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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

JOSE GONZALEZ MONTIEL, individually, and
on behalf of all others similarly situated,

Plaintiff,

vs.

V & Y FOODS, INC., a California corporation;
A.V. FOODS, INC., a California corporation;
DESERT SKY PLAZA FOODS, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: CIVDS2000057

CLASS ACTION

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

Action Filed: January 6, 2020
Trial Date: Not Set

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

2 This Joint Stipulation of Class Action Settlement (“Joint Stipulation of Settlement” or
3 “Settlement” or “Agreement”) is made and entered into by and between Plaintiff JOSE GONZALEZ
4 MONTIEL, individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class
5 Representative”), and Defendants V & Y FOODS, INC., DESERT SKY PLAZA FOODS, INC., and
6 A.V. FOODS, INC. (“Defendants”). Plaintiff and Defendants are collectively referred to herein as “the
7 Parties.”

8
9 THE PARTIES STIPULATE AND AGREE as follows:

10 **DEFINITIONS**

11 1. For purposes of this Settlement, “Complaint” refers to the operative complaint at the time
12 the Court grants Preliminary Approval of this Settlement.

13 2. For purposes of this Settlement, this matter, styled *Montiel v. V & Y Foods, Inc., et al.*,
14 Case No CIVDS2000057, is referred to herein as the “Action.”

15 3. For purposes of this Settlement, the “Class Period” is January 16, 2016 through the date
16 upon which the Court grants preliminary approval of this Settlement.

17 4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All
18 individuals employed by Defendants in California and classified as “non-exempt” at any time during the
19 Class Period. “Settlement Class Members” are those Class Members who do not submit timely exclusion
20 requests to the Settlement Administrator. Defendants’ best estimate is that the Class included
21 approximately 293 individuals working 17,000 workweeks between January 16, 2016 through September
22 23, 2020.

23 5. For purposes of this Settlement, “Class Counsel” means MOON & YANG, APC.

24 6. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a
25 Class Member worked at Defendants’ locations in California during the Class Period.

26 7. For purposes of this Settlement, “Response Deadline” means the date sixty (60) days after
27 the Settlement Administrator initially mails the Notice to Settlement Class Members and the last date on
28 which Settlement Class Members may submit a request for exclusion or written objection to the

1 Settlement. In the case of a re-mailed Notice, the Response Deadline will be the later of 60 calendar days
2 after initial mailing or 14 calendar days from re-mailing. The Response Deadline may be extended only as
3 expressly described herein.

4 8. For purposes of the Settlement, “Defendants’ Counsel” means Much Shelist, P.C.

5 9. For purposes of this Settlement, “PAGA” means the Labor Code Private Attorneys
6 General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*).

7 10. For purposes of this Settlement, “PAGA Allocation” means the portion of the Gross
8 Settlement Amount that the Parties have agreed to allocate to resolution of the Released PAGA Claims.
9 The Parties have agreed that the PAGA Allocation will be \$20,000 from the Gross Settlement Amount.
10 Pursuant to PAGA, Seventy Five Percent (75%), or \$15,000, of the PAGA Allocation will be paid to the
11 Labor and Workforce Development Agency (“LWDA”) (“PAGA Penalty Payment”), and Twenty Five
12 Percent (25%), or \$5,000, of the PAGA Allocation will be included in the Net Settlement Amount for
13 PAGA Employees (“PAGA Settlement Payment”).

14 11. For purposes of this Settlement, “PAGA Period” means the period between January 6,
15 2019 through the date upon which the Court grants preliminary approval of this Settlement.

16 12. For purposes of this Settlement, “PAGA Employee” means all Class Members that worked
17 during the PAGA Period. It is stipulated by the Parties that, for purposes of this Settlement, all PAGA
18 Employees are “aggrieved employees” as defined pursuant to PAGA.

19 13. For purposes of this Settlement, “PAGA Pay Periods” means the number of pay periods
20 each PAGA Employee worked during the PAGA Period.

21 14. For purposes of this Settlement, “PAGA Representative” means Plaintiff.

22 15. For purposes of this Settlement, “Released PAGA Claims” means all claims for penalties
23 and any other available relief pursuant to PAGA, to the extent asserted in Plaintiff’s administrative
24 exhaustion letter submitted to the LWDA in this Action, arising during the PAGA Period.

25 16. For purposes of this Settlement, “Settlement Payments” means all of the payments to
26 Settlement Class Members (the “Settlement Class Payments”) and all of the payments to PAGA
27 Employees (the “PAGA Settlement Payment”).
28

STIPULATED BACKGROUND

17. On January 16, 2020, Plaintiff filed a putative Class Action alleging the following labelled causes of action: (1) Failure to Pay Minimum Wage and Straight Time Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (6) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and (7) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, *et seq.*]. (The “Action.”) In the Complaint, Plaintiff sought to represent all persons that worked for Defendants in California as hourly-paid, non-exempt employees at any time during the period beginning four years before the filing of the initial complaint and ending when Notice to the Class is sent.

18. Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*] (“PAGA”). On or about March 11, 2020, Plaintiff filed a First Amended Complaint adding a cause of action for Civil Penalties Under PAGA [Cal. Lab. Code § 2699, *et seq.*].

19. Plaintiffs will include a request for certification of a settlement class in their motion for preliminary approval of this Settlement, and Defendants will not oppose that request.

20. Should, for whatever reason, the Settlement not become effective, the fact that Defendants did not oppose certification as part of the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of whether the Class Members and/or the Class Claims should be certified in a non-Settlement context in this Action or in any other lawsuit. Defendants expressly reserve the right to oppose claim or class certification in this or any other action should this Settlement not become effective.

21. Defendants deny any liability or wrongdoing of any kind whatsoever associated with the claims alleged in the Complaint, and Defendants further deny that, for any purpose other than settling this lawsuit, the action is appropriate for class or representative treatment. With respect to Plaintiff’s claims, Defendants contend, among other things, that Plaintiff and the Class Members have been paid proper wages, have been provided meal periods, have been provided rest periods, have been paid timely wages upon separation of employment, and have been provided with accurate itemized wage statements.

Defendants contend, among other things, that they have complied at all times with the California Labor Code and the applicable Wage Orders of the Industrial Welfare Commission. Furthermore, with respect to all claims, Defendants contend that they have complied at all times with the California Business and Professions Code.

22. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the Complaint.

23. Class Counsel has conducted a thorough investigation into the facts of this Action, including an extensive review of relevant documents, and has diligently pursued an investigation of the claims of the Class against Defendants. Based on its own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendants for the consideration and on the terms set forth in this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Class will not be certified by the Court, defenses asserted by Defendants, and numerous potential appellate issues. Defendants and Defendants' Counsel also agree that the Settlement is fair and in the best interest of all Parties.

24. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement.

25. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.

PRIMARY TERMS OF SETTLEMENT

26. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

- (a) It is agreed by and among the Class and Defendants that this case and any claims, damages, or causes of action arising out of the disputes which are the subject of this case, be settled and compromised as between the Class and Defendants, subject to the terms and conditions set forth in this Settlement and the approval of the Court.

