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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF TULARE**

20 MICHAEL SMITH, individually and on
21 behalf of all others similarly situated,

22 Plaintiff,

23 vs.

24 LAND O'LAKES, INC.; and DOES 1
25 through 20, inclusive,

26 Defendants.

27 **Case No. 282808**

28 **STIPULATION OF CLASS AND PAGA
REPRESENTATIVE ACTION SETTLEMENT
AND RELEASE**

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10 JOHN COOK, MICHAEL SMITH, GUILLERMO GONZALEZ
individually and on behalf of all others similarly situated

I. INTRODUCTION

1. This Stipulation of Class and PAGA Representative Action Settlement and Release (hereinafter “Settlement Agreement”) is made and entered into by and between the following Parties: Plaintiffs John Cook (“Plaintiff Cook”), Guillermo Gonzalez (“Plaintiff Gonzalez”), and Michael Smith¹ (Plaintiff Smith”) (collectively “Plaintiffs”) and Defendant Land O’Lakes, Inc. (“LOL” or “Defendant”). This Settlement Agreement sets forth the Parties’ class and PAGA representative action settlement to resolve all of the claims that are or could have been asserted in the: (1) the action entitled *Cook v. Land O’Lakes, Inc.*, Case No. 1:20-cv-00553-NONE-SAB, pending in the Eastern District of California (the “Cook Action”), (2) the action entitled *Smith v. Land O’ Lakes, Inc.*, Case No. 282808, pending in the Tulare County Superior Court (the “Smith Action”) (collectively the “Actions”), and/or (3) Plaintiffs’ letter(s) to the LWDA.

2. This Settlement Agreement is subject to the terms and conditions set forth below and to the approval of the Court in the Smith Action. As detailed below, the Cook Action shall be stayed pending the Final Approval of the Settlement in the Smith Action. Plaintiffs’ motion for Preliminary Approval will attach a draft First Amended Complaint, which will be filed on the date the Court in the Smith Action grants Preliminary Approval of this Settlement Agreement. After the Court in the Smith Action grants Final Approval of the Settlement and on the Effective Date, Plaintiffs will request a dismissal with prejudice of the Cook Action. As detailed below, if the Court in the Smith Action does not enter an order granting Final Approval of Settlement, or if the associated judgment does not become final for any reason, this Settlement Agreement shall be deemed null and void and shall be of no force or effect whatsoever.

II. DEFINITIONS

3. The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement also shall be applicable.

4. “Actions” means *Cook v. Land O’Lakes, Inc.*, Case No. 1:20-cv-00553-NONE-SAB, pending in the Eastern District of California (“Cook Action”) and *Smith v. Land O’ Lakes*,

¹ Plaintiff Michael Smith passed away shortly after the Parties agreed to settle this matter and had executed a Memorandum of Understanding memorializing the terms of the Parties’ agreement. Plaintiff Smith’s successor-in-interest, Roshanda Smith, will sign this Agreement on his behalf.

1 *Inc.*, Case No. 282808, pending in the Tulare County Superior Court (“Smith Action”).

2 5. “Class Counsel” means LEBE LAW, APLC and AEGIS LAW FIRM, PC.

3 6. “Class Counsel Award” means the total amount to be paid to Class Counsel,
4 including Class Counsel Fees and Class Counsel Expenses.

5 7. “Class Counsel Expenses” means the amount of reasonable litigation expenses
6 Class Counsel incurred in connection with the Actions, not to exceed \$15,000, including their pre-
7 filing investigation, their filing of the Actions and all related litigation activities, this Settlement,
8 and all post-Settlement compliance procedures.

9 8. “Class Counsel Fees” means an amount not to exceed Six Hundred and Sixteen
10 Thousand, Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents (\$616,666.67) (one-third of
11 the Gross Settlement Amount) to compensate Class Counsel for their attorneys’ fees incurred in
12 connection with the Actions, including their pre-filing investigation, their filing of the Actions and
13 all related litigation activities, this Settlement, and all post-Settlement compliance procedures.

14 9. “Class Information” means information regarding Class Members and PAGA
15 Representative Action Members that Defendant will in good faith compile from its electronic
16 human resources records and provide to the Settlement Administrator in a secure manner on a
17 confidential basis. The Class Information shall include each Class Members / PAGA
18 Representative Action Members’ full name; last known mailing address to the extent available in
19 Defendant’s electronic human resources records; Social Security Number; and Class Members’
20 number of Qualifying Workweek.

21 10. “Class” or “Class Members” means all current and former non-exempt hourly
22 production employees directly employed by LOL at its Tulare, California facility at any time from
23 March 6, 2016 until July 30, 2021.

24 11. “Class Period” means the period from March 6, 2016 through July 30, 2021.

25 12. “Class Representative Enhancements” means the amount to be paid to Plaintiffs in
26 recognition of their efforts and work in prosecuting the Actions on behalf of Class Members and
27 PAGA Representative Action Members. Defendant agrees to pay each Plaintiff – Cook, Gonzalez,
28 and Smith – a Class Representative Enhancement of up to Seven Thousand Five Hundred Dollars

1 (\$7,500), for a total Class Representative Enhancement of \$22,500, subject to the Court finally
2 approving this Settlement Agreement and subject to the exhaustion of any and all appeals. Any
3 portion of the Class Representative Enhancements not awarded to Plaintiffs will not revert to
4 Defendant, but instead shall be returned to the Net Settlement Amount for distribution to
5 Participating Class Members.

6 13. "Court" means the Superior Court of the State of California, for the County of
7 Tulare.

8 14. "Defendant" means Land O'Lakes, Inc.

9 15. "Defendant's Counsel" means Winston & Strawn LLP.

10 16. "Effective Date" means the date Defendant funds the Gross Settlement Amount
11 pursuant to Paragraph 43.

12 17. "Final Approval" means the Court order in the Smith Action granting final approval
13 of the Settlement Agreement.

14 18. "Gross Settlement Amount" means the maximum amount of One Million Eight
15 Hundred Fifty Thousand Dollars (\$1,850,000) to be paid by Defendant under this Settlement
16 Agreement, if all conditions herein are met, to settle the Actions, inclusive of the total settlement
17 value for all damages, restitution, penalties, taxes and interest, all payments to Participating Class
18 Members and PAGA Representative Action Members, the Class Counsel Award, Settlement
19 Administration Costs to the Settlement Administrator, PAGA Payment, Cook's Individual
20 Settlement Amount, and the Class Representative Enhancements to Plaintiffs, except that
21 Defendant shall pay the employer's share of the payroll taxes separately from and in addition to
22 the Gross Settlement Amount. The Gross Settlement Amount shall also include any interest that
23 accrues in the escrow account created by the Settlement Administrator.

24 19. "Individual Settlement Share" means each Participating Class Member's share of
25 the Net Settlement Amount calculated in accordance with the calculations described in Paragraph
26 54. Payment of an Individual Settlement Share shall be referred to as an "Individual Settlement
27 Payment."

28 20. "Net Settlement Amount" means the portion of the Gross Settlement Amount

1 remaining after deduction of the: (1) Class Representative Enhancements to Plaintiffs,
2 (2) Settlement Administration Costs to the Settlement Administrator, (3) Class Counsel Award,
3 (4) PAGA Payment, and (5) Cook’s Individual Settlement Amount. The Net Settlement Amount
4 will be distributed to Participating Class Members.

5 21. “Notice of Settlement” or “Notices of Settlement” means the notice (substantially in
6 the form attached hereto as **Exhibit A**) that the Court orders to be sent to all Class Members
7 advising them of their rights under this Settlement Agreement.

8 22. “Operative Complaint” means the First Amended Complaint to be filed in the Smith
9 Action in the Superior Court of the State of California, County of Tulare, Case No. 282808,
10 attached as an exhibit to Plaintiffs’ motion for Preliminary Approval.

