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POULTRY FARMS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

JOSE M. NEVAREZ, PEDRO CALDERON, and
MIGUEL CASTELLON, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

FOSTER FARMS, LLC; and DOES 1 through
100, inclusive,

Defendant(s).

Case No. 13CECG02624
Honorable Kimberly A. Gaab
Department 503

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

ACTION FILED: August 22, 2013

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiffs Pedro Calderon, Miguel Castellon, Juan Andrade, Adalberto Andrade,
3 Margarito Bautista, Sergio Bejar-Perez, Francisco Cazarez, John Dacosta, Santiago Elizondo,
4 Jose Estrada, Walter Fernandez, Juan Franco, Enrique Garcia, Ivan Guillen-Gutierrez, Jose
5 Gutierrez, Esteban Hurtado, Antonio Iguinez, Hector Lomeli, Heriberto Montanez, Ernesto
6 Ochoa, Cristobal Oragel, Francisco Oseguera, Robert Otto, Miguel Para Andrio, Armando Perez,
7 Luis Ramirez, Martin Robles, Mauricio Rodriguez, Bryan Saldana, Eliazar Sanchez, Elvin
8 Sanchez, Leonel Sandoval, Refugio Santana, Martha Veronica de Reyes as Representative of
9 Fernando Reyes’ Estate, and Jose Manual Nevarez (“Plaintiffs”) and defendants Foster Farms,
10 LLC and Foster Poultry Farms (collectively “Foster Farms”). The Agreement refers to Plaintiffs
11 and Foster Farms collectively as “Parties,” or individually as “Party.”

12 **1. DEFINITIONS**

13 1.1. “Action” shall refer to two cases filed in Fresno County Superior Court, *Jose*
14 *Nevarez et al. v. Foster Farms, LLC*, Case Number 13CECG02624, and *Pedro Calderon et al. v.*
15 *Foster Farms, LLC; Foster Poultry Farms, Inc.*, Case Number 20CECG00546.

16 1.2 “**Administrator**” means Simpluris (“Simpluris”), the neutral entity the Parties
17 have agreed to appoint to administer the Settlement.

18 1.3. “**Administration Expenses Payment**” means the amount the Administrator will be
19 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
20 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
21 with Preliminary Approval of the Settlement.

22 1.4. “**Aggrieved Employee**” means a person employed by Foster Farms as a Chicken
23 Ranch Manager in California and who resides or resided on Foster Farms’ premises as a condition
24 of employment during the PAGA Period.

25 1.5. “**Calderon Action**” means the litigation filed by Plaintiffs Jose Nevarez, Pedro
26 Calderon, Miguel Castellon, and 32 other plaintiffs in Fresno County Superior Court, case
27 number 20CECG00546.

1.6. “**Class**” means a person employed by Foster Farms as a Chicken Ranch Manager in California and who resides or resided on Foster Farms’ premises as a condition of employment during the Class Period.

1.7. “**Class Counsel**” means Martin Horwitz of the Law Office of Martin L. Horwitz, P.C. and Cathe Caraway-Howard of the Law Offices of Cathe L. Caraway-Howard.

1.8. “**Class Counsel Fees Payment**” and “**Class Counsel Litigation Expenses Payment**” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.9. “**Class Data**” means Class Member identifying information in Foster Farms’ possession including the Class Member’s name, last-known mailing address, last known phone number, Social Security number, the dates of employment, the number of Class Period Workweeks in each applicable period, PAGA Pay Periods, whether the Class Member responded to written discovery in either the *Nevarez* Action or the *Calderon* Action, whether the Class Member was deposed in either the *Nevarez* Action or the *Calderon* Action, and whether the Class Member submitted a declaration in either the *Nevarez* Action or the *Calderon* Action.

1.10. “**Class Member**” or “**Settlement Class Member**” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.11. “**Class Member Address Search**” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.12. “**Class Notice**” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English and Spanish in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.13. “**Class Period**” means the period from August 22, 2009 to the date of Preliminary Approval of the Settlement.

1.14. “**Class Representative**” means the named Plaintiffs in the operative complaint in the *Nevarez* Action seeking Court approval to serve as Class Representatives.

1.15. “**Class Representative Service Payment**” means the payment to a Class Representative for initiating the *Nevarez* Action and providing services in support of the *Nevarez* Action.

1.16. “**Court**” means the Superior Court of California, County of Fresno

1.17. “**Defense Counsel**” means Brandon R. McKelvey and Timothy B. Nelson of Medina McKelvey LLP, Sophia S. Kwan of Seyfarth Shaw, LLC, and Oliver W. Wanger and Michael S. Helsley of Wanger Jones Helsley PC.

1.18. “**Effective Date**” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.19. “**Final Approval**” means the Court’s order granting final approval of the Settlement.

1.20. “**Final Approval Hearing**” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.21. “**Final Judgment**” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1.22. “**Foster Farms**” means named defendants Foster Farms, LLC and Foster Poultry Farms.

1.23. “**Gross Settlement Amount**” means \$1,967,000 which is the total amount Foster Farms agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payments and the Administrator’s Expenses.

1 The Gross Settlement Amount includes a \$300,000 credit to Foster Farms for settlement
2 payments that have already been made to Class Members.

3 1.24. “**Individual Class Payment**” means the Participating Class Member’s pro rata
4 share of the Net Settlement Amount calculated according to the number of Workweeks worked
5 during each of the time periods in the Class Period (as described in paragraph 3.2.4.1) and
6 according to the formula for distribution of the Net Settlement Amount as described in this
7 Agreement, plus any Litigation Participation Payment that the Participating Class Member
8 receives.

9 1.25. “**Individual PAGA Payment**” means the Aggrieved Employee’s pro rata share of
10 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the
11 PAGA Period.

12 1.26. “**Judgment**” means the judgment entered by the Court based upon the Final
13 Approval.

14 1.27. “**Litigation Participation Payment**” means a payment to Class Members who
15 participated in litigation activities in the *Nevarez* Action or the *Calderon* Action. Class Members
16 will receive the following Litigation Participation Payments: \$500 if the Class Member responded
17 to written discovery in the *Nevarez* Action or the *Calderon* Action; \$500 if the Class Member
18 submitted a written declaration in the *Nevarez* Action or the *Calderon* Action; and \$500 if the
19 Class Member had his/her deposition taken in the *Nevarez* Action or *Calderon* Action.

20 1.28. “**LWDA**” means the California Labor and Workforce Development Agency, the
21 agency entitled, under Labor Code section 2699, subd. (i).

22 1.29. “**LWDA PAGA Payment**” means the 75% of the PAGA Penalties paid to the
23 LWDA under Labor Code section 2699, subd. (i).

