

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT & RELEASE

Bunkley, et al. v. DMSD Foods, Inc., et al.
San Diego Superior Court
Case No. 37-2020-00017973-CU-OE-CTL

Alicia Gomez v. DMSD Foods, Inc.
San Diego Superior Court
Case No. 37-2021-00000309-CU-OE-CTL

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the settlement of the above-listed actions with respect to certain claims brought in a representative capacity pursuant to the Private Attorneys General Act (“PAGA”) (Labor Code § 2698, *et seq.*) shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this PAGA Settlement Agreement (“PAGA Settlement” or “Agreement”).

This Agreement is made by and between Defendant DMSD Foods, Inc., Beshay Foods, Inc., and Beshay Enterprises (“DMSD” or “Defendants”) on the one hand, and Plaintiff Renee Bunkley (“Bunkley”) and Plaintiff Alicia Gomez (“Gomez”) (Bunkley and Gomez together are the “Plaintiffs”) on the other, for themselves, the Aggrieved Employees (defined below), and on behalf of the State of California. Defendants and Plaintiffs, as defined herein, are sometimes collectively referred to as the “Parties.” The Release shall be effective upon the date that Defendants pay the First Installment Payment (defined below).

The Parties agree that all representative PAGA claims brought, or that could have been brought, based upon the facts alleged in San Diego County Superior Court Case Number 37-2020-00017973-CU-OE-CTL and San Diego County Superior Court Case Number 37-2021-00000309-CU-OE-CTL (the “Actions”), including based on Plaintiffs’ claims that DMSD failed to pay Plaintiffs and Aggrieved Employees all minimum and overtime wages owed, failed to provide Plaintiffs and Aggrieved Employees compliant meal and rest periods, failed to issue Plaintiffs and Aggrieved Employees accurate itemized wage statements and/or maintain or provide certain records, and failed to timely pay Plaintiffs and Aggrieved Employees all wages owed upon separation of employment, shall be, and hereby are, fully and completely ended, settled, resolved, and concluded by agreement of Defendant to pay the gross sum of Five Hundred Ninety-Five Thousand Dollars and Zero Cents (\$595,000.00) (hereinafter referred to as the “PAGA Settlement Sum”), subject to the installment payment provisions described herein, in settlement of all PAGA civil penalties sought in the Actions, the amount of which shall be inclusive of attorneys’ fees and costs for Plaintiffs’ Counsel, in connection with this Agreement.

Article I.

Definitions

Section 1.01 Definitions.

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) “Aggrieved Employees” means all individuals who are, or previously were, employed by DMSD Foods, Inc., Beshay Foods, Inc., and/or Beshay Enterprises and classified as non-exempt employees in California during the Release Period.
- (b) “Court” means the Superior Court for the State of California, County of San Diego.
- (c) “Defendant’s Counsel” or “Counsel for Defendant” are:

Michael J. O’Connor, Jr., Esq.
Geoff D. La Val, Esq.
Atkinson, Andelson, Loya, Ruud & Romo
4275 Executive Square, Suite 700
La Jolla, California 92037

- (d) “Effective Date” means the latter of: (a) if no objections to the motion to approve this Agreement are made in writing or at the hearing for Court approval, the date the Court enters an order granting the Order approving the Agreement; (b) if objection is made in writing or at the hearing on the motion to approve the Agreement and overruled, and no appeal is taken of the Order granting approval or no motion to intervene or motion to vacate judgment is filed, then the Effective Date shall be three (3) calendar days after the deadline to file an appeal of the Order granting approval; or (c) if one or more appeals are taken from the Court’s overruling any objection to the Agreement in addition to an appeal of an order denying either intervention or a motion to vacate judgment, then the Effective Date shall be three (3) calendar days after any appeal is dismissed or the Order granting approval of the Agreement is affirmed after an appeal, and the Order granting approval is not subject to further review and becomes final.
- (e) “Bunkley Complaint” means the operative Complaint filed by Plaintiff Bunkley on May 29, 2020 in San Diego Superior Court, Case No. 37-2020-00017973, and the PAGA notice submitted to the California Labor and Workforce Development Agency (“LWDA”) on February 10, 2020, the filing of which was a procedural prerequisite for Plaintiff Bunkley to pursue recovery of civil penalties under PAGA.
- (f) “Gomez Complaint” means the operative First Amended Complaint filed by Plaintiff Gomez on July 22, 2020 currently pending in San Diego County Superior Court, Case No. 37-2021-00000309, the original Complaint filed on May 12, 2020, and the PAGA notice submitted to the California Labor and Workforce Development Agency

(“LWDA”) on May 12, 2020, the filing of which was a procedural prerequisite for Plaintiff Gomez to pursue recovery of civil penalties under PAGA.

