and/or PAGA Members.

17 17. “Net Settlement Amount” means the funds available for payments to the Putative
18 Class, which shall be the amount remaining after the following amounts are deducted from the
19 Gross Settlement Amount: (1) Class Counsel’s fees, (2) Class Counsel’s costs, (3) Settlement
20 Administration Costs, (4) Class Representative Incentive Payment to Plaintiff, and (5) PAGA
21 Penalties to the California Labor and Workforce Development Agency (“LWDA”) and PAGA
22 Members.

23 18. “PAGA” means the California Labor Code Private Attorneys General Act of
24 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”).

25 19. “PAGA Penalties” means the amount that the Parties have agreed to allocate in
26 order to settle all claims arising under or based on PAGA, which could have been alleged based
27 on the allegations contained in notice letter sent by Plaintiff to the California Labor Workforce
28 & Development Agency and Defendant on June 9, 2020. The Parties have agreed that Thirty-

Five Thousand Dollars (\$35,000.00) of the Gross Settlement Amount will be allocated to the resolution of Plaintiff's and the PAGA Members' PAGA claims. Seventy-five percent (75%) of the PAGA Penalties (i.e., Twenty-Six Thousand Two Hundred Fifty Dollars (\$26,250.00)) will be paid to the LWDA in accordance with Labor Code §§ 2698 *et seq.* The remaining twenty-five percent (25%) of the PAGA Penalties (i.e., Eight Thousand Seven Hundred Fifty Dollars (\$8,750.00)), will be distributed to PAGA Members. PAGA Members will receive payment from the employee portion of the PAGA Penalties regardless of their decision to participate in the class action if the PAGA Penalties is approved by the Court.

20. "PAGA Period" means the period commencing on June 9, 2019 and ending on August 11, 2021.

21. "PAGA Members" or "Putative Aggrieved Employees" means all current and former hourly-paid, non-exempt employees of Defendant who were employed by Defendant in the state of California at any time during the PAGA Period.

22. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either Plaintiff or Defendant, individually.

23. "Participating Class Members" means all Class Members who do not submit a valid and timely Request for Exclusion.

24. "Plaintiff" means Evelyn Flores.

25. "Preliminary Approval" means the Court order granting preliminary approval of the Settlement Agreement.

26. "Objection" means a Class Member's valid and timely written objection to the Settlement Agreement. For an Objection to be valid, it must include: (a) the objector's full name, signature, address, telephone number, last four digits of the employee's social security number or employee ID number; (b) a written statement of all grounds for the objection accompanied by legal support, if any, for such objection (c) copies of any papers, briefs, or other documents upon which the objection is based; and (d) a list of all persons who will be called to testify in support of the objection, if any. Further, an objector may appear at the Final Approval hearing, either in person or through counsel, at his or her expense. The Parties will be

permitted to respond in writing to such objections at least seven calendar days prior to the Final Approval hearing or within the time period set by the Court.

27. “Released Claims” means any and all claims alleged or which could have been alleged based on the facts alleged in the operative complaint in the Action including but not limited to the following claims: (i) unpaid overtime; (ii) unpaid meal period premiums; (iii) unpaid rest period premiums; (iv) unpaid minimum wages; (v) final wages not timely paid; (vi) wages not timely paid during employment; (vii) failure to provide accurate wage statements; (viii) failure to keep requisite payroll records; (ix) unfair business practices under Business and Professions Code § 17200 based on the aforementioned alleged Labor Code violations; and (x) all claims of any kind under or based on the California Labor Code Private Attorneys General Act of 2004 based on the aforementioned Labor Code violations alleged or which could have been alleged in the operative complaint in the Action based on the allegations contained in notice letter sent by Plaintiff to the California Labor Workforce & Development Agency and Defendant on June 9, 2020. , and any penalties, restitution, disgorgement, interest or attorneys’ fees. This release will cover all Class Members who do not opt out.

28. “Released Parties” means Defendant Barrios Foods, Inc., as named by Plaintiff in the operative complaint in the Action, and all of its current and former and future owners, officers, directors, shareholders, members, operators, managers, employees, consultants, vendors, partners, agents, representatives, subsidiaries, parents, affiliates, franchisors, franchisees, predecessors, successors, joint venturers, co-owners, co-employers, joint employers, payroll providers, attorneys, insurers, and reinsurers.

29. “Request for Exclusion” means a valid and timely written statement submitted by a Class Member requesting to be excluded from the Action. To be effective, the Request for Exclusion must contain (a) the Class Member’s name, signature, address, telephone number, and the last four digits of the Class Member’s Social Security number and/or the Employee ID number and (b) a clear statement requesting to be excluded from the settlement of the class claims similar to the following: “I wish to exclude myself from the class settlement reached in the matter of *Flores v. Barrios Foods, Inc.* I understand that by excluding myself, I will not

1 receive money from the settlement of my individual claims.” To be effective, the Request for
2 Exclusion must be post-marked by the Response Deadline and received by the Settlement
3 Administrator.

4 30. “Response Deadline” means the date sixty (60) days after the Settlement
5 Administrator mails the Class Notice to Class Members and the last date on which Class
6 Members may submit Requests for Exclusion, written objections to the Settlement, or
7 workweek disputes. In the event the 60th day falls on a Sunday or Federal holiday, the
8 Response Deadline will be extended to the next day on which the U.S. Postal Service is open.
9 The Response Deadline for Requests for Exclusion or Objections will be extended fifteen (15)
10 calendar days for any Class Member who is re-mailed a Class Notice by the Settlement
11 Administrator, unless the 15th day falls on a Sunday or Federal holiday, in which case the
12 Response Deadline will be extended to the next day on which the U.S. Postal Service is open.
13 The Response Deadline may also be extended by express agreement between Class Counsel and
14 Defendant. Under no circumstances, however, will the Settlement Administrator have the
15 authority to unilaterally extend the deadline for Class Members to submit a Request for
16 Exclusion or Objection to the settlement.

17 31. “Settlement” means the disposition of the Action pursuant to this Agreement.

18 32. “Settlement Administrator” means ILYM Group, Inc. The Parties each represent
19 that they do not have any financial interest in the Settlement Administrator or otherwise have a
20 relationship with the Settlement Administrator that could create a conflict of interest.

21 33. “Settlement Administration Costs” means the costs payable from the Gross
22 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
23 but not limited to, printing, distributing, and tracking documents for this Settlement,
24 calculating/confirming the Class Members’ Workweeks from the information contained in the
25 Class List, calculating each Participating Class Member’s Individual Settlement Payment, tax
26 reporting, distributing the Gross Settlement Amount, providing necessary reports and
27 declarations, and other duties and responsibilities set forth herein to process this Settlement, and
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as requested by the Parties or the Court. Settlement Administration Costs shall not exceed Twelve Thousand Five Hundred Dollars (\$12,500.00).