24 1.30. “**Net Settlement Amount**” means the Gross Settlement Amount, less the following
25 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
26 Payment, Class Representative Service Payment, Litigation Participation Payments, Class
27 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Administration
28 Expenses Payment., and a \$300,000 credit for settlement payments previously made to Class

Members. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.31. “**Nevarez Action**” means the case filed by plaintiff Jose Nevarez in the Fresno County Superior Court, case number 13CECG02624, which is currently on appeal at the Court of Appeal, Fifth Appellate District, case number F081183.

1.32. “**Non-Participating Class Member**” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.33. “**PAGA Pay Period**” means any Pay Period during which an Aggrieved Employee worked for Foster Farms for at least one day during the PAGA Period.

1.34. “**PAGA Period**” means the period from January 20, 2018 to the date of Preliminary Approval of the Settlement.

1.35. “**PAGA**” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.36. “**PAGA Penalties**” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount (\$50,000.00), allocated 25% to the Aggrieved Employees (\$12,500.00) and the 75% to LWDA (\$37,500.00) in settlement of PAGA claims.

1.37. “**PAGA Notice**” means Plaintiffs’ February 10, 2020 letter to Foster Farms and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.38. “**Participating Class Member**” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.39. “**Plaintiffs**” means Jose Nevarez, Pedro Calderon, and Miguel Castellon, the named plaintiffs in the *Nevarez Action* and all of the named plaintiffs in the *Calderon Action*, which includes Pedro Calderon, Miguel Castellon, Juan Andrade, Adalberto Andrade, Margarito Bautista, Sergio Bejar-Perez, Francisco Cazarez, John Dacosta, Santiago Elizondo, Jose Estrada, Walter Fernandez, Juan Franco, Enrique Garcia, Ivan Guillen-Gutierrez, Jose Gutierrez, Esteban Hurtado, Antonio Iguinez, Hector Lomeli, Heriberto Montanez, Ernesto Ochoa, Cristobal Oragel, Francisco Oseguera, Robert Otto, Miguel Para Andrio, Armando Perez, Luis Ramirez, Martin Robles, Mauricio Rodriguez, Bryan Saldana, Eliazar Sanchez, Elvin Sanchez, Leonel Sandoval,

1 Refugio Santana, Martha Veronica de Reyes as Representative of Fernando Reyes' Estate, and
2 Jose Manual Nevarez.

3 1.40. "**Preliminary Approval**" means the Court's Order Granting Preliminary Approval
4 of the Settlement.

5 1.41. "**Preliminary Approval Order**" means the proposed Order Granting Preliminary
6 Approval and Approval of PAGA Settlement.

7 1.42. "**Released Class Claims**" means the claims being released as described in
8 Paragraph 5.2 below.

9 1.43. "**Released PAGA Claims**" means the claims being released as described in
10 Paragraph 5.2 below.

11 1.44. "**Released Parties**" means: Foster Farms, LLC, Foster Poultry Farms and each of
12 their former and present directors, officers, shareholders, owners, members, attorneys, insurers,
13 predecessors, successors, assigns, subsidiaries, and affiliates.

14 1.45. "**Request for Exclusion**" means a Class Member's submission of a written request
15 to be excluded from the Class Settlement signed by the Class Member.

16 1.46. "**Response Deadline**" means 60 days after the Administrator mails Notice to Class
17 Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a)
18 fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or
19 her Objection to the Settlement. Class Members to whom Notice Packets are resent after having
20 been returned undeliverable to the Administrator shall have an additional 14 calendar days
21 beyond the Response Deadline has expired.

22 1.47. "**Settlement**" means the disposition of the Action effected by this Agreement and
23 the Judgment.

24 1.48. "**Workweek**" means any week during which a Class Member worked for Foster
25 Farms during the Class Period, based on the dates of employment of each Class Member.

26 **2. RECITALS**

27 2.1. On August 22, 2013, plaintiff Jose Nevarez commenced the *Nevarez* Action by filing
28 a Complaint alleging causes of action against Foster Farms for: (1) failure to pay wages; (2)

1 failure to provide itemized statements; (3) unfair competition; and (4) breach of implied in fact
2 contract. On October 1, 2013, plaintiff Jose Nevarez filed a First Amended Complaint alleging
3 causes of action against Foster Farms, LLC and Foster Poultry Farms for unfair competition for:
4 (1) failure to pay wages; (2) failure to provide itemized statements; (3) failure to pay overtime
5 wages; and (4) quantum meruit. On July 12, 2017, plaintiff Jose Nevarez filed a Second
6 Amended Complaint alleging causes of action against Foster Farms, LLC for: (1) failure to pay
7 minimum wages; (2) failure to pay overtime compensation; (3) failure to provide meal periods;
8 (4) failure to permit rest periods; (5) failure to provide accurate itemized statements; and (6)
9 unfair competition. On March 26, 2019, plaintiffs Jose Nevarez, Pedro Calderon, and Miguel
10 Castellon filed a Third Amended Complaint against Foster Farms, LLC for: (1) failure to pay
11 minimum wages; (2) failure to pay overtime compensation; (3) failure to provide meal periods;
12 (4) failure to permit rest periods; (5) failure to provide accurate itemized statements; (6) unfair
13 competition; and (7) waiting time penalties. The Third Amended Complaint also sought civil
14 penalties pursuant to the Private Attorneys' General Act for the same alleged violations of the
15 Labor Code. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs in the *Nevarez* Action
16 gave timely written notice to Foster Farms and the LWDA by sending the PAGA Notice. The
17 Third Amended Complaint is the operative complaint in the *Nevarez* Action (the "Operative
18 *Nevarez* Complaint."). Foster Farms denies the allegations in the Operative *Nevarez* Complaint,
19 denies any failure to comply with the laws identified in in the Operative *Nevarez* Complaint and
20 denies any and all liability for the causes of action alleged.

21 2.2. The Court in the *Nevarez* Action granted class certification on July 18, 2018. Class
22 notice was never provided to Class Members in the *Nevarez* Action. On January 31, 2020, the
23 Court granted Foster Farms' motion to dismiss the complaint based on Plaintiffs failure to bring
24 the case to trial within five years. On March 16, 2020, the Fresno County Superior Order signed
25 a judgment dismissing the *Nevarez* Action. Plaintiffs filed a notice of appeal of the judgment
26 dismissing the *Nevarez* Action in the Court of Appeal, Fifth Appellate District, on April 20, 2020.
27 The appeal is currently pending at the Court of Appeal, Fifth Appellate District.