(g) “Plaintiff Bunkley’s Counsel” are:

ACKERMANN & TILAJEF, P.C.
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(h) “Plaintiff Gomez’s Counsel” are:

AEGIS LAW FIRM, P.C.
Kashif Haque, State Bar No. 218672
Samuel Wong, State Bar No. 217104
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9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
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LAW OFFICE OF NEDA AGUIRRE, APC
Neda Aguirre, State Bar No. 303790
41593 Winchester Road, Suite 102
Temecula, CA 92590
Tel. 951-775-8445
Fax. 951-346-38761

(i) “Plaintiffs’ Counsel” means Plaintiff Bunkley’s Counsel and Plaintiff Gomez’s Counsel, together.

(j) “Release Period” means the time period of February 2, 2019 through the date the Court grants approval of the PAGA Settlement.

(k) “Settlement Administrator” means ILYM Group, Inc.

Article II.

Background.

Section 2.01 Procedural Background.

- (a) On March 29, 2020, Plaintiff Bunkley filed a PAGA representative action in the Superior Court of the State of California for the County of San Diego, entitled *Renee Bunkley v. DMSD Foods, Inc., et al.*, Case No. 37-2019-00017973-CU-OE-CTL, which alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 226(a), 226(e) 226.3, 226.7, 256, and 558, as well as the Industrial Welfare Commission Wage Order No. 5-2001.
- (b) On May 12, 2020, Plaintiff Gomez filed a putative class action complaint in the Superior Court of the State of California for the County of Los Angeles, entitled *Alicia Gomez v. DMSD Foods, Inc.*, which alleged claims for: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to provide accurate itemized wage statements; (6) failure to pay all wages due upon separation of employment; and (7) violation of Business and Professions Code §§ 1700, *et seq.* On July 22, 2020, Plaintiff filed a First Amended Complaint to add a representative PAGA claim, which sought recovery of civil penalties for violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, and 1198. In November 2020, the Parties met and conferred regarding the venue for the *Gomez* matter and the Parties stipulated to transfer the matter to San Diego Superior Court, where it was opened on December 30, 2020 and assigned to Judge Medel, Case No. Case No. 37-2021-00000309-CU-OE-CTL.
- (c) During the course of the Actions, the Parties engaged in informal discovery and investigation into Plaintiffs' claims. The Parties reached this PAGA Settlement only after such discovery and investigation was performed and the Parties engaged in a full-day, arms-length mediation before Hon. Steven R. Denton (Ret.) with Judicate West and this settlement itself is the product of a post-mediation mediator's proposal by Judge Denton.
- (d) In addition to this PAGA Settlement, Plaintiffs have agreed to a full and complete release of their individual claims against Defendant, as set forth in separate confidential settlement agreements between Plaintiffs and Defendant. Plaintiffs' individual claims were never at issue in this lawsuit even though based largely upon the same underlying conduct. *Kim v. Reins International California, Inc.*, 9 Cal.5th 73, 81 (2020) ("A PAGA claim is legally and conceptually different from an employee's own suit for damages and statutory" and "Settlement of individual claims does not strip an aggrieved employee of standing, as the state's authorized representative, to pursue PAGA remedies."). PAGA Counsel are not receiving any attorneys' fees nor cost reimbursement associated with Plaintiffs' individual settlements.

- (e) In connection with this PAGA Settlement, Plaintiffs' representative PAGA claims alleging violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, and 1198, will be dismissed with prejudice through the entry of the Order granting approval in this Action.
- (f) This PAGA Settlement contemplates the entry of an order by the Court approving the payment allocated for settlement of the PAGA penalties sought in the Actions and dismissal of both Actions in accordance with this Agreement.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Court Approval of the PAGA Settlement; Mutual Cooperation.

