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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF TULARE**

14
15 MICHAEL SMITH, individually and on
behalf of all others similarly situated,

16 Plaintiff,

17 vs.

18 LAND O'LAKES, INC.; and DOES 1
19 through 20, inclusive,

20 Defendants.

Case No. 282808

**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 be filed concurrent with the First Amended Complaint. 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, Inc.*, Case No. 282808, pending in the Tulare County Superior Court (“Smith Action”).

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

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

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

8 8. “Class Counsel Fees” means an amount not to exceed Six Hundred and Sixteen
9 Thousand, Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents (\$613,333.33) (one-third of
10 the Gross Settlement Amount) to compensate Class Counsel for their attorneys’ fees incurred in
11 connection with the Actions, including their pre-filing investigation, their filing of the Actions and
12 all related litigation activities, this Settlement, and all post-Settlement compliance procedures.

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

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

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

24 12. “Class Representative Enhancements” means the amount to be paid to Plaintiffs in
25 recognition of their efforts and work in prosecuting the Actions on behalf of Class Members and
26 PAGA Representative Action Members. Defendant agrees to pay each Plaintiff – Cook, Gonzalez,
27 and Smith – a Class Representative Enhancement of up to Seven Thousand Five Hundred Dollars
28 (\$7,500), for a total Class Representative Enhancement of \$22,500, subject to the Court finally

1 approving this Settlement Agreement and subject to the exhaustion of any and all appeals. Any
2 portion of the Class Representative Enhancements not awarded to Plaintiffs will not revert to
3 Defendant, but instead shall be returned to the Net Settlement Amount for distribution to
4 Participating Class Members.

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

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

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

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

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

13 18. "Gross Settlement Amount" means the maximum amount of One Million Eight
14 Hundred Fifty Thousand Dollars (\$1,840,000) to be paid by Defendant under this Settlement
15 Agreement, if all conditions herein are met, to settle the Actions, inclusive of the total settlement
16 value for all damages, restitution, penalties, taxes and interest, all payments to Participating Class
17 Members and PAGA Representative Action Members, the Class Counsel Award, Settlement
18 Administration Costs to the Settlement Administrator, PAGA Payment, and the Class
19 Representative Enhancements to Plaintiffs, except that Defendant shall pay the employer's share
20 of the payroll taxes separately from and in addition to the Gross Settlement Amount. The Gross
21 Settlement Amount shall also include any interest that accrues in the escrow account created by
22 the Settlement Administrator.

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

27 20. "Net Settlement Amount" means the portion of the Gross Settlement Amount
28 remaining after deduction of the: (1) Class Representative Enhancements to Plaintiffs,

1 (2) Settlement Administration Costs to the Settlement Administrator, (3) Class Counsel Award,
2 and (4) PAGA Payment. The Net Settlement Amount will be distributed to Participating Class
3 Members.

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

7 22. “Operative Complaint” means the First Amended Complaint to be filed in the Smith
8 Action in the Superior Court of the State of California, County of Tulare, Case No. 282808, filed
9 concurrent with Plaintiffs’ motion for Preliminary Approval and attached as **Exhibit B**.

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

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

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

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

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

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

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

28 30. “Preliminary Approval” means the Court order in the Smith Action granting

1 preliminary approval of the Settlement Agreement without material change to the Settlement
2 Agreement.

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

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

10 33. “Response Deadline” means the date sixty (60) calendar days after the Settlement
11 Administrator mails the Notice of Settlement to Class Members and the last date on which Class
12 Members may: (a) postmark written requests to be excluded from the class action portion of this
13 Settlement, or (b) mail to the Settlement Administrator a Notice of Objection to the Settlement and
14 serve on counsel for the Parties. If the 60th day falls on a Sunday or federal holiday, the Response
15 Deadline will be extended to the next day on which the U.S. Postal Service is open.

16 34. “Settlement” means the Parties’ agreement to compromise the Actions, the material
17 terms of which are set forth in this Settlement Agreement.

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

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

23 37. “Settlement Agreement” means this Stipulation of Class and PAGA Representative
24 Action Settlement and Release.