34. “Workweek” means any calendar week (i.e., a week beginning with Sunday and ending with Saturday) in which a Class Member or PAGA Member worked at least one day.

TERMS OF AGREEMENT

35. Settlement Consideration. Defendant shall fully fund the Gross Settlement Amount following Final Approval by the Court and the occurrence of the Effective Date. The following will be paid out of the Gross Settlement Amount: the sum of the Individual Settlement Payments, the Class Representative Incentive Payment, Class Counsel’s Fees and Costs, the PAGA Penalties, and the Settlement Administration Costs, as specified in this Agreement. Except for any employer-side payroll taxes due on the Individual Settlement Payments, or as a result of an increase in the number of workweeks as set forth below, Defendant shall not be required to pay more than the Gross Settlement Amount. The Gross Settlement Amount is non-reversionary; no portion of the Gross Settlement Amount will revert to Defendant.

36. Potential Increase to the Gross Settlement Amount. Defendant has represented there are approximately 23,854 Workweeks from June 30, 2016 (beginning of the Class Period) through April 30, 2021. Should the actual number of Workweeks exceed this number by more than ten percent (10%) (i.e., increase by more than 2,385 Workweeks), the Gross Settlement Amount shall increase on a pro-rata basis equal to the percentage increase in the number of Workweeks worked by the Class Members above 10% (for example, if the number of Workweeks increases by 11%, the Gross Settlement Amount will increase by 1%).

37. Funding of the Gross Settlement Amount. Within thirty (30) calendar days after Final Approval of the Settlement, Defendant will deposit the Gross Settlement Amount, and all applicable employer-side payroll taxes, into a Qualified Settlement Fund (“QSF”) to be established by the Settlement Administrator. Defendant shall provide all information necessary for the Settlement Administrator to calculate necessary payroll taxes including its official name, 8 digit state unemployment insurance tax ID number, and other information requested by the

1 Settlement Administrator, no later than thirty (30) calendar days after Final Approval of the
2 Settlement.

3 38. Distribution of the Gross Settlement Amount. Within seven (7) calendar days of
4 the funding of the Settlement, the Settlement Administrator will issue payments for: (a)
5 Individual Settlement Payments; (b) the PAGA Penalties to the LWDA; (c) the Class
6 Representative Incentive Payment; (d) Class Counsel's Fees and Costs and (e) Settlement
7 Administration Costs. If the Settlement Administrator asks for the Parties' approval prior to
8 distributing the court approved allocations and corresponding payments, the Parties shall
9 provide their approval within three (3) business days. If either Party has an objection to the
10 court approved allocations and disbursement schedule, it must seek *ex parte* relief from the
11 Court about its objection, unless both Parties agree to an alternate date for distribution.

12 39. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any
13 application or motion by Class Counsel for attorneys' fees of up to thirty-five percent (35%) of
14 the Gross Settlement Amount of Seven Hundred Fifty Thousand Dollars and Zero Cents, in an
15 amount not to exceed Two Hundred Sixty Two Thousand Five Hundred Dollars (\$262,500.00),
16 plus the reimbursement of costs and expenses associated with Class Counsel's litigation and
17 settlement of the Action, in an amount not to exceed Twenty Five Thousand Dollars
18 (\$25,000.00), both of which will be paid from the Gross Settlement Amount. Any portion of the
19 requested fees or costs that is not awarded by the Court to Class Counsel shall be reallocated to
20 the Net Settlement Amount and distributed to Participating Class Members as provided in this
21 Agreement.

22 40. Class Representative Incentive Payment. Defendant agrees not to oppose or
23 object to any application or motion by Plaintiff for a Class Representative Incentive Payment of
24 Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff Evelyn Flores. The Class
25 Representative Incentive Payment is in exchange for the General Release of Plaintiff's
26 individual claims, and for Plaintiff's time, effort and risk in bringing and prosecuting the
27 Action. Any adjustments made by the Court to the requested Class Representative Incentive
28 Payment shall not be deemed a material modification of this Agreement. In the event that the

1 Court reduces or does not approve the requested Class Representative Incentive Payment, the
2 Settlement Agreement remains in full force and effect, Plaintiff shall not have the right to
3 revoke the settlement for that reason, it shall remain binding, and any portion of the requested
4 Class Representative Incentive Payment that is not awarded by the Court to the Class
5 Representative shall be reallocated to the Net Settlement Amount and distributed to
6 Participating Class Members as provided in this Agreement.

7 41. Settlement Administration Costs. The Settlement Administrator will be paid for
8 the reasonable costs of administration of the Settlement and distribution of payments from the
9 Gross Settlement Amount as further set forth in this Agreement. Settlement Administration
10 Costs shall not exceed Twelve Thousand Five Hundred Dollars (\$12,500.00).

11 42. PAGA Penalties. Thirty-Five Thousand Dollars (\$35,000.00) of the Gross
12 Settlement Amount shall be allocated for settlement of claims for civil penalties under PAGA.
13 The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Penalties, or
14 Twenty-Six Thousand Two Hundred Fifty Dollars (\$26,250.00), to the LWDA. The remaining
15 twenty-five percent (25%) of the PAGA Penalties, or Eight Thousand Seven Hundred Fifty
16 Dollars (\$8,750.00), will be distributed to PAGA Members on a *pro rata* basis based on the
17 total number of Workweeks worked by each PAGA Member during the PAGA Period. PAGA
18 Members shall receive their portion of the PAGA Penalties regardless of their decision to opt-
19 out of the class settlement.

20 43. Net Settlement Amount for Payment of Class Claims. The Net Settlement
21 Amount will be used to satisfy the class portion of Participating Class Members' Individual
22 Settlement Payments in accordance with the terms of this Agreement. The estimated Net
23 Settlement Amount is as follows:

Gross Settlement Amount	\$	750,000.00
Class Representative Incentive Payment:	\$	7,500.00
Class Counsel's Fees:	\$	262,500.00
Class Counsel's Costs:	\$	25,000.00
PAGA Penalties:	\$	35,000.00

Settlement Administration Costs: \$ 12,500.00

Estimated Net Settlement Amount: \$ 407,500.00

44. Individual Settlement Payment Calculations. Individual Settlement Payments will be paid from the Net Settlement Amount and the 25% portion of the PAGA Penalties for PAGA Members and shall be paid pursuant to the formulas set forth herein:

a) Calculation of Class Portion of Individual Settlement Payments. The Settlement Administrator will calculate the total Workweeks for all Participating Class Members by adding the number of workweeks worked by each Participating Class Member during the Class Period. The amount that each Participating Class Member will be eligible to receive will be calculated by dividing each Participating Class Member's individual Workweeks by the total Workweeks of all Participating Class Members, and multiplying the resulting fraction by the Net Settlement Amount.