- 1 (b) Effective Date: Settlement Effective Date shall mean five (5) business days after
2 the date that an Order by the Court granting final approval of this Settlement
3 becomes non-appealable. “Non-appealable” means that no party, including
4 objectors, if any, has a right to appeal to, or seek reconsideration in, the California
5 Court of Appeal, California Supreme Court, or the U.S. Supreme Court, or to the
6 extent that any appeals have been filed, they have been finally resolved or
7 exhausted. By way of example, in the event that there are no intervenors in the
8 Settlement who file any Notices of Appeal, the Effective Date will be 60 calendar
9 days after the Court grants final approval, plus five additional business days.
- 10 (c) Gross Settlement Amount: Defendants’ maximum total payment under the
11 Settlement, including all attorney’s fees and costs, the Service Payment to the
12 named Plaintiff, the costs of settlement administration, the PAGA Allocation, and
13 any other payments provided by this Settlement, is \$200,000.00 (“Gross Settlement
14 Amount”), subject to the Escalator Clause and except that, to the extent that any
15 portions of the Class Members’ Settlement Payments constitute wages, Defendant
16 will be separately responsible for any employer payroll taxes required by law,
17 including the employer FICA, FUTA, and SDI contributions.
- 18 (d) Escalator Clause: If it is later determined that the number of Class Member
19 workweeks as of September 23, 2020 is more than 5% greater than the 17,000
20 workweeks estimated as of that date, the Gross Settlement Amount shall be
21 increased by one percent for each percent the correct number of workweeks
22 exceeds the 17,000 estimate (the “Escalator Clause”). The Gross Settlement
23 Amount will not be reduced for any reason. Class member workweeks shall mean
24 and include any workweek during the Settlement Class Period that a Class Member
25 worked for one or more of the Defendants.
- 26 (e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will
27 revert to Defendant.
- 28 (f) No Claims Required: Class Members will not be required to submit a claim to

1 receive their Settlement payment.

2 (g) Net Settlement Amount: The Net Settlement Amount shall be calculated by
3 deducting from the Gross Settlement Amount (\$200,000.00) the following sums,
4 subject to approval by the Court: (1) attorney's fees (not to exceed 33 1/3% of the
5 Gross Settlement Amount, or \$66,666.67); (2) reasonable litigation costs (not to
6 exceed \$15,000.00); (3) the Service Payment (not to exceed \$7,500.00 to the
7 named Plaintiff); (4) the PAGA Penalty Payment in the amount of \$15,000.00
8 (which is 75% of the \$20,000 PAGA Allocation); and (5) costs of settlement
9 administration (bid not to exceed \$8,000). Settlement Payments to the Class
10 Members will be calculated by the Settlement Administrator and paid out of the
11 Net Settlement Amount as set forth below.

12 (h) Payroll Taxes and Required Withholdings: To the extent that any portions of the
13 Settlement Class Members' Settlement Payments constitute wages, Defendants
14 will be separately responsible for any **employer** payroll taxes required by law,
15 including the employer FICA, FUTA, and SDI contributions. Except for any
16 employer payroll taxes, it is understood and agreed that Defendants' maximum
17 total liability under this Settlement shall not exceed the Gross Settlement Amount.
18 The Settlement Administrator will calculate and submit the Defendants' employer
19 share of payroll taxes after advising Defendants of the total amount owed, in
20 aggregate, as employer-side payroll taxes and receiving a lump sum payment from
21 Defendants in that amount when the Gross Settlement Amount is delivered to the
22 Settlement Administrator.

23 (i) Settlement Class Payments (Excludes PAGA Payments): Settlement Class
24 Payments will be paid out of the Net Settlement Amount. Each Settlement Class
25 Member will be paid a pro-rata share of the Net Settlement Amount (less the
26 PAGA Settlement Payments), as calculated by the Settlement Administrator. The
27 pro-rata share will be determined by comparing the individual Settlement Class
28 Member's Covered Workweeks employed during the Class Period in California to

the total Covered Workweeks of all the Settlement Class Members during the Class Period as follows: $[Workweeks\ worked\ by\ a\ Settlement\ Class\ Member] \div [Sum\ of\ all\ Covered\ Workweeks\ worked\ by\ all\ Settlement\ Class\ Members] \times [Net\ Settlement\ Amount - all\ PAGA\ Settlement\ Payments]$ = individual Settlement Payment for a Settlement Class Member. Settlement Class Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below.

(j) PAGA Payments: PAGA Settlement Payments will be paid out of the Net Settlement Amount. Each PAGA Employee will be paid a pro-rata share of the PAGA Employees' PAGA Settlement Payment, as calculated by the Settlement Administrator. Class Members will not be permitted to exclude themselves from this portion of the Settlement. The pro-rata share will be determined by comparing the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows: $[PAGA\ Pay\ Periods\ worked\ by\ a\ PAGA\ Employee] \div [Sum\ of\ all\ PAGA\ Pay\ Periods\ worked\ by\ all\ PAGA\ Employees] \times [PAGA\ Settlement\ Payment]$ = individual PAGA Employee's portion of the PAGA Settlement Payment. PAGA Settlement Payments to PAGA Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees at the same time Settlement Class Payments issue to the Settlement Class. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below. The LWDA's PAGA Penalty Payment will issue to the LWDA at the same time Settlement Payments issue to the Settlement Class.

(k) Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments will be allocated as follows: 20% to wages and 80% to penalties and interest. The PAGA Settlement Payment shares to PAGA Employees will be

1 entirely allocated to penalties. Appropriate federal, state and local withholding
2 taxes will be taken out of the wage allocations, and each Class Member will
3 receive an IRS Form W-2 with respect to this portion of the Settlement Payment.
4 The employer's share of payroll taxes and other required withholdings will be paid
5 as set forth above, including but not limited to the Defendants' FICA and FUTA
6 contributions, based on the payment of claims to the Class Members. Class
7 Members are responsible to pay appropriate taxes due on the Settlement Payments
8 they receive. To the extent required by law, IRS Forms 1099 and W-2 will be
9 issued to each Class Member with respect to such payments.

10 (l) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement
11 Payments to individual Class Members shall be deemed to be paid to such Class
12 Member solely in the year in which such payments actually are received by the
13 Class Member. It is expressly understood and agreed that the receipt of such
14 Settlement Payments will not entitle any Class Member to additional compensation
15 or benefits under any company bonus, contest or other compensation or benefit
16 plan or agreement in place during the period covered by the Settlement, nor will it
17 entitle any Class Member to any increased retirement, 401(k) benefits or matching
18 benefits or deferred compensation benefits. It is the intent that the Settlement
19 Payments provided for in this Settlement are the sole payments to be made by
20 Defendants to the Class Members, and that the Class Members are not entitled to
21 any new or additional compensation or benefits as a result of having received the
22 Settlement Payments (notwithstanding any contrary language or agreement in any
23 benefit or compensation plan document that might have been in effect during the
24 period covered by this Settlement).

25 (m) Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not
26 object to Class Counsel's application for attorney's fees not to exceed 33 1/3% of
27 the Gross Settlement Amount (\$66,666.67) and reimbursement of litigation costs
28 and expenses not to exceed \$15,000.00.

1 (n) Service Payment: Subject to Court approval, and in exchange for a general release,
2 Defendant will not object to Class Counsel's application for an additional payment
3 of up to \$7,500.00 to Plaintiff for service as a Class Representative ("Service
4 Payment"). It is understood that the Service Payment is in addition to the individual
5 Settlement Payment to which a Class Representative is entitled to along with the
6 other Class Members. In exchange, Plaintiff has agreed to release all claims,
7 whether known or unknown, under federal law or state law against the
8 Releasees, to the extent permitted by law, through the Class Period ("Plaintiff's
9 Released Claims"). Plaintiff understands that this release includes unknown
10 claims and that he is, as a result, waiving all rights and benefits afforded by
11 Section 1542 of the California Civil Code, which provides:

12 **A general release does not extend to claims that the creditor**
13 **or releasing party does not know or suspect to exist in his or**
14 **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.