25 **III. RECITALS**

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

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

IV. TERMS OF AGREEMENT

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

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

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

42. Settlement Administration Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement and distribution of all payments from the Gross Settlement Amount. The estimate of the Settlement Administration Costs is Nine Thousand Six Hundred and Fifty Dollars (\$9,650.00). If the Settlement Administration Costs exceed Nine Thousand Six Hundred and Fifty Dollars (\$9,650.00), such cost will be deducted from the Net Settlement Amount. These costs, which shall be paid from the Gross Settlement Amount, shall be used to administer the settlement, including, *inter alia*, preparing the required tax reporting on

1 Individual Settlement Payments and PAGA Settlement Payments, issuing 1099 and W-2 IRS
2 Forms, distributing the Notice of Settlement, calculating Individual Settlement Payments,
3 calculating PAGA Settlement Payments, processing exclusion requests, resolving disputes,
4 distributing the Net Settlement Amount as directed by the Court and as set forth herein, providing
5 necessary reports and declaration, and posting notice of final judgment on the Settlement
6 Administrator's website.

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

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

16 43. Funding and Allocation of the Class Settlement Amount. The Settlement is non-
17 reversionary. Defendant shall transfer the Gross Settlement Amount to a Qualified Settlement
18 Fund ("QSF") established by the Settlement Administrator within thirty (30) calendar days after
19 the occurrence of latest of: (a) if an objection is filed, 60 days after the Court enters an order
20 granting Final Approval of the Settlement, (b) if an objection is filed and not withdrawn, and if
21 any timely appeals are filed, the resolution of any such appeals in a way that does not materially
22 alter the terms of the settlement; (c) if no objection is filed and no appeal is filed, the date the
23 Court enters an order granting Final Approval of the Settlement; (d) if an objection is filed but is
24 withdrawn, the date on which the Court of Appeal, or Supreme Court renders a final judgment
25 affirming Final Approval; (e) after Class Counsel has delivered a fully-executed Request for
26 Dismissal with Prejudice for Plaintiff Cook's Federal Case to Defendant's Counsel.

27 a. The QSF will be controlled by the Settlement Administrator subject to the
28 terms of this Settlement and the Court's order(s). Interest, if any, earned on monies in the QSF will

1 be added to the Gross Settlement Amount. The Settlement Administrator shall serve as Trustee of
2 the QSF and shall act as a fiduciary with respect to the handling, management, and distribution of
3 the Gross Settlement Amount, including the handling of tax related issues and payments. The
4 Settlement Administrator shall act in a manner as necessary to qualify the settlement fund as a
5 QSF and to maintain the qualification.

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

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

25 45. Payment of Class Counsel Award. Defendant agrees not to oppose any application
26 or motion by Class Counsel for an award of Class Counsel Fees not to exceed Six Hundred
27 Thirteen Thousand, Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$613,333.33),
28 and Class Counsel Expenses not to exceed Fifteen Thousand Dollars (\$15,000). The Class Counsel

1 Award shall be paid out of the Gross Settlement Amount. Any portion of the Class Counsel Award
2 not awarded to Class Counsel will not revert to Defendant, but instead shall be returned to the Net
3 Settlement Amount for distribution to Participating Class Members. Class Counsel shall be solely
4 and legally responsible to pay all applicable taxes on the payment made pursuant to this Paragraph.
5 IRS Form 1099 shall be provided to Class Counsel for the payments made pursuant to this
6 Paragraph.

7 46. PAGA Payment. Subject to Court approval, \$20,000 from the Gross Settlement
8 Amount shall be designated for satisfaction of Plaintiffs' and PAGA Representative Action
9 Members' claims pursuant to the PAGA. Pursuant to the PAGA, Seventy-Five Percent (75%), or
10 \$15,000, of this amount shall be paid to the LWDA and Twenty-Five Percent (25%), or \$5,000,
11 shall be evenly distributed to PAGA Representative Action Members on a per capita basis as
12 PAGA Settlement Payments. If the PAGA Payment is adjusted by the Court, it shall be adjusted
13 by using funds from the Gross Settlement Amount and in no event shall increase the Gross
14 Settlement Amount.

15 47. Notice Procedure. The Settlement Administrator shall be responsible for the
16 following notice procedure.