Subject to Defendant's review and approval prior to filing, Plaintiffs' Counsel shall be responsible for preparing and filing a Motion for Approval of the PAGA Settlement ("Motion") in the *Bunkley* action. Plaintiffs' Counsel will provide Defendant's Counsel with a copy of the Motion no later than three (3) business days prior to the deadline for submission and an opportunity to propose revisions to that Motion before it is filed. The Parties will cooperate in obtaining, through an unopposed motion, an Order from the Court approving the payment of the PAGA Settlement Sum as described in this Agreement at the earliest possible date.

Concurrently with the submission of this Agreement to the Court, Plaintiffs shall submit it to the LWDA, as required by PAGA. The Parties agree to use their best efforts to expedite the preparation and submission of the settlement approval documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to, the approval and implementation of the payment of the PAGA Settlement Sum as described in this Agreement.

The Court's approval of the payment of the PAGA Settlement Sum as described in this Agreement shall be embodied in a written Order, which shall be transmitted to the LWDA by Plaintiffs promptly upon entry, as required by PAGA. Should the Court not grant approval of the payment of the PAGA Settlement Sum as described in this Agreement or decline to dismiss the Action as agreed by the Parties, this Agreement shall be null and void and have no further effect.

Section 3.02 Settlement Payment Procedures.

(a) Payment of PAGA Settlement Sum.

- (1) Defendant agrees to pay the total maximum amount of Five Hundred Ninety-Five Thousand Dollars and Zero Cents (\$595,000.00) to fully and finally settle the Actions. This amount, *i.e.*, the PAGA Settlement Sum, which shall be paid in installment payments as described in Section 3.02(a)(2) below, shall cover, resolve, and fully and completely satisfy any and all amounts owed to the State of California, the Aggrieved Employees, and Plaintiffs' Counsel, including all

amounts allocated to attorneys' fees and costs, in settlement of all of Plaintiffs' claims pursuant to PAGA based on Plaintiffs' allegation that DMSD violated Labor Code 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, and 1198, which were asserted or could have been asserted based upon the facts alleged in the Bunkley Complaint or the Gomez Complaint, and the costs of administering the PAGA Settlement. The Parties agree there are no circumstances that would require Defendants to pay any amount greater than the PAGA Settlement Sum in connection with this Agreement. In the event this Agreement is canceled, rescinded, terminated, voided or nullified, however that may occur, or the settlement is barred by operation of law, invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendants shall have no obligation to pay any of the PAGA Settlement Sum.

- (2) Defendants' payment of the PAGA Settlement Sum shall be conditioned upon Court approval of the PAGA Settlement. Upon the Effective Date, Defendants shall pay the PAGA Settlement Sum in installment payments, as follows:
 - a) Three Hundred Twenty Thousand Dollars and Zero Cents (\$320,000.00) (i.e. the "First Installment Payment") will be deposited with the Settlement Administrator and placed in an interest-bearing qualified settlement fund no later than thirty (30) calendar days after the Effective Date;
 - b) Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) (the "Second Installment Payment") will be deposited with the Settlement Administrator no later than one year after the First Installment Payment is made;
 - c) Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) (the "Subsequent Installment Payments") will be deposited with the Settlement Administrator no later than the last calendar date in each fiscal quarter occurring after the date of the Second Installment Payment (i.e. by March 31, June 30, September 30, or December 31, respectively) until the remaining balance of the Settlement Sum is paid in full.
- (3) The "Net Settlement Fund" or "Net PAGA Penalties" shall be calculated by deducting from the PAGA Settlement Sum the following: (1) \$198,333.33 for the payment of Plaintiffs' Counsel's fees; (2) \$11,665.63 for Plaintiffs' Counsel's costs; and (3) Settlement Administration Expenses, but not to exceed \$15,000. The Net Settlement Fund is currently estimated to total approximately \$370,007.04. If the Court does not approve the full amount of any of the items in this paragraph, such amount(s) not approved shall be re-allocated into the Net Settlement Fund for distribution to the LWDA and the aggrieved employees consistent with PAGA. The Net PAGA Penalties will be allocated and distributed pursuant to Labor Code section 2699(i) with 75% paid to the LWDA (\$277,500.78) and 25% paid to the aggrieved employees on a pro-rata basis (\$92,500.26).