1 2.3. On February 10, 2020, plaintiffs Pedro Calderon, Miguel Castellon, Juan Andrade,
2 Adalberto Andrade, Sergio Bejar-Perez, Francisco Cazerez, John Dacosta, Santiago Elizondo,
3 Jose Estrada, Walter Fernandez, Juan Franco, Enrique Garcia, Ivan Guillen-Gutierrez, Jose
4 Gutierrez, Esteban Hurtado, Antonio Iguinez, Hector Lomeli, Heriberto Montanez, Ernesto
5 Ochoa, Cristobal Oragel, Francisco Oseguera, Robert Otto, Miguel Parra Andrio, Armando Perez,
6 Luis Ramirez, Martin Robles, Mauricio Rodriguez, Bryan Saldana, Eliazar Sanchez, Elvin
7 Sanchez, Leonel Sandoval, Refugio Santana, Martha Veronica De Reyes as representative of
8 Fernando Reyes' estate, and Jose Manuel Nevarez commenced the *Calderon* Action by filing a
9 Complaint alleging causes of action against Foster Farms, LLC and Foster Poultry Farms for: (1)
10 failure to pay minimum wages; (2) failure to overtime and double-time compensation; (3) failure
11 to pay wages when due; (4) failure to provide meal periods; (5) failure to permit rest periods; (6)
12 failure to provide accurate itemized statements; (7) waiting time penalties; (8) unfair competition;
13 (9) retaliation; and (10) negligence. On June 30, 2020, these Plaintiffs filed a First Amended
14 Complaint against Foster Farms, LLC and Foster Poultry Farms that alleged the same causes of
15 action and also sought penalties under the PAGA. The First Amended Complaint is the operative
16 complaint in the *Calderon* Action (the "Operative Calderon Complaint."). Foster Farms denies
17 the allegations in the Operative *Calderon* Complaint, denies any failure to comply with the laws
18 identified in in the Operative *Calderon* Complaint and denies any and all liability for the causes
19 of action alleged.

20 2.4. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs in the *Calderon* Action
21 gave timely written notice to Foster Farms and the LWDA by sending the PAGA Notice.

22 2.5. On December 18, 2018, the Parties participated in an all-day mediation with Judge
23 Ronald Sabraw (ret.). On January 24, 2022, the Parties participated in an all-day mediation
24 presided over by the Honorable Patrick O'Hara (ret.). Following the mediation, the parties
25 continued to negotiate and agreed to attend a second half-day of mediation. On July 6, 2022, the
26 Parties participated in a second half-day mediation with Judge O'Hara. Following the second day
27 of mediation, the Parties continued to negotiate, including negotiating an allocation formula
28 following an agreement on an amount for settlement following the first day of mediation. All

1 three days of mediation and the subsequent negotiations led to this Agreement to settle the
2 *Nevarez* Action and the *Calderon* Action.

3 2.6. Prior to mediation, Plaintiffs obtained, through formal and informal discovery,
4 significant information about the class, including the following: (1) a spreadsheet that contains
5 dates of employment, employment status, pay rate and ranch information for each ranch manger
6 who worked during the class period; (2) a report with assumptions related to workweeks at issues,
7 including the number of workweeks that should be excluded for downtime, vacation/leave, night
8 assistant coverage, and other factors; (3) 37 declarations from class members; (4) personnel files
9 and payroll records for 32 class members; (5) 33 depositions of class members; (6) 7 depositions
10 of witnesses from Foster Farms; and (7) extensive formal written discovery (including over 215
11 requests for documents, 75 special interrogatories, 75 requests for admissions, and 35 form
12 interrogatories, most of which were propounded by plaintiff). Plaintiffs' investigation was more
13 than sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail,*
14 *Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168
15 Cal.App.4th 116, 129–130 (“*Dunk/Kullar*”).

16 2.7. The Parties, Class Counsel and Defense Counsel represent that they are not aware of
17 any other pending matter or action asserting claims that will be extinguished or affected by the
18 Settlement.

19 **3. MONETARY TERMS**

20 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
21 Foster Farms promises to pay \$1,967,000 (minus the \$300,000 credit for settlement payments
22 previously made to Class Members) and no more as the Gross Settlement Amount. Foster Farms
23 has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph
24 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount
25 (minus the \$300,000 credit for settlement payments previously made to Class Members) without
26 asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as
27 a condition of payment. None of the Gross Settlement Amount will revert to Foster Farms.
28

1 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
2 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
3 the Court in the Final Approval:

4 3.2.1. To Class Representatives: Class Representative Service Payments to the
5 Class Representatives of not more than \$10,000 to Plaintiff Nevarez, and \$2,500 to Plaintiffs
6 Calderon and Castellon (in addition to any Individual Class Payments and any Individual PAGA
7 Payments the Class Representatives are entitled to receive as a Participating Class Member).
8 Foster Farms will not oppose Plaintiffs' request for Class Representative Service Payments that
9 do not exceed these amounts. As part of the motion for Class Counsel Fees Payment and Class
10 Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative
11 Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court
12 approves Class Representative Service Payments less than the amounts requested, the
13 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will
14 pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full
15 responsibility and liability for employee taxes owed on the Class Representative Service
16 Payments.

17 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 35%,
18 which is currently estimated to be \$688,450.00 and a Class Counsel Litigation Expenses Payment
19 of not more than \$70,000.00. Foster Farms will not oppose requests for these payments provided
20 that they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for
21 Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days
22 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or
23 a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator
24 will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability
25 to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class
26 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator
27 will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or
28 more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on

1 the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
2 Foster Farms harmless, and indemnifies Foster Farms, from any dispute or controversy regarding
3 any division or sharing of any of these Payments.

4 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
5 \$15,000.00 except for a showing of good cause and as approved by the Court. To the extent the
6 Administration Expenses are less or the Court approves payment less than \$15,000.00, the
7 Administrator will retain the remainder in the Net Settlement Amount.

8 3.2.4. To Each Participating Class Member: An Individual Class Payment is
9 calculated as follows:

10 3.2.4.1. The Net Settlement Fund will be allocated as follows: 35% of the
11 Net Settlement Fund will be allocated to the time period of August 22, 2009 to February 9, 2016;
12 15% of the Net Settlement Fund will be allocated to the time period of February 10, 2016 to
13 January 31, 2018; and 50% of the Net Settlement Fund will be allocated to the time period of
14 February 1, 2018 to the date of Preliminary Approval. Each Participating Class Member's share
15 of the Net Settlement fund will be determined by (a) dividing each portion of the Net Settlement
16 Amount by the total number of Workweeks worked by all Participating Class Members during
17 that time period and (b) multiplying the result by each Participating Class Member's Workweeks
18 during that time period.

19 3.2.4.2. In addition, each Participating Class Member will receive a
20 Litigation Participation Payment if he/she is eligible. Each Participating Class Member who was
21 deposed in the *Nevarez* Action or the *Calderon* Action will receive a Litigation Participation
22 Payment of \$500.00. Each Participating Class Member who submitted a declaration in the
23 *Nevarez* Action or the *Calderon* Action will receive a Litigation Participation Payment of
24 \$500.00. Each Participating Class Member who responded to written discovery in either the
25 *Nevarez* Action or the *Calderon* Action will receive a Litigation Participation Payment of
26 \$500.00. The maximum Litigation Participation Payment for any Participating Class Member
27 shall be \$1,500.00.