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

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

25 c. Undeliverable Notices. Any Notices of Settlement returned to the Settlement
26 Administrator as non-delivered on or before the Response Deadline shall be sent to the forwarding
27 address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall
28 promptly attempt to determine a correct address using a skip-trace, or other search using the name,

1 address and/or Social Security number of the Class Member involved, and shall re-mail the Notice
2 of Settlement. If, after performing a skip-trace search, the Notice of Settlement is still returned to
3 the Settlement Administrator as non-deliverable, the Settlement Administrator will have no further
4 obligation to undertake efforts to obtain an alternative address. The Response Deadline for any
5 Class Member who is re-mailed a Notice of Settlement shall be extended fifteen (15) calendar days
6 from the original sixty (60) calendar day deadline.

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

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

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

26 c. A Class Member who does not properly and timely submit a request to opt-
27 out in the manner and by the deadline specified above will automatically receive his or her
28 Individual Settlement Share, in addition to his or her PAGA Settlement Share, and will be bound

1 by all terms and conditions of the Settlement Agreement, including its release of the Released
2 Class Claims and Released PAGA Claims, if the Settlement Agreement is approved by the Court,
3 and be bound by the Final Approval order, regardless of whether he or she has objected to the
4 Settlement Agreement.

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

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

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

25 50. Disputed Information on Notice of Settlement. If a Class Member disputes the
26 employment dates and number of Qualifying Workweeks attributed to him or her in the Notice of
27 Settlement, he or she must submit such a dispute to the Settlement Administrator on or before the
28 Response Deadline and Defendant will check its records. If a Class Member disputes the

1 employment dates or number of Qualifying Workweeks listed in the Notice of Settlement, the
2 Class Member may produce evidence to the Settlement Administrator showing that such
3 information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's records
4 will be presumed determinative. However, if a Class Member produces evidence to the contrary,
5 the Parties will meet and confer and evaluate the evidence submitted by the Class Member. If the
6 Parties are unable to resolve the dispute informally, the Court will make the final decision as to the
7 number of eligible Qualifying Workweeks that should be applied.

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

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

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; (5) Class Counsel; and (6) itself,
12 for Court-approved services performed in connection with the Settlement.

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

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

1 61. Amended Complaint. Plaintiffs shall file a First Amended Complaint in the Smith
2 Action in the form attached hereto as Exhibit B, concurrent with Plaintiffs' motion for
3 Preliminary Approval.

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

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

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

26 62. Amended LWDA Letter. In connection with the Settlement, and solely for the
27 purpose of facilitating the settlement of the Actions, Plaintiffs shall send an amended letter to the
28 LWDA that covers each of the PAGA Released Claims, including any of the factual allegations to

1 support those claims (the “Amended LWDA Letter”). If the Court in the Smith Action does not
2 grant Final Approval of the Settlement, Plaintiffs will withdraw the Amended LWDA Letter and it
3 will be void *ab initio*.

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

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

14 65. Plaintiffs’ Right to Void. At mediation, Defendant estimated that, as of December
15 31, 2020, there were approximately 84,198 work weeks where Class Members who were directly
16 employed by Defendant at the Tulare location and performed work at the Tulare location from
17 March 6, 2016 to December 31, 2021. This serves as the basis for Plaintiffs accepting the
18 Settlement. If the number of work weeks from March 6, 2016 through December 31, 2020 exceeds
19 84,198 by more than five percent (5%), Plaintiffs shall have the right the void the Settlement
20 Agreement.

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

(collectively the “Released Parties”) from the following rights or claims (the “Released Class Claims”):

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

67. PAGA Release by PAGA Representative Action Members: Upon the Final Approval by the Court in the Smith Action of this Settlement Agreement and payment of amounts set forth herein, and except as to such rights or claims as may be created by this Settlement Agreement, each and every PAGA Representative Action Member, on behalf of themselves and their heirs and assigns, and irrespective of whether the PAGA Representative Action Member

1 opted out of the class action portion of the Settlement, hereby releases the Released Parties from
2 the following rights or claims (the “Released PAGA Claims”):

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

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

24 a. In exchange for the consideration provided in this Agreement, including the
25 Class Representative Enhancements, upon the occurrence of the Effective Date, Plaintiffs and their
26 heirs, executors, representatives, administrators, agents, and assigns irrevocably and
27 unconditionally waive and forever release the Released Parties from any and all claims, demands,
28 actions, causes of actions, judgments, rights, fees, damages, debts, obligations, liabilities, and

1 expenses (inclusive of attorneys' fees) of any kind whatsoever, whether known or unknown, that
2 Plaintiffs may have or have ever had against the Released Parties, or any of them by reason of any
3 actual or alleged act, omission, transaction, practice, conduct, occurrence, or other matter from the
4 beginning of time up to and including the Effective Date.