(b) Distribution of the PAGA Settlement Sum.

- (1) Distribution of the PAGA Settlement Sum shall be conditioned upon the Effective Date first occurring and then proceed as follows:
 - a) The Settlement Administrator shall distribute the proceeds of the First Installment Payment within fifteen (15) calendar days of the deposit, as follows: (1) the Aggrieved Employees' 25% portion of the Net PAGA Penalties; (2) 50% of the Settlement Administrator's fees; and (3) Plaintiffs' Counsel's fees and costs.
 - i) The 25% portion of the Net Settlement Fund to be distributed to the Aggrieved Employees will be divided among and paid to all Aggrieved Employees according to the total number of pay periods that each Aggrieved Employee worked during the Release Period.
 - ii) All interest accrued on the Settlement Sum shall be distributed 75% to the LWDA and 25% to the Aggrieved Employees. The Settlement Administrator shall transmit the settlement checks to the Aggrieved Employees, with no claims process required, to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each recipient with directions to the Postmaster to return all undeliverable settlement checks.
 - b) The Settlement Administrator shall distribute all remaining proceeds of the First Installment Payment, the Second Installment Payment, and the Subsequent Installment Payments no later than fifteen (15) calendar days after the installment payment is made, as follows: 50% of the Settlement Administrator's fees shall be paid out of the Second Installment Payment with the remainder of the settlement funds (including the remainder of the Second Installment Payment) representing the LWDA's 75% portion of the PAGA penalties shall be paid to the LWDA consistent with PAGA.
- (2) For each settlement check that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database. Any settlement checks that remain uncashed more than 180 calendar days after issuance shall be paid to the California State Controller, with the identity of the Aggrieved Employee(s) to whom the funds belong, to be held for the Aggrieved Employee(s) per the California Unclaimed Property Law, in the interest of justice. The money paid to the State Controller will remain each of the Aggrieved Employee's property to the extent permitted by law.
- (3) The entire amount of the PAGA Settlement Amount is considered penalties or attorney fees/costs and will not be subject to local, state, or federal tax withholdings. All recipients of payments under this PAGA Settlement shall have their payments reported on an IRS Form 1099 via the Settlement Administrator if required.

Article IV.

Limitations On Use Of This Settlement.

Section 4.01 No Admission.

This Agreement, and compliance with this Agreement, shall not be construed as an admission by Defendants of any liability whatsoever, or as an admission by Defendants of any violations of Plaintiffs' or Aggrieved Employees' rights, violation of any order, law, statute, duty or contract whatsoever. Defendants specifically disclaim any liability to Plaintiffs or any other allegedly Aggrieved Employee for any alleged violation of his/her rights, or for any alleged violation of any order, law, statute, duty or contract. Defendants further deny, for any purpose other than settling these matters, that this action is appropriate for representative treatment.

Section 4.02 No Use; Non-Evidentiary Use.

Neither this Agreement, nor any of its terms, nor any of the negotiations connected with it or proceedings relating to this Agreement, payouts or anything else associated with it, shall be publicized, marketed, reported, or advertised by Plaintiffs or their counsel, nor offered or used as evidence by any of the Parties or their respective counsel in the Actions or in any other action or proceeding, including to establish any liability or admission on the part of Defendant or any Released Parties (defined in Section 5.01) or to establish the existence of any condition constituting a violation of, or noncompliance with, federal, state, local or other applicable law; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement. Defendant and the Released Parties may also use this Agreement as an affirmative defense and bar to any future or subsequent claims or suits by the Aggrieved Employees, to the extent applicable. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it or proceedings relating to this Agreement, payouts or other events associated with it, shall be construed as an admission or concession by Defendants or any Released Parties or establishment of any such violation(s) or failure(s) to comply with any applicable law. Defendants specifically retain the right to defend, on the merits, against any non-settled claims brought by any allegedly Aggrieved Employees.

Section 4.03 Nullification.

Invalidation of any material provision of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

Article V.

