

DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
david@yeremianlaw.com
535 N. Brand Blvd., Suite 705
Glendale, California 91203
Telephone: (818) 230-8380
Facsimile: (818) 230-0308

Attorneys for Plaintiff
RUDY SANDOVAL,
on behalf of himself and others similarly situated

[Additional counsel and party listed on following page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

RUDY SANDOVAL, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

US FOODS, INC. dba US FOODSERVICE,
INC., a Delaware Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. STK-CV-UOE-2020-0000978

*[Assigned for all purposes to The Honorable
George J. Abdallah, Dept. 10a]*

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

Complaint Filed: January 21, 2020

Trial Date: None set

1 Joseph C. Liburt (SBN 155507)
jliburt@orrick.com
2 ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
3 Menlo Park, CA 94025-1015
Telephone: (650) 614-7400
4 Facsimile: (650) 614-7401

5 Katie E. Briscoe (SBN 287629)
kbriscoe@orrick.com
6 Alexandra Guerra (SBN 319412)
aguerra@orrick.com
7 ORRICK, HERRINGTON & SUTCLIFFE LLP
8 400 Capitol Mall, Suite 3000
Sacramento, CA 95814-4497
9 Telephone: (916)447-9200
10 Facsimile: (916)329-4900

11 Attorneys for Defendant US FOODS, INC.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 This Joint Stipulation of Class Action and PAGA Settlement (“Joint Stipulation” or
2 “Settlement”) is made and entered by and between RUDY SANDOVAL, in his individual capacity,
3 as a class representative, and as a private attorney general (hereinafter referred to as “Plaintiff”) on
4 one hand, and Defendant US FOODS, INC. (hereinafter referred to as “Defendant”) on the other
5 hand. Subject to the Court’s approval, the above-referenced action is being compromised and settled
6 under the terms and conditions set forth below. This Joint Stipulation will be binding on Plaintiff,
7 the State of California, and the individuals purported to be represented thereby, and Defendant,
8 subject to the terms and conditions set forth below and the approval of the Court.

9 **I. DEFINITIONS**

10 To the extent any terms or phrases used in this Joint Stipulation are not specifically defined
11 in this section (i.e., Section I), but are defined elsewhere in this Joint Stipulation, they are
12 incorporated herein by reference.

13 “Action” means the above-entitled putative class and PAGA action pending in the Superior
14 Court of the State of California, County of San Joaquin.

15 “Aggrieved Employees” are all current and former non-exempt, non-Driver, non-union
16 employees who worked an alternative workweek schedule in California at any point during the
17 PAGA Period.

18 “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and approved
19 by the Court for Class Counsel’s litigation and resolution of the Action, and all costs incurred and
20 to be incurred by Class Counsel in the Action, including but not limited to costs associated with
21 documenting the Settlement, providing any notices required as part of the Settlement or Court order,
22 securing the Court’s approval of the Settlement, administering the Settlement, obtaining entry of a
23 judgment terminating the Action, and expenses for any experts. Class Counsel will request
24 attorneys’ fees not in excess of one-third of the Gross Settlement Amount, or Three Hundred and
25 Sixty Thousand Dollars (\$360,000.00). Class Counsel will request costs not in excess of Twenty-
26 Five Thousand Dollars (\$25,000.00). The Attorneys’ Fees and Costs will also mean and include the
27 additional reimbursement of any reasonable costs and expenses associated with Class Counsel’s
28 litigation and settlement of the Action, subject to the Court’s approval. Defendant has agreed not to

1 oppose Class Counsel's request for fees and reimbursement of costs as set forth above.

2 "Class" or "Class Members" means all current and former non-exempt, non-Driver, non-
3 union employees who worked an alternative workweek schedule in California at any point during
4 the Class Period. The Class consists of approximately 339 Class Members.

5 "Class Member" means a single, current and former non-exempt, non-Driver, non-union
6 employee who worked an alternative workweek schedule in California at any point during the Class
7 Period.

8 "Class Counsel" means David Yeremian & Associates, Inc.

9 "Class Period" means the time from January 21, 2016 through the earlier of November 25,
10 2020 or the date that the court grants Preliminary Approval.

11 "Class Workweeks" means the number of workweeks each Class Member worked an
12 alternative workweek schedule in California during the Class Period.

13 "Complaint" means the operative Complaint filed in the Action on or about January 21,
14 2020, and all amendments thereto. Plaintiff will file, with or prior to submission of this Joint
15 Stipulation to the Court for approval, a First Amended Complaint that adds a Fair Labor Standards
16 Act ("FLSA") claim and adds to the overtime, wage statement, and waiting time penalties claims
17 allegations regarding a regular rate theory. Plaintiff also will provide an amended notice to the
18 LWDA adding regular rate theory allegations to the overtime, wage statement, and waiting time
19 penalties alleged violations, and adding a reference to Labor Code section 511 in the overtime
20 allegations. Prior to the filing of Plaintiff's Motion for Preliminary Approval, Plaintiff and
21 Defendant will file a stipulation seeking leave for Plaintiff to file the First Amended Complaint, in
22 substantially the form attached hereto as **Exhibit 1** ("FAC"), which shall be the operative Complaint
23 in the Action and with regard to this Settlement.

24 "Court" means the San Joaquin County Superior Court or any other court taking jurisdiction
25 of the Settlement.

26 "Defendant" means US FOODS, INC.

27 "Drivers" include Delivery Drivers, Shuttle Drivers, Delivery Driver Trainees, and Delivery
28 Driver Leads.

1 “Effective Date” means the date by which the Court’s order granting Final Approval of this
2 Joint Stipulation and Judgment becomes final. Such Judgment becomes final upon the following
3 events: (i) upon the Court issuing an order granting Final Approval of this Joint Stipulation and
4 entering Judgment thereon; and (ii) the later of the following events: (a) the day after the last day
5 by which a notice of appeal of the Judgment may be timely filed with the California Court of Appeal,
6 and none is filed; (b) if an appeal is filed and is finally disposed of by ruling, dismissal, denial, or
7 otherwise, the day after the last date for filing a request for further review of the Court of Appeal’s
8 decision passes and no further review is requested; (c) if an appeal is filed and there is a final
9 disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and further review of
10 the Court of Appeal’s decision is requested, the day after the request for review is denied with
11 prejudice and/or no further review of the order can be requested; or (d) if review is accepted, the
12 day the Supreme Court of the State of California affirms the Settlement.

13 “Enhancement Award” means the amount to be paid to Plaintiff in recognition of his effort
14 and work in prosecuting the Action on behalf of Class Members, and for his individual general
15 release of claims, including a Civil Code § 1542 waiver. Subject to the Court granting Final
16 Approval of this Settlement and subject to the exhaustion of any and all appeals, Plaintiff will
17 request Court approval of an Enhancement Award of Seven Thousand and Five Hundred Dollars
18 (\$7,500), as approved by the Court, which Defendant agrees not to oppose.

19 “Final Approval” means the date upon which the Court enters an order granting final
20 approval of this Joint Stipulation, after having determined that the settlement is fair, adequate, and
21 reasonable to the Class following notice to the Class and a hearing on the fairness of the settlement.

22 “Final Approval Hearing” means the final hearing held to ascertain the fairness,
23 reasonableness, and adequacy of the Joint Stipulation, after which the Court will enter its order
24 approving the Joint Stipulation finally and entering Judgment thereon.

25 “Gross Settlement Amount” means up to One Million Eighty Thousand Dollars
26 (\$1,080,000.00) that Defendant will pay in the aggregate to resolve this Action, on a non-
27 reversionary basis. The Gross Settlement Amount is all-inclusive. The following costs will be
28 deducted from the Gross Settlement Amount, as approved by the Court: (1) Class Counsels’

1 Attorneys' Fees and Costs; (2) an Enhancement Award to the named Plaintiff; (3) Settlement
2 Administrator's Fees; and (4) the PAGA Settlement Amount. Defendant's corporate payroll tax
3 obligation shall be paid in addition to the Gross Settlement Amount. If Preliminary Approval occurs
4 after November 25, 2020, and the total Class Members increase by more than 12.5% as of the date
5 of Preliminary Approval, then there shall be a corresponding pro-rata increase in the Gross
6 Settlement Amount.