11 23. “PAGA Payment” means an amount of up to \$20,000, the amount attributable to
12 Plaintiffs’ claims pursuant to the California Private Attorneys General Act of 2004, Cal. Labor
13 Code § 2698 *et seq.* (“PAGA”).

14 24. “PAGA Period” means the period from March 6, 2019 through July 30, 2021.

15 25. “PAGA Representative Action Members” means all current and former non-exempt
16 hourly production employees directly employed by LOL at its Tulare, California facility at any
17 time from March 6, 2019 until July 30, 2021.

18 26. “PAGA Settlement Share” means each PAGA Representative Action Member’s
19 share of the 25 percent portion of the PAGA Payment, calculated in accordance with the
20 calculations described in Paragraph 56. Payment of a PAGA Settlement Share shall be referred to
21 as a “PAGA Settlement Payment.”

22 27. “Participating Class” or “Participating Class Members” means all Class Members
23 who do not submit a valid letter requesting to be excluded from the class action portion of the
24 Settlement (*i.e.*, opt-out), consistent with the terms set forth in this Settlement Agreement.

25 28. “Parties” means Plaintiffs and Defendant, collectively, and “Party” shall mean
26 either Plaintiffs or Defendant, individually.

27 29. “Plaintiffs” means the named Plaintiffs in the Actions, John Cook, Guillermo
28 Gonzalez, and Michael Smith.

1 30. “Preliminary Approval” means the Court order in the Smith Action granting
2 preliminary approval of the Settlement Agreement without material change to the Settlement
3 Agreement.

4 31. “Qualified Settlement Account” means the account established by the Settlement
5 Administrator, into which the Gross Settlement Amount shall be deposited.

6 32. “Qualifying Workweeks” means the number of weeks in which a Class Member
7 was employed by, and worked for, Defendant as a non-exempt hourly production employee at
8 LOL’s Tulare, California facility at any time during the Class Period, excluding weeks when the
9 Class Member did not work or was on leave for the entire week. Each Qualifying Workweek runs
10 from Sunday to Saturday.

11 33. “Response Deadline” means the date forty-five (45) calendar days after the
12 Settlement Administrator mails the Notice of Settlement to Class Members and the last date on
13 which Class Members may: (a) postmark written requests to be excluded from the class action
14 portion of this Settlement, or (b) mail to the Settlement Administrator a Notice of Objection to the
15 Settlement and serve on counsel for the Parties. If the 45th day falls on a Sunday or federal
16 holiday, the Response Deadline will be extended to the next day on which the U.S. Postal Service
17 is open.

18 34. “Settlement” means the Parties’ agreement to compromise the Actions, the material
19 terms of which are set forth in this Settlement Agreement and Cook’s Individual Settlement
20 Agreement.

21 35. “Settlement Administrator” means Simpluris, Inc.

22 36. “Settlement Administration Costs” means the expense payable from the Gross
23 Settlement Amount to the Settlement Administrator for administering this Settlement. The
24 Settlement Administration Costs are estimated to be Nine Thousand Six Hundred and Fifty Dollars
25 (\$9,650.00).

26 37. “Settlement Agreement” means this Stipulation of Class and PAGA Representative
27 Action Settlement and Release.
28

1 **III. RECITALS**

2 38. Procedural History. The Cook Action is a class action filed on March 6, 2020 in
3 Tulare Superior Court. The Smith Action was filed on May 6, 2020, and alleges a single cause of
4 action for violation of the California Labor Code Private Attorneys General Act of 2004.

5 39. Mediation. On June 25, 2021, the Parties participated in a private mediation with
6 the Steve Pearl, an experienced and neutral mediator. The Parties did not settle at mediation, but
7 Mr. Pearl made a post-mediation mediator's proposal for settlement of the Actions. All Parties
8 accepted the mediator's proposal and, as a result, agreed to all material terms for this Settlement.

9 **IV. TERMS OF AGREEMENT**

10 Plaintiffs, individually and on behalf of Class Members and PAGA Representative Action
11 Members, and Defendant agree as follows:

12 40. Terms of Agreement Subject to Court Approval. All terms set forth in this
13 Settlement Agreement are subject to Court approval in the Smith Action. The Parties stipulate to
14 class certification only for purposes of the Settlement. Plaintiffs shall apply to the Court for
15 approval of the Settlement Agreement and for class certification solely for purposes of effectuating
16 this Settlement. If, for any reason, the Settlement is not approved, the stipulation to certification
17 will be void. The Parties further agree that certification for purposes of the Settlement is not an
18 admission that class certification is proper under the standard applied to contested certification
19 motions and that this Settlement will not be admissible in this, or any other, legal process as
20 evidence that (i) a class should be certified, (ii) representative treatment is appropriate, or
21 (iii) Defendant is liable to Plaintiffs or any of the Class Members or PAGA Representative Action
22 Members.

23 41. Retention of Settlement Administrator. No later than seven (7) calendar days after
24 Preliminary Approval, the Parties shall retain the Settlement Administrator. The Settlement
25 Administrator shall be responsible for administration of this Settlement.

26 42. Settlement Administration Costs. The Settlement Administrator shall be paid for the
27 costs of administration of the Settlement and distribution of all payments from the Gross
28 Settlement Amount. The estimate of the Settlement Administration Costs is Nine Thousand Six

1 Hundred and Fifty Dollars (\$9,650.00). If the Settlement Administration Costs exceed Nine
2 Thousand Six Hundred and Fifty Dollars (\$9,650.00), such cost will be deducted from the Net
3 Settlement Amount. These costs, which shall be paid from the Gross Settlement Amount, shall be
4 used to administer the settlement, including, *inter alia*, preparing the required tax reporting on
5 Individual Settlement Payments and PAGA Settlement Payments, issuing 1099 and W-2 IRS
6 Forms, distributing the Notice of Settlement, calculating Individual Settlement Payments,
7 calculating PAGA Settlement Payments, processing exclusion requests, resolving disputes,
8 distributing the Net Settlement Amount as directed by the Court and as set forth herein, providing
9 necessary reports and declaration, and posting notice of final judgment on the Settlement
10 Administrator's website.

11 a. No fewer than ten (10) calendar days before the Final Approval hearing, the
12 Settlement Administrator shall provide the Court and all counsel for the Parties with a statement
13 detailing the Settlement Administration Costs. The Parties agree to cooperate in the settlement
14 administration process and to make all reasonable efforts to control and minimize the costs and
15 expenses incurred in the administration of the Settlement. An IRS Form 1099 shall be issued to the
16 Settlement Administrator.

17 b. Any portion of the Settlement Administration Costs that are not used or
18 which are not awarded by the Court will not revert to Defendant, but instead will be part of the Net
19 Settlement Amount for distribution to Participating Class Members.

20 43. Funding and Allocation of the Class Settlement Amount. The Settlement is non-
21 reversionary. Defendant shall transfer the Gross Settlement Amount to a Qualified Settlement
22 Fund ("QSF") established by the Settlement Administrator within thirty (30) calendar days after
23 the occurrence of latest of: (a) if an objection is filed, 60 days after the Court enters an order
24 granting Final Approval of the Settlement, (b) if an objection is filed and not withdrawn, and if
25 any timely appeals are filed, the resolution of any such appeals in a way that does not materially
26 alter the terms of the settlement; (c) if no objection is filed and no appeal is filed, the date the
27 Court enters an order granting Final Approval of the Settlement; (d) if an objection is filed but is
28 withdrawn, the date on which the Court of Appeal, or Supreme Court renders a final judgment

1 affirming Final Approval; (e) after Class Counsel has delivered a fully-executed Request for
2 Dismissal with Prejudice for Plaintiff Cook's Federal Case to Defendant's Counsel.