3.2.4.3. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for [e.g., interest and penalties] (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.4. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments and their Litigation Participation Payments, if any, in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$50,000.00 to be paid from the Gross Settlement Amount, with 75% (\$37,500.00) allocated to the LWDA PAGA Payment and 25% (\$12,500.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$12,500.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Foster Farms estimates there are 235 Class Members who collectively worked a

1 total of 75,390 Workweeks, and 161 of Aggrieved Employees who worked a total 12,764 of
2 PAGA Pay Periods.

3 4.2. Class Data. Not later than 21 days after the Court grants Preliminary Approval of the
4 Settlement, Foster Farms will simultaneously deliver the Class Data to the Administrator, in the
5 form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
6 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
7 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
8 employees who need access to the Class Data to effect and perform under this Agreement. Foster
9 Farms has a continuing duty to immediately notify Class Counsel if it discovers that the Class
10 Data omitted class member identifying information and to provide corrected or updated Class
11 Data as soon as reasonably feasible. Without any extension of the deadline by which Foster
12 Farms must send the Class Data to the Administrator, the Parties and their counsel will
13 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related
14 to missing or omitted Class Data.

15 4.3. Funding of Gross Settlement Amount. Foster Farms shall fully fund the Gross
16 Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the
17 Effective Date.

18 4.4. Payments from the Gross Settlement Amount. Within 14 days after Foster Farms
19 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
20 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
21 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
22 Payment, and the Class Representative Service Payments. Disbursement of the Class Counsel
23 Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative
24 Service Payments shall not precede disbursement of Individual Class Payments and Individual
25 PAGA Payments.

26 4.4.1. The Administrator will issue checks for the Individual Class Payments
27 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S.
28 Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180

1 days after the date of mailing) when the check will be voided. The Administrator will cancel all
2 checks not cashed by the void date. The Administrator will send checks for Individual Settlement
3 Payments to all Participating Class Members (including those for whom Class Notice was
4 returned undelivered). The Administrator will send checks for Individual PAGA Payments to all
5 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
6 Employees (including those for whom Class Notice was returned undelivered). The
7 Administrator may send Participating Class Members a single check combining the Individual
8 Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement
9 Administrator must update the recipients' mailing addresses using the National Change of
10 Address Database.

11 4.4.2. The Administrator must conduct a Class Member Address Search for all
12 other Class Members whose checks are returned undelivered without USPS forwarding address.
13 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
14 forwarding address provided or to an address ascertained through the Class Member Address
15 Search. The Administrator need not take further steps to deliver checks to Class Members whose
16 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
17 replacement check to any Class Member whose original check was lost or misplaced, requested
18 by the Class Member prior to the void date.

19 4.4.3. The Individual Class Payment checks and Individual PAGA Payment checks issued
20 to Participating Class Members and PAGA Members will be valid and negotiable for 180 days
21 from the date of mailing. For Individual Class Payment checks or Individual PAGA Payment
22 checks that remain uncashed after the 180-day check cashing period expires, the Administrator
23 shall be redistribute any funds associated with those uncashed and canceled checks to
24 Participating Class Members who have already cashed their Individual Class Payment checks and
25 Individual PAGA payment checks on a pro rata basis. These redistributed funds will be issued as
26 1099 penalties. If the total amount of uncashed checks after the first distribution amount to
27 \$1,000 or less, there will be no second distribution and the remaining funds will be distributed to
28 a cy pres beneficiary. If a second distribution occurs (because the remaining funds after the first

1 distribution is more than \$1,000.00), then any remaining funds after the second distribution will
2 be provided to a cy pres beneficiary. The Parties agree that this disposition results in no "unpaid
3 residue" under California Civil Procedure Code § 384(b), as all payments to the Participating
4 Class Members and PAGA Members will be paid out, whether or not these individuals cash their
5 Settlement checks. Therefore, Defendants will not be required to pay any interest on such
6 amounts.

7 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments
8 shall not obligate Foster Farms to confer any additional benefits or make any additional payments
9 to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this
10 Agreement.

11 **5. RELEASES OF CLAIMS**

12 Effective on the date when Foster Farms fully funds the entire Gross Settlement Amount,
13 Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as
14 follows:

15 5.1. Plaintiffs' Release. Plaintiffs and their respective former and present spouses,
16 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
17 and discharge Released Parties from all claims, transactions, or occurrences that occurred during
18 the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have
19 been, alleged, based on the facts contained, in the Operative *Nevarez* Complaint and the
20 Operative *Calderon* Complaint and (b) all PAGA claims that were, or reasonably could have
21 been, alleged based on facts contained in the Operative *Calderon* Complaint, and Plaintiffs'
22 PAGA Notice ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims or actions
23 to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
24 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
25 on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts
26 or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be
27 true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects,
28 notwithstanding such different or additional facts or Plaintiffs' discovery of them.

1 5.1.1. Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For
2 purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights,
3 and benefits, if any, of section 1542 of the California Civil Code, which reads:

4 A general release does not extend to claims that the creditor or releasing party does
5 not know or suspect to exist in his or her favor at the time of executing the release,
6 and that if known by him or her would have materially affected his or her settlement
with the debtor or Released Party.

7 5.2. Release by Participating Class Members Who Are Not Aggrieved Employees. All
8 Participating Class Members, on behalf of themselves and their respective former and present
9 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
10 Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the
11 Class Period facts stated in the *Nevarez* Operative Complaint and the *Calderon* Operative
12 Complaint and ascertained in the course of the Action, including, e.g., (1) failure to pay minimum
13 wages in violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 1199; (2)
14 failure to pay overtime and double-time compensation in violation of Labor Code §§ 510, 558,
15 1194, 1197, 1197.1, 1198, 1199; (3) failure to provide meal periods in violation of Labor Code §§
16 226.7, 512, and 558; (4) failure to permit rest periods in violation of Labor Code §§ 226.7 and
17 558; (5) failure to provide accurate itemized statements and records in violation of Labor Code §§
18 226 and 226.3; (6) waiting time penalties pursuant to Labor Code §§ 201, 202, and 203; (7)
19 retaliation in violation of Labor Code §§ 98.6 and 1102.5; and (8) negligence. Except as set forth
20 in Section 5.3 of this Agreement, Participating Class Members do not release any other claims,
21 including claims for vested benefits, wrongful termination, violation of the Fair Employment and
22 Housing Act, unemployment insurance, disability, social security, workers' compensation, or
claims based on facts occurring outside the Class Period.