7 "Individual Class Settlement Payment" means the portion of the Net Settlement Amount
8 distributable to each Participating Class Member as set forth in this Agreement.

9 "Individual PAGA Settlement Payment" means the portion of the PAGA Aggrieved
10 Employee Amount distributable to each Aggrieved Employee.

11 "LWDA" means California's Labor and Workforce Development Agency.

12 "LWDA Payment" means the amount that the Parties have agreed to pay to the LWDA in
13 connection with PAGA. Pursuant to PAGA, Seventy-Five Percent (75%), or Thirty-Seven Thousand
14 and Five Hundred Dollars (\$37,500.00) of the PAGA Settlement Amount will be paid to the LWDA.

15 "Net Settlement Amount" means the portion of the Gross Settlement Amount remaining
16 after deductions for the Court-approved Enhancement Award, Settlement Administrator's Fees, the
17 Attorneys' Fees and Costs, and the PAGA Settlement Amount. The Net Settlement Amount will be
18 distributed to Participating Class Members.

19 "Notice of Objection" means a Class Member's valid and timely written objection to the
20 Settlement. For the Notice of Objection to be valid, it must include: (i) the Lawsuit's name and case
21 number; (ii) the objector's full name, signature, address, and telephone number, (iii) a written
22 statement of all grounds for the objection accompanied by any legal support for such objection; (iv)
23 copies of any papers, briefs, or other documents upon which the objection is based; and (v) a
24 statement whether the objector intends to appear at the Final Approval hearing. Any Class Member
25 who does not submit a timely written objection to the Settlement, or who fails to otherwise comply
26 with the specific and technical requirements of this section, will be foreclosed from objecting to the
27 Settlement and seeking any adjudication or review of the Settlement, by appeal or otherwise. Class
28 Members who submit Notices of Objection must make themselves available for deposition.

1 “Notice Packet” means the form mailed by the Settlement Administrator to Class Members
2 regarding this Settlement, substantially in the form attached as **Exhibit 2**.

3 “Opt-Outs” means all Class Members who timely submit a valid Request for Exclusion.

4 “PAGA” means California’s Labor Code Private Attorneys General Act of 2004, as
5 amended (Cal. Labor Code §§ 2698 *et seq.*).

6 “PAGA Aggrieved Employee Amount” means the Twenty-Five Percent (25%) or Twelve
7 Thousand and Five Hundred Dollars (\$12,500.00) of the PAGA Settlement Amount that will be
8 paid to Aggrieved Employees.

9 “PAGA Period” means the time from January 14, 2019 through the earlier of November 25,
10 2020 or the date that the Court grants Preliminary Approval.

11 “PAGA Released Claims” means all claims, demands, rights, liabilities, penalties, fees, and
12 causes of action under PAGA, including under Labor Code sections 558 and/or 2698 *et seq.*,
13 predicated on any Labor Code violations alleged in the operative Complaint (which include Labor
14 Code sections 201-204, 210, 226, 510, 511, 558, 1174, 1174.5, 1182.2, 1185, 1194, 1194.2, 1197,
15 and 1199) or that could have been alleged in the operative Complaint based on the facts, policies,
16 practices, occurrences, or acts alleged in the operative Complaint, or that are based on any alleged
17 failure to pay minimum, regular, or hourly wages, and/or alleged off-the-clock work; failure to pay
18 overtime wages or accurate overtime wages; failure to pay timely wages during employment or upon
19 separation; failure to provide accurate and/or complete wage statements; failure to maintain records.

20 “PAGA Settlement Amount” means the Fifty Thousand Dollars (\$50,000.00) of the Gross
21 Settlement Amount that the Parties agree will be allocated to resolving Aggrieved Employees’
22 claims arising under PAGA.

23 “PAGA Workweeks” means the number of workweeks each Aggrieved Employee worked
24 an alternative workweek schedule in California during the PAGA Period.

25 “Participating Class Members” means all Class Members who do not submit timely and
26 valid Requests for Exclusion.

27 “Parties” means Plaintiff and Defendant collectively.

28 “Preliminary Approval” means the court order preliminarily approving this Joint Stipulation.

1 “Preliminary Approval Hearing” means the court hearing held on the Motion for Preliminary
2 Approval of the Joint Stipulation.

3 “Class Released Claims” means all claims, rights, demands, liabilities, penalties, wages,
4 fees, and causes of action, arising from, or related to, or that were asserted, or that could have been
5 asserted in the Action (whether in tort, contract, statute, or otherwise), including, but not limited to,
6 for alleged violation of Labor Code sections 201-204, 226, 510, 558, 1174, 1174.5, 1182.2, 1185,
7 1194, 1194.2, 1197, or 1199, or any claims based on the following allegations under any theory:
8 failure to pay minimum, regular, or hourly wages, and/or alleged off-the-clock work; failure to pay
9 overtime wages or accurate overtime wages; failure to pay timely wages during employment or upon
10 separation; failure to provide accurate and/or complete wage statements; failure to maintain records;
11 or violation of Cal. Bus. & Prof. Code section 17200 et seq. by engaging in the foregoing conduct.
12 Settlement Class Members’ Class Released Claims include all claims for unpaid wages, overtime
13 wages, statutory penalties, damages of any kind, interest, attorneys’ fees, costs, injunctive relief,
14 restitution, and any other equitable relief under California or federal statute, ordinance, regulation,
15 common law, or other source of law, including but not limited to the California Labor Code,
16 California Business and Professions Code, and California Civil Code, California Industrial Welfare
17 Commission Wage Orders, and the Fair Labor Standards Act (FLSA).

18 “Released Parties” means Defendant and all of its past, present and/or future owners,
19 officers, directors, shareholders, members, employees, agents, principals, heirs, representatives,
20 accountants, auditors, assigns, attorneys, consultants, insurers, parent companies, and their
21 respective successors and predecessors in interest, assigns, subsidiaries, joint ventures, parents, and
22 affiliates, if any.

23 “Request for Exclusion” means a timely writing submitted by a Class Member to the
24 Settlement Administrator indicating a request to be excluded from the Settlement. The Request for
25 Exclusion must: (i) set forth the full name, address, telephone number and last four digits of the
26 Social Security Number of the Class Member requesting exclusion; (ii) be signed by the Class
27 Member; (iii) be returned to the Settlement Administrator; (iv) clearly state that the Class Member
28 does not wish to be included in the Settlement; and (v) be faxed or postmarked on or before the

1 Response Deadline. A Class Member who does not submit a valid Request for Exclusion will be
2 deemed a Participating Class Member and will be bound by all terms of the Settlement Agreement,
3 if the settlement is granted Final Approval by the Court. Any Class Member who submits a Request
4 for Exclusion will still remain bound by the PAGA portion of the Settlement Agreement, including
5 the PAGA Released Claims, to the extent the Class Member also is an Aggrieved Employee.

6 “Response Deadline” means the deadline by which Class Members must postmark or fax to
7 the Settlement Administrator Requests for Exclusion and/or Notices of Objection. The Response
8 Deadline will be forty-five (45) calendar days after the initial mailing of the Notice Packet by the
9 Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a Sunday or State
10 holiday, in which case the Response Deadline will be extended to the next day on which the U.S.
11 Postal Service is open.

12 “Settlement Administrator” means ILYM Group, Inc. or any other third-party class action
13 settlement administrator agreed to by the Parties and approved by the Court for the purposes of
14 administering this Settlement. The Parties each represent that they do not have any financial interest
15 in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator
16 that could create a conflict of interest.