15 Specifically excluded from Plaintiff's Released Claims are any claims for
16 workers' compensation benefits, although Plaintiff represents and warrants that
17 he is unaware of any facts that could support such claims. The Service Payment
18 will issue at the same time all Settlement Payments are mailed to the Settlement
19 Class.

20 (o) Defendant or the Settlement Administrator will issue an IRS Form 1099 for the
21 Service Payment to the Plaintiff. The Plaintiff will be individually responsible for
22 correctly characterizing this compensation on personal income tax returns for tax
23 purposes and for paying any taxes on the amounts received. Should the Court
24 approve a Service Payment in an amount less than that set forth above, the
25 difference between the lesser amount(s) approved by the Court and the Service
26 Payment amount(s) set forth above shall be added to the Net Settlement Amount.
27 Plaintiff agrees not to opt out or object to the Service Payment as the Class
28 Representative.

- 1 (p) Settlement Administrator: Plaintiff shall obtain two or more bids from entities
2 having experience in administering settlements such as the one reflected in this
3 Settlement. The Settlement Administrator will be Phoenix Settlement
4 Administrators, or such Settlement Administrator as may be mutually agreeable to
5 the Parties and approved by the Court. The Parties agree that Settlement
6 Administration Costs should not reasonably exceed \$15,000, and the Settlement
7 Administrator was selected based upon a bid for services of \$8,000. The costs of
8 the Settlement Administrator for work done shall be paid regardless of the outcome
9 of this Settlement.
- 10 (q) Funding of Settlement Account: Defendants will fund the settlement account
11 within seven calendar days of the Effective Date of the Settlement provided that
12 the Settlement Administrator has provided the Parties with an accounting of the
13 amounts to be paid by Defendants pursuant to the terms of this Settlement.
- 14 (r) Mailing of Settlement Payments: The Settlement Administrator shall cause the
15 Settlement Payments to be mailed to the Class Members within 21 calendar days of
16 the Effective Date of the Settlement, provided that the Settlement Administrator
17 has provided the Parties with an accounting of the amounts to be paid by
18 Defendants pursuant to the terms of this Settlement.
- 19 (s) Notice of Settlement: Each Class Member will be mailed a notice setting forth the
20 material terms of the proposed Settlement, along with instructions about how to
21 object or request exclusion from the propose class action Settlement (“Notice”).
22 For each Class Member, there will be pre-printed information on the mailed
23 Notice, based on Defendant’s records, stating the Class Member’s Covered
24 Workweeks during the Class Period and the estimated total Settlement Payment
25 under the Settlement, including the Settlement Class Payment and the PAGA
26 Settlement Payment that will be distributed irrespective of any exclusion request.
27 The pre-printed information based on Defendants’ records shall be presumed to be
28 correct. A Class Member may dispute the pre-printed information on the Notice as

1 to his or her Covered Workweeks during the Class Period. Class Members must
2 submit any dispute regarding the information on the Notice as to his or her
3 Covered Workweeks within the Response Deadline. Unless a disputing Class
4 Member submits documentary evidence in support of his or her dispute, the
5 records of the Defendant will be determinative.

6 (t) Settlement Notice Language: The Notice will issue in English and Spanish.

7 (u) Class Members Cannot Exclude Themselves from the Released PAGA Claims:

8 Class Members submitting a Request for Exclusion will nevertheless receive their
9 pro-rata share of the PAGA Settlement Payment. If the Court approves the
10 compromise of the PAGA Claim, all Class Members are bound by the Court's
11 resolution of that Claim. Plaintiff shall serve a notice of settlement on the
12 California Labor and Workforce Development Agency at or before the time
13 Plaintiff files the motion for preliminary approval.

14 (v) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of
15 Defendant's records used to calculate Covered Workweeks, and the Parties'
16 counsel cannot resolve the dispute informally, the matter will be referred to the
17 Settlement Administrator. The Settlement Administrator will review Defendants'
18 records and any information or documents submitted by the Class Member and
19 issue a non-appealable decision regarding the dispute. The Class Member must
20 submit information or documents supporting his or her position to the Settlement
21 Administrator prior to the expiration of the Response Deadline. Information or
22 documents submitted after the expiration of the Response Deadline will not be
23 considered by the Settlement Administrator, unless otherwise agreed to by the
24 Parties.

25 (w) Right of Class Member to Request Exclusion from the Settlement: Any Class
26 Member may request to be excluded from the Class by mailing a "Request for
27 Exclusion" from the Settlement within the Response Deadline, stating, as follows
28 or in substantially similar terms:

1 “I WISH TO BE EXCLUDED FROM THE CLASS IN THE
2 *MONTIEL v. V & Y FOODS, INC.*, CLASS ACTION
3 LAWSUIT, SAN BERNARDINO COUNTY SUPERIOR
4 COURT CASE NO. CIVDS2000057. I UNDERSTAND
5 THAT IF I ASK TO BE EXCLUDED FROM THE CLASS, I
6 WILL NOT RECEIVE ANY MONEY FROM THE
7 SETTLEMENT OTHER THAN MY SHARE OF THE PAGA
8 PAYMENT.”

9 Any Request for Exclusion must include the name, address, telephone number,
10 last four digits of the Class Member’s Social Security Number, and the signature
11 of the Class Member requesting exclusion. Any such request must be made in
12 accordance with the terms of the Notice, and the Notice will advise Class
13 Members of these requirements. Any Class Member who timely requests
14 exclusion in compliance with these requirements (i) shall not have any rights
15 under this Settlement other than a right to receive a pro-rata share of the portion
16 of the PAGA payment allocated to the Class Members if the Class Member is
17 also PAGA Employee; (ii) shall not be entitled to receive any Settlement
18 Payments under this Settlement other than as stated in Paragraph 26(j); and (iii)
19 shall not be bound by this Settlement or the Court’s Order and Final Judgment
20 other than as it applies to the PAGA Claim.

- 21 (x) Right of Settlement Class Member to Object to The Settlement: Any Class
22 Member may object to the Settlement. To object, the Class Member may (1)
23 appear in person at the Final Approval Hearing to explain any objection (which
24 includes a telephonic appearance), (2) have an attorney object for the Class
25 Member, or (3) submit a simple written brief or statement of objection to the
26 Settlement Administrator. If any Class Member chooses to submit a written
27 objection, the written objection should contain sufficient information to confirm
28 the identity of the objector and the basis of the objection, including (1) the full
name of the Settlement Class Member; (2) the signature of the Settlement Class
Member; (3) the grounds for the objection; and (4) be postmarked within the
Response Deadline to permit adequate time for processing and review by the

Parties of the written statement or objection. Class Counsel shall ensure that any written objections are transmitted to the Court for the Court's review (either by Class Counsel or as an attachment to declaration from the Settlement Administrator). Regardless of the form, an objection alone will not satisfy the requirement that a Settlement Class Member must either make a timely complaint in intervention before final judgment or by file a motion to set aside and vacate the class judgment under Code of Civil Procedure § 663 to have standing to appeal entry of judgment approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018). A Class Member who does not object prior to or at the Final Approval Hearing, will be deemed to have waived any objections and will be foreclosed from making any objections (whether at the Final Approval Hearing, by appeal, or otherwise) to the Settlement. If the objecting Class Member does not formally intervene in the action or move to set aside any judgment and/or the Court rejects the Class Member's objection, the Class Member will still be bound by the terms of this Agreement. Class Counsel and Defendants' Counsel may, at least five (5) calendar days (or some other number of days as the Court shall specify) before the final approval hearing, file responses to any written objections submitted to the Court.