3 a. The QSF will be controlled by the Settlement Administrator subject to the
4 terms of this Settlement and the Court's order(s). Interest, if any, earned on monies in the QSF will
5 be added to the Gross Settlement Amount. The Settlement Administrator shall serve as Trustee of
6 the QSF and shall act as a fiduciary with respect to the handling, management, and distribution of
7 the Gross Settlement Amount, including the handling of tax related issues and payments. The
8 Settlement Administrator shall act in a manner as necessary to qualify the settlement fund as a
9 QSF and to maintain the qualification.

10 b. The funds in the Qualified Settlement Account shall be used to pay:
11 (1) Individual Settlement Payments; (2) PAGA Payment; (3) the award of Class Counsel Fees and
12 Class Counsel Expenses; (4) the Class Representative Enhancement payments; (5) Cook's
13 Individual Settlement Amount; (6) Settlement Administration Costs; and (7) and all employee's
14 withholdings and taxes associated with the wage-portion of Individual Settlement Shares.

15 44. Class Representative Enhancement. In exchange for a general release, and in
16 recognition of their efforts and work in prosecuting the Actions on behalf of Class Members,
17 Defendant agrees not to oppose any application or motion for a Class Representative Enhancement
18 payment to each Plaintiff of up to Seven Thousand Five Hundred Dollars (\$7,500), for a total of
19 \$22,500. With respect to Cook, the \$7,500 Class Representative Enhancement payment, which
20 shall be paid from the Gross Settlement Amount, shall be in addition to Cook's Individual
21 Settlement Payment paid pursuant to the Settlement (as described in further detail in Paragraph
22 70), which shall also be paid from the Gross Settlement Amount. The Settlement Administrator
23 shall issue an IRS Form 1099 for the Class Representative Enhancement payments. Plaintiffs shall
24 be solely and legally responsible to pay any and all applicable taxes on the payments made
25 pursuant to this Paragraph and shall hold Defendant harmless from any claim or liability for taxes,
26 penalties, or interest arising as a result of the payments. Any reduction in the amount of the Class
27 Representative Enhancement by the Court will not revert to Defendant, but shall be returned to the
28 Net Settlement Amount to be distributed to Participating Class Members.

1 45. Payment of Class Counsel Award. Defendant agrees not to oppose any application
2 or motion by Class Counsel for an award of Class Counsel Fees not to exceed Six Hundred Sixteen
3 Thousand, Six Hundred Sixty-Six Dollars and Sixty Seven Cents (\$616,666.67), and Class
4 Counsel Expenses not to exceed Fifteen Thousand Dollars (\$15,000). The Class Counsel Award
5 shall be paid out of the Gross Settlement Amount. Any portion of the Class Counsel Award not
6 awarded to Class Counsel will not revert to Defendant, but instead shall be returned to the Net
7 Settlement Amount for distribution to Participating Class Members. Class Counsel shall be solely
8 and legally responsible to pay all applicable taxes on the payment made pursuant to this Paragraph.
9 IRS Form 1099 shall be provided to Class Counsel for the payments made pursuant to this
10 Paragraph.

11 46. PAGA Payment. Subject to Court approval, \$20,000 from the Gross Settlement
12 Amount shall be designated for satisfaction of Plaintiffs' and PAGA Representative Action
13 Members' claims pursuant to the PAGA. Pursuant to the PAGA, Seventy-Five Percent (75%), or
14 \$15,000, of this amount shall be paid to the LWDA and Twenty-Five Percent (25%), or \$5,000,
15 shall be evenly distributed to PAGA Representative Action Members on a per capita basis as
16 PAGA Settlement Payments. If the PAGA Payment is adjusted by the Court, it shall be adjusted
17 by using funds from the Gross Settlement Amount and in no event shall increase the Gross
18 Settlement Amount.

19 47. Notice Procedure. The Settlement Administrator shall be responsible for the
20 following notice procedure.

21 a. Delivery of the Class Information. Within fourteen (14) calendar days after
22 the Court serves the Preliminary Approval order, Defendant shall provide the Class Information to
23 only the Settlement Administrator. The Class Information shall remain confidential and shall not
24 be disclosed to anyone, except pursuant to express written authorization by Defendant.

25 b. Notice by First-Class U.S. Mail. Within fourteen (14) calendar days of
26 receiving the Class Information, the Settlement Administrator shall send the Notice of Settlement
27 to all Class Members via regular First Class U.S. Mail, using the most current mailing addresses
28 identified in the Class Information as updated using the National Change of Address Database.

1 c. Undeliverable Notices. Any Notices of Settlement returned to the Settlement
2 Administrator as non-delivered on or before the Response Deadline shall be sent to the forwarding
3 address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall
4 promptly attempt to determine a correct address using a skip-trace, or other search using the name,
5 address and/or Social Security number of the Class Member involved, and shall re-mail the Notice
6 of Settlement. If, after performing a skip-trace search, the Notice of Settlement is still returned to
7 the Settlement Administrator as non-deliverable, the Settlement Administrator will have no further
8 obligation to undertake efforts to obtain an alternative address. The Response Deadline for any
9 Class Member who is re-mailed a Notice of Settlement shall be extended fifteen (15) calendar days
10 from the original forty-five (45) calendar day deadline.

11 48. Request for Exclusion Procedure. The Notice of Settlement shall provide Class
12 Members with instructions on how to exclude themselves, or “opt-out,” in part, from the class
13 action (i.e., non-PAGA) portion of the Settlement.

14 a. Class Members who wish to opt-out of the class action portion of the
15 Settlement shall notify the Settlement Administrator in writing that they want to exclude
16 themselves, *i.e.*, opt-out, from the class action portion Settlement. The request to opt-out sent to
17 the Settlement Administrator must be postmarked no later than the Response Deadline, or fifteen
18 (15) days after the original Response Deadline in the event of a re-mailed Notice of Settlement.
19 Class Members shall be permitted to rescind their opt-out statements in writing by submitting a
20 rescission statement to the Settlement Administrator not later than one (1) business day before the
21 Court’s Final Approval hearing, orally at the Final Approval hearing, or as otherwise ordered by
22 the Court.

23 b. The proposed order granting Preliminary Approval of the Settlement will
24 provide, and the Notice of Settlement will instruct Class Members, that, to be valid, a written
25 request to opt-out of the class action portion of the Settlement must include the Class Member’s
26 name and signature and state the following: I wish to opt-out of the class action portion of the
27 Settlement of the lawsuit *Smith v. Land O’ Lakes, Inc.* I understand that by requesting exclusion, I
28 will not be eligible to receive any payment or other benefit for Class Members from the class

1 action portion of the Settlement involving Land O'Lakes, Inc. (or words to a similar effect).

2 c. A Class Member who does not properly and timely submit a request to opt-
3 out in the manner and by the deadline specified above will automatically receive his or her
4 Individual Settlement Share, in addition to his or her PAGA Settlement Share, and will be bound
5 by all terms and conditions of the Settlement Agreement, including its release of the Released
6 Class Claims and Released PAGA Claims, if the Settlement Agreement is approved by the Court,
7 and be bound by the Final Approval order, regardless of whether he or she has objected to the
8 Settlement Agreement.

9 d. A Class Member who properly and timely submits a request to opt-out of the
10 class action portion of the Settlement will not be entitled to any Individual Settlement Share and
11 will not release the Released Class Claims in Paragraph 66, but will receive a PAGA Settlement
12 Share, will release the Released PAGA Claims, and will not have any right to object, appeal, or
13 comment on the terms of the Settlement Agreement.

14 e. Counsel for the Parties shall neither encourage nor discourage any Class
15 Member from participating in, objecting to, or opting out of the Settlement.