17 “Settlement Administrator’s Fees” means all fees, costs, and expenses as approved by the
18 Court relating to the administration of the Settlement in this Action, including without limitation,
19 printing and mailing the Notice Packet, posting a public website where Class Members can access
20 the Settlement Agreement and receive updates on the progress of the case, receiving and processing
21 Opt-Outs, translating the Notice Packet into Spanish, calculating and determining payments and
22 percentages, tax reporting, distributing the Settlement Amount, regularly updating counsel on the
23 status of administration, and the accounting and maintenance of the Settlement Fund Account. The
24 Settlement Administrator’s Fees will be paid from the Gross Settlement Amount, including, if
25 necessary, any such costs in excess of the amount represented by the Settlement Administrator as
26 being the maximum costs necessary to administer the Settlement. The Settlement Administrator’s
27 Fees are currently estimated to be Ten Thousand Dollars (\$10,000.00). Any Settlement
28 Administrator’s Fees that exceed the amount approved by the Court shall be subtracted from the

1 Gross Settlement Amount.

2 “Settlement Fund Account” means the Qualified Settlement Fund within the meaning of
3 Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
4 Administrator for the benefit of Participating Class Members and Aggrieved Employees, from
5 which all monies payable under this Joint Stipulation shall be paid, as set forth herein.

6 **II. PRE-TRIAL PROCEEDINGS AND NEGOTIATIONS**

7 **A. Discovery, Investigation, and Research**

8 The Parties investigated facts and law throughout the Action. Investigation included the
9 exchange of information under formal and informal discovery, including expert witness
10 consultations. It also included preparing for and attending private mediation with a well-respected
11 wage and hour class action mediator, Tripper Ortman. The Parties also investigated relevant law as
12 applied to the facts of this case, potential defenses as to the merits and class certification, and
13 damages claimed by Plaintiff on behalf of himself, the Class, and the Aggrieved Employees.
14 Discovery addressed Plaintiff’s allegations that Class Members and Aggrieved Employees were not
15 paid all minimum, regular, overtime, or hourly wages owed, performed off-the-clock work, received
16 improper wage statements, and were not paid all owed and due wages upon separation of
17 employment and that Defendant did not maintain accurate and adequate records. Defendant
18 provided Class Counsel with over 1,200 relevant files, including all of the Class Members’ extensive
19 time and pay records, the relevant policies and practices of Defendant, the relevant training materials
20 used by Defendant, and other Class data regarding the Class Released Claims and PAGA Released
21 Claims. The Parties conducted their own evaluations of the potential recoveries based on the claims
22 alleged in the Action.

23 **B. Allegations of the Plaintiff and Benefits of Settlement**

24 This Joint Stipulation was reached after arm’s length bargaining by the Parties with the
25 assistance of an experienced mediator, and after Class Counsel thoroughly reviewed all available
26 evidence. The information exchanged between the Parties allowed them to assess the merits of the
27 claims and defenses, and to reach a compromise of the issues.

28 Plaintiff and Class Counsel all contend the claims asserted in the Action have merit.

1 However, they also acknowledge the expense and delay of continued litigation. Class Counsel has
2 considered the uncertain outcome and risk of litigation, Defendant's defenses, and the difficulties
3 and delays inherent in such litigation. Class Counsel also considered the potential difficulty of
4 maintaining the Action as a class and/or PAGA action and the likelihood of appeals.

5 Class Counsel determined this Joint Stipulation confers substantial benefit to the Class and
6 respectfully submits that an independent review by the Court will confirm this conclusion. Class
7 Counsel has determined that this Joint Stipulation is in the best interests of Plaintiff and the Class
8 Members.

9 **C. Defendant's Denial of Wrongdoing and Benefits of Settlement**

10 In entering into this Settlement Agreement, Defendant does not admit, and specifically
11 denies, all claims alleged in the Action and further denies class or PAGA treatment is appropriate
12 for any purpose other than this Settlement. Defendant contends it complied with all applicable state,
13 federal, and local laws. It is Defendant's position that, if litigation continued, class certification
14 would not be granted, or if it were, that it would be reversed, and that the named Plaintiff is not an
15 adequate class or PAGA representative, his claims are not typical of the Class Members, and
16 individual issues predominate over common ones. However, Defendant has concluded that further
17 litigation would be protracted and expensive. Thus, Defendant has determined that it is desirable
18 that the Action be fully and finally settled in the manner and upon the terms and conditions herein.

19 **D. Intent of the Settlement**

20 This Joint Stipulation intends to achieve the following: (1) entry of an order approving the
21 Joint Stipulation and granting the monetary relief set forth herein, including the PAGA Settlement
22 Amount; (2) entry of final judgment on Plaintiff's alleged claims; (3) a general release of claims by
23 Plaintiff; and (4) discharge of Released Parties from liability for all Class Released Claims and
24 PAGA Released Claims.

25 **III. PROCEDURAL ISSUES**

26 **A. First Amended Complaint**

27 Promptly after execution of this settlement agreement, and prior to the filing of Plaintiff's
28 Motion for Preliminary Approval, Plaintiff and Defendant shall file a stipulation seeking leave for

1 Plaintiff to file a FAC. As a condition of settlement, Plaintiff will file a FAC in this Action to
2 conform the pleadings with the scope and definitions of the Settlement. The FAC, substantively in
3 the form attached as **Exhibit 1** to this Joint Stipulation, will be deemed the operative Complaint in
4 the Action and for purposes of the Settlement. The FAC is permitted solely for purposes of
5 settlement. In the event that: (i) the Court does not finally approve the Settlement as provided herein;
6 or (ii) the Settlement does not become final for any other reason, the Parties' stipulation to allow
7 Plaintiff to file a FAC as part of this settlement shall become void and the FAC shall be considered
8 withdrawn or otherwise off of the Court docket. Defendant may file an Answer to the FAC within
9 30 days after the FAC is filed.

10 **B. Preliminary Approval**

11 Class Counsel will submit this Joint Stipulation to the Court with a Motion for Preliminary
12 Approval of Class and PAGA Action Settlement ("Motion for Preliminary Approval"). Plaintiff and
13 Class Counsel will be responsible for drafting the Motion for Preliminary Approval and will provide
14 a draft to Defendant's counsel for their review at least five (5) business days before the filing
15 deadline. The Parties will work in good faith to consider and implement any proposed revisions to
16 Plaintiff's Motion for Preliminary Approval. In accordance with Labor Code section 2699(1)(2),
17 Class Counsel shall submit a copy of this proposed Settlement to the LWDA on the same date on
18 which Plaintiff files the Motion for Preliminary Approval.

19 **C. Settlement Administrator**

20 The Settlement Administrator will handle: (1) preparing, printing, and mailing the Notice
21 Packet to Class Members and Aggrieved Employees, which includes translation of the Notice Packet
22 into Spanish; (2) receiving, reviewing, and tracking any Opt-Outs; (3) calculating payments under
23 the Settlement; (4) handling inquiries from Class Members and Aggrieved Employees concerning
24 the Notice Packet; (5) resolving any Class Workweek and/or PAGA Workweek disputes; (6)
25 providing weekly status reports to Defendant's counsel and Class Counsel regarding the mailings,
26 Opt-Outs, Notices of Objection to the Settlement, whether any Class Member or Aggrieved
27 Employee has submitted a challenge to any information contained in their Notice Packet, and
28 Settlement payments; (7) providing copies of any Requests for Exclusion and any contact

1 information updates to Defendant; (8) distributing Individual Class Settlement Payments to Class
2 Members, Individual PAGA Settlement Payments, and payments to other parties under the terms of
3 this Joint Stipulation; (9) providing due diligence declarations for submission to the Court, as
4 needed; (10) tax reporting and printing and providing Participating Class Members, Aggrieved
5 Employees, and Plaintiff with tax forms as required under this Joint Stipulation and applicable law,
6 including the issuance of IRS 1099 and W-2 forms, and providing copies of the same to Defendant;
7 (11) responding to submissions of Opt-Outs, or contact information updates; (12) providing the
8 Parties any updated reports regarding the administration of the Settlement Agreement as needed or
9 requested; and (13) such other tasks as the Parties mutually agree or the Court orders the Settlement
10 Administrator to perform.