- (y) Opt-in to Release Under Fair Labor Standards Act: Settlement Class Members will be advised that they will opt into a settlement of claims for unpaid compensation under the Fair Labor Standards Act ("FLSA") by cashing or otherwise depositing the check for their Settlement Class Payment. This will be set forth in the Notice.

THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES

27. Subject to the Court's approval, and subject to reconsideration by the Parties after a competitive bidding process, the Parties have agreed to the appointment of Phoenix Settlement Administrators to perform the customary duties of Settlement Administrator. The Settlement Administrator will mail the Notice, both in English and Spanish, to the Class Members.

1 28. The Settlement Administrator will independently review the Covered Workweeks
2 attributed to each Class Member and will calculate the estimated amounts due to each Class Member and
3 the actual amounts due to each Settlement Class Member in accordance with this Settlement. The
4 Settlement Administrator shall report, in summary or narrative form, the substance of its findings. The
5 Settlement Administrator shall be granted reasonable access to Defendants' records in order to perform its
6 duties.

7 29. In accordance with the terms of this Settlement, and upon receipt of Gross Settlement
8 Amount from Defendant, the Settlement Administrator will issue and send out the Settlement Payment
9 checks to the Class Members. Tax treatment of the Settlement Payments will be as set forth herein, and in
10 accordance with state and federal tax laws. All disputes relating to the Settlement Administrator's
11 performance of its duties shall be referred to the Court, if necessary, which will have continuing
12 jurisdiction over the terms and conditions of this Settlement until all payments and obligations
13 contemplated by this Settlement have been fully carried out.

14 30. The Settlement Administrator will post the final judgment approving the Settlement on a
15 website maintained by the Settlement Administrator for a period of not less than 90 calendar days after the
16 final judgment is entered. The address of that website will be included in the Notice.

17 **ATTORNEY'S FEES AND COSTS**

18 31. In consideration for resolving this matter and in exchange for the release of all claims by
19 the Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not object to
20 Class Counsel's application for attorney's fees not to exceed 33 1/3% of the Gross Settlement Amount
21 (\$66,666.67 of \$200,000.00) and litigation costs not to exceed \$15,000.00. The amounts set forth above
22 will cover all work performed and all fees and costs incurred to date, and all work to be performed and all
23 fees and costs to be incurred in connection with the approval by the Court of this Settlement and
24 administration of the Settlement. Should Class Counsel request a lesser amount and/or the Court approve
25 a lesser amount(s) of attorney's fees and/or attorneys' costs, the difference between the lesser amount(s)
26 and the maximum amount set forth above shall be added to the Net Settlement Amount. As with the
27 Settlement Payments to the Settlement Class, the attorney's fees and costs approved by the Court shall be
28 paid to Class Counsel, within 21 calendar days of the Effective Date of the Settlement, provided that the

1 Settlement Administrator has provided the Parties with an accounting of the amounts to be paid by
2 Defendants pursuant to the terms of this Settlement. Class Counsel shall disclose to the Court any fee
3 sharing agreements in existence. In the event that the Court awards less than 25% of the Gross Settlement
4 Amount for attorney's fees, Class Counsel shall retain the right to appeal that portion of any Final
5 Approval Order and Judgment.

6 **THE NOTICE PROCESS**

7 32. A Notice in approximately the form attached hereto as Exhibit "A," and as approved by the
8 Court, shall be sent by the Settlement Administrator to the Class Members by first class mail. The Notice
9 shall be translated into Spanish so that Spanish and English language versions of the Notice are included in
10 the mailing. Any returned envelopes from this mailing with forwarding addresses will be utilized by the
11 Settlement Administrator to forward the Notices to the Class.

- 12 (a) Within 7 calendar days from the date of preliminary approval of this Settlement by
13 the Court, Defendants shall provide to the Settlement Administrator a class
14 database containing the following information for each Class Member: (1) name;
15 (2) last known address; (3) social security number; and (5) dates of employment at
16 Defendant's locations in California. This database shall be based on Defendant's
17 payroll and other business records and shall be provided in a format acceptable to
18 the Settlement Administrator. Defendants agree to consult with the Settlement
19 Administrator prior to the production date to ensure that the format will be
20 acceptable to the Settlement Administrator. The Settlement Administrator will run
21 a check of the Class Members' addresses against those on file with the U.S. Postal
22 Service's National Change of Address List; this check will be performed only once
23 per Class Member by the Settlement Administrator. Absent mutual written
24 agreement of counsel for the Parties or Court order, the Settlement Administrator
25 will keep this database confidential and secure and use it only for the purposes
26 described herein, and will return this database to Defendant upon final approval of
27 the settlement or destroy electronic records containing the database after the
28 Settlement is final and all payments are distributed as required under this

1 Agreement. The Settlement Administrator shall thereafter provide an anonymized
2 version of this database to Class Counsel so that Class Counsel can review the data
3 for apparent irregularities and confirm that the formula used for calculating
4 Settlement Payments has been correctly applied by the Settlement Administrator.
5 Class Counsel shall treat the anonymized version of the database as confidential.

- 6 (b) Within 14 calendar days after the Class database is provided to the Settlement
7 Administrator, the Settlement Administrator will mail the Notices to the Class
8 Members by First Class United States mail.
- 9 (c) Notices returned to the Settlement Administrator as non-deliverable on or before
10 the initial Response Deadline shall be resent to the forwarding address, if any, on
11 the returned envelope. A returned Notice will be forwarded by the Settlement
12 Administrator any time that a forwarding address is provided with the returned
13 mail. If there is no forwarding address, the Settlement Administrator will do a
14 computer search for a new address using the Class Member's social security
15 number or other information. In any instance where a Notice is re-mailed, that
16 Class Member will have until the extended Response Deadline as described above.
17 A letter prepared by the Settlement Administrator will be included in the re-mailed
18 Notice in that instance, stating the extended Response Deadline. Upon completion
19 of these steps by the Settlement Administrator, Defendants and the Settlement
20 Administrator shall be deemed to have satisfied their obligations to provide the
21 Notice to the affected Class Member. The affected Class Member shall remain a
22 member of the Settlement Class and shall be bound by all the terms of the
23 Settlement and the Court's Order and Final Judgment.
- 24 (d) Class Counsel shall provide to the Court, at least five calendar days prior to the
25 final approval hearing, or such other date as set by the Court, a declaration by the
26 Settlement Administrator of due diligence and confirming mailing of the Notices.

27 **DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS**

28 33. As set forth above, each Class Member will have until the expiration of the applicable

1 Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Class
2 Member's Covered Workweek information on the Notice. No disputes will be honored if they are
3 submitted after the Response Deadline, unless the Parties mutually agree to accept the untimely dispute.
4 Each Class Member is responsible to maintain a copy of any documents sent to the Settlement
5 Administrator and a record of proof of mailing.