b) Calculation of PAGA Portion of Individual Settlement Payments. The Settlement Administrator will calculate the total Workweeks for all PAGA Members by adding the number of workweeks worked by each PAGA Member during the PAGA Period. The amount that each PAGA Member will receive will be calculated by dividing each participating PAGA Member's individual Workweeks by the total Workweeks of all PAGA Members, and multiplying the resulting fraction by the 25% share of the PAGA Penalties designated for distribution to PAGA Members. PAGA Members shall receive this portion of their Individual Settlement Payment regardless of whether they opt out of the participation regarding the class claims.

c) Allocation of Individual Settlement Payments. All Individual Settlement Payments will be allocated as follows: ten percent (10%) of each Individual Settlement Payment will be allocated as wages, ninety percent (90%) shall be allocated as non-wage statutory damages, premiums, and interest. The portion of the Individual Settlement Payment allocated to

wages will be reported by the Settlement Administrator on an IRS Form W-2. The remaining non-wage payments will be reported on an IRS Form-1099 by the Settlement Administrator.

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

46. Settlement Administration Process. The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement. The Settlement Administrator will provide the following services:

46(a) Establish and maintain a Qualified Settlement Fund.

46(b) Calculate the Individual Settlement Payment each Participating Class Member is eligible to receive and the portion of the PAGA Penalties each PAGA Member shall receive.

46(c) Translate the Class Notice from English to Spanish.

46(d) Print and mail the Class Notice in English and Spanish.

46(e) Perform address searches as detailed herein, including conduct additional address searches and skip traces for mailed Class Notices that are returned as undeliverable.

46(f) Process Requests for Exclusion, Objections, calculate Participating Class Members' Individual Settlement Payment, field inquiries or disputes from Class Members.

46(g) Print and issue Settlement Payment Checks, prepare any IRS W2 and 1099 Tax Forms and any other filings required by any governmental

1 taxing authority.

2 46(h) Provide declarations and/or other information to this Court as
3 requested by the Parties and/or the Court.

4 46(i) Provide weekly status reports to counsel for the Parties.

5 46(j) Posting a notice of final judgment, after entry of the judgment, online
6 at the Settlement Administrator's website for a period of sixty (60)
7 days pursuant to California Rule of Court 3.769.

8 46(k) Calculate employer's share of the payroll taxes.

9 47. Delivery of the Class List. Within fourteen (14) calendar days of Preliminary
10 Approval, Defendant will provide the Class List on a confidential basis to the Settlement
11 Administrator. This is a material term of the Agreement, and if Defendant fails to comply,
12 Plaintiff shall have the right to void the Agreement.

13 48. Class Notice by First-Class U.S. Mail. Within ten (10) calendar days after
14 receiving the Class List from Defendant, the Settlement Administrator will mail the Class
15 Notice (in both English and Spanish) to all Class Members via regular First-Class U.S. Mail,
16 using the most current, known mailing addresses identified in the Class List. The Parties may
17 not vary from the form of the Class Notice approved by the Court. If the Settlement
18 Administrator asks for the Parties' approval prior to mailing the court approved Class Notice,
19 the Parties shall provide their approval within three (3) business days. If either Party has an
20 objection to the court approved form of the Class Notice, it must seek *ex parte* relief from the
21 Court about its objection.

22 49. Confirmation of Contact Information in the Class List. Prior to mailing, the
23 Settlement Administrator will perform a search based on the National Change of Address
24 Database for information to update and correct for any known or identifiable address changes.
25 Any Class Notice returned to the Settlement Administrator as non-deliverable on or before the
26 Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
27 address affixed thereto and the Settlement Administrator will indicate the date of such re-
28 mailing on the Class Notice. If no forwarding address is provided, the Settlement Administrator

1 will promptly attempt to determine the correct address using a skip-trace, or other search using
2 the name, address and/or Social Security number of the Class Member involved, and will then
3 perform a single re-mailing. If any Class Notice sent to a Class Member by the Settlement
4 Administrator is returned as undeliverable to a current employee, then Defendant shall make all
5 reasonable efforts to obtain the current address from the Class Member and provide the same
6 within seven (7) calendar days of notice from the Settlement Administrator. Those Class
7 Members who receive a re-mailed Class Notice, whether by skip-trace or by request, will have
8 between the later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to
9 postmark a Request for Exclusion, or an Objection to the Settlement.

10 50. Class Notice. All Class Members will be mailed a Class Notice. Each Class
11 Notice will provide: (a) information regarding the nature of the Action; (b) a summary of the
12 Settlement's principal terms; (c) the Class definition; (d) the total number of Workweeks each
13 respective Class Member worked for Defendant during the Class Period; (e) each Class
14 Member's estimated Individual Settlement Payment and the formula for calculating Individual
15 Settlement Payments; (f) the dates which comprise the Class Period and PAGA Period; (g) the
16 deadlines by which the Class Member must postmark Requests for Exclusion, Objections to the
17 Settlement, or workweek disputes; (h) the claims to be released, as set forth herein; and (j) the
18 date for the final approval hearing.

19 51. Disputed Information on Class Notice. Class Members will have an opportunity
20 to dispute the information provided in their Class Notice. To the extent Class Members dispute
21 the number of Workweeks with which they have been credited or the amount of their Individual
22 Settlement Payment, Class Members may produce evidence to the Settlement Administrator
23 showing that such information is inaccurate. Absent evidence rebutting Defendant's records,
24 Defendant's records will be presumed determinative. However, if a Class Member produces
25 evidence contrary to Defendant's records by the Response Deadline, the Settlement
26 Administrator shall notify Class Counsel, and Defendant's counsel to discuss and resolve the
27 dispute, including providing all available relevant information to all counsel. The Parties will
28 resolve all disputes jointly, which shall be final and binding on any Class Member disputes, and

1 shall thereafter instruct the Settlement Administrator how to proceed in processing the dispute.
2 If the Parties cannot reach an agreement, disputes shall be referred to the Settlement
3 Administrator for a determination and if the dispute remains unresolved after that, the dispute
4 shall be submitted to the Court for final determination. All such disputes are to be resolved or
5 submitted to the Court no later than fourteen (14) calendar days after the Response Deadline.