11 The Settlement Administrator will skip trace and re-mail all returned, undeliverable mail
12 within seven (7) days of receiving notice the mailing was undeliverable. The Settlement
13 Administrator will also effectuate all payments provided for in this Settlement, as approved by the
14 Court. The Settlement Administrator will also handle the distribution of any remaining amounts
15 from uncashed checks in accordance with California Code of Civil Procedure § 384(b) and this Joint
16 Stipulation, as approved by the Court.

17 Settlement Administrator's Fees are to be paid from the Gross Settlement Amount.

18 Not later than ten (10) business days prior to the Final Approval Hearing, the Settlement
19 Administrator will provide to the Parties a draft declaration of due diligence setting forth its
20 compliance with its obligations under this Joint Stipulation, which the Settlement Administrator
21 shall update and finalize prior to the Final Approval Hearing.

22 **D. Notice to Class Members**

23 If the Court grants Preliminary Approval, notice will be provided to Class Members as
24 follows:

25 Within twenty-one (21) calendar days after Preliminary Approval, Defendant will provide
26 the Settlement Administrator with the following information from Defendant's records about each
27 Class Member: (1) first and last name; (2) last known mailing address; (3) social security number;
28 (4) total Class Workweeks; and (5) total PAGA Workweeks (collectively, the "Class Data"). The

1 Class Data will be treated as confidential, disclosed only to the Settlement Administrator, and used
2 for Settlement purposes only.

3 Within ten (10) calendar days after the Settlement Administrator's receipt of the Class Data,
4 it will mail the Notice Packet to Class Members via first-class regular U.S. mail.

5 Prior to mailing, the Settlement Administrator will perform a search based on the National
6 Change of Address Database for information to update and correct any known or identifiable address
7 changes. Efforts to locate updated address for undeliverable notices will continue for forty-five (45)
8 calendar days from the date the Notice Packet is first mailed to Opt-Out of the Class. If a new address
9 is obtained by way of a returned Notice Packet, then the Settlement Administrator will, within five
10 (5) business days, forward the original Notice Packet to the updated address via first-class regular
11 U.S. mail, indicating on the original packet the date of such re-mailing. If no forwarding address is
12 provided, the Settlement Administrator shall promptly attempt to determine a correct address by the
13 use of skip-tracing, or other type of automated search, using the name, address and/or Social
14 Security number of the Class Member involved, and shall then perform a re-mailing to the Class
15 Member whose Notice Packet was returned as non-deliverable, assuming another mailing address
16 is identified by the Settlement Administrator.

17 Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or by
18 request, will have the latter of (a) an additional fifteen (15) calendar days, or (b) the Response
19 Deadline to submit a Request for Exclusion or a Notice of Objection to the Settlement.

20 A returned Notice Packet will be forwarded only once by the Settlement Administrator.
21 Upon completion of these steps by the Settlement Administrator, the Parties will be deemed to have
22 satisfied their obligation to provide notice of the Settlement to Class Members. Each and all Class
23 Members will be bound by all terms of the Joint Stipulation (including the Class Released Claims)
24 and the Court's Preliminary Approval and Final Approval orders and final judgment, unless the
25 Class Member submits a timely and valid Request for Exclusion to Opt-Out of the Class. However,
26 any Class Member who submits a Request for Exclusion will still remain bound by the PAGA
27 portion of the Settlement Agreement, including the PAGA Released Claims, to the extent the Class
28 Member also is an Aggrieved Employee.

1 All Class Members will have until the Response Deadline to submit a Notice of Objection,
2 to dispute their Class Workweek totals, or to Opt-Out of the Class by submitting a Request for
3 Exclusion. Aggrieved Employees cannot Opt-Out of the PAGA portion of this Settlement, but they
4 may dispute their PAGA Workweek totals provided they do so by the Response Deadline.

5 **E. Procedure for Opting Out of the Class**

6 Class Members who wish to exclude themselves from the Class must submit to the
7 Settlement Administrator a valid, written Request for Exclusion on or before the Response Deadline,
8 unless the Court orders otherwise. The Request for Exclusion must be signed by the Class Member
9 and contain all information required by this Joint Stipulation. In the case of Requests for Exclusion
10 that are mailed to the Settlement Administrator, the postmark date will be the exclusive means to
11 determine whether a Request for Exclusion has been timely submitted. At no time will any of the
12 Parties or their counsel seek to directly or indirectly solicit or otherwise encourage any Class
13 Member to opt out of the Settlement Class, but may, if warranted by the circumstances, advise
14 individual Class Members of the consequences of opting out.

15 Any Class Member who submits a valid, timely Request for Exclusion will not receive an
16 Individual Class Settlement Payment, will not be able to object, appeal, or comment on the
17 Settlement, and will not be bound by the Class portion of this Settlement. However, any Class
18 Member who submits a Request for Exclusion will still be bound by the PAGA portion of the
19 Settlement, including the PAGA Released Claims, to the extent the Class Member is also an
20 Aggrieved Employee. Class Members who fail to timely submit a valid Request for Exclusion will
21 be deemed Participating Class Members, and shall be bound by all the terms of this Joint Stipulation,
22 and any judgment and order entered by the Court in the Action.

23 If a Class Member's Request for Exclusion is defective as to the requirements listed in this
24 Joint Stipulation, that Class Member will be given an opportunity to cure the defect(s). The
25 Settlement Administrator will mail the Class Member a cure letter within three (3) business days of
26 receiving the defective submission to advise the Class Member that his or her submission is
27 defective and that the defect must be cured to render the Request for Exclusion valid. The Class
28 Member will have until the later of the Response Deadline or fifteen (15) calendar days from the

1 date of the cure letter, whichever date is later, to postmark or fax a revised Request for Exclusion.
2 If the revised Request for Exclusion is not postmarked or received by fax within that period, it will
3 be deemed untimely.

4 **F. Procedure for Disputing Class Workweeks and/or PAGA Workweeks**

5 The Settlement Administrator's determination of eligibility for, and the amount of, any
6 Settlement payment under this Joint Stipulation will be conclusive, final, and binding on all Parties,
7 including all Participating Class Members and Aggrieved Employees. To dispute the number of
8 Class Workweeks and/or PAGA Workweeks with which he or she has been credited, a Class
9 Member and/or Aggrieved Employee must timely produce evidence to the Settlement Administrator
10 showing that the Class Workweek and/or PAGA Workweek information is inaccurate by the
11 Response Deadline. The delivery date is deemed to be the date the dispute is deposited in the U.S.
12 Mail as evidenced by the postmark. The Settlement Administrator shall decide the dispute.
13 Defendant's records will be presumed correct, but the Settlement Administrator will evaluate the
14 evidence submitted by the Class Member and/or Aggrieved Employee and will make the final
15 decision on the merits of the dispute. The Settlement Administrator may ask Defendant to produce
16 relevant portions of the personnel and payroll files of the Class Member and/or Aggrieved Employee
17 disputing his or her credited Class Workweeks and/or PAGA Workweeks in order for the Settlement
18 Administrator to resolve the dispute. All disputes will be decided within ten (10) calendar days after
19 the Response Deadline.

20 **G. Procedure for Objecting to Settlement**

21 Any Class Member who seeks to object to the Settlement may serve a Notice of Objection
22 to the Settlement Administrator at the address set forth in the Notice Packet. All Notices of Objection
23 must be submitted to the Settlement Administrator by the Response Deadline. The Notice of
24 Objection must be signed by the Class Member and contain all information required by this
25 Settlement Agreement. For mailed Notices of Objection, the postmark will be deemed the exclusive
26 means for determining that the Notice of Objection is timely. Class Members who do not serve
27 written objections or appear at the Final Approval Hearing to explain their objection(s) shall be
28

1 deemed to have waived any objections and shall be foreclosed from making any objections (whether
2 by appeal or otherwise) to the Settlement.