23 5.3. Release by Non-Participating Class Members Who Are Aggrieved Employees. All
24 Non-Participating Class Members who are Aggrieved Employees are deemed to release, on
25 behalf of themselves and their respective former and present representatives, agents, attorneys,
26 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA
27 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period
28

1 facts stated in the Calderon Operative Complaint and the PAGA Notice, including, e.g., (1)
2 failure to pay minimum wages in violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197,
3 1197.1, 1198, and 1199; (2) failure to pay overtime and double-time compensation in violation of
4 Labor Code §§ 510, 558, 1194, 1197, 1197.1, 1198, 1199; (3) failure to provide meal periods in
5 violation of Labor Code §§ 226.7, 512, and 558; (4) failure to permit rest periods in violation of
6 Labor Code §§ 226.7 and 558; (5) failure to provide accurate itemized statements and records in
7 violation of Labor Code §§ 226 and 226.3; (6) waiting time penalties pursuant to Labor Code §§
8 201, 202, and 203; (7) retaliation in violation of Labor Code §§ 98.6 and 1102.5; and (8)
9 negligence.

10 **6. MOTION FOR PRELIMINARY APPROVAL**

11 The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion
12 for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary
13 Approvals.

14 6.1. Foster Farms’ Declaration in Support of Preliminary Approval. Within 21 days of
15 the full execution of this Agreement, Foster Farms will prepare and deliver to Class Counsel a
16 signed Declaration from Foster Farms and Defense Counsel disclosing all facts relevant to any
17 actual or potential conflicts of interest with the Administrator. In their Declarations, Defense
18 Counsel and Foster Farms shall aver that they are not aware of any other pending matter or action
19 asserting claims that will be extinguished or adversely affected by the Settlement.

20 6.2. Plaintiffs’ Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all
21 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and
22 memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the
23 Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor
24 Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and
25 Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from
26 the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting
27 to its willingness to serve; competency; operative procedures for protecting the security of Class
28 Data; amounts of insurance coverage for any data breach, defalcation of funds or other

1 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
2 and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense
3 Counsel; (v) signed declarations from Plaintiffs confirming willingness and competency to serve
4 and disclosing all facts relevant to any actual or potential conflicts of interest with Class
5 Members, and/or the Administrator; (vi) a signed declaration from each Class Counsel firm
6 attesting to its competency to represent the Class Members; its timely transmission to the LWDA
7 of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd.
8 (a)), Operative Calderon Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement
9 (Labor Code section 2699, subd. (1)(2)); and (vii) all facts relevant to any actual or potential
10 conflict of interest with Class Members and the Administrator. In their Declarations, Plaintiffs
11 and Class Counsel shall aver that they are not aware of any other pending matter or action
12 asserting claims that will be extinguished or adversely affected by the Settlement.

13 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
14 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later
15 than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the
16 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion
17 for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
18 Approval to the Administrator.

19 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
20 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
21 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
22 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
23 Preliminary Approval or conditions Preliminary Approval on any material change to this
24 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the
25 Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
26 otherwise satisfy the Court's concerns.

27 7. SETTLEMENT ADMINISTRATION

1 7.1. Selection of Administrator. The Parties have jointly selected Simpluris to serve as
2 the Administrator and verified that, as a condition of appointment, Simpluris agrees to be bound
3 by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in
4 exchange for payment of Administration Expenses. The Parties and their Counsel represent that
5 they have no interest or relationship, financial or otherwise, with the Administrator other than a
6 professional relationship arising out of prior experiences administering settlements.

7 7.2. Employer Identification Number. The Administrator shall have and use its own
8 Employer Identification Number for purposes of calculating payroll tax withholdings and
9 providing reports state and federal tax authorities.

10 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that
11 meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation
12 section 468B-1.

13 7.4. Notice to Class Members.

14 7.4.1. No later than three (3) business days after receipt of the Class Data, the
15 Administrator shall notify Class Counsel that the list has been received and state the number of
16 Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

17 7.4.2. Using best efforts to perform as soon as possible, and in no event later than
18 14 days after receiving the Class Data, the Administrator will send to all Class Members
19 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class
20 Notice with Spanish translation, if applicable, substantially in the form attached to this Agreement
21 as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of
22 any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member,
23 and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these
24 amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses
25 using the National Change of Address database.

26 7.4.3. Not later than 3 business days after the Administrator’s receipt of any Class
27 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
28 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding

1 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class
2 Notice to the most current address obtained. The Administrator has no obligation to make further
3 attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the
4 USPS a second time.

5 7.4.4. The deadlines for Class Members' written objections, Challenges to
6 Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14
7 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose
8 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline
9 with the re-mailed Class Notice.

10 7.4.5. If the Administrator, Foster Farms or Class Counsel is contacted by or
11 otherwise discovers any persons who believe they should have been included in the Class Data
12 and should have received Class Notice, the Parties will expeditiously meet and confer in person
13 or by telephone, and in good faith, in an effort to agree on whether to include them as Class
14 Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
15 other Class Members, and the Administrator will send, via email or overnight delivery, a Class
16 Notice requiring them to exercise options under this Agreement not later than [14] days after
17 receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

18 7.5. Requests for Exclusion (Opt-Outs).

19 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class
20 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
21 Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional
22 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter
23 from a Class Member or his/her representative that reasonably communicates the Class Member's
24 election to be excluded from the Settlement and includes the Class Member's name, address and
25 email address or telephone number. To be valid, a Request for Exclusion must be timely faxed,
26 emailed, or postmarked by the Response Deadline.

27 7.5.2. The Administrator may not reject a Request for Exclusion as invalid
28 because it fails to contain all the information specified in the Class Notice. The Administrator

1 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
2 identity of the person as a Class Member and the Class Member's desire to be excluded. The
3 Administrator's determination shall be final and not appealable or otherwise susceptible to
4 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,
5 the Administrator may demand additional proof of the Class Member's identity. The
6 Administrator's determination of authenticity shall be final and not appealable or otherwise
7 susceptible to challenge.

8 7.5.3. Every Class Member who does not submit a timely and valid Request for
9 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
10 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
11 Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless whether the
12 Participating Class Member actually receives the Class Notice or objects to the Settlement.

13 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion
14 is a Non-Participating Class Member and shall not receive an Individual Class Payment or have
15 the right to object to the class action components of the Settlement. Because future PAGA claims
16 are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members
17 who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this
18 Agreement and are eligible for an Individual PAGA Payment.

19 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 60 days
20 after the Administrator mails the Class Notice (plus an additional 14 days for Class Members
21 whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay
22 Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may
23 challenge the allocation by communicating with the Administrator via fax, email or mail. The
24 Administrator must encourage the challenging Class Member to submit supporting
25 documentation. In the absence of any contrary documentation, the Administrator is entitled to
26 presume that the Workweeks contained in the Class Notice are correct so long as they are
27 consistent with the Class Data. The Administrator's determination of each Class Member's
28 allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise

1 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to the
2 calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the
3 Administrator's determination the challenges.