6 34. The Settlement Administrator shall cause the Settlement Payments to be mailed to the
7 Settlement Class Members and PAGA Employees as provided herein. Settlement Class Payments and
8 PAGA Payments may be combined into one check. Settlement Payment checks shall remain valid and
9 negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will
10 automatically be cancelled by the Settlement Administrator if they are not cashed by the Class Member
11 within that time, and the Class Member's relevant claims will remain released by the Settlement.
12 Settlement Payment checks which have expired will not be reissued.

13 35. Funds from un-cashed or abandoned Settlement Payment checks, based on a 180-day void
14 date, shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of
15 each Class Member who failed to cash their Settlement Payment check prior to the void date.

16 36. Upon completion of its calculation of Settlement Payments, the Settlement Administrator
17 shall provide Class Counsel and Defendant's Counsel with a report listing the amounts of all payments to
18 be made to Class Members (to be identified anonymously by employee number or other identifier). A
19 Declaration attesting to completion of all payment obligations will be provided to Class Counsel and
20 Defendant's Counsel and filed with the Court by Class Counsel.

21 **RELEASE BY THE CLASS AND PAGA EMPLOYEES**

22 37. Upon the final approval by the Court of this Settlement and Defendants' payment of all
23 sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this
24 Settlement, the Class Representatives, the Class and each Class Member who has not submitted a valid
25 and timely request for exclusion as to claims other than the PAGA claim, and each PAGA Employee,
26 regardless of whether they have requested exclusion from the Settlement of Class claims, will release
27 claims as follows:

28 (a) **Identity of Released Parties.** The released parties are Defendants, and each of

1 its/their former and present direct and/or indirect owners, dba's, affiliates, parents,
2 subsidiaries, brother and sister corporations, divisions, related companies,
3 successors and predecessors, and current and former employees, attorneys, officers,
4 directors, shareholders, owners, trustees, attorneys, fiduciaries, beneficiaries,
5 subrogees, executors, partners, privies, agents, servants, insurers, representatives,
6 administrators, employee benefit plans, and assigns of said entities (collectively
7 "Releasees").

8 (b) **Date Release Becomes Active.** The Released Claims and Released PAGA Claims
9 will be released upon the later of (1) the Settlement's Effective Date, or (2) the
10 satisfaction of Defendants' obligation to provide to the Settlement Administrator a
11 sum in the amount required to satisfy all required payments and distributions
12 pursuant to this Settlement and the Order and Judgment of final approval. Class
13 Members will not release the Released Claims or Released PAGA Claims until
14 both the Effective Date of the Settlement has occurred, **and** Defendant has paid all
15 amounts owing under the Settlement.

16 (c) **Claims Released by Settlement Class Members.** Each and every Class Member,
17 on behalf of himself or herself and his or her heirs and assigns, unless he or she has
18 submitted a timely and valid Request for Exclusion (which will not effectuate an
19 opt-out from the release of Released PAGA Claims), hereby releases Releasees
20 from the following claims for the entire Class Period:

21 1) any and all claims stated in the Action, or that could have been stated based
22 on the facts alleged in the Action, implicitly or explicitly, including but not
23 limited to state wage and hour claims (including all claims under the
24 California Labor Code) for unpaid wages, minimum wage, overtime, off-
25 the-clock work, meal periods, rest periods, wage statement violations,
26 interest, penalties, and attorneys' fees, waiting time penalties, withholding
27 from wages and the related provisions of the Labor Code including but
28 limited to Labor Code §§ 201-204, 210, 216, 218.6, 226, 226.3, 226.7,

510, 512, 512.5, 558, 1194, 1194.2, 1198, derivative claims under California Business & Professions Code §§ 17200 et seq., and all related claims under the governing Wage Order (“Released Claims”);

2) as to any Class Member who cashes their Settlement Payment, the signing and negotiation of that check shall serve as the Class Member’s consent to join the action for purposes of releasing claims arising under the Fair Labor Standards Act that are related to the claims stated in the Action, implicitly or explicitly; and,

(d) **Claims Released by the PAGA Employees.** All PAGA Employees release the Released PAGA Claims, regardless of whether they have requested exclusion from the Settlement as to Class claims.

EMPLOYMENT BY DEFENDANT

38. Employment of Plaintiff by Defendant is not consideration for, or a condition of, this Settlement.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

39. The Parties shall submit this Joint Stipulation of Class Action Settlement to the Court in support of Plaintiff’s unopposed motion for preliminary approval for determination by the Court as to its fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Class Action Settlement, the Parties shall apply to the Court for the entry of an order:

- (a) Scheduling a final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorney’s fees and costs, and the Class Representatives’ service payment, should be finally approved as fair, reasonable, and adequate as to the members of the Settlement Class;
- (b) Certifying a Settlement Class;
- (c) Approving as to form and content the proposed Notice;
- (d) Directing the mailing of the Notice;
- (e) Preliminarily approving the Settlement subject only to the objections of Class Members and final review by the Court;

- 1 (f) Conditionally appointing Plaintiff and Class Counsel as representatives of the
2 proposed Settlement Class Members; and,
- 3 (g) Appointing Phoenix Settlement Administrators as the Settlement Administrator,
4 and order the Settlement Administrator to issue Notices as outlined above.

5 **DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL**

6 40. In conjunction with the hearing of a motion for final approval by the Court of the
7 Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will provide to Defendants'
8 Counsel for review and approval and then submit to the Court a proposed final order and judgment
9 containing provisions sufficient to accomplish the following:

- 10 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and
11 adequate, and directing consummation of its terms and provisions;
- 12 (b) Approving Class Counsel's application for an award of attorney's fees and costs;
- 13 (c) Approving the Service Payment to the Class Representatives;
- 14 (d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting
15 duties under the Settlement.
- 16 (e) Adjudging Plaintiff and Class Counsel may adequately represent the Final
17 Settlement Class for the purpose of entering into and implementing the Agreement;
- 18 (f) Entering a final judgment in the action;
- 19 (g) Adjudging that notwithstanding the submission of a timely request for exclusion,
20 Class Members who are also PAGA Employees are still bound by the settlement
21 and release of the Released PAGA Claims or remedies under the Judgment
22 pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), as requests to be
23 excluded from the Settlement do not apply to the Released PAGA Claims, and
24 further affirms that the State's claims for civil penalties pursuant to PAGA are also
25 extinguished;
- 26 (h) Directing the posting of the final judgment on a website maintained by the
27 Settlement Administrator for a period of not less than 90 calendar days after entry
28 of final judgment.

Any revised final judgments will also be provided to Defendants' Counsel for review and approval before they are submitted to the Court.

NULLIFICATION AND TERMINATION

41. This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to the attorney's fees and costs or granting of Service Payments; (c) the Court should for any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final for any other reason.

42. If 30 or more of the Class Members opt out of this Settlement, then Defendants in their sole discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide Defendants' Counsel with the information necessary to effectuate this provision on a regular basis, but no less frequently than on a monthly basis. To terminate this Settlement under this paragraph, Defendants' Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later than 10 court days after the Response Deadline.

43. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or proceedings shall have any force or effect and no party shall be bound by any of its terms, and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court and Defendants shall not be obligated to make any payments contemplated by this Settlement.

PARTIES' AUTHORITY

44. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions thereof.

MUTUAL FULL COOPERATION

45. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement including, but not limited to, execution of such documents and taking such other action as reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement

1 shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that
2 may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set
3 forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the
4 assistance and cooperation of Defendant and Defendants' Counsel, take all necessary steps to secure the
5 Court's preliminary and final approval of this Settlement.