3 At no time will any of the Parties or their counsel seek to solicit or otherwise encourage any
4 Class Member to submit objections to the Settlement Agreement or to appeal from the Final
5 Approval order and judgment. Class Counsel will not represent any Class Members with respect to
6 any such objections to this Settlement.

7 **H. Final Approval**

8 Plaintiff and Class Counsel will be responsible for drafting the Motion for Final Approval
9 and will provide a draft to Defendant's counsel for their review at least five (5) business days before
10 the filing deadline. The Parties will work in good faith to consider and implement any proposed
11 revisions to Plaintiff's Motion for Final Approval. At the Final Approval Hearing, Class Counsel
12 will move the Court for the entry of judgment under Rule 3.769(h) of the California Rules of Court,
13 incorporating the Joint Stipulation. Class Counsel will seek approval of the Joint Stipulation as being
14 fair, adequate, and reasonable to the Class Members. Class Counsel will submit to the Court such
15 pleadings and evidence as required for the Court's determination.

16 **IV. SETTLEMENT TERMS**

17 **A. Gross Settlement Amount and Minimum Settlement Payments**

18 Pending Final Approval of this Settlement, Defendant will pay up to the aggregate Gross
19 Settlement Amount on an all-inclusive, non-reversionary basis. Defendant will not be required to
20 contribute additional sums to fund the Settlement or otherwise resolve this action. Defendant will
21 wire or mail the entire Gross Settlement Amount and the employer's share of payroll taxes to the
22 Settlement Fund Account within ten (10) business days after the Effective Date.

23 All Class Members will be eligible to participate in the Settlement, including those that
24 previously accepted an individual settlement payment from Defendant during the pendency of this
25 litigation, if any. Participating Class Members will receive a pro-rata share of the Net Settlement
26 Amount under a Class Workweek formula, as set forth below.

27 **B. Allocation of Settlement Proceeds**

28 The Gross Settlement Amount is inclusive of and will be allocated as follows, subject to

1 Court approval:

- 2 i. Attorneys' Fees and Costs, which is the amount the Court awards to Class Counsel
3 for their attorneys' fees in an amount not exceeding one-third (\$360,000) of the Gross
4 Settlement Amount, and reasonable litigation costs in an amount not exceeding
5 Twenty-Five Thousand Dollars (\$25,000.00);
- 6 ii. The Enhancement Award, which comprises the amount the Court awards to the
7 named Plaintiff as class representative, in an amount not exceeding \$7,500.00;
- 8 iii. The Settlement Administrator's Fees;
- 9 iv. The PAGA Settlement Amount; and
- 10 v. The Net Settlement Amount, which shall be distributed to Participating Class
11 Members as provided below.

12 Payment to each Participating Class Member shall be allocated fifty percent (50%) as non-
13 wage penalties and interest, for which IRS Forms 1099-MISC will be issued, and fifty percent (50%)
14 wages, for which IRS Forms W-2 will be issued. Payment to each Aggrieved Employee shall be
15 allocated as one hundred percent (100%) non-wage penalties, for which IRS Forms 1099-MISC will
16 be issued. The Settlement Administrator will be responsible for issuing to Plaintiff, Participating
17 Class Members, Aggrieved Employees, and Class Counsel any W-2, 1099, or other tax forms as
18 may be required by law for all amounts paid pursuant to this Settlement. The Settlement
19 Administrator will also be responsible for forwarding all payroll taxes and penalties to the
20 appropriate government authorities.

21 If the Court approves a lesser amount in Attorneys' Fees and Costs, the Enhancement Award,
22 Settlement Administrator's Fees, or the PAGA Settlement Amount than set forth in this Joint
23 Stipulation, then the Net Settlement Fund will increase proportionately.

24 Defendant and Defendant's counsel make no representations or warranties as to the tax
25 treatment, consequences, or legal effect of the payments called for hereunder, and Plaintiff and Class
26 Members are not relying on any statement, representation, or calculation by Defendant, Defendant's
27 Counsel, or the Settlement Administrator in this regard. Nothing contained in this Settlement is
28 intended to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be

1 relied on as such. Plaintiff, Participating Class Members, and Aggrieved Employees understand and
2 agree that, except for the payment of the employer's share of the payroll taxes, Plaintiff,
3 Participating Class Members, and Aggrieved Employees will be solely responsible for correctly
4 characterizing any compensation received under the Settlement on his/her personal income tax
5 returns and paying any and all taxes due for any and all amounts paid to them under the Settlement.
6 No Gross Settlement Amount funds will revert to Defendant.

7 The Individual Class Settlement Payments made to Participating Class Members and
8 Individual PAGA Settlement Payments made to Aggrieved Employees under this Settlement, as
9 well as any other payments made pursuant to this Settlement, will not be utilized to calculate any
10 additional benefits under any benefit plans to which any Class Members or Aggrieved Employees
11 may be eligible, including but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock
12 purchase plans, vacation plans, sick leave plans, paid time off plans, and any other benefit plan.
13 Rather, it is the Parties' intention that this Joint Stipulation will not affect any rights, contributions,
14 or amounts to which any Class Members or Aggrieved Employees may be entitled under any benefit
15 plans.

16 **C. Distribution of Settlement Proceeds**

17 The Settlement Administrator will keep Defendant's counsel and Class Counsel apprised of
18 all distributions from the Settlement Fund Account. No person will have any claim against
19 Defendant, Defendant's counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on
20 distributions and payments made under this Joint Stipulation. Distribution of the Gross Settlement
21 Amount will be as follows:

22 **1. Initial Payment**

23 Within fifteen (15) business days after the Effective Date, the Settlement Administrator will
24 pay the Attorneys' Fees and Costs awarded to Class Counsel, the Enhancement Award, the LWDA
25 Payment to the LWDA, and the Settlement Administrator's Fees, based on how the Court rules at
26 the Final Approval Hearing.

27 **2. Payment to Participating Class Members and Aggrieved Employees**

28 The Settlement Administrator will calculate the Individual Class Settlement Payments to

1 Participating Class Members. The Individual Class Settlement Payments to Settlement Class
2 Members will be made pro rata based on the number of Class Workweeks that each Settlement Class
3 Member worked during the Class Period. Individual Class Settlement Payments will be calculated
4 as follows: $[(\text{Settlement Class Member's Class Workweeks}) \div (\text{total of all Settlement Class}$
5 $\text{Members' Class Workweeks})] \times [\text{Net Settlement Amount}]$.

6 The Settlement Administrator will calculate the Individual PAGA Settlement Payments to
7 Aggrieved Employees. The Individual PAGA Settlement Payments to Aggrieved Employees will
8 be made pro rata based on the number of PAGA Workweeks that each Aggrieved Employee worked
9 during the PAGA Period. Individual PAGA Settlement Payments will be calculated as follows:
10 $[(\text{Aggrieved Employee's PAGA Workweeks}) \div (\text{total of all Aggrieved Employees' PAGA}$
11 $\text{Workweeks})] \times [\text{PAGA Aggrieved Employee Amount}]$.

12 To the extent a Participating Class Member is also an Aggrieved Employee, he/she shall
13 receive his/her Individual Class Settlement Payment and Individual PAGA Settlement Payment in
14 the same check. Any Class Member who submits a Request for Exclusion will remain bound by the
15 PAGA portion of the Settlement Agreement, including the PAGA Released Claims, to the extent
16 the Class Member also is an Aggrieved Employee and will still receive an Individual PAGA
17 Settlement Payment for this portion.

18 The Individual Class Settlement Payments to Participating Class Members and the
19 Individual PAGA Settlement Payments to Aggrieved Employees will be paid within twenty-five
20 (25) business days after the Effective Date.