6 52. Defective Submissions. If a Class Member's Request for Exclusion is defective
7 as to the requirements listed herein, that Class Member will be given an opportunity to cure the
8 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three
9 (3) business days of receiving the defective submission to advise the Class Member that his or
10 her submission is defective and that the defect must be cured to render the Request for
11 Exclusion valid. The Class Member will have until the later of (a) the Response Deadline or (b)
12 fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark a
13 revised Request for Exclusion. If a Class Member responds to a cure letter by filing a defective
14 claim, then the Settlement Administrator will have no further obligation to give notice of a need
15 to cure. If the revised Request for Exclusion is not postmarked within that period, it will be
16 deemed untimely. Any dispute regarding the validity of a Request for Exclusion falls solely
17 within the discretion of the Settlement Administrator unless both Parties stipulate otherwise.

18 53. Request for Exclusion Procedures. Any Class Member wishing to opt-out from
19 the Action must sign and postmark a written Request for Exclusion to the Settlement
20 Administrator by the Response Deadline. The Request for Exclusion must include (a) the Class
21 Member's name, signature, address, telephone number, and the last four digits of the Class
22 Member's Social Security number and/or the Employee ID number and (b) a clear statement
23 requesting to be excluded from the settlement of the class claims similar to the following: "I
24 wish to exclude myself from the class settlement reached in the matter of *Flores v. Barrios Foods,*
25 *Inc.* I understand that by excluding myself, I will not receive money from the settlement of my
26 individual claims." The date of the postmark on the return mailing envelope receipt
27 confirmation will be the exclusive means to determine whether a Request for Exclusion has
28 been timely submitted. All Requests for Exclusion will be submitted to the Settlement

1 Administrator, who will certify jointly to Class Counsel and Defendant's Counsel the Requests
2 for Exclusion that were timely submitted. All Class Members who do not request exclusion
3 from the Action will be bound by all terms of the Settlement Agreement if the Settlement is
4 granted final approval by the Court.

5 54. Defendant's Right to Rescind. If ten percent (10%) or more of the Class
6 Members (rounded to the next whole number) elect not to participate in the Settlement,
7 Defendant may, at its election, rescind the Settlement Agreement and all actions taken in
8 furtherance of it will be thereby null and void. Defendant must meet and confer with Class
9 Counsel prior to exercising this right and must make clear its intent to rescind the Agreement no
10 later than ten (10) calendar days after the Response Deadline. If Defendant exercises its right to
11 rescind the Agreement, Defendant shall be responsible for all Settlement Administration Costs
12 incurred to the date of rescission.

13 55. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
14 Member who does not affirmatively opt-out of the Settlement by submitting a timely and valid
15 Request for Exclusion will be bound by all of its terms, including those pertaining to the
16 Released Claims, as well as any Judgment that may be entered by the Court if it grants final
17 approval to the Settlement. Class Members who opt-out of the Settlement shall not be bound by
18 such Judgment or release. The names of Class Members who have opt-ed out of the settlement
19 shall be disclosed to counsel for Plaintiff and Defendant and noted in the proposed Judgment
20 submitted to the Court.

21 56. Objection Procedures. To object to the Settlement, a Participating Class Member
22 must postmark a valid Objection to the Settlement Administrator on or before the Response
23 Deadline. The Objection must be signed by the Participating Class Member and contain all
24 information required by this Settlement Agreement including the Class Member's full name,
25 address, telephone number, the last four digits of their social security number and/or Employee
26 ID number, and the specific reason including any legal grounds for the Participating Class
27 Member's objection. The postmark date will be deemed the exclusive means for determining
28 that the Objection is timely. Any dispute regarding the validity of an Objection falls solely

1 within the discretion of the Settlement Administrator unless both Parties stipulate otherwise.
2 Participating Class Members who fail to object in the manner specified above will be foreclosed
3 from making a written objection, but shall still have a right to appear at the Final Approval
4 Hearing in order to have their objections heard by the Court. At no time will any of the Parties
5 or their counsel seek to solicit or otherwise encourage Participating Class Members to submit
6 written objections to the Settlement or appeal from the Order and Judgment. Class Counsel will
7 not represent any Participating Class Members with respect to any objections to this Settlement.

8 57. Certification Reports Regarding Individual Settlement Payment Calculations.

9 The Settlement Administrator will provide Defendant's Counsel and Class Counsel a weekly
10 report which certifies: (a) the number of Class Members who have submitted Requests for
11 Exclusion; (b) the number of re-mailed and/or undeliverable Class Notices; and (c) whether any
12 Class Member has submitted a challenge to any information contained in the Class Notice.
13 Additionally, the Settlement Administrator will provide to counsel for all Parties any updated
14 reports regarding the administration of the Settlement Agreement as needed or requested. The
15 Settlement Administrator will provide a declaration to Class Counsel in advance of the hearing
16 on Final Approval of the settlement which Class Counsel shall be responsible for reviewing and
17 approving.

18 58. Uncashed Settlement Checks. Any checks issued by the Settlement
19 Administrator to Participating Class Members and PAGA Members will be negotiable for at
20 least one hundred eighty (180) calendar days. If a Participating Class Member and/or PAGA
21 Member does not cash his or her settlement check within 180 days, the uncashed funds, subject
22 to Court approval, shall be distributed to the Controller of the State of California to be held
23 pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et. seq.* for the benefit
24 of those Participating Class Members and/or PAGA Members who did not cash their checks
25 until such time that they claim their property. The Parties agree that this disposition results in no
26 "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement
27 Amount will be paid out to Participating Class Members and PAGA Members, whether or not
28 they all cash their settlement checks. Therefore, Defendant will not be required to pay any

1 interest on such amounts. The Individual Settlement Payments provided to Participating Class
2 Members and to PAGA Members shall prominently state the expiration date or a statement that
3 the settlement check will expire in one hundred eighty (180) days, or alternatively, such a
4 statement may be made in a letter accompanying the Individual Settlement Payment. Expired
5 Individual Settlement Payments will not be reissued, except for good cause and as mutually
6 agreed by the Parties in writing. The parties agree no unclaimed funds will result from the
7 settlement process detailed in this Agreement.

8 59. Administration of Taxes by the Settlement Administrator. The Settlement
9 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and
10 Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts
11 paid pursuant to this Settlement. The Settlement Administrator will also be responsible for
12 forwarding all payroll taxes and penalties to the appropriate government authorities.

13 60. Tax Liability. Defendant makes no representation as to the tax treatment or legal
14 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are
15 not relying on any statement, representation, or calculation by Defendant or by the Settlement
16 Administrator in this regard. Plaintiff and Participating Class Members understand and agree
17 that except for Defendant's payment of the employer's portion of any payroll taxes, they will be
18 solely responsible for the payment of any taxes and penalties assessed on the payments
19 described herein. Defendant's share of any employer-side payroll taxes and other required
20 employer withholdings due on the Individual Settlement Payments, including, but not limited
21 to, Defendant's FICA and FUTA contributions, shall be paid separate and apart from the Gross
22 Settlement Amount.