Release and Waiver of Claims; Non-Disparagement.

Section 5.01 Limited Release of Claims.

Upon approval by the Court, Plaintiffs, on behalf of themselves and their heirs, executors, and assigns, and the State of California, fully release and discharge Defendant, and each of its present and former affiliates, parent companies, subsidiaries, divisions, successors, predecessors, and assigns, and each of its respective past and present owners, officers, directors, managing agents, members, shareholders, partners, employees, agents, attorneys, insurers, successors, assigns, representatives, accountants, and all persons acting under, by, through, or in concert with any of them (collectively, “Released Parties”) from any and all claims under PAGA which were asserted in the Complaint or which could have been asserted in the Complaint based on the facts pleaded therein, including relating to alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, and 1198 (“Released Claims”) that accrued during the Release Period.

As a result of this release, the State of California and the Aggrieved Employees will be unable to bring, or recover a claim against any of the Release Parties under the California Private Attorneys General Act, California Labor Code section 2698 et seq., for any violations of the Released Claims that took place during the Release Period. Defendants and the Released Parties shall have no liability for payment of civil penalties arising out of the Released Claims in this Action except as set forth in this Agreement.

Section 5.02 Non-Disparagement by Plaintiffs.

Plaintiffs agree they will not, orally or in writing, publicly or privately, post, publish, make or express any comment, view or opinion which criticizes, is adverse to, brings disrepute in the eyes of the public, defames, derogates or disparages Defendants or the Released Parties in any manner, nor shall Plaintiffs authorize any agent or representative to make or express any such comment, view or opinion.

Article VI.

Miscellaneous Provisions.

Section 6.01 Drafting.

The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm’s-length negotiations between the Parties and that neither Party shall be considered the “drafter” of this Settlement Agreement for purposes of having terms construed against that Party.

Section 6.02 No Impact on Benefit Plans.

Neither the Settlement Agreement nor any amounts paid to Plaintiffs or any Aggrieved Employee under the Settlement Agreement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any of Defendant's benefit plans, policy, or bonus program. Defendant retains the right, if necessary, to modify the language of its benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

Section 6.03 Acknowledgement that the Settlement is Fair and Reasonable.

The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement Agreement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement Agreement.

Section 6.04 Mutual Preparation.

The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

Section 6.05 Representation By Counsel.

The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

Section 6.06 Waiver of Right to Appeal.

Provided that the Court's Order granting approval of this PAGA Settlement is consistent with the terms and conditions of the Settlement Agreement, Plaintiffs, Aggrieved Employees, the LWDA, and Defendants, inclusive, hereby waive any and all rights to appeal in connection with any issue in the Court's Order, including, but not limited to, all rights to any post-judgment proceeding and/or appellate proceeding, such as a motion to vacate or set-aside judgment, a motion for new trial, and any extraordinary writ, and the Order will become final and non-

appealable at the time it is entered. This provision does not in any way impact Plaintiffs, Defendants, nor PAGA Counsel's right to appeal any adverse rulings entered as a result of any objections and/or other collateral attacks.

Section 6.07 Voluntariness.

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

Section 6.08 Amendments.

The terms and provisions of this Agreement may be amended only by a written agreement that is both: (a) signed by the Plaintiffs and Defendant who executed this Agreement; and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 6.09 Assignment.

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiffs expressly warrant that they has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 6.10 Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

Section 6.11 Entire Agreement.

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Actions.

Section 6.12 Waiver of Compliance.

Any failure of any Party hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 6.13 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

Section 6.14 Plaintiffs and PAGA Counsels' Fees and Costs.

With respect to this Agreement, neither Plaintiffs' Counsel nor any other attorneys acting for, or purporting to act for the Aggrieved Employees, or Plaintiffs may recover, or seek to recover, any amounts for fees, costs, or disbursements from the Released Parties or the PAGA Settlement Sum except as expressly provided herein.