21 The payments to Participating Class Members and Aggrieved Employees shall be
22 transmitted by U.S. Mail to the last-known addresses. The settlement payment checks to
23 Participating Class Members shall contain language in the endorsement section which states:

24 The cashing, deposit, or negotiation of this settlement check shall be deemed to be
25 your consent in writing to become a party to this action for the purposes of
26 effectuating the settlement and release of claims arising under the Fair Labor
27 Standards Act ("FLSA") as described in the Settlement Agreement in *Rudy Sandoval*
28 *v. US Foods, Inc. doing business as US Foodservice, Inc.*, San Joaquin County

1 Superior Court, Case No. STK-CV-UOE-2020-0000978.

2 No later than 220 days after the mailing of the settlement payment checks, the Settlement
3 Administrator shall prepare and sign a declaration attaching as an exhibit all the settlement payment
4 checks that have been cashed by the Participating Class Members and Aggrieved Employees. Class
5 Counsel shall file the declaration and exhibit with the Court as the current record of all consents by
6 Participating Class Members to opt into the action and release their FLSA claims.

7 **D. Uncashed Settlement Checks**

8 Any checks issued to Participating Class Members and Aggrieved Employees shall be
9 negotiable for at least one-hundred and eighty (180) calendar days from the date the checks are
10 mailed. The aggregate value of all settlement checks that remain uncashed after one-hundred
11 eighty (180) days after the checks are mailed will be distributed pursuant to Cal. Code Civ. Proc. §
12 384(b) to California Rural Legal Assistance, Inc. located at 145 E. Weber Avenue, Stockton, CA
13 95202 by the Settlement Administrator within two-hundred (200) calendar days from the date on
14 which the checks were mailed. Participating Class Members and Aggrieved Employees whose
15 Individual Class Settlement Payment and Individual PAGA Settlement Payments checks are
16 cancelled or remain uncashed shall, nevertheless, be bound by this Settlement. The Parties agree
17 that this disposition results in no “unpaid residue” under California Civil Procedure Code § 384, as
18 the entire Net Settlement Amount and PAGA Aggrieved Employee Amount will be paid out to
19 Participating Class Members and Aggrieved Employees, whether or not they all cash their
20 settlement checks. Defendant will not be required to pay any interest on said amounts.

21 **E. Settlement Amounts Payable as Attorneys’ Fees and Costs**

22 Defendant will not oppose a request for attorneys’ fees to Class Counsel up to one-third
23 (\$360,000.00) of the Gross Settlement Amount. All fees awarded by the Court to Class Counsel will
24 be deducted from the Gross Settlement Amount. Class Counsel’s attorney fee application will be
25 submitted with supporting documentation and heard during the Final Approval Hearing. The Fee
26 Award will be determined by the Court.

27 Defendant will not oppose a request for reasonable litigation expenses to Class Counsel in
28 an amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00). All costs approved by the

1 Court to Class Counsel will be deducted from the Gross Settlement Amount. Class Counsel's request
2 for costs must be submitted with its fee application and with supporting documentation, and heard
3 during the Final Approval Hearing. The Costs Award will be determined by the Court.

4 The Court-approved Attorneys' Fees and Costs shall be deemed to cover all work performed,
5 costs, and expenses related to the investigation, prosecution, and settlement of the Action incurred
6 by Class Counsel. Any fees or costs sought by Class Counsel but not approved by the Court shall
7 become part of the Net Settlement Amount to be distributed to Participating Class Members.

8 **F. Enhancement Award**

9 Defendant will not object to an Enhancement Award of Seven Thousand and Five Hundred
10 Dollars (\$7,500.00) to the named Plaintiff. The Enhancement Award will be considered
11 miscellaneous income. The Settlement Administrator will issue a Form 1099, and any other tax
12 forms, to Plaintiff relating to the Enhancement Award. The Enhancement Award will be determined
13 by the Court. The Enhancement Payment will be paid from the Gross Settlement Amount and will
14 be in addition to Plaintiff's Individual Class Settlement Payment and Individual PAGA Settlement
15 Payment paid pursuant to this Settlement. Plaintiff will be solely and legally responsible to pay any
16 and all applicable taxes on the Enhancement Payment.

17 **G. Certificate of Completion by Settlement Administrator**

18 Within ten (10) calendar days after final disbursement of all funds from the Gross Settlement
19 Account, the Settlement Administrator will provide Class Counsel and Defendant's Counsel a
20 declaration certifying completion of its duties and a final report on the disbursement of all funds
21 from the Gross Settlement Amount.

22 **H. Settlement Administrator's Fees**

23 The Parties agree Settlement Administrator's Fees will be deducted from the Gross
24 Settlement Amount, subject to approval by the Court.

25 **I. PAGA Settlement Amount**

26 The Parties agree to allocate \$50,000.00 of the Gross Settlement Amount to the resolution
27 of all claims for penalties under PAGA. Under Labor Code § 2699(i), 75% of that amount will be
28 paid to the LWDA, and the other 25% will be paid to Aggrieved Employees.

1 The Parties agree that this Joint Stipulation is not contingent upon the Court's (or an
2 appellate court's) approval of the PAGA Settlement Amount in the amount requested by Class
3 Counsel, and that the Court's (or an appellate court's) decision to approve a PAGA Settlement
4 Amount in an amount less or more than requested by Class Counsel shall not invalidate this Joint
5 Stipulation, which shall remain fully effective and enforceable.

6 If the Court (or an appellate court) awards a PAGA Settlement Amount in an amount less
7 than the amount requested by Class Counsel, only the awarded amounts shall be paid and shall
8 constitute satisfaction of the obligations set forth in this Joint Stipulation and full payment
9 thereunder. The difference between the requested and awarded amounts shall also be reallocated to
10 the Net Settlement Amount. If the Court (or an appellate court) awards a PAGA Settlement Amount
11 in an amount above that requested by Class Counsel, the increased amount will be paid out of the
12 Gross Settlement Amount.

13 **V. RELEASE OF CLAIMS BY THE CLASS**

14 Upon the Effective Date, Plaintiff and Participating Class Members will be deemed to have
15 released the Released Parties of and from all of the Class Released Claims during the Class Period.

16 **VI. RELEASE OF CLAIMS BY AGGRIEVED EMPLOYEES**

17 Upon the Effective Date, Plaintiff and Aggrieved Employees will be deemed to have
18 released the Released Parties of and from all of the PAGA Released Claims during the PAGA
19 Period.

20 **VII. RELEASE OF CLAIMS BY PLAINTIFF**

21 In addition to the Class Released Claims applicable to the Participating Class Members and
22 the PAGA Released Claims applicable to the Aggrieved Employees, and in consideration for the
23 Enhancement Payment, Plaintiff releases the Released Parties from all claims, demands, rights,
24 liabilities and causes of action of every nature and description whatsoever, known or unknown,
25 asserted or that might have been asserted, whether in tort, contract, or violation of any local, state
26 or federal statute, rule or regulation arising out of, relating to, or in connection with any act or
27 omission by or on the part of any of the Released Parties committed or omitted through the Effective
28 Date. This release is intended to have the broadest possible application but excludes claims for

workers' compensation benefits, claims for unemployment benefits, and any current and/or future claims that are unwaivable as a matter of law. Nothing in this Agreement is intended to or shall be interpreted: (i) to restrict or otherwise interfere with Plaintiff's obligation to testify truthfully in any forum; or (ii) to restrict or otherwise interfere with Plaintiff's right and/or obligation to contact, cooperate with, provide information to, or participate in any investigation conducted by, any government agency or commission. Plaintiff's release as set forth herein includes a waiver of all rights under California Civil Code section 1542, which includes a release of all known and unknown claims against the Released Parties that have been alleged or could have been alleged arising out of the facts, circumstances, causes of action, and primary rights alleged in the Action. Civil Code section 1542 provides:

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

Upon the Effective Date, Plaintiff will be deemed to have expressly waived his rights under Civil Code section 1542, as set forth above. Plaintiff's execution of this Joint Stipulation will be deemed a consent by Plaintiff to this general release of claims and Section 1542 waiver.