4 7.7. Objections to Settlement.

5 7.7.1. Only Participating Class Members may object to the class action
6 components of the Settlement and/or this Agreement, including contesting the fairness of the
7 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
8 Litigation Expenses Payment and/or Class Representative Service Payments.

9 7.7.2. Participating Class Members may send written objections to the
10 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
11 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
12 Hearing. A Participating Class Member who elects to send a written objection to the
13 Administrator must do so not later than 60 days after the Administrator's mailing of the Class
14 Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

15 7.7.3. Non-Participating Class Members have no right to object to any of the class
16 action components of the Settlement.

17 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks
18 to be performed or observed by the Administrator contained in this Agreement or otherwise.

19 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will
20 establish and maintain and use an internet website to post information of interest to Class
21 Members including the date, time and location for the Final Approval Hearing and copies of the
22 Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
23 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
24 Counsel Litigation Expenses Payment and Class Representative Service Payments, the Final
25 Approval and the Judgment. The Administrator will also maintain and monitor an email address
26 and a toll-free telephone number to receive Class Member calls, faxes and emails.

27 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
28 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not

1 later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the
2 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names
3 and other identifying information of Class Members who have timely submitted valid Requests
4 for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class
5 Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
6 Exclusion from Settlement submitted (whether valid or invalid).

7 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide
8 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
9 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion
10 (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay
11 Periods received and/or resolved, and checks mailed for Individual Class Payments and
12 Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the
13 Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all
14 Requests for Exclusion and objections received.

15 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the
16 authority to address and make final decisions consistent with the terms of this Agreement on all
17 Class Member challenges over the calculation of Workweeks and/or Pay Periods. The
18 Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

19 7.8.5 Administrator’s Declaration. Not later than 14 days before the date by
20 which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the
21 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
22 for filing in Court attesting to its due diligence and compliance with all of its obligations under
23 this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices
24 returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the
25 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
26 number of written objections and attach the Exclusion List. The Administrator will supplement
27 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is
28 responsible for filing the Administrator’s declaration(s) in Court.

1 7.8.6. Final Report by Settlement Administrator. Within 10 days after the
2 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide
3 Class Counsel and Defense Counsel with a final report detailing its disbursements by employee
4 identification number only of all payments made under this Agreement. At least 15 days before
5 any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and
6 Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of
7 all payments required under this Agreement. Class Counsel is responsible for filing the
8 Administrator's declaration in Court.

9 **8. CLASS SIZE ESTIMATES**

10 Based on its records, Foster Farms estimates that, as of the date of this Settlement
11 Agreement, (1) there are 235 Class Members and 75,390 Total Workweeks during the Class
12 period and (2) there were and 161 of Aggrieved Employees who worked a total 12,764 of PAGA
13 Pay Periods.

14 **9. FOSTER FARMS' RIGHT TO WITHDRAW**

15 If the number of valid Requests for Exclusion identified in the Exclusion List exceeds
16 10% of the total of all Class Members, or if the number of valid Requests for Exclusion received
17 from plaintiffs in the *Calderon* action exceeds 10% of the total number of plaintiffs in the
18 *Calderon* action, Foster Farms may elect, but is not obligated, to withdraw from the Settlement.
19 The Parties agree that, if Foster Farms withdraws, the Settlement shall be void ab initio, have no
20 force or effect whatsoever, and that neither Party will have any further obligation to perform
21 under this Agreement; provided, however, Foster Farms will remain responsible for paying all
22 Settlement Administration Expenses incurred to that point. Foster Farms must notify Class
23 Counsel and the Court of its election to withdraw not later than 7 days after the Administrator
24 sends the final Exclusion List to Defense Counsel; late elections will have no effect.

25 **10. MOTION FOR FINAL APPROVAL**

26 Not later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will
27 file in Court, a motion for final approval of the Settlement that includes a request for approval of
28 the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order

1 and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiffs shall provide
2 drafts of these documents to Defense Counsel not later than 7 days prior to filing the Motion for
3 Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person
4 or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final
5 Approval.

6 10.1. Response to Objections. Each Party retains the right to respond to any objection
7 raised by a Participating Class Member, including the right to file responsive documents in Court
8 no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or
9 accepted by the Court.

10 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
11 Approval on any material change to the Settlement (including, but not limited to, the scope of
12 release to be granted by Class Members), the Parties will expeditiously work together in good
13 faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final
14 Approval. The Court’s decision to award less than the amounts requested for the Class
15 Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation
16 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
17 modification to the Agreement within the meaning of this paragraph.

18 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of
19 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
20 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
21 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

22 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
23 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
24 Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
25 respective counsel, and all Participating Class Members who did not object to the Settlement as
26 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
27 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
28 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver

1 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
2 Parties' obligations to perform under this Agreement will be suspended until such time as the
3 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
4 the amount of the Net Settlement Amount.

5 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
6 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
7 modification of this Agreement (including, but not limited to, the scope of release to be granted
8 by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
9 expeditiously work together in good faith to address the appellate court's concerns and to obtain
10 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
11 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
12 the Court's award of the Class Representative Service Payments or any payments to Class
13 Counsel shall not constitute a material modification of the Judgment within the meaning of this
14 paragraph, as long as the Gross Settlement Amount remains unchanged.

15 11. AMENDED JUDGMENT

16 If any amended judgment is required under Code of Civil Procedure section 384, the
17 Parties will work together in good faith to jointly submit and a proposed amended judgment.

18 12. ADDITIONAL PROVISIONS

19 13.1. No Admission of Liability, Class Certification or Representative Manageability for
20 Other Purposes. This Agreement represents a compromise and settlement of highly disputed
21 claims. Nothing in this Agreement is intended or should be construed as an admission by Foster
22 Farms that any of the allegations in the Operative *Nevarez* Complaint or the Operative *Calderon*
23 Complaint have merit or that Foster Farms has any liability for any claims asserted; nor should it
24 be intended or construed as an admission by Plaintiffs that Foster Farms' defenses in the Action
25 have merit. The Parties agree that class certification and representative treatment is for purposes
26 of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final
27 Approval or enter Judgment, Foster Farms reserves the right to contest certification of any class
28 for any reasons, and Foster Farms reserves all available defenses to the claims in the Action, and

1 Plaintiff reserves the right to move for class certification on any grounds available and to contest
2 Foster Farms' defenses. The Settlement, this Agreement and Parties' willingness to settle the
3 Action will have no bearing on, and will not be admissible in connection with, any litigation
4 (except for proceedings to enforce or effectuate the Settlement and this Agreement).