16 49. Objections. For a Class Member to object to the class action portion of the
17 Settlement, a Class Member must mail to the Settlement Administrator by the Response Deadline
18 a notice of objection, signed by the Class Member, stating: (i) the Class Member's name;
19 (ii) current address; (iii) telephone number; and (iv) the basis of the objection. The Class Member
20 must send a copy of his or her objection to the Settlement Administrator by the Response
21 Deadline. The postmark date of the filing and service shall be deemed the exclusive means for
22 determining that the notice of objection is timely. Class Members shall be permitted to withdraw
23 their objections in writing by submitting a withdrawal statement to the Settlement Administrator
24 not later than one (1) business day before the Court's Final Approval hearing, orally at the Final
25 Approval hearing, or as otherwise ordered by the Court. Class Members who do not make and mail
26 written objections in the manner and by the deadline specified above, or at the Final Approval
27 hearing, shall be deemed to have waived any objections and shall be foreclosed from making any
28 objections (whether by appeal or otherwise) to the Settlement.

1 50. Disputed Information on Notice of Settlement. If a Class Member disputes the
2 employment dates and number of Qualifying Workweeks attributed to him or her in the Notice of
3 Settlement, he or she must submit such a dispute to the Settlement Administrator on or before the
4 Response Deadline and Defendant will check its records. If a Class Member disputes the
5 employment dates or number of Qualifying Workweeks listed in the Notice of Settlement, the
6 Class Member may produce evidence to the Settlement Administrator showing that such
7 information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's records
8 will be presumed determinative. However, if a Class Member produces evidence to the contrary,
9 the Parties will meet and confer and evaluate the evidence submitted by the Class Member. If the
10 Parties are unable to resolve the dispute informally, the Court will make the final decision as to the
11 number of eligible Qualifying Workweeks that should be applied.

12 51. The Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
13 Member who does not affirmatively opt-out of the class action portion of the Settlement by the
14 procedures described in Paragraph 48 shall be bound by all of its terms, including those pertaining
15 to the Released Class Claims, as well as any judgment that may be entered by the Court in the
16 Smith Action after it grants Final Approval of the Settlement. After the Court grants Final
17 Approval of the Settlement, all PAGA Representative Action Members will be bound by the terms
18 of this Settlement Agreement, irrespective of whether they opted out of the class action portion of
19 the Settlement.

20 52. No PAGA Opt-Out. No PAGA Representative Action Member may opt-out of or be
21 excluded from participating in the settlement of the PAGA Released Claims. All PAGA
22 Representative Action Members will release the PAGA Released Claims effective when the Court
23 in the Smith Action grants Final Approval. If the Court grants Final Approval of the Settlement,
24 the occurrence of the Effective Date shall forever bar Plaintiffs, the LWDA, and any other
25 representative, proxy, or agent thereof, including but not limited to any and all PAGA
26 Representative Action Members, from pursuing any action pursuant to the PAGA against the
27 Released Parties for the PAGA Released Claims.
28

1 53. Certification Reports Regarding Requests for Exclusion and Disputes. The
2 Settlement Administrator shall provide Defendant's Counsel and Class Counsel a weekly report
3 which certifies: (a) the number of Class Members who have submitted a valid or defective letter or
4 communication objecting or requesting exclusion from, *i.e.*, to opt-out of, the class action portion
5 of the Settlement; (b) whether any Class Member has submitted a challenge to any information
6 contained in their Notice of Settlement; and (c) the number of returned, undeliverable and/or re-
7 mailed Notice of Settlements. Additionally, the Settlement Administrator will provide to counsel
8 for both Parties any updated, non-confidential reports regarding the administration of the
9 Settlement Agreement as needed or requested.

10 54. Individual Settlement Share Calculations. The Settlement Administrator shall
11 determine the eligibility for, and the amounts of, any Individual Settlement Shares or Individual
12 Settlement Payments that Participating Class Members may receive under the terms of this
13 Settlement Agreement. Any unresolved disputes concerning the administration of the Settlement
14 Agreement will be resolved by the Court, under the laws of the State of California.

15 a. Each Class Member who does not timely request to opt-out will receive a
16 share of the remaining Net Settlement Amount ("Individual Settlement Share"), less employee's
17 and employer's withholdings and taxes associated with the wage portion of the Individual
18 Settlement Shares, based on the number of Qualifying Workweeks a Class Member was employed
19 by, and worked for, Defendant as a non-exempt hourly production employee at LOL's Tulare,
20 California facility at any time from March 6, 2016 until July 30, 2021, excluding weeks when the
21 Class Member did not work or was on leave for the entire week. Specific calculations of
22 Individual Settlement Shares shall be made as follows:

23 i. The Settlement Administrator shall calculate the total aggregate
24 number of Qualifying Workweeks that all Class Members were employed by, and worked for,
25 Defendant as a non-exempt hourly production employees at LOL's Tulare, California facility at
26 any time from March 6, 2016 until July 30, 2021, excluding weeks when Class Members did not
27 work or were on leave for the entire week ("Total Workweeks").

28 ii. The value of each individual Qualifying Workweek shall then be

1 determined by dividing the proceeds of the Net Settlement Amount by the Total Workweeks,
2 resulting in the “Workweek Value.” Each Individual Settlement Share shall then be determined by
3 multiplying the individual Participating Class Member’s number of Qualifying Workweeks by the
4 Workweek Value.

5 iii. If any Class Members submit timely and valid Requests for
6 Exclusion, the Settlement Administrator shall reallocate their Individual Settlement Payment
7 amounts to the Net Settlement Amount for distribution to Participating Class Members pursuant to
8 the terms of this Settlement Agreement. The Settlement Administrator shall provide the final
9 Individual Settlement Payment calculations to Defendant. The Settlement Administrator shall
10 withhold any legally mandated withholdings or deductions (*e.g.*, payroll taxes, etc.) from the
11 Individual Settlement Payment for each Participating Class Member and remit tax withholdings to
12 the applicable tax authorities (not including Defendant’s share of payroll taxes for the Individual
13 Settlement Payments).

14 55. Allocation of Individual Settlement Shares. 20 percent of each Individual
15 Settlement Share shall be allocated as wages and 80 percent of each Individual Settlement Share
16 shall be allocated as penalties and interest. Individual Settlement Shares will be paid out to
17 Participating Class Members subject to reduction for all employer’s and employee’s share of
18 withholdings and taxes associated with the wage-portion of the Individual Settlement Shares.

19 56. PAGA Settlement Share Calculations. Each PAGA Representative Class Member,
20 regardless of whether he or she timely requests to opt-out of the class action portion of the
21 Settlement (*i.e.*, the Released Class Claims), will receive a portion of the PAGA Settlement Share
22 allocated on a per capita basis. Specific calculations of the PAGA Settlement Shares shall be made
23 by dividing 25 percent of the PAGA Payment (\$5,000) by the total number of PAGA
24 Representative Action Members.

25 57. Payment of Settlement Amounts. The Settlement Administrator shall have the
26 authority and obligation to make all payments, credits, and disbursements, calculated in
27 accordance with the methodology set out in this Settlement Agreement and orders of the Court in
28 the Smith Action.

1 a. No person shall have any claim against Defendant, Defendant's Counsel,
2 Plaintiffs, Participating Class Members, Class Counsel, or the Settlement Administrator based on
3 distributions and payments made in accordance with this Settlement Agreement.

4 b. With respect to Participating Class Members whose Notices of Settlement
5 are undeliverable, as provided in Paragraph 47(c), settlement checks shall be sent to the last
6 address obtained by the Settlement Administrator with respect to the Participating Class Member.
7 If the settlement checks are not negotiated within the timeframe set forth in Paragraph 59, the
8 corresponding funds shall be handled as provided in Paragraph 59.