VIII. NULLIFICATION OF THE JOINT STIPULATION

If (a) the Court should for any reason fail to approve this Joint Stipulation in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment in the Action, or (c) the judgment is reversed, modified, or declared or rendered void, this Joint Stipulation will be null and void. Invalidation of any material portion of this Joint Stipulation will invalidate this Joint Stipulation in its entirety, unless the Parties subsequently agree in writing that the remaining provisions of the Joint Stipulation are to remain in full force and effect. "Material" terms include, but are not limited to, the Gross Settlement Amount, the Class Released Claims, the PAGA Released Claims, and the Released Parties.

1 The Parties agree to stipulate to class action certification for purposes of the Settlement only.
2 If, for any reason, the Settlement is not approved, the stipulation to certification will be void and the
3 Court shall, either *sua sponte* or on the motion of any party, decertify the class. The Parties further
4 agree that certification for purposes of the Settlement is not an admission that class action
5 certification is proper under the standards applied to contested certification motions, and that this
6 Joint Stipulation will not be admissible in this or any other proceeding as evidence that either (i) a
7 class action should be certified, or (ii) Defendant is liable to Plaintiff or any Class Member, other
8 than according to the Settlement's terms.

9 If the number of Class Members who submit valid Requests for Exclusion reaches 5%,
10 Defendant may rescind this Joint Stipulation. If Defendant rescinds, it must do so in writing to Class
11 Counsel.

12 If the Joint Stipulation is terminated, nullified, or rescinded, then: (i) neither this Joint
13 Stipulation, nor any of the related negotiations or proceedings, will be of any force or effect, and no
14 Party shall be bound by any of its terms; (ii) the Settlement Agreement and all negotiations,
15 statements, and proceedings relating thereto shall be without prejudice to the rights of any of the
16 Parties, all of whom shall be restored to their respective positions in the Action prior to the execution
17 of the Settlement Agreement; (iii) Defendant shall have no obligation to make any payments to any
18 Party, Class Member, Aggrieved Employee, or attorney; (iv) the terminating Party shall pay the
19 Settlement Administrator for services rendered up to the date the Settlement Administrator is
20 notified that the settlement has been terminated; (v) the Preliminary Approval Order, Final Approval
21 Order and Judgment, including any order certifying the Class, shall be vacated; (vi) neither this
22 Settlement Agreement, nor any ancillary documents, actions, statements or filings in furtherance of
23 the settlement (including all matters associated with the mediation) shall be admissible or offered
24 into evidence in the Action or any other action for any purpose whatsoever; and (vii) any documents
25 generated to bring the settlement into effect, will be null and void, and any order or judgment entered
26 by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the
27 beginning.
28

1 **IX. DUTIES OF THE PARTIES**

2 **A. Confidentiality**

3 The Parties, Class Counsel and counsel for Defendant each agree to treat all terms,
4 conditions and provisions of this Joint Stipulation as confidential until Plaintiff files his Motion
5 for Preliminary Approval. This provision does not preclude any attorney-client privileged
6 communications.

7 **B. Mutual Full Cooperation**

8 The Parties agree to cooperate to accomplish and implement the terms of this Joint
9 Stipulation. Such cooperation will include, but is not necessarily limited to, execution of such other
10 documents and taking such other actions as maybe reasonably necessary to fulfill the terms of this
11 Joint Stipulation. The Parties will use their best efforts, including all efforts contemplated by this
12 Joint Stipulation and any other efforts that may become necessary by Court order, or otherwise, to
13 effectuate this Joint Stipulation and the terms set forth herein. As soon as practicable after execution
14 of this Joint Stipulation, Class Counsel, with the cooperation of Defendant and its counsel, will try
15 to secure Preliminary Approval and Final Approval.

16 **C. Duty to Support and Defend the Settlement**

17 The Parties agree the Settlement is fair, adequate, and reasonable and will so represent to the
18 Court. The Parties agree to abide by all terms of the Joint Stipulation in good faith and to support
19 the Joint Stipulation fully, and to use their best efforts to defend this Settlement from any legal
20 challenge, whether by appeal or collateral attack.

21 If the Court fails to enter a Final Approval Order at or after the Final Approval Hearing, or
22 if the Final Approval Order and Judgment is set aside by appeal, the Settlement Administrator will
23 within ten (10) calendar days provide notice to Class Members and Aggrieved Employees that the
24 Agreement did not receive Final Approval and that, as a result, no payments will be made to Class
25 Members and Aggrieved Employees under the Agreement. The content of such notice shall be
26 agreed to by the Parties, and such notice shall be mailed by the Settlement Administrator via first
27 class U.S. mail, postage prepaid, and email to the addresses used by the Settlement Administrator
28 in mailing the Notice Packets.

1 **X. MISCELLANEOUS PROVISIONS**

2 **A. Interim Stay in Proceedings**

3 The parties agree to hold in abeyance all proceedings in the Action, except such proceedings
4 necessary to implement and complete the Settlement Agreement, pending the Final Approval
5 hearing to be conducted by the Court.

6 **B. Privacy of Documents and Information**

7 Plaintiff and Class Counsel agree that they will destroy all confidential documents and information
8 provided to them by Defendant within thirty (30) days of the Effective Date, except for documents
9 that must be saved for malpractice purposes or ethical rules governing attorney conduct in
10 California and the United States. Plaintiff and Class Counsel further agree that none of the
11 documents and information provided to them by Defendant shall be used for any purpose other
12 than prosecution of the Action or the defense or prosecution of a malpractice action or defense of
13 any state bar complaint.

14 **C. No Media Comments or Publicity**

15 If contacted by the media, the Parties and Class Counsel will merely inform them that the
16 Action has been resolved. In addition, there shall be no publicity sought or undertaken whatsoever
17 with regard to the Action or the terms of this Joint Stipulation. Plaintiff and Class Counsel will not
18 issue a press release or notify the media about the terms of the Settlement or advertise or market any
19 of the terms of the Settlement through written, recorded, or electronic communications.

20 **D. Waiver of Appeals**

21 The Parties and Class Members agree to waive any appellate rights; provided, however,
22 Plaintiff may appeal any reduction in the Attorneys' Fees and/or Cost award. The outcome of any
23 proceeding related to Class Counsel's application for Attorneys' Fees and Costs shall not terminate
24 this Joint Stipulation or otherwise affect the Court's ruling on the motion for Final Approval.

25 **E. No Admission of Liability**

26 The Parties enter into this Joint Stipulation to resolve the dispute that has arisen between
27 them and to avoid the burden, expense and risk of continued litigation. In entering into this Joint
28 Stipulation, Defendant does not admit, and specifically denies, that it violated any federal, state, or

1 local law; violated any regulations or guidelines promulgated pursuant to any statute or any other
2 applicable laws, regulations or legal requirements; breached any contract; violated or breached any
3 duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with
4 respect to its current and former employees. This Joint Stipulation is not an admission of liability
5 by Defendant or any of the Released Parties. Except as necessary in a proceeding to enforce the
6 terms of this Settlement, this Joint Stipulation and its terms and provisions will not be offered or
7 received as evidence in any action or proceeding to establish any liability or admission on the part
8 of Defendant or to establish the existence of any condition constituting a violation of, or a non-
9 compliance with, federal, state, local or other applicable law.

10 **F. Non-Disparagement**

11 Plaintiff and Class Counsel agree not to publicly disparage Defendant or any of the Released
12 Parties. For the purpose of this Settlement, "disparage" includes, without limitation, making
13 comments or statements to any person or entity including, but not limited to, the press and/or media,
14 employees, partners or principals of the Released Parties or any entity with whom the Released
15 Parties have a business relationship, that would adversely affect in any manner (a) the conduct of
16 the business of the Released Parties (including, but not limited to, any business plans or prospects)
17 or (b) the reputation of the Released Parties.