5 13.2. Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Foster
6 Farms and Defense Counsel separately agree that, until the Motion for Preliminary Approval of
7 Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause
8 or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement
9 directly or indirectly, specifically or generally, to any person, corporation, association,
10 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,
11 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related
12 matter; (3) in response to a court order or subpoena; or (4) in response to an inquiry or subpoena
13 issued by a state or federal government agency. Each Party agrees to immediately notify each
14 other Party of any judicial or agency order, inquiry, or subpoena seeking such information.
15 Plaintiffs, Class Counsel, Foster Farms and Defense Counsel separately agree not to, directly or
16 indirectly, initiate any conversation or other communication, before the filing of the Motion for
17 Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to
18 this Agreement except to respond only that "the matter was resolved," or words to that effect.
19 This paragraph does not restrict Class Counsel's communications with Class Members in
20 accordance with Class Counsel's ethical obligations owed to Class Members.

21 13.3. No Solicitation. The Parties separately agree that they and their respective counsel
22 and employees will not solicit any Class Member to opt out of or object to the Settlement, or
23 appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
24 Counsel's ability to communicate with Class Members in accordance with Class Counsel's
25 ethical obligations owed to Class Members.

26 13.4. Integrated Agreement. Upon execution by all Parties and their counsel, this
27 Agreement together with its attached exhibits shall constitute the entire agreement between the
28

1 Parties relating to the Settlement, superseding any and all oral representations, warranties,
2 covenants, or inducements made to or by any Party.

3 13.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant
4 and represent that they are authorized by Plaintiffs and Foster Farms, respectively, to take all
5 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to
6 effectuate its terms, and to execute any other documents reasonably required to effectuate the
7 terms of this Agreement including any amendments to this Agreement.

8 13.6. Cooperation. The Parties and their counsel will cooperate with each other and use
9 their best efforts, in good faith, to implement the Settlement by, among other things, modifying
10 the Settlement Agreement, submitting supplemental evidence and supplementing points and
11 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
12 or content of any document necessary to implement the Settlement, or on any modification of the
13 Agreement that may become necessary to implement the Settlement, the Parties will seek the
14 assistance of a mediator and/or the Court for resolution.

15 13.7. No Prior Assignments. The Parties separately represent and warrant that they have
16 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
17 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
18 action, or right released and discharged by the Party in this Settlement.

19 13.8. No Tax Advice. Neither Plaintiffs, Class Counsel, Foster Farms nor Defense
20 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
21 Settlement be relied upon as such within the meaning of United States Treasury Department
22 Circular 230 (31 CFR Part 10, as amended) or otherwise.

23 13.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,
24 modified, changed, or waived only by an express written instrument signed by all Parties or their
25 representatives, and approved by the Court.

26 13.10. Agreement Binding on Successors. This Agreement will be binding upon, and
27 inure to the benefit of, the successors of each of the Parties.
28

1 13.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will
2 be governed by and interpreted according to the internal laws of the State of California, without
3 regard to conflict of law principles.

4 13.12. Cooperation in Drafting. The Parties have cooperated in the drafting and
5 preparation of this Agreement. This Agreement will not be construed against any Party on the
6 basis that the Party was the drafter or participated in the drafting.

7 13.13. Confidentiality. To the extent permitted by law, all agreements made, and orders
8 entered during Action and in this Agreement relating to the confidentiality of information shall
9 survive the execution of this Agreement.

10 13.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to
11 Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel
12 by Foster Farms in connection with the mediation, other settlement negotiations, or in connection
13 with the Settlement, may be used only with respect to this Settlement, and no other purpose, and
14 may not be used in any way that violates any existing contractual agreement, statute, or rule of
15 court. Not later than 90 days after the date when the Court discharges the Administrator's
16 obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs
17 shall destroy, all paper and electronic versions of Class Data received from Foster Farms unless,
18 prior to the Court's discharge of the Administrator's obligation, Foster Farms makes a written
19 request to Class Counsel for the return, rather than the destructions, of Class Data.

20 13.15. Headings. The descriptive heading of any section or paragraph of this Agreement
21 is inserted for convenience of reference only and does not constitute a part of this Agreement.

22 13.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
23 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
24 weekend or federal legal holiday, such date or deadline shall be on the first business day
25 thereafter.

26 13.17. Notice. All notices, demands or other communications between the Parties in
27 connection with this Agreement will be in writing and deemed to have been duly given as of the
28

1 third business day after mailing by United States mail, or the day sent by email or messenger,
2 addressed as follows:

3 To Plaintiff: Martin Horwitz, The Law Office of Martin L. Horwitz, P.C., 11150 West
4 Olympic Boulevard, Suite 1120, Los Angeles, California 90064-1850.

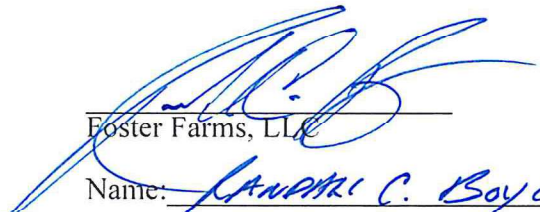
5 To Foster Farms: Brandon McKelvey, Medina McKelvey LLP, 925 Highland Pointe
6 Drive, Suite 300, Roseville, California 95678.

7 13.18. Execution in Counterparts. This Agreement may be executed in one or more
8 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
9 Agreement shall be accepted as an original. All executed counterparts and each of them will be
10 deemed to be one and the same instrument if counsel for the Parties will exchange between
11 themselves signed counterparts. Any executed counterpart will be admissible in evidence to
12 prove the existence and contents of this Agreement.

13 13.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
14 litigation shall be stayed, including the the five-year deadline to bring the Action to trial pursuant
15 to pursuant to Code of Civil Procedure §583.310, except to effectuate the terms of this
16 Agreement.

17 **IT IS SO AGREED.**

18 Dated: 1/17/23

19 
Foster Farms, LLC

20 Name: Brandon C. Boyce

21 Dated: _____

22 _____
Pedro Calderon

23 Dated: _____

24 _____
Miguel Castellon

third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff: Martin Horwitz, The Law Office of Martin L. Horwitz, P.C., 11150 West Olympic Boulevard, Suite 1120, Los Angeles, California 90064-1850.

To Foster Farms: Brandon McKelvey, Medina McKelvey LLP, 925 Highland Pointe Drive, Suite 300, Roseville, California 95678.

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IT IS SO AGREED.

Dated: _____

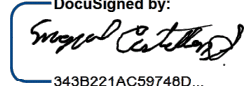
Foster Farms, LLC

Name: _____

Dated: _____

Pedro Calderon

Dated: 1/18/2023

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Miguel Castellon

third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff: Martin Horwitz, The Law Office of Martin L. Horwitz, P.C., 11150 West Olympic Boulevard, Suite 1120, Los Angeles, California 90064-1850.

To Foster Farms: Brandon McKelvey, Medina McKelvey LLP, 925 Highland Pointe Drive, Suite 300, Roseville, California 95678.