9 58. Distribution Timing. Within thirty (30) calendar days of the Effective Date, the
10 Settlement Administrator shall issue payments to: (1) Participating Class Members; (2) PAGA
11 Representative Action Members; (3) the LWDA; (4) Plaintiffs, including Cook's Individual
12 Settlement Amount; (5) Class Counsel; and (6) itself, for Court-approved services performed in
13 connection with the Settlement.

14 59. Non-Negotiated Settlement Checks. Any checks issued by the Settlement
15 Administrator to Participating Class Members and PAGA Representative Class Members shall be
16 negotiable for one hundred and eighty (180) calendar days from the date of their issuance. The
17 total amount of funds returned as undeliverable and the funds which correspond with the
18 settlement checks that are not negotiated within one hundred and eighty (180) calendar days after
19 issuance shall be tendered, with interest, to the State Controller's Unclaimed Property Fund in the
20 name of the Class Member.

21 60. Settlement Administrator's Final Report(s). Not less than ten (10) calendar days
22 after the Response Deadline, the Settlement Administrator shall provide Defendant's Counsel a
23 report showing: (i) the names of Participating Class Members; and (ii) the Individual Settlement
24 Payments owed to each Participating Class Member. The Settlement Administrator shall provide
25 Defendant's Counsel and Class Counsel the final number of Class Members who have submitted
26 objections or valid letters requesting exclusion from the Settlement and the sum of their Qualifying
27 Workweeks. Upon completion of administration of the Settlement, the Settlement Administrator
28 shall provide written certification of such completion to counsel for all Parties and the Court, if

1 requested by the Parties.

2 61. Amended Complaint. Plaintiffs shall file a First Amended Complaint in the Smith
3 Action in the form attached hereto as Exhibit B. Plaintiffs' motion for Preliminary Approval will
4 attach the draft First Amended Complaint and include a proposed order stating that Plaintiffs are
5 granted leave to file the First Amended Complaint on the date the Court in the Smith Action grants
6 Preliminary Approval of this Settlement Agreement.

7 a. The First Amended Complaint: (a) adds Cook and Gonzalez as named
8 Plaintiffs in the Smith Action, (b) asserts class claims based on all facts, causes of action, and
9 California Labor Code provisions asserted in any complaint filed in the Actions and/or Plaintiffs'
10 letter(s) to the LWDA (including any subsequently amended complaints or letters), and as set forth
11 in Paragraph 66, (c) adds an off-the-clock claim, and (d) adds collective action claims for
12 violations of the Fair Labor Standards Act on behalf of all non-exempt hourly production
13 employees employed by LOL at its Tulare, California location at any time from March 6, 2016
14 until July 30, 2021, based on any and all facts or causes of action asserted in any complaint filed in
15 the Actions and/or Plaintiffs' letter(s) to the LWDA (including any subsequently amended
16 complaints or letters), and as set forth in Paragraph 66, including but not limited to claims for
17 minimum wage, overtime, and the calculation of regular rate of pay for payment of overtime. Each
18 Plaintiff shall also concurrently file with the First Amended Complaint a consent to opt in to the
19 FLSA collective action.

20 b. The Parties agree that Defendant shall maintain any and all affirmative
21 defenses but shall not be required to file an Answer or other responsive pleading to the First
22 Amended Complaint and that such agreement precludes Plaintiffs from any right to: (a) obtain a
23 default judgment against Defendant on the basis that Defendant did not respond to the First
24 Amended Complaint; (b) argue that Defendant waived any right to a demurrer or other challenge
25 to the pleadings; and (c) argue that Defendant waived any affirmative defense.

26 c. If the Court in the Smith Action does not grant Final Approval of the
27 Settlement, Plaintiffs will withdraw the First Amended Complaint and it will be void *ab initio*.

28 62. Amended LWDA Letter. In connection with the Settlement, and solely for the

1 purpose of facilitating the settlement of the Actions, Plaintiffs shall send an amended letter to the
2 LWDA that covers each of the PAGA Released Claims, including any of the factual allegations to
3 support those claims (the “Amended LWDA Letter”). If the Court in the Smith Action does not
4 grant Final Approval of the Settlement, Plaintiffs will withdraw the Amended LWDA Letter and it
5 will be void *ab initio*.

6 63. Stay and Ultimate Dismissal of the Cook Action. The Parties agree that the Cook
7 Action shall be stayed pending Final Approval of the Settlement in the Smith Action. On or before
8 the date the motion for Preliminary Approval is filed, the Parties shall submit a joint stipulation in
9 the Cook Action to obtain the stay. On the Effective Date, Plaintiffs will request a dismissal with
10 prejudice of the Cook Action.

11 64. Defendant’s Right to Revoke. If, after the Response Deadline and before the Final
12 Approval hearing, five percent (5%) or more of the Class Members opt-out, Defendant shall have the
13 right, in its sole discretion, to void and revoke the Settlement Agreement and its stipulation to class
14 certification. Defendant shall have ten (10) calendar days after the Response Deadline to notify
15 Class Counsel in writing of its intent to revoke the Settlement Agreement.

16 65. Plaintiffs’ Right to Void. At mediation, Defendant estimated that, as of December
17 31, 2020, there were approximately 84,198 work weeks where Class Members who were directly
18 employed by Defendant at the Tulare location and performed work at the Tulare location from
19 March 6, 2016 to December 31, 2021. This serves as the basis for Plaintiffs accepting the
20 Settlement. If the number of work weeks from March 6, 2016 through December 31, 2020 exceeds
21 84,198 by more than five percent (5%), Plaintiffs shall have the right the void the Settlement
22 Agreement.

23 66. Class Release. Upon the Final Approval by the Court in the Smith Action of this
24 Settlement Agreement and payment of amounts set forth herein, and except as to such rights or
25 claims as may be created by this Settlement Agreement, each and every Participating Class
26 Member, on behalf of themselves and their heirs and assigns, hereby releases Defendant Land
27 O’Lakes, Inc., its present, former, or future parent and/or subsidiary corporations, and each of the
28 foregoing’s present, former, or future owners, officers, directors, shareholders, partners,

1 employees, insurers, successors, predecessors, contractors, assigns, and managing agents and any
2 and all agents, legal representatives, and/or attorneys of all of the foregoing entities or individuals
3 (collectively the “Released Parties”) from the following rights or claims (the “Released Class
4 Claims”):

5 a. Any and all claims, known or unknown, that: were asserted in any and/or all
6 of the complaints in the Actions and/or in any of Plaintiffs’ letter(s) to the LWDA (including any
7 subsequently amended complaints or letters); and/or any and all claims, known or unknown, that
8 could have been asserted based on any or all the factual allegations in any and/or all of the
9 complaints in the Actions and/or in any of Plaintiffs’ letter(s) to the LWDA (including any
10 subsequently amended complaints or letters). This includes but is not limited to claims for or
11 related to: minimum wages, overtime; pay for all hours worked/compensation due for services;
12 off-the-clock work; calculation of the regular rate of pay; reporting time pay; including shift
13 premiums and other incentive payments when calculating the overtime rate; meal periods; rest
14 periods; meal and/or rest period premiums including all claims related to the calculation thereof;
15 wage statements; timeliness of wages; payment of wages at termination; maintaining accurate and
16 complete records; unfair competition related to any or all of the foregoing; any unpaid wages or
17 compensation related to any or all of the foregoing; any premium payments related to any or all
18 the foregoing; restitution related to any or all of the foregoing; any penalties, including statutory or
19 civil penalties, related to any or all of the foregoing; attorneys’ fees or costs related to any or all of
20 the foregoing; interest related to any of the foregoing; and/or any other damages or amounts
21 related to any or all of the foregoing. This release includes any and all claims pursuant to:
22 California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174,
23 1174.5, 1194, 1197, and 1198; the California Business & Professions Code; the California
24 Industrial Welfare Commission Wage Orders, and the Fair Labor Standards Act. The release shall
25 run through the Class Period.