23 61. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this
24 section, the "acknowledging party" and each Party to this Agreement other than the
25 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision of this
26 Agreement, and no written communication or disclosure between or among the Parties or their
27 attorneys and other advisers, is or was intended to be, nor shall any such communication or
28 disclosure constitute or be construed or be relied upon as, tax advice within the meaning of

1 United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the
2 acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and
3 tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not
4 entered into this Agreement based upon the recommendation of any other Party or any attorney
5 or advisor to any other Party, and (c) is not entitled to rely upon any communication or
6 disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be
7 imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has
8 imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax
9 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
10 acknowledging party of the tax treatment or tax structure of any transaction, including any
11 transaction contemplated by this Agreement.

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

16 63. Release by Participating Class Members, PAGA Members, the LWDA and the
17 State of California. Upon the funding of the Gross Settlement Amount and all applicable
18 employer-side payroll taxes by Defendant, Participating Class Members shall fully release and
19 discharge the Released Parties from any and all Released Claims arising during the Class
20 Period. This release shall be binding on all Participating Class Members. All PAGA Members,
21 the LWDA, and the State of California shall release all claims under PAGA for the PAGA
22 Period which could have been alleged based on the allegations contained in notice letter sent by Plaintiff
23 to the California Labor Workforce & Development Agency and Defendant on June 9, 2020. All PAGA
24 Members shall release all claims arising under PAGA during the PAGA Period which could have
25 been alleged based on the allegations contained in notice letter sent by Plaintiff to the California Labor
26 Workforce & Development Agency and Defendant on June 9, 2020 regardless of their decision to
27 participate in the class settlement.

28 64. Release of Additional Claims & Rights by Plaintiff. Upon the funding of the

1 Gross Settlement Amount, Plaintiff will agree to the additional following General Release: In
2 consideration of Defendant's promises and agreements as set forth herein, Plaintiff hereby
3 releases the Released Parties from all claims, demands, rights, liabilities and causes of action of
4 every nature and description whatsoever, known or unknown, asserted or that might have been
5 asserted, whether in tort, contract, or for violation of any state or federal statute, rule or
6 regulation arising out of, relating to, or in connection with any act or omission by or on the part
7 of any of the Released Party committed or omitted prior to the execution thereof. Specifically,
8 Plaintiff will expressly waive and relinquish, to the fullest extent permitted by law, the
9 provisions, rights and benefits afforded of section 1542 of the California Civil Code, or any
10 other provision under federal or state law, which provides:

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

16 This release specifically excludes claims for unemployment insurance, disability, social
17 security, and workers' compensation (with the exception of claims arising pursuant to
18 California Labor Code sections 132(a) and 4553).

19 65. Neutral Employment Reference. Defendant agrees that it will adopt a neutral
20 reporting policy regarding any future employment references related to Plaintiff. In the event
21 that any potential or future employers of Plaintiff request a reference regarding Defendant's
22 employment of Plaintiff, Defendant shall only provide Plaintiff's dates of employment, job titles
23 during employment, and final rate of pay. Defendant shall not refer to the Action or this
24 Settlement.

25 66. Nullification of Settlement Agreement. In the event that: (a) the Court does not
26 finally approve the Settlement as provided herein; (b) the Court strikes or does not approve any
27 material term of this Settlement Agreement; or (c) the Settlement does not become final as
28 written and agreed to by the Parties for any other reason, then this Settlement Agreement, and

any documents generated to bring it into effect, will be null and void, all amounts deposited into the QSF will be returned to Defendant, and the Parties shall be returned to their original respective positions. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning. Pursuant to California Evidence Code § 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, and remains protected by California Evidence Code § 1152. Should the Court fail to approve this settlement for any reason, the Parties agree that they will return to and attend mediation with a mutually agreed mediator in an effort to reach a settlement that may be approved by the Court.

67. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to request Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order for: (a) conditional certification of the Putative Class for settlement purposes only, (b) Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for the Class Notice to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this Agreement, which sets forth the terms of the Settlement, and will include the proposed Class Notice attached as Exhibit A. Class Counsel will be responsible for drafting all documents necessary to obtain Preliminary Approval but shall provide the Motion for Preliminary Approval to Defendant's Counsel at least three (3) calendar days in advance of submission for their review and comment. Defendant may provide additional information regarding Defendant's contentions and alleged defenses, which Plaintiff may dispute, but shall include in the preliminary approval papers. Plaintiff will work in good faith with Defendant regarding other revisions and comments to the Motion for Preliminary Approval, which Plaintiff shall consider, but shall not be required to accept. Defendant shall file a notice of non-opposition that states it either joins in Plaintiff's Motion for Preliminary Approval or that it will not file any response to Plaintiff's unopposed Motion for Preliminary Approval. This is a material term of the settlement and any opposition by

1 Defendant will be grounds for Plaintiff to withdraw from the settlement. Any failure by the
2 Court to fully and completely approve the Agreement as to the Action, or the entry of any Order
3 by another Court with regard to any of the Action which has the effect of preventing the full and
4 complete approval of this Settlement Agreement as written and agreed to by the Parties, will
5 result in this Settlement Agreement and the Memorandum of Understanding entered into by the
6 Parties, and all obligations under this Settlement Agreement and the Memorandum of
7 Understanding being nullified and voided.

8 68. Final Settlement Approval Hearing and Entry of Judgment. Upon completion of the
9 Class Notice process, including the expiration of the deadlines to postmark Requests for
10 Exclusion or Objections to the Settlement Agreement, a Final Approval/Settlement Fairness
11 Hearing will be conducted to determine the Final Approval of the Settlement Agreement along with the
12 amounts properly payable for: (a) Individual Settlement Payments; (b) the PAGA Penalties to the
13 LWDA; (c) Class Counsel's Attorneys' Fees and Costs; (d) the Class Representative Incentive Payment;
14 and (e) the Settlement Administration Costs. Any failure by the Court to fully and completely
15 approve the Settlement Agreement as to all of the Action, or the entry of any Order by another
16 Court with regard to any of the Action which has the effect of modifying material terms of this
17 Agreement or preventing the full and complete approval of the Settlement Agreement as written
18 and agreed to by the Parties, will result in this Agreement and all obligations under this
19 Agreement being null and void. Class Counsel will be responsible for drafting all documents
20 necessary to obtain Final Approval but shall provide the Motion for Final Approval to
21 Defendant's Counsel at least three (3) calendar days in advance of submission for their review
22 and comment. Defendant may provide additional information regarding Defendant's
23 contentions and alleged defenses, which Plaintiff may dispute, but shall include in the
24 preliminary approval papers. Plaintiff will work in good faith with Defendant regarding other
25 revisions and comments to the Motion for Final Approval, which Plaintiff shall consider, but
26 shall not be required to accept. Defendant agrees it shall not oppose the granting of the Motion
27
28

for Final Approval, provided Defendant has not exercised its right to rescind pursuant to the terms of this Agreement.