6 **NO PRIOR ASSIGNMENTS**

7 46. The Parties and their respective counsel represent, covenant, and warrant that they have not
8 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
9 any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
10 released and discharged except as set forth herein.

11 **NO ADMISSION OF LIABILITY**

12 47. Nothing contained herein, nor the consummation of this Settlement, is to be construed or
13 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants.
14 Defendants deny all the claims and contentions alleged by the Plaintiff in this case. The Defendants have
15 entered into this Settlement solely with the intention to avoid further disputes and litigation with the
16 attendant inconvenience and expenses.

17 **ENFORCEMENT ACTIONS**

18 48. In the event that one or more of the Parties to this Settlement institutes any legal action or
19 other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare
20 rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover
21 from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees
22 incurred in connection with any enforcement actions.

23 **NOTICES**

24 49. Unless otherwise specifically provided herein, all notices, demands or other
25 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
26 third business day after mailing by United States registered or certified mail, return receipt requested,
27 addressed as follows:

28 Class Counsel:

Counsel for Defendant:

Kane Moon
H. Scott Leviant
Ani Martirosian
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
kane.moon@moonyanglaw.com
scott.leviant@moonyanglaw.com
ani.martirosian@moonyanglaw.com

Jeff J. Astarabadi
MUCH SHELIST, P.C.
660 Newport Center Drive, Suite 900 |
Newport Beach, CA 92660
Telephone: (949) 767-2200
jastarabadi@muchlaw.com

CONSTRUCTION

50. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, and this Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her or its counsel participated in the drafting of this Settlement.

CAPTIONS AND INTERPRETATIONS

51. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

MODIFICATION

52. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

INTEGRATION CLAUSE

53. This Settlement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

WAIVER OF APPEALS

54. The Parties agree to waive appeals and to stipulate to class certification for purposes of implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the

1 amount awarded as attorney's fees in the event that the Court awards less than twenty-five percent of the
2 Gross Settlement Amount as attorney's fees.

3 **BINDING ON ASSIGNS**

4 55. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and
5 their respective heirs, trustees, executors, administrators, successors and assigns.

6 **CLASS COUNSEL SIGNATORIES**

7 56. It is agreed that because the members of the Class are so numerous, it is impossible or
8 impractical to have each member of the Class execute this Settlement. The Notice will advise all Class
9 Members of the binding nature of the Released Claims and Released PAGA Claims, and the release shall
10 have the same force and effect as if this Settlement were executed by each member of the Class.

11 **COUNTERPARTS**

12 57. This Settlement may be executed in counterparts and by electronic or facsimile signatures,
13 and when each party has signed and delivered at least one such counterpart, each counterpart shall be
14 deemed an original, and, when taken together with other signed counterparts, shall constitute one
15 Settlement, which shall be binding upon and effective as to all Parties.

16 **CONFIDENTIALITY & PUBLIC COMMENT**

17 58. The Class Representative and Class Counsel agree they will not make any disparaging
18 comments about Defendant relating to this Settlement of this class action or disclose the negotiations of
19 the Settlement. The Class Representative and Class Counsel shall only disclose matters of public record
20 other than to Class Members, who may receive information about the Settlement that is not in the public
21 record after the Court has preliminarily approved the Settlement. Other than as to Class Members or as
22 expressly allowed below, the Parties and attorneys will keep the settlement confidential until the filing of
23 the motion for preliminary approval of the class settlement. Thereafter, the Parties agree to make no
24 comments to the media or otherwise publicize the terms of the Settlement, other than in court filings. To
25 the extent counsel for either Party wish to advertise this settlement, such advertising will be limited to a
26 statement that a matter was settled between a putative class and a "food business." Any communication
27 about the Settlement to Class Members prior to the Court-approved mailing will be limited to (1) a
28 statement that a settlement has been reached, (2) a statement of any of the details that would necessarily be

1 included in any Court-approved Notice if a Class Member requests details about the proposed Settlement,
2 and (3) a warning that the terms of the proposed Settlement have not yet been approved by the Court.
3 Prior to preliminary approval, the Class Representative is prohibited from discussing the terms or the fact
4 of the settlement with third parties other than (1) a spouse, (2) accountants or lawyers as necessary for tax
5 purposes, or (3) Class Members. At all times, the Class Representative is prohibited from communicating
6 about the terms or the fact of the settlement on any form of social media ("Social Media Bar"). In the
7 event of a proven breach of the Social Media Bar, the violating Plaintiff shall forfeit one-half of the class
8 representative enhancement payment, as a form of liquidated damages. Class Counsel will take all steps
9 necessary to ensure the Class Representative is aware of, and will adhere to, the restrictions against any
10 public disclosure of the Settlement. Class Counsel will not include or use the settlement for any marketing
11 or promotional purposes other than as expressly allowed above.

12 **FINAL JUDGMENT**

13 59. The Parties agree that, upon final approval of the Settlement, final judgment of this Action
14 will be made and entered in its entirety. The final judgment may be included in the Order granting Final
15 Approval of the Settlement.

16 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint
17 Stipulation of Class Action Settlement between Plaintiff and Defendants as set forth below:

18 IT IS SO STIPULATED.

19 **Plaintiff & Class Representative:**

20 Dated: March __, 2021

By: _____
JOSE GONZALEZ MONTIEL

22 **Plaintiff's Counsel:**

23 Dated: March __, 2021

MOON & YANG, APC

By: _____
Kane Moon
H. Scott Leviant
Ani Martirosian

Attorneys for Plaintiff

included in any Court-approved Notice if a Class Member requests details about the proposed Settlement, and (3) a warning that the terms of the proposed Settlement have not yet been approved by the Court. Prior to preliminary approval, the Class Representative is prohibited from discussing the terms or the fact of the settlement with third parties other than (1) a spouse, (2) accountants or lawyers as necessary for tax purposes, or (3) Class Members. At all times, the Class Representative is prohibited from communicating about the terms or the fact of the settlement on any form of social media ("Social Media Bar"). In the event of a proven breach of the Social Media Bar, the violating Plaintiff shall forfeit one-half of the class representative enhancement payment, as a form of liquidated damages. Class Counsel will take all steps necessary to ensure the Class Representative is aware of, and will adhere to, the restrictions against any public disclosure of the Settlement. Class Counsel will not include or use the settlement for any marketing or promotional purposes other than as expressly allowed above.

FINAL JUDGMENT

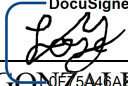
59. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will be made and entered in its entirety. The final judgment may be included in the Order granting Final Approval of the Settlement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement between Plaintiff and Defendants as set forth below:

IT IS SO STIPULATED.

Plaintiff & Class Representative:

3/9/2021
Dated: March __, 2021

DocuSigned by:

By: _____
JOSE GONZALEZ MONTIEL

Plaintiff's Counsel:

Dated: March __, 2021

MOON & YANG, APC

By:  _____
Kane Moon
H. Scott Leviant
Ani Martirosian

Attorneys for Plaintiff

Defendants:

Dated: March 14, 2021

V & Y FOODS, INC.

By: YATIN BERN
Print Name

[Signature]
Signature

CFO
Title

Dated: March 14, 2021

A.V. FOODS, INC.