As part of the request for approval of this Settlement, PAGA Counsel will request court approval of 1/3 of the Gross Settlement Amount, which is \$198,333.33. PAGA Counsel will also request cost reimbursement in the amount of \$11,665.63 for costs incurred by PAGA Counsel. Should PAGA Counsel request a lesser amount for attorneys' fees and costs and/or the Court approve a lesser amount, the difference shall be allocated to the Net PAGA Penalties and distributed consistent with PAGA. Any attorneys' fees and costs awarded to PAGA Counsel, hereinafter referred to as "PAGA Counsel Fees & Costs," shall fully compensate and reimburse PAGA Counsel for any and all of the work already performed in connection with the Lawsuit and all work remaining to be performed in fully and finally resolving the Lawsuit, including but not limited to securing Court approval of the settlement, appearing at any hearings, making sure that the settlement is fairly and properly administered, defending the settlement in any appeal or other post-approval matter, all other work that PAGA Counsel has performed or will perform, and all costs that PAGA Counsel has incurred or will incur. Defendants will not object to nor oppose a request for attorneys' fees in the amount of up to 1/3 of the Gross Settlement Amount nor any request for reimbursement that does not exceed \$22,000.00.

The PAGA Counsels' Fees will be awarded and distributed as follows: 40% to Winston Law Group, P.C., 26% to Aegis Law Firm, PC, 20% to Ackermann & Tilajef, P.C., and 14% to the Law Office of Neda Aguirre, APC. This division of attorneys' fees was agreed to by the Plaintiffs and in no means increased the amount of legal fees or costs that the Clients will pay or agreed to pay attorneys for services rendered and costs incurred on the Clients' behalf.

PAGA Counsel are not receiving any attorneys' fees or costs reimbursement in association with Plaintiffs individual settlements.

Section 6.15 Attorneys' Fees and Costs Between the Parties.

Defendants shall bear their own attorney's fees and costs, and neither Plaintiffs' Counsel, the Aggrieved Employees, nor Plaintiffs shall be responsible for Defendants' attorney's fees and costs. The Court shall retain jurisdiction to enforce this Agreement pursuant to Code of Civil Procedure section 664.6; if any party moves the Court to enforce this Agreement, the

prevailing party shall be entitled to recover from the other party all attorneys' fees and costs incurred to enforce this Agreement.

Section 6.16 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties shall submit any such dispute(s) to the Court. To the extent any Party seeks to enforce any of the terms of this Agreement in Court or before the Court, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

Section 6.17 No Other Claims or Actions; Defendants' Right to Cancel If Plaintiffs' Counsel Files Action Against Released Parties

Plaintiffs represents that they have not filed any complaints, claims, or actions against Defendants or the Released Parties with any court or administrative agency other than the Actions, and the related notice(s) filed with the LWDA. If any agency or court has or assumes jurisdiction of any complaint, claim, or action against Defendants or the Released Parties on behalf of Plaintiffs, Plaintiffs will request that agency or court to withdraw from or dismiss the matter. Plaintiffs and their Counsel agree to fully defend this Agreement and this Settlement in the event that a third party objects to, undermines, attacks, or attempts to otherwise intervene or interfere with the process and approval of this settlement or this Agreement.

Plaintiffs and their counsel further represent and warrant they have no other claims or actions pending or which they intend to make against Defendants or the Released Parties other than Plaintiffs' claims that are being resolved through their individual settlements, nor do they represent or currently intend to represent any other parties on behalf of whom such other claims or actions may be made.

Section 6.18 Binding.

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

Section 6.19 Default, Notice and Cure; Time is of the Essence.

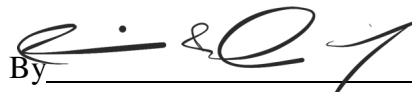
If Defendant fails to timely make any payment required herein, it shall be in default. Plaintiffs shall give Counsel for Defendant notice of the default by e-mail and Defendant shall have ten (10) business days thereafter to cure the default. The Parties agree that time is of the essence with respect to all provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Private Attorneys General Act Settlement Agreement on the date set forth below.

APPROVED AND ACCEPTED.

Dated: June 16, 2021

DMSD FOODS, INC.

By 

Title President

Dated:

ALICIA GOMEZ

By _____
Plaintiff Alicia Gomez

Dated:

RENEE BUNKLEY

By _____
Plaintiff Renee Bunkley

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated:

ACKERMANN & TILAJEF, P.C.