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

70. Exhibits Incorporated by Reference. The terms of this Settlement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement.

71. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' Settlement. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

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

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

74. Binding on Successors and Assigns. This Settlement Agreement will be binding

upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

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

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

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

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

79. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this Settlement only; except, however, that either party may appeal any court order that materially alters the Settlement Agreement's terms.

80. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to class action certification only for purposes of the Settlement. If, for any reason, the Settlement is not approved, the stipulation to certification will be void. The Parties further agree that certification for purposes of the Settlement is not an admission that class action certification is proper under the standards applied to contested certification motions and that this Agreement

1 will not be admissible in this or any other proceeding as evidence that either: (a) a class action
2 should be certified or (b) Defendant is liable to Plaintiff or any Class Member, other than
3 according to the Settlement's terms.

4 81. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
5 dispute that has arisen between them and to avoid the burden, expense and risk of continued
6 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, it
7 has violated any federal, state, or local law; violated any regulations or guidelines promulgated
8 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached
9 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
10 engaged in any other unlawful conduct with respect to its employees. Neither this Agreement,
11 nor any of its terms or provisions, nor any of the negotiations connected with it, shall be
12 construed as an admission or concession by Defendant of any such violations or failures to
13 comply with any applicable law. Except as necessary in a proceeding to enforce the terms of
14 this Agreement, including but not limited to use as a bar or affirmative defense, in whole or in
15 part, to claims released herein, this Agreement and its terms and provisions shall not be offered
16 or received as evidence in any action or proceeding to establish any liability or admission on the
17 part of Defendant or to establish the existence of any condition constituting a violation of, or a
18 non-compliance with, federal, state, local or other applicable law.

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

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

26 84. Mutual Preparation. The Parties have had a full opportunity to negotiate the
27 terms and conditions of this Agreement. Accordingly, this Agreement will not be construed
28 more strictly against one Party than another merely by virtue of the fact that it may have been

1 prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
2 negotiations between the Parties, all Parties have contributed to the preparation of this
3 Settlement Agreement.

4 85. Representation By Counsel. The Parties acknowledge that they have been
5 represented by counsel throughout all negotiations that preceded the execution of this
6 Agreement, and that this Agreement has been executed with the consent and advice of counsel
7 and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there are no
8 liens on the Agreement.

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

11 87. Cooperation and Execution of Necessary Documents. The Parties agree to
12 cooperate to promote participation in the Settlement, and in seeking court approval of the
13 Settlement. The Parties and their counsel agree not to take any action to encourage any Class
14 Members to opt out of and/or object to the Settlement. Defendant agrees not to obtain any
15 settlement agreement waivers, Pick Up Stix agreements or arbitration agreements from any
16 Class Member prior to the funding of the Gross Settlement Amount concerning claims released
17 via this Agreement, or enter into any arbitration agreement with any Class Member that covers
18 the claims released via this Agreement during the Settlement approval process prior to the
19 funding of the Gross Settlement Amount and that the Parties will work in good faith to reach an
20 agreement approved by the Court.

21 88. Enforcement and Continuing Jurisdiction of the Court. To the extent consistent
22 with class action procedure, this Settlement Agreement shall be enforceable by the Court
23 pursuant to California Code of Civil Procedure § 664.6. The Court shall retain continuing
24 jurisdiction over this Action and over all Parties and Class Members, to the fullest extent to
25 enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any
26 claimed breaches of this Settlement Agreement. The Court may award reasonable attorneys'
27 fees and costs to the prevailing party in any motion or action taken and based on an alleged
28 violation of any material term of the Settlement Agreement.

1 89. Voluntary Agreement. The Parties acknowledge that they have entered into this
2 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion,
3 duress, or undue influence of any Party, and not in reliance on any promises, representations, or
4 statements made by the other Parties other than those contained in this Settlement Agreement.
5 Each of the Parties hereto expressly waives any right she/it might ever have to claim that this
6 Settlement Agreement was in any way induced by fraud.

7 90. Confidentiality. The Parties and their counsel agree that there will be no
8 publicity, marketing, posting, publishing, reporting, or advertising of the Settlement or any of its
9 terms. However, Class Counsel may list the case name, number, and a brief description of the
10 claims in their declarations in support of qualifications as class counsel in future filings.
11 Notwithstanding anything in this provision, Class Counsel can discuss the Settlement with
12 Plaintiff and with Class Members and can include it in all necessary Court and ancillary
13 documents supporting the resolution of this Action. Nothing in this paragraph is intended to
14 interfere with Class Counsel's duties and obligations to faithfully discharge their duties as Class
15 Counsel, including but not limited to, communicating with Class Members regarding the
16 settlement.

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

22
23 **[Remainder of page intentionally left blank – signatures on following page.]**
24
25
26
27
28

1 APPROVED AS TO FORM AND CONTENT:

2 Dated: _____

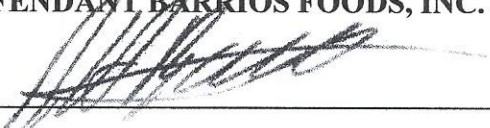
PLAINTIFF

3
4 By: _____

5 Evelyn Flores

6
7 Dated: 10/5/2021

DEFENDANT BARRIOS FOODS, INC.

8
9 By:  _____

10 Name: Robert H Barrios Jr

11 Title: President

12
13 APPROVED AS TO FORM ONLY:

14
15 Dated: _____

PROTECTION LAW GROUP, LLP

16
17 By: _____

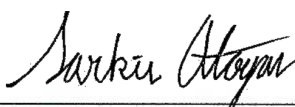
18 Heather Davis, Esq.

19 Amir Nayebdadash, Esq.

20 Attorneys for Plaintiff

21 Dated: October 6, 2021

ATKINSON, ANDELSON, LOYA, RUDD &
ROMO

22
23 By:  _____

24 Michael J. O'Connor, Jr., Esq.

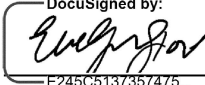
25 Sarkis A. Atoyan, Esq.