13.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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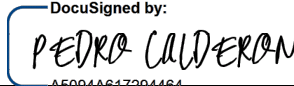
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Foster Farms, LLC

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Pedro Calderon

Dated: _____

Miguel Castellon

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Juan Andrade

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Margarito Bautista

Sergio Bejar-Perez

Francisco Cazarez

John Dacosta

Santiago Elizondo

Jose Estrada

Walter Fernandez

Juan Franco

Enrique Garcia

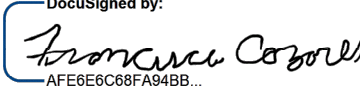
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Jose Gutierrez

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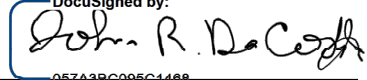
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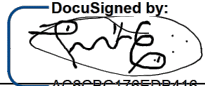
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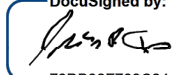
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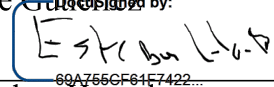
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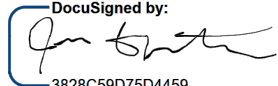

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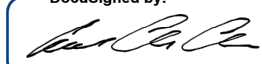
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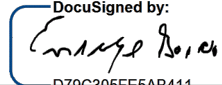
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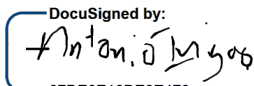
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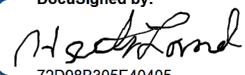
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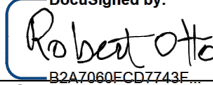
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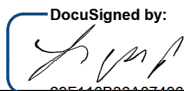
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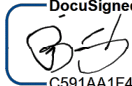
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Dated: 1/19/2023

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Bryan Saldana

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Dated: _____

Eliazar Sanchez

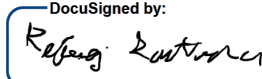
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Elvin Sanchez

Dated: _____

Leonel Sandoval

Dated: 1/16/2023

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 Refugio Santana

Dated: _____

Martha Veronica de Reyes as
 Representative of Fernando Reyes'
 Estate

Dated: _____

Jose Manual Nevarez

APPROVED AS TO FORM

Dated: November __, 2022

MEDINA McKELVEY LLP

By: _____
 BRANDON R. McKELVEY
 TIMOTHY B. NELSON
 Counsel for Defendants FOSTER FARMS,
 LLC and FOSTER POULTRY FARMS

Dated: November __, 2022

THE LAW OFFICE OF
 MARTIN L. HORWITZ, P.C

By: _____
 MARTIN L. HORWITZ
 Attorneys for Plaintiffs

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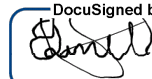
Dated: _____

Eliazar Sanchez

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Elvin Sanchez

Dated: 1/18/2023

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Leonel Sandoval

Dated: _____

Martha Veronica de Reyes as
Representative of Fernando Reyes'
Estate

Dated: _____

Jose Manual Nevarez

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BRANDON R. McKELVEY
TIMOTHY B. NELSON
Counsel for Defendants FOSTER FARMS,
LLC and FOSTER POULTRY FARMS

Dated: November __, 2022

THE LAW OFFICE OF
MARTIN L. HORWITZ, P.C

By: _____
MARTIN L. HORWITZ
Attorneys for Plaintiffs

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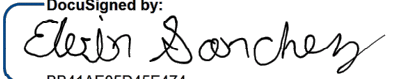
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Eliazar Sanchez

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Elvin Sanchez

Refugio Santana

Martha Veronica de Reyes as
Representative of Fernando Reyes'
Estate

Jose Manual Nevarez

MEDINA McKELVEY LLP

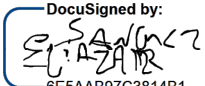
By: _____
BRANDON R. McKELVEY
TIMOTHY B. NELSON
Counsel for Defendants FOSTER FARMS,
LLC and FOSTER POULTRY FARMS

THE LAW OFFICE OF
MARTIN L. HORWITZ, P.C

By: _____
MARTIN L. HORWITZ
Attorneys for Plaintiffs

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Dated: 1/19/2023

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Eliazar Sanchez

Dated:

Martha Veronica de Reyes as
Representative of Fernando Reyes'
Estate

Dated:

Jose Manual Nevarez

APPROVED AS TO FORM

Dated: November __, 2022

MEDINA McKELVEY LLP

By: _____
BRANDON R. McKELVEY
TIMOTHY B. NELSON
Counsel for Defendants FOSTER FARMS,
LLC and FOSTER POULTRY FARMS

Dated: November __, 2022

THE LAW OFFICE OF
MARTIN L. HORWITZ, P.C

By: _____
MARTIN L. HORWITZ
Attorneys for Plaintiffs

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Dated: _____

Refugio Santana

1/18/2023
Dated: _____

DocuSigned by:

 A797D75C250E4E7...
 Martha Veronica de Reyes as
 Representative of Fernando Reyes'
 Estate

Dated: _____

Jose Manual Nevarez

APPROVED AS TO FORM

Dated: November __, 2022

MEDINA McKELVEY LLP

By: _____
 BRANDON R. McKELVEY
 TIMOTHY B. NELSON
 Counsel for Defendants FOSTER FARMS,
 LLC and FOSTER POULTRY FARMS

Dated: November __, 2022

THE LAW OFFICE OF
MARTIN L. HORWITZ, P.C

By: _____
 MARTIN L. HORWITZ
 Attorneys for Plaintiffs

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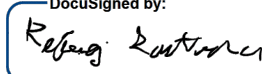
Dated: _____

Elvin Sanchez

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Dated: 1/16/2023

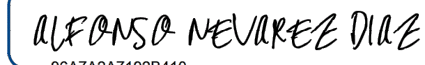
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Refugio Santana

Dated: 1/20/2023

Martha Veronica de Reyes as
Representative of Fernando Reyes'
Estate

Dated: 1/20/2023

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Jose Manual Nevarez

APPROVED AS TO FORM

Dated: November __, 2022

MEDINA McKELVEY LLP

By: _____
BRANDON R. McKELVEY
TIMOTHY B. NELSON
Counsel for Defendants FOSTER FARMS,
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Dated: November __, 2022

THE LAW OFFICE OF
MARTIN L. HORWITZ, P.C

By: _____
MARTIN L. HORWITZ
Attorneys for Plaintiffs

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APPROVED AS TO FORM

Dated: January 18, 2023

MEDINA McKELVEY LLP

By: 
BRANDON R. McKELVEY
TIMOTHY B. NELSON
Counsel for Defendants FOSTER FARMS,
LLC and FOSTER POULTRY FARMS

Dated: January 31, 2023

THE LAW OFFICE OF
MARTIN L. HORWITZ, P.C

By: 
MARTIN L. HORWITZ
Attorneys for Plaintiffs