26 67. PAGA Release by PAGA Representative Action Members: Upon the Final
27 Approval by the Court in the Smith Action of this Settlement Agreement and payment of amounts
28 set forth herein, and except as to such rights or claims as may be created by this Settlement

1 Agreement, each and every PAGA Representative Action Member, on behalf of themselves and
2 their heirs and assigns, and irrespective of whether the PAGA Representative Action Member
3 opted out of the class action portion of the Settlement, hereby releases the Released Parties from
4 the following rights or claims (the “Released PAGA Claims”):

5 a. Any and all claims known or unknown, for civil penalties under California
6 Labor Code section 2698 *et seq.* (PAGA) that: were asserted in any complaint filed in the Actions
7 and/or Plaintiffs’ letter(s) to the LWDA (including any subsequently amended complaints or
8 letters); and/or that could have been asserted in any complaint filed in the Actions and/or any of
9 Plaintiffs’ letter(s) to the LWDA (including any subsequently amended complaints or letters)
10 based on or related to the facts and/or allegations in any complaint filed in the Actions and/or
11 Plaintiffs’ letter(s) to the LWDA (including any subsequently amended complaints or letters). This
12 release includes, but is not limited to, claims for PAGA civil penalties premised on: California
13 Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,
14 1194, 1197, and 1198; failure to pay minimum wages and overtime; failure to pay for all hours
15 worked/compensation due for services; off-the-clock work; failure to pay reporting time pay;
16 failing to include shift premiums and other incentive payments when calculating the overtime rate;
17 failure to provide meal periods; failure to authorize and permit rest periods; failure to pay meal or
18 rest period premiums including any failure to pay meal or rest period premiums at the correct rate;
19 failure to provide accurate itemized wage statements; failure to timely pay wages at termination;
20 and failure to maintain accurate and complete records. The release shall run through the PAGA
21 Period.

22 68. General Release by Plaintiffs Only. As of the Effective Date, and with the
23 exceptions set forth herein, Plaintiffs shall release the Released Class Claims and Released PAGA
24 Claims against the Released Parties, and Plaintiffs make the additional following General Release
25 in favor of the Released Parties:

26 a. In exchange for the consideration provided in this Agreement, including the
27 Class Representative Enhancements, upon the occurrence of the Effective Date, Plaintiffs and their
28 heirs, executors, representatives, administrators, agents, and assigns irrevocably and

1 unconditionally waive and forever release the Released Parties from any and all claims, demands,
2 actions, causes of actions, judgments, rights, fees, damages, debts, obligations, liabilities, and
3 expenses (inclusive of attorneys' fees) of any kind whatsoever, whether known or unknown, that
4 Plaintiffs may have or have ever had against the Released Parties, or any of them by reason of any
5 actual or alleged act, omission, transaction, practice, conduct, occurrence, or other matter from the
6 beginning of time up to and including the Effective Date.

7 b. Plaintiffs acknowledge that they have had the opportunity to review, and
8 have reviewed, California Civil Code section 1542, which provides:

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

15 Plaintiffs acknowledge that they may later discover claims or facts in addition to or
16 different from those which they now know or believe to exist about the subject matter of the
17 Settlement Agreement, and which, if known or suspected at the time of executing the Agreement,
18 may have materially affected its terms. Nevertheless, Plaintiffs, being fully informed of Section
19 1542 of the California Civil Code, and understanding its provisions, agree to waive any rights
20 under Section 1542, and acknowledge that this Settlement Agreement and the general release
21 contained in this Paragraph extends to all claims that they have or may have against the Released
22 Parties, including those which are presently unknown to them.

23 69. Plaintiffs' Release of Age Discrimination in Employment Act Claims. Cook,
24 Gonzalez, and Smith understand and acknowledge that:

25 a. They are each voluntarily waiving any and all rights and claims they have
26 against the Released Parties arising pursuant to the Age Discrimination in Employment Act, 29
27 U.S.C. §§ 623, et seq. ("ADEA") as of the date they sign the Settlement Agreement;

28 b. They are waiving these substantive rights or claims pursuant to the
Settlement Agreement in exchange for consideration, the value of which exceeds the payment or
remuneration to which they were already entitled;

1 c. They have been advised in writing to consult with an attorney of their
2 choosing concerning the Settlement Agreement prior to executing it. They further acknowledge
3 that they sought such advice, that their counsel advised them to sign the Settlement Agreement,
4 and that their execution of the Settlement Agreement is voluntary and without coercion;

5 d. They have been given at least twenty-one (21) days to consider the terms of
6 the Settlement Agreement, and in the event they decide to sign the Settlement Agreement in fewer
7 than twenty-one (21) days, they have done so with the express understanding that they had been
8 given and declined the opportunity to consider it for a full twenty-one (21) days;

9 e. They may revoke their waiver of claims arising pursuant to the ADEA at any
10 time during the seven (7) days following the date they sign the Settlement Agreement. Plaintiffs
11 understand and agree that should they revoke their waiver of claims arising pursuant to the ADEA
12 at any time during the seven (7) days following the date they sign the Settlement Agreement, they
13 will receive ten percent (10%) of their respective Court-approved Class Representative
14 Enhancement and such amount will be the consideration for the general release of all their rights
15 and claims addressed in the Settlement Agreement except any claims they may have pursuant to
16 the ADEA. Plaintiffs further understand and agree that should they not revoke their waiver of
17 claims arising pursuant to the ADEA during the seven (7) days following the date they sign the
18 Settlement Agreement, they will receive one hundred percent (100%) of their respective Class
19 Representative Enhancement and such amount will be consideration for the general release of all
20 rights and claims addressed in the Settlement Agreement, including any claims they may have
21 pursuant to the ADEA;

22 f. Any revocation must be in writing and delivered by hand or certified mail to
23 Joan B. Tucker Fife, Winston & Strawn LLP, 101 California Street, 35th Floor, San Francisco,
24 California 94111; and

25 g. Any changes to the Settlement Agreement, whether material or immaterial,
26 do not restart the twenty-one-day (21-day) consideration period.

27 70. Plaintiff Cook's Separate Individual Release Agreement. As part of the
28 consideration for the settlement of Plaintiff Cook's individual claims, and in addition to the \$7,500

1 Class Representative Enhancement, \$10,000 of the GSA will be allocated to Plaintiff Cook
2 (“Cook’s Individual Settlement Amount”). The Individual Settlement Amount shall be apportioned
3 as 20% for alleged owed wages and 80% for non-wage damages and interest. Cook shall enter into
4 a confidential standalone agreement (“Cook’s Individual Settlement Agreement”) that includes a
5 general release of all known and unknown claims of any type whatsoever Cook may have against
6 Defendant, excluding his class claims, enhancement for the class action, and PAGA claims, that he
7 is releasing in this Settlement Agreement.

8 71. Final Approval Hearing and Entry of Judgment. Upon expiration of the deadlines to
9 postmark a letter requesting exclusion from the Settlement, or objections to the Settlement
10 Agreement, and with the Court’s permission in the Smith Action, a Final Approval hearing shall
11 be conducted to finally determine the fairness of the Settlement, along with the amounts properly
12 payable for (a) Individual Settlement Payments; (b) the PAGA Payment; (c) the Award of Class
13 Counsel Fees and Class Counsel Expenses; (d) the Class Representative Enhancement Payment;
14 (e) Cook’s Individual Settlement Amount; and (f) all Settlement Administration Costs. Class
15 Counsel will be responsible for drafting the attorneys’ fees and costs application to be heard at the
16 Final Approval hearing.