26 Attorneys for Defendant

1 APPROVED AS TO FORM AND CONTENT:

2 Dated: 10/1/2021

3 **PLAINTIFF**

4 By: 
 DocuSigned by: E245C5137357475...

5 Evelyn Flores

6
7 Dated: _____

8 **DEFENDANT BARRIOS FOODS, INC.**

9 By: _____

10 Name: _____

11 Title: _____

12
13 APPROVED AS TO FORM ONLY:

14
15 Dated: 10/6/2021

16 **PROTECTION LAW GROUP, LLP**

17
18 By: 
 Heather Davis, Esq.
 Amir Nayebdadash, Esq.
 Attorneys for Plaintiff

19
20
21 Dated: _____

22 **ATKINSON, ANDELSON, LOYA, RUDD & ROMO**

23 By: _____
24 Michael J. O'Connor, Jr., Esq.
25 Sarkis A. Atoyan, Esq.
26 Attorneys for Defendant

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Flores v. Barrios Foods, Inc.

San Diego County Superior Court, Case No. 37-2020-00022485-CU-OE-CTL

**THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION.
PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**

To:	All current and former hourly-paid, non-exempt employees of Barrios Foods, Inc. who were employed by Barrios Foods, Inc. in the state of California at any time from June 30, 2016 to August 11, 2021.
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BASIC INFORMATION

1. What is this settlement about?

A lawsuit was commenced by Evelyn Flores (“Plaintiff”), a former employee of Defendant Barrios Foods, Inc. (“Defendant”) on June 30, 2020. The case is currently pending in the San Diego County Superior Court, Case No. 37-2020-00022485-CU-OE-CTL.

The lawsuit claims that Defendant violated sections of the California Labor Code and California Business and Professions Code. Specifically, Plaintiff alleges that Defendant failed to provide compliant meal and rest periods and associated premium pay, did not properly pay employees all wages owed for time worked, did not provide accurate wage statements, did not timely pay all wages owed during employment and all wages owed at termination of employment, and maintained unfair business practices. The settlement also seeks to recover penalties pursuant to the California Private Attorneys General Act (“PAGA”). The lawsuit claims that the Defendant violated the California Labor Code and the California Business and Professions Code, entitling Class Members to, *inter alia*, damages, penalties and restitution. Defendant denies all alleged violations and denies that it owes Class Members any remedies. The Court has not made any ruling on the merits of Plaintiff’s claims or the case.

2. Why is this a class action?

In a class action, one or more people called the Class Representative (in this case Plaintiff Evelyn Flores), sue on behalf of people who appear to be similarly situated and, thus, would appear to have similar claims (in this case all current and former hourly-paid, non-exempt employees of Defendant who were employed by Defendant in the state of California at any time from June 30, 2016 to August 11, 2021). All these people are referred to here as Class Members. In a class action one court resolves the issues for all Class Members in one lawsuit, except for those who elect to exclude themselves from the Class. The San Diego County Superior Court is in charge of this class action.

3. Why is there a settlement?

The Court has not decided in favor of Plaintiff or Defendant. Instead, both sides agreed to avoid the time, cost, and risk associated with continued litigation by entering into a settlement which is memorialized in the Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement” or “Settlement”). On [DATE OF PRELIMINARY APPROVAL], the Court granted preliminary approval of the Settlement, appointed Plaintiff Evelyn Flores as the Class Representative, and appointed her attorneys at Protection Law Group as counsel for the Class (“Class Counsel”).

The Class Representative and Class Counsel think the Settlement is best for the Class.

WHO IS IN THE SETTLEMENT?

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

You are part of the Settlement, and a Class Member, if you were an hourly-paid, non-exempt employee of Defendant who was employed by Defendant in the state of California at any time from June 30, 2016 to August 11, 2021.

THE SETTLEMENT BENEFITS—WHAT YOU GET

5. What does the settlement provide?

The Settlement provides that Defendant will pay a maximum of Seven Hundred Fifty Thousand Dollars (\$750,000.00) (“Gross Settlement Amount”). This includes all costs and attorneys’ fees for Class Counsel.

The “Net Settlement Amount” is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Amount is the Gross Settlement Amount less the following amounts (which are subject to Court approval):

- A. **Attorneys’ Fees to Class Counsel** not to exceed 35% of the Gross Settlement Amount or Two Hundred Sixty-Two Thousand Five Hundred Dollars (\$262,500.00);
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Twenty-Five Thousand Dollars (\$25,000.00);
- C. **Incentive Payment to the Class Representative** not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00);
- D. **Settlement Administration Costs** not to exceed Twelve Thousand Five Hundred Dollars (\$13,000.00); and
- E. **PAGA Penalties** in the amount of Thirty-Five Thousand Dollars (\$35,000.00) for the settlement of all claims arising under PAGA which could have been alleged based on the allegations contained in notice letter sent by Plaintiff to the California Labor Workforce & Development Agency and Defendant on June 9, 2020. Seventy-Five percent (75%) of this amount (\$26,250.00) shall be paid to the Labor Workforce Development Agency (“LWDA”). The remaining twenty-five percent (25%) (\$8,750.00) will be distributed to PAGA Members (current and former hourly-paid, non-exempt employees of Defendant who were employed by Defendant in the state of California at any time from June 9, 2019 to August 11, 2021) for the release of their claims arising under PAGA.

The amount you are eligible to receive from the settlement, your “Individual Settlement Payment” will be determined on a *pro rata* basis, based on the number of weeks (“Workweeks”) you worked in California for Defendant during the period beginning on June 30, 2016 and ending on August 11, 2021 (“Class Period”). Your Individual Settlement Payment includes both your estimated share of the Net Settlement Amount and, if eligible, your share of the PAGA Payment.

Your Individual Settlement Payment will be apportioned as ten percent (10%) wages and ninety percent (90%) non-wage damages, premiums, and interest. The wage portion of the Individual Settlement Payment will be subject to withholding for the employee taxes and will be reported on a W-2 Form. Employer-side payroll taxes shall be paid by Defendant separately from and in addition to the Gross Settlement Amount. The non-wage portions of each Class Member’s settlement payment will not be subject to any withholdings and will be reported on an IRS Form 1099.

You worked XXX workweeks during the Class Period. Your Individual Settlement Payment is \$XXX.XX. The amount of the payment may change depending on the number of timely and valid requests for exclusions submitted in the Settlement, if any.

This Amount was determined based on Defendant's record of your employment during the period beginning on June 30, 2016 and ending on August 11, 2021, and is presumed correct. If you dispute the accuracy of Defendant's records as to the number of weeks worked during the Class Period, you must contact the Settlement Administrator and provide any documentation you have supporting such dispute by [DATE]. All disputes regarding your workweeks will be resolved and decided by the Parties or if the Parties cannot agree, the Court, after you submit evidence to the Settlement Administrator. The Settlement Administrator's contact information is listed below:

[Settlement Administrator]
[Address]
[Telephone No.]
[Fax No.]

HOW TO GET A PAYMENT FROM THE SETTLEMENT

6. How can I get a payment?

You do not have to do anything to qualify for a payment of your portion of the Settlement.