By: Bhapat Bhanvadia
Print Name

B. V. Bhanvadia
Signature

PRESIDENT
Title

Dated: March 15, 2021

DESERT SKY PLAZA FOODS, INC.

By: Vimal Bhanvadia
Print Name

[Signature]
Signature

PRESIDENT
Title

Defendant's Counsel:

Dated: March 18, 2021

MUCH SHELIST, P.C.

By: _____

Jeff J. Astarabadi

Attorneys for Defendants V & Y FOODS, INC.,
DESERT SKY PLAZA FOODS, INC., and A.V.
FOODS, INC.

Exhibit “A”

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Montiel v. V & Y Foods, Inc., et al.
San Bernardino Superior Court Case No. CIVDS2000057

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE EMPLOYED BY V & Y FOODS, INC., DESERT SKY PLAZA FOODS, INC., OR A.V. FOODS, INC. (“DEFENDANTS”) IN CALIFORNIA AND CLASSIFIED AS “NON-EXEMPT” AT ANY TIME BETWEEN JANUARY 16, 2016 THROUGH <<**PRELIM APPROVAL DATE**>> (THE “CLASS PERIOD”), THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a class action lawsuit entitled *Montiel v. V & Y Foods, Inc., et al.*, San Bernardino Superior Court Case No. CIVDS2000057 (the “Action”). The purpose of this Notice of Proposed Class Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Action.

A hearing concerning final approval of the proposed Settlement will be held before the Hon. David S. Cohn on <<**FA DATE**>>, at <<**FA TIME**>>, in Department S-26 of the San Bernardino Superior Court, San Bernardino Justice Center, 247 West Third Street, San Bernardino, CA 92415-0210, to determine whether the Settlement is fair, adequate and reasonable. As a Class Member, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
GET MONEY AND RELEASE YOUR CLAIMS	If you do nothing, you will be considered part of the Class and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS DEADLINE TO EXCLUDE YOURSELF: <<RESPONSE DEADLINE>>	You have the option to pursue separate legal action against Defendants about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by submitting a written Request to be Excluded. As a result, you will not receive any benefits under the Settlement.
OBJECT TO THE SETTLEMENT DEADLINE TO SUBMIT WRITTEN OBJECTIONS: <<RESPONSE DEADLINE>>	To object to the Settlement, you may mail a written explanation of why you don’t like the Settlement to the Settlement Administrator, appear at the final approval hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. To object to the Settlement, it is not required that you appear at the final approval hearing. Do <u>not</u> submit a Request to be Excluded if you wish to object. <i>Written</i> objections must be submitted by << RESPONSE DEADLINE >>.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following class (the “Class”):

All individuals employed by Defendants in California and classified as “non-exempt” at any time during the Class Period. (the “Class Period” is January 16, 2016 through <<**PRELIM APPROVAL DATE**>>).

According to Defendants’ records, you are a member of the Class (“Class Member”).

What is this case about?

In the Action, Plaintiff Jose Gonazalez Montiel (“Plaintiff”) alleges on behalf of himself and the Class that Defendants: (1) failed to pay minimum and straight time wages; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to timely pay all wages to terminated employees; (6) failed to furnish accurate itemized wage statements; (7) violated California’s Unfair Competition Law, California Business and Professions Code § 17200 et seq.; and (8) violated provisions of the Labor Code giving rise to civil penalty liability under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.]. Plaintiff seeks unpaid wages, actual damages, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys’ fees, and costs.

Defendants deny all liability and are confident that they have strong legal and factual defenses to these claims, but they recognize the risks, distractions, and costs associated with litigation. Defendants contend that their conduct is and has been lawful at all times relevant and that Plaintiff’s claims do not have merit and do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiff and Defendants (the “Parties”), through their attorneys, and is not an admission of liability on the part of Defendants. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiff’s claims or Defendants’ defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

Kane Moon
H. Scott Leviant
Ani Martirosian
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
scott.leviant@moonyanglaw.com
ani.martirosian@moonyanglaw.com

Defendant’s Counsel

Jeff J. Astarabadi
MUCH SHELIST, P.C.
660 Newport Center Drive, Suite 900 |
Newport Beach, CA 92660
Telephone: (949) 767-2200
jastarabadi@muchlaw.com

What are the Settlement terms?

Subject to final Court approval, Defendants will pay \$200,000 (the “Gross Settlement Amount”) for: (a) individual Settlement Payments to Settlement Class Members; (b) the Court-approved Class Representative Service Payment to Plaintiff (\$7,500 to be requested); (c) the Court-approved attorneys’ fees and costs to Class Counsel (\$66,666.67 in fees and up to \$15,000 in costs to be requested); (d) payment to the Labor and Workforce Development Agency (“LWDA”) for alleged PAGA penalties (\$15,000 of a total of \$20,000 allocated to PAGA penalties); and (e) payment to the Settlement Administrator for settlement administration services (at an estimated amount of \$8,000).

Individual Settlement Payments. After deduction from the Gross Settlement Amount for attorneys’ fees and costs, the Class Representative Service Payment to Plaintiff, the payment to the LWDA, and settlement administration costs, there will be a Net Settlement Amount. From this Net Settlement Amount, Defendants will make an individual Settlement Class Payment to each Settlement Class Member who does not request to be excluded from the Settlement (“Settlement Class Members”) and an individual PAGA Settlement Payment to each PAGA Employee, regardless of whether they request exclusion from the Class (the “Settlement Payments”). From the Net Settlement Amount, \$5,000 will be set aside for payments to PAGA Employees. The remainder of the Net Settlement Amount will be distributed to Settlement Class Members. If you will receive payments both as a Settlement Class Members and as a PAGA Employee, the Settlement Administrator will combine the payments, less applicable taxes and required withholdings, into a single check.

The Net Settlement Amount shall be divided among all Settlement Class Members and PAGA Employees on a pro rata basis based upon the total number of workweeks or pay periods worked by each respective Settlement

Class Member as a non-exempt hourly employee in the State of California during the Class Period and each respective PAGA Employee during the PAGA Period, where applicable. Your estimated individual Settlement Payment is listed below.

Your estimated minimum settlement payment is <<**Estimated Payment**>> and your covered Work Weeks worked during the relevant period between January 16, 2016 and <<**PRELIM APPROVAL DATE**>> are <<**Work Weeks**>>. To the extent you dispute the number of Work Weeks, you must make your dispute (“Work Week Dispute”) in writing and send it to the Settlement Administrator via fax or mail. Your Work Week Dispute must be postmarked or faxed no later than <<**RESPONSE DEADLINE**>> (the “Response Deadline”) to:

Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863

Your Work Week Dispute must be in writing and contain: (a) your full name, signature, address, telephone number, and the last four digits of your Social Security number; (b) the number of Work Weeks you contend is correct; and (c) any evidence supporting your contention. Defendants’ records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator will resolve and decide all Work Week Disputes, and its decisions will be final and non-appealable. **REMINDER:** If you believe your estimated individual Settlement Amount is incorrect because your Work Weeks (the number of total weeks you worked within the Class Period only) are wrong, the deadline to dispute the workweeks reported for you is <<**RESPONSE DEADLINE**>>.

For tax reporting purposes, the payments to Settlement Class Members will be allocated 20% as wages and 80% as penalties and interest. The payments to PAGA Employees will be allocated as 100% penalties. The wage portion of the individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the individual Settlement Payments. The portion of the Settlement Payments allocated to penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC if required by governing tax laws. Any taxes owed on that other miscellaneous income will be the responsibility of Settlement Class Members receiving those payments. The employer’s share of any payroll taxes will be separately paid by Defendants.