18 **G. Construction**

19 The Parties agree this Joint Stipulation resulted from lengthy, intensive, arm's-length
20 negotiations, was drafted and revised by both Parties, and it is not to be construed for or against
21 either of the Parties for any reason.

22 **H. Choice of Law**

23 This Joint Stipulation is intended to and will be interpreted and governed by the laws of the
24 State of California, without regard to conflicts of law principles. The Court will retain continuing
25 jurisdiction to enforce the Settlement.

26 **I. Captions and Interpretations**

27 Paragraph, titles, or captions contained herein are inserted as a matter of convenience and
28 for reference only, and in no way define, limit, extend, or describe the scope of this Joint Stipulation

1 or any provision thereof.

2 **J. Modification**

3 No waiver, modification or amendment of the terms of this Joint Stipulation, whether
4 purportedly made before or after the Court's approval of this Joint Stipulation, shall be valid or
5 binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth
6 in such written waiver, modification or amendment, subject to any required Court approval. This
7 Joint Stipulation may not be discharged except by performance under its terms or by a writing signed
8 by the Parties.

9 **K. Integration Clause**

10 This Joint Stipulation, including the exhibits attached hereto and incorporated by reference,
11 constitutes the entire agreement between the Parties with regard to the subject matter contained
12 herein. All prior or contemporaneous agreements, understandings, representations, and statements,
13 whether oral or written, between the Parties are merged herein. No rights under this Joint Stipulation
14 may be waived except in writing.

15 **L. Successors and Assigns**

16 This Joint Stipulation will be binding upon and inure to the benefit of the Parties and their
17 respective heirs, trustees, executors, administrators, successors, and assigns.

18 **M. No Assignment**

19 Class Counsel and Plaintiff, on behalf of the individual Class Members, represent and
20 warrant that they have not assigned or transferred, or purported to assign or transfer, to any person
21 or entity, any claim or any portion thereof or interest therein, including, but not limited to, any
22 interest in the Action, or any related action.

23 **N. Notices to Parties**

24 Whenever this Joint Stipulation requires or contemplates that one Party, the Court, or the Settlement
25 Administrator give notice to another, notice shall be provided by email or next-day (excluding Sundays and
26 Court holidays) express delivery service as follows:

27 If to Defendant, then to both:

28 Joseph C. Liburt

jliburt@orrick.com

ORRICK, HERRINGTON & SUTCLIFFE LLP

1000 Marsh Road
Menlo Park, CA 94025-1015
Telephone: (650) 614-7400
Facsimile: (650) 614-7401

Katie E. Briscoe
kbriscoe@orrick.com
Alexandra Guerra
aguerra@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
400 Capitol Mall, Suite 3000
Sacramento, CA 95814-4497
Telephone: (916)447-9200

If to Class Counsel or Plaintiff, then to:

David Yeremian
david@yeremianlaw.com
DAVID YEREMIAN & ASSOCIATES, INC.
535 N. Brand Blvd., Suite 705
Glendale, CA 92103
Telephone: (818) 230-8380
Facsimile: (818) 230-0308

O. Class Counsel Signatories

Because the Class Members are so numerous, the Parties agree it is impossible or impractical to have each Class Member sign this Joint Stipulation. This Joint Stipulation may be executed on behalf of the Class by Class Counsel and the named Plaintiff.

P. 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 Joint Stipulation and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Joint Stipulation to effectuate its terms and to execute any other documents required to effectuate the terms of this Joint Stipulation. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Joint Stipulation. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Joint Stipulation, or on any supplemental provisions that may become necessary to effectuate the terms of this Joint Stipulation, the Parties may seek the assistance of the Court to resolve such disagreement.

1 **Q. Plaintiff's Waiver of Right to be Excluded or Object**

2 Named Plaintiff agrees not to Opt-Out of the Class and agrees not to object to any terms of
3 this Joint Stipulation. Non-compliance by Plaintiff with this paragraph will be void and of no force
4 or effect. Any such request for exclusion or objection by Plaintiff will therefore be void and of no
5 force or effect. This provision shall be effective upon Plaintiff signing this Stipulation.

6 **R. Representation by Counsel**

7 The Parties acknowledge that they have been represented by competent counsel throughout
8 all negotiations that preceded the execution of this Joint Stipulation, and that this Joint Stipulation
9 has been executed with the consent and advice of counsel. The Parties further acknowledge that they
10 have had an opportunity to consult with their counsel regarding the fairness and reasonableness of
11 this Joint Stipulation. Further, Plaintiff and Class Counsel warrant and represent that there are no
12 liens on the Joint Stipulation.

13 **S. Severability**

14 If any provision of this Joint Stipulation is held by a court of competent jurisdiction to be
15 void, voidable, unlawful or unenforceable, then that portion shall be severed, and the remaining
16 portions of this Joint Stipulation will remain in full force and effect.

17 **T. Execution in Counterparts**

18 This Joint Stipulation will become effective upon its execution by all of the undersigned.
19 The Parties may execute this Joint Stipulation in counterparts, and execution of counterparts will
20 have the same force and effect as if all Parties signed the same instrument. Any signature made and
21 transmitted by facsimile or email for the purpose of executing this Joint Stipulation shall be deemed
22 an original signature for purposes of this Agreement and shall be binding upon the party whose
23 counsel transmits the signature page by facsimile or email.

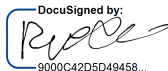
24 **U. Continuing Jurisdiction**

25 The Court shall retain jurisdiction over the interpretation and implementation of this Joint
26 Stipulation as well as any and all matters arising out of, or related to, the interpretation or
27 implementation of this Joint Stipulation and of the Settlement contemplated thereby. The Court shall
28 not have jurisdiction or authority to modify the terms of the Joint Stipulation.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF/CLASS REPRESENTATIVE AND CLASS COUNSEL

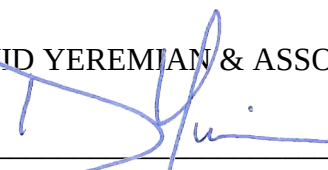
DATED: 9/10, 2020

By: 
Plaintiff RUDY SANDOVAL

APPROVED AS TO FORM

DATED: 9/10, 2020

DAVID YEREMIAN & ASSOCIATES, INC.

By: 
David Yeremian
Attorney for Plaintiff and the Class

DEFENDANT AND COUNSEL FOR DEFENDANT

DATED: _____, 2020

By: _____
Andrew M. Johnstone, Associate General
Counsel
Authorized to sign on behalf of Defendant US
FOODS, INC.

APPROVED AS TO FORM

DATED: _____, 2020

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: _____
Joseph C. Liburt
Katie E. Briscoe
Alexandra M. Guerra
Attorneys for Defendant US FOODS, 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

READ CAREFULLY BEFORE SIGNING

PLAINTIFF/CLASS REPRESENTATIVE AND CLASS COUNSEL

DATED: _____, 2020

By: _____
Plaintiff RUDY SANDOVAL

APPROVED AS TO FORM

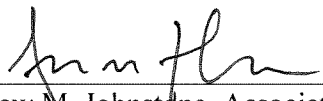
DATED: _____, 2020

DAVID YEREMIAN & ASSOCIATES, INC.

By: _____
David Yeremian
Attorney for Plaintiff and the Class

DEFENDANT AND COUNSEL FOR DEFENDANT

DATED: 10/8, 2020

By: 
Andrew M. Johnstone, Associate General
Counsel
Authorized to sign on behalf of Defendant US
FOODS, INC.

APPROVED AS TO FORM

DATED: 10/9, 2020

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: 
Joseph C. Liburt
Katie E. Briscoe
Alexandra M. Guerra
Attorneys for Defendant US FOODS, INC.