7. What am I giving up if I do not request to be excluded from the settlement?

Upon the funding of the Gross Settlement Amount, in exchange for the consideration set forth by the Settlement, Plaintiff and all Class Members who do not submit a timely request for exclusion shall release the "Released Parties" from the "Released Claims" for the Class Period.

The "Released Parties" include Defendant Barrios Foods, Inc. as named by Plaintiff in the operative complaint, and its current and former owners, officers, directors, members, operators, managers, employees, agents, representatives, subsidiaries, parents, affiliates, predecessors, successors, joint venturers, co-owners, co-employers, joint employers, payroll providers, attorneys, insurers, and reinsurers.

The "Released Claims" means any and all claims alleged or which could have been alleged based on the facts alleged in the operative complaint in the Action including the following claims: (i) unpaid overtime; (ii) failure to provide meal breaks or meal period premiums in lieu thereof; (iii) failure to provide rest periods or rest period premiums in lieu thereof; (iv) unpaid minimum wages; (v) final wages not timely paid; (vi) wages not timely paid during employment; (vii) failure to provide accurate wage statements; (viii) failure to keep requisite payroll records; (ix) unfair business practices under Business and Professions Code § 17200 based on the aforementioned alleged Labor Code violations; and (x) all claims under the California Labor Code Private Attorneys General Act of 2004 based on the aforementioned Labor Code violations.

This release of these claims pertains to the Class Period beginning on June 30, 2016 and ending on August 11, 2021.

All PAGA Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all Released Claims arising under PAGA with respect to all of the Released Parties irrespective of whether a Class Member submits a request for exclusion.

EXCLUDING YOURSELF FROM THE RELEASE OF NON-PAGA CLAIMS

If you want to keep the right to sue or continue to sue Defendant with respect to the Released Claims (other than those which arise under the Private Attorneys General Act (California Labor Code sections 2698 *et seq.*), then you must submit a request for exclusion in conformity with the requirements set forth herein. If you exclude yourself, you will not receive payment from the Net Settlement Amount. However, if eligible, you will still receive a

payment in an amount equal to your estimated *pro rata* share of the PAGA Payment because the Request for Exclusion does not apply to this claim.

8. How can I not participate in the settlement?

To exclude yourself from the release of Released Claims you must submit a written request for exclusion. You must include your name, address, telephone number and the last four digits of your social security number and/or Employee ID number. Your request for exclusion must also include a statement that you do not wish to be included in this action similar to the following: I wish to exclude myself from the class action settlement reached in the matter of *Flores v. Barrios Foods, Inc.* I understand that by excluding myself I will not receive money from the class portion of the settlement.”

The written request for exclusion must be mailed to the Settlement Administrator at the address listed below, post-marked by [DATE]. You cannot exclude yourself by phone.

[Settlement Administrator]

[Address]

[Telephone No.]

[Fax No.]

If you ask to be excluded, you will not receive payment of any portion of the Net Settlement Amount and you cannot object to the Settlement. You will not be legally bound by the release of Released Claims (except for Released Claims that arise under the Private Attorneys General Act (California Labor Code sections 2698 *et seq.*)).

9. If I don't exclude myself, can I sue Defendant for the same thing later?

No. Unless you submit a request for exclusion, you give up the right to sue Defendant and the Released Parties for the Released Claims. If you have a pending individual lawsuit on your own behalf which involved the Released Claims, speak to your lawyer in that lawsuit immediately.

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

No, except if you worked during the period beginning on June 9, 2019 and ending on August 11, 2021, in which case you will still receive the portion of your Individual Settlement Payment for Released Claims that arise under PAGA, only. But if you submit a timely and valid request for exclusion, you retain any right that you may have to sue, continue to sue, or be part of a different lawsuit against the Defendant and/or Released Parties for Released Claims (except for Released Claims that arise under PAGA).

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

The Court has approved Protection Law Group LLP as Class Counsel. The firm's contact information is:

PROTECTION LAW GROUP LLP

Heather Davis, Esq.

Amir Nayebdadash, Esq.

S. Emi Minne, Esq.

237 California Street

El Segundo, California 90245

Telephone: (424) 290-3095

Facsimile: (866) 264-7880

Class Counsel will ask the Court for attorneys' fees of up to \$262,500.00 and reimbursement of litigation cost/expenses of up to \$25,000.00. These amounts are subject to Court approval and the Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

You can object to the Settlement or some part of it.

12. How do I tell the Court if I don't like the settlement?

If you are a Class Member, you can object to the Settlement and you can give reasons for why you think the Court should not approve it. The Court will consider your views. To object, you must mail your objection to the Settlement Administrator no later than [DATE]. Your objection must include your full name, address, telephone number, the last four digits of your social security number or employee ID number, and the specific reason for your objection. You may also come to the Final Approval Hearing on [DATE] and make an objection at that time, regardless of whether you submitted a written objection.

13. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to grant final approval of the Settlement ("Final Approval Hearing"). You may attend, but you do not have to attend.

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

The Court will hold the Final Approval Hearing at [] a.m./p.m. on [], at the San Diego Superior Court, located at 330 West Broadway, San Diego, CA 92101.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them.

15. Do I have to come to the hearing?

No. If you agree to the Settlement you do not have to come to Court to talk about it. However, you may attend. You may also retain your own lawyer at your expense to attend on your behalf. You may attend in person, but you may also attend remotely if you wish. Please see http://www.sdcourt.ca.gov/portal/page?_pageid=55,2053814&_dad=portal&_schema=PORTAL or http://www.sdcourt.ca.gov/portal/page?_pageid=55,2070120&_dad=portal&_schema=PORTAL for more information on remote appearances.

16. How will I learn if the settlement was approved?

A notice of final judgment will be posted on the Settlement Administrator website located at [www.\[\]](http://www.[]).

IF YOU DO NOTHING

17. What happens if I do nothing at all?

If you do nothing, you will receive your share of the Settlement, and you will release the Released Claims. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant and/or the Released Parties about the Released Claims, ever again. Your Individual Settlement Payment will be mailed to you and remain valid and negotiable for 180 days. If you do not cash your settlement check within 180 days, these funds will be transferred to the Controller of the State of California's Unclaimed Property Fund. You may then claim these funds from there.

GETTING MORE INFORMATION

18. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by viewing the settlement located on the Settlement Administrator's website at www.██████████ or by contacting the Settlement Administrator or Class Counsel.

WHAT IF MY INFORMATION CHANGES?

19. What if my contact information changes?

It is your responsibility to inform the Settlement Administrator of your updated information to ensure receipt of settlement payments or communications regarding this matter. You can change or update your contact information by contacting the Settlement Administrator.

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE
CLERK OF THE COURT OR THE JUDGE**