All checks for individual Settlement Payments paid to Class Members shall advise that the checks will remain valid and negotiable for one hundred eighty (180) days from the date of the checks’ issuance and shall thereafter automatically be void if not cashed by a Class Member within that time. Any individual Settlement Payment that is not cashed by a Class Member within one hundred eighty (180) days of issuance shall be transmitted to the California State Controller’s Office for Unclaimed Property in the name of each check recipient who failed to cash their check prior to the void date. In such event, the Class Member shall nevertheless remain bound by the Settlement.

PLEASE BE PATIENT AND UPDATE THE SETTLEMENT ADMINISTRATOR WITH YOUR NEW ADDRESS IF YOU MOVE AFTER RECEIVING THIS NOTICE OR YOU RECEIVED THIS NOTICE AS FORWARDED MAIL.

None of the Parties or attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

NOTE: If you are a PAGA Employee, you will receive your share of the \$5,000 allocated to PAGA Employees even if you request exclusion from the Settlement Class.

Class Counsel Attorneys’ Fees and Costs, Class Representative Service Award, Settlement Administration Costs and Payment to the LWDA. Class Counsel will ask the Court to award attorneys’ fees up to \$66,666.67 (one third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$15,000. In addition, Class Counsel will ask the Court to authorize a Class Representative Service Payment of \$7,500 for Plaintiff for his efforts in bringing the case on behalf of the Class. The Parties believe the cost of administering the Settlement will be approximately \$8,000.00. A payment in the amount of \$15,000.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$20,000 set aside for payment under PAGA.

What claims are being released by the proposed Settlement?

Upon the final approval by the Court of this Settlement and Defendants' payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representatives, the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, and each PAGA Employee, regardless of whether they have requested exclusion from the Settlement of Class claims, will release claims as follows:

(a) **Identity of Released Parties.** The released parties are Defendants, and each of its/their former and present direct and/or indirect owners, dba's, affiliates, parents, subsidiaries, brother and sister corporations, divisions, related companies, successors and predecessors, and current and former employees, attorneys, officers, directors, shareholders, owners, trustees, attorneys, fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents, servants, insurers, representatives, administrators, employee benefit plans, and assigns of said entities (collectively "Releasees").

(b) **Date Release Becomes Active.** The Released Claims and Released PAGA Claims will be released upon the later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendants' obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, and Defendant has paid all amounts owing under the Settlement.

(c) **Claims Released by Settlement Class Members.** Each and every Class Member, on behalf of himself or herself and his or her heirs and assigns, unless he or she has submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period:

1) any and all claims stated in the Action, or that could have been stated based on the facts alleged in the Action, implicitly or explicitly, including but not limited to state wage and hour claims (including all claims under the California Labor Code) for unpaid wages, minimum wage, overtime, off-the-clock work, meal periods, rest periods, wage statement violations, interest, penalties, and attorneys' fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code including but limited to Labor Code §§ 201-204, 210, 216, 218.6, 226, 226.3, 226.7, 510, 512, 512.5, 558, 1194, 1194.2, 1198, derivative claims under California Business & Professions Code §§ 17200 et seq., and all related claims under the governing Wage Order ("Released Claims");

2) as to any Class Member who cashes their Settlement Payment, the signing and negotiation of that check shall serve as the Class Member's consent to join the action for purposes of releasing claims arising under the Fair Labor Standards Act that are related to the claims stated in the Action, implicitly or explicitly; and,

(d) **Claims Released by the PAGA Employees.** All PAGA Employees release all claims for penalties and any other available relief pursuant to PAGA, to the extent asserted in Plaintiff's administrative exhaustion letter submitted to the LWDA in this Action, arising during the PAGA Period (January 6, 2019 through <<PRELIM APPROVAL DATE>>) (the "Released PAGA Claims"), regardless of whether they have requested exclusion from the Settlement as to Class claims.

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Settlement Class and receive an individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

OPTION A. Remain in the Class. If you wish to remain in the Settlement Class and be eligible to receive an individual Settlement Payment under the Settlement, **you do not need to take any action.** By remaining in the Settlement Class and receiving settlement monies, you consent to the release of the Released Claims as described above.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable, or adequate in any way, you have several options that you may use to object to it or express any concerns. To object, you may appear in person at the Final Approval Hearing (although you are not required to do so), have an attorney object for you, or submit a written brief or statement of objection (“written objection”) to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. If you submit a written objection, it should contain sufficient information to confirm the your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; (3) your signature; and (4) be postmarked on or before <<RESPONSE DEADLINE>> and returned to the Settlement Administrator at the address listed above to ensure that it is received in time to be transmitted to and considered by the Court. You can also hire an attorney at your own expense to represent you in your objection. The Parties shall file responses to any written objections before the final approval hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Settlement Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.**

Regardless of the form, an objection, alone will not satisfy the requirement that a Settlement Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Settlement Class and Receive No Money from the Settlement. If you do not want to be part of the Settlement, you must submit a written request to be excluded from the Settlement to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. In order to be valid, your written request to be excluded from the Settlement must be signed and include your name, address, and telephone number (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement), along with a statement like the following:

“I hereby request to be excluded from the Class Action Settlement in *Montiel v. V & Y Foods, Inc.*”

Your written request to be excluded from the Settlement must then be signed and postmarked on or before <<RESPONSE DEADLINE>>. If you do not submit a written request to be excluded from the Settlement on time (as evidenced by the postmark), your written request to be excluded from the Settlement will be rejected, you will be deemed a Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a written request to be excluded from the Settlement by the deadline to request exclusion, you will have no further role in the Action. **You will not be entitled to any benefit, including money,** as a result of the Action and Settlement. You will not be able to complain to the Court about any aspect of the Settlement.

NOTE: PAGA Employees cannot exclude themselves from the release of the PAGA claims.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel’s request for attorneys’ fees and costs, the Class Representative Service Payment to Plaintiff, the settlement administration costs, and the payment to the LWDA for PAGA penalties on <<FA DATE>>, at <<FA TIME>>, in Department S-26 of the San Bernardino Superior Court, San Bernardino Justice Center, 247 West Third Street, San Bernardino, CA 92415-0210. Because of healthcare guidance and Orders of the San Bernardino Superior Court related to COVID-19, the hearing may be a telephonic hearing only. If you wish to attend the Final Approval Hearing telephonically, visit the Court’s website for instructions on how to do so, at <https://www.sb-court.org/general-information/remote-access>. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an individual Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment will be posted on a website by the Settlement Administrator for a period of at least 90 days following the entry of that Order in the Court record. That website is: <<[website](#)>>.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Joint Stipulation of Class Action and PAGA Action Settlement attached to the Declaration of H. Scott Leviant in Support of Plaintiff's Motion for Preliminary Approval. The Joint Stipulation of Class Action and PAGA Action Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the San Bernardino Superior Court. Because of the Superior Court's COVID-19 pandemic procedures, in order to view documents filed in the lawsuit, Class Members may be required to make an appointment with the Court to view documents. You may also request a copy of the Settlement Agreement from Class Counsel, at the address listed above.

You may also view documents filed in this case, including the complete Settlement, on the Court's website at: <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>

NOTE: If you choose to access documents online, the Court will charge you a fee for access. Class Counsel can provide you with copies of the settlement documents at no charge.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.