17 72. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by the
18 Court in the Smith Action or after the Final Approval hearing, the Parties shall present a judgment
19 of dismissal to the Court in the Smith Action for its approval. After entry of the judgment of
20 dismissal, the Court in the Smith Action shall retain jurisdiction solely for purposes of addressing:
21 (a) the interpretation and enforcement of the terms of the Settlement, (b) Settlement administration
22 matters, and (c) such post-judgment matters as may be appropriate under Court rules or as set forth
23 in this Settlement Agreement.

24 73. No Solicitation of Settlement Objections or Exclusions. The Parties agree to use
25 their best efforts to carry out the terms of this Settlement Agreement. At no time shall any of the
26 Parties or their counsel seek to solicit or otherwise encourage Class Members to submit either a
27 letter requesting exclusion from the Settlement or written objections to the Settlement Agreement
28 or to appeal from the Court’s final judgment.

1 74. Nullification of Settlement Agreement. In the event: (i) the Court does not finally
2 approve the Settlement as provided herein; (ii) the Court does not enter a final judgment as
3 provided herein, which becomes final as a result of the occurrence of the Effective Date; or
4 (iii) the Settlement does not become final for any other reason, this Settlement Agreement shall be
5 null and void and any order or judgment entered by the Court in the Smith Action in furtherance of
6 the Settlement shall be treated as void from the beginning. In such a case, the Parties shall be
7 returned to their respective statuses as of the date and time immediately before the execution of
8 this Settlement Agreement and the Parties shall proceed in all respects as if this Settlement
9 Agreement had not been executed. In the event an appeal is filed from the Court's final judgment,
10 or any other appellate review is sought before the Effective Date, administration of the Settlement
11 shall be stayed pending final resolution of the appeal or other appellate review (unless otherwise
12 agreed to by the Parties).

13 75. No Admission. Nothing contained herein, nor the consummation of this Settlement
14 Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or
15 wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties
16 hereto has entered into this Settlement Agreement with the intention of avoiding further disputes
17 and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a
18 settlement document and, pursuant to California Evidence Code section 1152 and/or any other
19 similar law, shall be inadmissible in evidence in any proceeding, except an action or proceeding to
20 approve the Settlement, and/or interpret or enforce this Settlement Agreement.

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

25
26 **To Class Counsel:**

27 Jonathan M. Lebe
28 Zachary Gershman
 LEBE LAW, APLC
 777 S. Alameda Street, Second Floor

To Defendant's Counsel:

 Joan B. Tucker Fife
 WINSTON & STRAWN LLP
 101 California Street, 35th Floor
 San Francisco, CA 94111

1 Los Angeles, California 90021

2 Jessica L. Campbell
3 Alexander G.L. Davies
4 Aegis Law Firm, PC
9811 Irvine Center Drive, Suite 100
Irvine, California 92618

Caitlin W. Tran
WINSTON & STRAWN LLP
333 S. Grand Ave., 38th Floor
Los Angeles, California 90071

5 77. Tax Liability. The Parties make no representations as to the tax treatment or legal
6 effect of the payments called for hereunder, and Participating Class Members are not relying on
7 any statement or representation by the Parties in this regard. Defendant shall pay the employer-
8 side share of payroll taxes separately from and in addition to the Gross Settlement Amount. Each
9 Participating Class Member shall be solely responsible for any and all additional federal, state, and
10 local taxes and/or penalties that may be due from payment of any Individual Settlement Payment
11 made to him/her, whether it is determined that any additional taxes are owed based on the taxation
12 laws in effect on the date of execution of this Settlement Agreement or that may become due at
13 any time in the future because of a change to the laws governing the taxation of such settlement
14 proceeds. Each Participating Class Member will hold the Parties free and harmless from and
15 against any claims resulting from the treatment of such payments as non-taxable damages,
16 including the treatment of such payment as not subject to withholding or deduction for payroll and
17 employment taxes. Each Party to this Settlement Agreement acknowledges and agrees that no
18 provision of this Settlement Agreement, and no written communication or disclosure between or
19 among the Parties or their attorneys and other advisers, is or was intended to constitute or be
20 construed or be relied upon as, tax advice.

21 78. Exhibits and Headings. The terms of this Settlement Agreement include the terms
22 set forth in any attached exhibits, which are incorporated by this reference as though fully set forth
23 herein. Any exhibits to this Settlement Agreement are an integral part of the Settlement. The
24 descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for
25 convenience of reference only and do not constitute a part of this Settlement Agreement.

26 79. Amendment or Modification. Unless otherwise provided herein, this Settlement
27 Agreement may be amended or modified only by a written instrument signed by counsel for all
28

1 Parties or their successors-in-interest.

2 80. Entire Agreement. This Settlement Agreement, Cook's Individual Settlement
3 Agreement, any supplemental written agreement subsequently incorporated, and any attached
4 exhibits constitute the entire Settlement Agreement among these Parties, and no oral or written
5 representations, warranties or inducements have been made to any party concerning this
6 Settlement Agreement or its exhibits other than the representations, warranties, and covenants
7 contained and memorialized in such documents.

8 81. Authorization to Enter Into Settlement Agreement. The signatories hereto represent
9 that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to
10 the terms and conditions hereof.

11 82. Opportunity to Consult With Counsel. The Parties are represented by competent
12 counsel and have had an opportunity to consult with counsel before the execution of this
13 Settlement Agreement.

14 83. Mutual Full Cooperation. The Parties and their counsel will cooperate with each
15 other and use their best efforts to affect the implementation of the Settlement. In the event the
16 Parties are unable to reach agreement on the form or content of any document needed to
17 implement the Settlement, or on any supplemental provisions that may become necessary to
18 effectuate the terms of the Settlement, the Parties may seek the assistance of the Court to resolve
19 such disagreement.

20 84. Binding on Successors and Assigns. This Settlement Agreement shall be binding
21 upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors,
22 administrators and successors. The Parties hereto represent, covenant, and warrant that they have
23 not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
24 encumber to any person or entity any portion of any liability, claim, demand, action, cause of
25 action or rights herein released and discharged except as set forth herein.

26 85. Participating Class Member and PAGA Representative Action Member Signatories.
27 It is agreed that because the Participating Class Members and PAGA Representative Action
28 Members are so numerous, it is impossible or impractical to have each Participating Class Member

1 and PAGA Representative Action Member execute this Settlement Agreement. The Notices of
2 Settlement will advise all Class Members and PAGA Representative Action Members of the
3 binding nature of the release and, upon Final Approval, such shall have the same force and effect
4 as if this Settlement Agreement were executed by each Participating Class Member and PAGA
5 Representative Action Member.

6 86. California Law Governs. All terms of this Settlement Agreement and the exhibits
7 hereto shall be governed by and interpreted according to the laws of the State of California.

8 87. Counterparts. This Settlement Agreement may be executed in one or more
9 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
10 instrument provided that counsel for the Parties to this Settlement Agreement shall exchange
11 among themselves original signed counterparts.

12 88. Plaintiffs' Waiver of Right to be Excluded. Plaintiffs agree that by signing this
13 Settlement Agreement, they are bound by the terms herein stated and further agree not to request
14 to be excluded from the Class.

15 89. Confidentiality Preceding Preliminary Approval. Plaintiffs and Class Counsel agree
16 that the terms of the Settlement (including, but not limited to, the Settlement Amount) and the
17 negotiations leading to the Settlement, shall be kept confidential through preliminary approval,
18 except as necessary to obtain Court approval in the Smith Action and effectuate the terms of the
19 settlement. Plaintiffs and Class Counsel agree that all documents related to the Settlement shall not
20 be discussed with, publicized or promoted to the public. Any confidentiality agreement entered
21 into regarding information exchanged during settlement negotiations and leading up to the
22 Settlement shall remain in full force and effect. Notwithstanding the foregoing, Plaintiffs and
23 Class Counsel may tell the public in general only that certain claims "have been resolved by the
24 parties." Plaintiffs and Class Counsel will not publish or publicize the Settlement at any time,
25 including but not limited to not filing a press release regarding the Settlement, posting information
26 about the Settlement on their websites or in social media, responding to press/media inquiries
27 regarding the Settlement (except to refer the person inquiring to the Court file), or otherwise
28 publicizing the terms or fact of the Settlement. This provision does not apply to court filings, the

1 notice of settlement that shall be sent to the Class Members by the claims administrator, or for the
2 limited purposed of allowing Plaintiffs' Counsel to prove adequacy as counsel in other unrelated
3 actions by referring to any information in the public record regarding the Settlement for such
4 purposes.