By _____
Craig J. Ackermann, Esq.
Attorney for Plaintiff Bunkley

Dated:

WINSTON LAW GROUP, P.C.

By _____
David Winston, Esq.
Attorney for Plaintiff Bunkley

IN WITNESS WHEREOF, the Parties have executed this Private Attorneys General Act Settlement Agreement on the date set forth below.

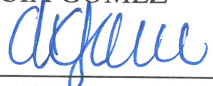
APPROVED AND ACCEPTED.

Dated: DMSD FOODS, INC.

By _____
Title _____

Dated: 06-16-2021

ALICIA GOMEZ

By  _____
Plaintiff Alicia Gomez

Dated: RENEE BUNKLEY

By _____
Plaintiff Renee Bunkley

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: ACKERMANN & TILAJEF, P.C.

By _____
Craig J. Ackermann, Esq.
Attorney for Plaintiff Bunkley

Dated: WINSTON LAW GROUP, P.C.

By _____
David Winston, Esq.
Attorney for Plaintiff Bunkley

IN WITNESS WHEREOF, the Parties have executed this Private Attorneys General Act Settlement Agreement on the date set forth below.

APPROVED AND ACCEPTED.

Dated: DMSD FOODS, INC.

By _____
Title _____

Dated: ALICIA GOMEZ

By _____
Plaintiff Alicia Gomez

Dated: 6/14/2021

RENEE BUNKLEY
By _____
Plaintiff Renee Bunkley

DocuSigned by:
Renee Bunkley
E5D1C8892FE5481...

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

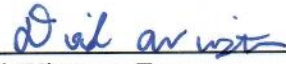
Dated: June 16, 2021

ACKERMANN & TILAJEF, P.C.

By  _____
Craig J. Ackermann, Esq.
Attorney for Plaintiff Bunkley

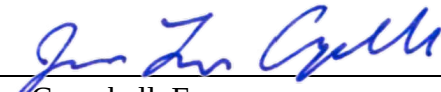
Dated: 6/15/21

WINSTON LAW GROUP, P.C.

By  _____
David Winston, Esq.
Attorney for Plaintiff Bunkley

Dated: 06/16/2021

AEGIS LAW FIRM, P.C.

By 

Jessica Campbell, Esq.
Attorney for Plaintiff Gomez

Dated:

LAW OFFICE OF NEDA AGUIRRE, APC

By _____
Neda Aguirre, Esq.
Attorney for Plaintiff Gomez

Dated:

AEGIS LAW FIRM, P.C.

By _____
Jessica Campbell, Esq.
Attorney for Plaintiff Gomez

Dated: 06-16-2021

LAW OFFICE OF NEDA AGUIRRE, APC

By Neda Aguirre
Neda Aguirre, Esq.
Attorney for Plaintiff Gomez

EXHIBIT A

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: *Renee Bunkley v. DMSD Foods, Inc. et al., Case No. 37-2020-00017973-CU-OE-CT*
Notice of PAGA Settlement, Settlement Payment, and Release of Claims

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your portion of the settlement proceeds allocated to the aggrieved employees from the settlement of the lawsuit entitled *Renee Bunkley v. DMSD Foods, Inc. et al.*, San Diego County Superior Court, Case No. 37-2020-00017973-CU-OE-CT. The Plaintiff in this case alleged that DMSD Foods, Inc., Beshay Foods, Inc., and Beshay Enterprises (“DMSD Foods”) violated certain California Labor Code laws and brought this lawsuit pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called “PAGA”) seeking recovery of civil penalties. DMSD Foods denies that it did anything wrong or that it owes any penalties whatsoever. DMSD Foods maintains that it was, at all relevant times, operating in compliance with the California Labor Code. In the interest of avoiding the cost and operational burden of continued litigation, the Parties agreed to settle the case, which requires that DMSD Foods pay a certain amount of money categorized as civil penalties to employees and the State of California. The settlement of this action does not constitute an admission of liability by DMSD Foods of any of the matters alleged in the case. Under the PAGA statute, the settlement proceeds are divided between the State and the aggrieved employees and the enclosed check represents your portion of the settlement proceeds.

* * *

PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE. If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter) or Plaintiff’s counsel:

Very Truly Yours,

[Settlement Administrator Contact Information]