5 90. Disposition of Data. The Parties expressly agree that all data and information shared
6 by the Parties in the negotiations leading up to the Settlement is considered confidential settlement
7 communications. The Parties and their counsel expressly agree to destroy all confidential data that
8 was exchanged, including, but not limited to, such data that was designated as confidential by any
9 Party, and not use any copies of such data. Nothing in this provision is intended to refer, relate to,
10 or affect Plaintiff's counsel's retention of its confidential case files relating to the Actions.

11 **V. DUTIES OF THE PARTIES BEFORE PRELIMINARY APPROVAL AND**
12 **BETWEEN PRELIMINARY AND FINAL APPROVAL**

13 91. Within 60 calendar days after execution of the Parties' MOU, Plaintiffs shall move
14 the Court in the Smith Action for Preliminary Approval of the Settlement and obtain entry of an
15 order accomplishing the following: (a) preliminarily approving the Settlement; (b) approving as to
16 form and content the proposed Notice of Settlement; (c) directing the mailing of the Notice of
17 Settlement; (d) preliminarily appointing Plaintiffs and Class Counsel as representatives of the
18 Class Members; (e) preliminarily approving the application for Class Counsel Fees and Class
19 Counsel Expenses payable to Class Counsel; (f) preliminarily approving the Class Representative
20 Enhancement to Plaintiffs; (g) preliminarily approving the PAGA Payment; (h) preliminarily
21 approving settlement administration services to be provided by the Settlement Administrator, and
22 its estimated fees and costs of Nine Thousand Six Hundred and Fifty Dollars (\$9,650.00); (i)
23 allowing Plaintiffs' to file their First Amended Complaint; and (j) scheduling the Final Approval
24 hearing, which is a fairness hearing on the question of whether the proposed Settlement Agreement
25 should be finally approved as fair, reasonable, and adequate as to the Class Members.

26 92. Plaintiffs shall submit this Settlement Agreement in support of Plaintiffs'
27 unopposed motion for Preliminary Approval of the Settlement. Plaintiffs shall not file the
28 unopposed motion for Preliminary Approval or any other documents until Defendant has been

1 given five (5) business days to approve their contents.

2 93. On or before the date that Plaintiffs file the motion for Preliminary Approval,
3 Plaintiffs shall also submit to the LWDA a copy of the proposed Settlement pursuant to Labor
4 Code § 2699. Class Counsel shall draft the motion for Preliminary Approval and shall provide the
5 draft of the motion to Defendant's Counsel at least five (5) business days before filing the motion
6 with the Court.

7 94. Class Counsel will file a motion for Final Approval of the Settlement and
8 supporting documents with the Court at least sixteen (16) court days before Final Approval
9 hearing. Supporting documents include: (a) a declaration by the Settlement Administrator of due
10 diligence and proof of mailing of the Notice of Settlement required to be mailed to Class Members
11 by this Settlement Agreement, and of the delivery results of the Settlement Administrator's
12 mailings including tracing and re-mailing efforts; (b) a proposed order granting Final Approval;
13 and (c) a proposed final judgment. Class Counsel will send Defendant's Counsel the motion for
14 Final Approval of the Settlement for review, comments, and changes before filing the motion.
15 Defendant shall have five (5) business days in which to provide its comments. The Parties will
16 meet and confer and agree upon the proposed order granting Final Approval and the proposed final
17 judgment.

18 95. Defendant will not oppose Final Approval of the Settlement so long as it is
19 consistent with the terms set forth in this Settlement Agreement.

20 96. Class Counsel will submit a proposed order and judgment for Final Approval. The
21 proposed order and judgment shall include the following findings and orders: (a) approving the
22 Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing that its
23 terms and provisions be carried out; (b) approving the payment of the Class Representative
24 Enhancement awards to Plaintiffs; (c) approving Class Counsel's application for Class Counsel
25 Fees and Class Counsel Expenses; (d) approving the PAGA Payment; and (e) providing that the
26 Court in the Smith Action will retain jurisdiction to oversee administration and enforcement of the
27 terms of the Settlement and the Court's orders.

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[SIGNATURES ON NEXT PAGE]

1 **Plaintiff JOHN COOK**

LAND O'LAKES, INC.

2 
3 John Cook (Jan 25, 2022 11:05 PST)

John Cook

By: Laurie Olson

Its: Associate General Counsel

5 **ROSHANDA SMITH on behalf of**
6 **Plaintiff MICHAEL SMITH**

WINSTON & STRAWN LLP

7
8 Roshanda Smith

9 **Plaintiff GUILLERMO GONZALEZ**

By: Joan B. Tucker Fife

Attorney for Defendant, Land O'Lakes, Inc.

10 
11 Guillermo Gonzalez (Jan 13, 2022 13:01 PST)

Guillermo Gonzalez

14 **AEGIS LAW FIRM, PC**

16 By: Jessica L. Campbell
17 Attorney for Plaintiffs

18 **LEBE LAW, APLC**

19 
20 By: Jonathan M. Lebe
21 Attorney for Plaintiffs

Plaintiff JOHN COOK

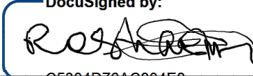
LAND O'LAKES, INC.

John Cook

By: Laurie Olson
Its: Associate General Counsel

**ROSHANDA SMITH on behalf of
Plaintiff MICHAEL SMITH**

WINSTON & STRAWN LLP

DocuSigned by:


Roshanda Smith

Plaintiff GUILLERMO GONZALEZ

By: Joan B. Tucker Fife
Attorney for Defendant, Land O'Lakes, Inc.

Guillermo Gonzalez

AEGIS LAW FIRM, PC

By: Jessica L. Campbell
Attorney for Plaintiffs

LEBE LAW, APLC

By: Jonathan M. Lebe
Attorney for Plaintiffs

Plaintiff JOHN COOK

LAND O'LAKES, INC.

John Cook

By: Laurie Olson
Its: Associate General Counsel

**ROSHANDA SMITH on behalf of
Plaintiff MICHAEL SMITH**

WINSTON & STRAWN LLP

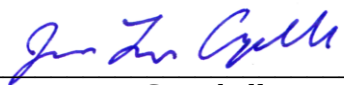
Roshanda Smith

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1 **Plaintiff JOHN COOK**

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4 John Cook

LAND O'LAKES, INC.

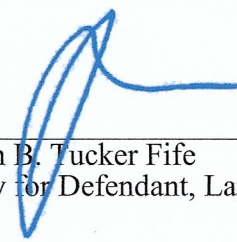

By: Laurie Olson
Its: Associate General Counsel

5 **ROSHANDA SMITH on behalf of**
6 **Plaintiff MICHAEL SMITH**

7 _____
8 Roshanda Smith

WINSTON & STRAWN LLP

9 **Plaintiff GUILLERMO GONZALEZ**


By: Joan B. Tucker Fife
Attorney for Defendant, Land O'Lakes, Inc.

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12 Guillermo Gonzalez

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14 **AEGIS LAW FIRM, PC**

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17 By: Jessica L. Campbell
18 Attorney for Plaintiffs

19 **LEBE LAW, APLC**

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21 By: Jonathan M. Lebe
22 Attorney for Plaintiffs

EXHIBIT A

EXHIBIT B