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

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

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

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

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

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

c. They have been advised in writing to consult with an attorney of their
choosing concerning the Settlement Agreement prior to executing it. They further acknowledge

1 that they sought such advice, that their counsel advised them to sign the Settlement Agreement,
2 and that their execution of the Settlement Agreement is voluntary and without coercion;

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

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

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

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

25 70. Plaintiff Cook's Separate Individual Release Agreement. Separate from Plaintiff
26 Cook's agreement to release all Class and PAGA wage and hour claims alleged in the Actions,
27 Plaintiff Cook has also entered into a confidential standalone agreement to release his individually
28 alleged claims for wrongful termination ("Cook's Individual Settlement Agreement."). Cook's

1 Individual Settlement Agreement includes a general release of all known and unknown claims of
2 any type whatsoever Cook may have against Defendant, excluding his class claims, enhancement
3 for the class action, and PAGA claims, that he is releasing in this Settlement Agreement. Payment
4 under Plaintiff Cook's Individual Settlement Agreement will be due after the Court grants Final
5 Approval in the Actions.

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

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

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

26 74. Nullification of Settlement Agreement. In the event: (i) the Court does not finally
27 approve the Settlement as provided herein; (ii) the Court does not enter a final judgment as
28 provided herein, which becomes final as a result of the occurrence of the Effective Date; or

(iii) the Settlement does not become final for any other reason, this Settlement Agreement shall be null and void and any order or judgment entered by the Court in the Smith Action in furtherance of the Settlement shall be treated as void from the beginning. In such a case, the Parties shall be returned to their respective statuses as of the date and time immediately before the execution of this Settlement Agreement and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed. In the event an appeal is filed from the Court's final judgment, or any other appellate review is sought before the Effective Date, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review (unless otherwise agreed to by the Parties).

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

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

To Class Counsel:

Jonathan M. Lebe
Zachary Gershman
LEBE LAW, APLC
777 S. Alameda Street, Second Floor
Los Angeles, California 90021

Jessica L. Campbell
Alexander G.L. Davies
Aegis Law Firm, PC
9811 Irvine Center Drive, Suite 100

To Defendant's Counsel:

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

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

Irvine, California 92618

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

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

79. Amendment or Modification. Unless otherwise provided herein, this Settlement Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

80. Entire Agreement. This Settlement Agreement, Cook's Individual Settlement Agreement, any supplemental written agreement subsequently incorporated, and any attached

1 exhibits constitute the entire Settlement Agreement among these Parties, and no oral or written
2 representations, warranties or inducements have been made to any party concerning this
3 Settlement Agreement or its exhibits other than the representations, warranties, and covenants
4 contained and memorialized in such documents.

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

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

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

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

23 85. Participating Class Member and PAGA Representative Action Member Signatories.
24 It is agreed that because the Participating Class Members and PAGA Representative Action
25 Members are so numerous, it is impossible or impractical to have each Participating Class Member
26 and PAGA Representative Action Member execute this Settlement Agreement. The Notices of
27 Settlement will advise all Class Members and PAGA Representative Action Members of the
28 binding nature of the release and, upon Final Approval, such shall have the same force and effect

1 as if this Settlement Agreement were executed by each Participating Class Member and PAGA
2 Representative Action Member.

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

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

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

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

1 purposes.

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

8 **V. DUTIES OF THE PARTIES BEFORE PRELIMINARY APPROVAL AND**
9 **BETWEEN PRELIMINARY AND FINAL APPROVAL**

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

23 92. Plaintiffs shall submit this Settlement Agreement in support of Plaintiffs'
24 unopposed motion for Preliminary Approval of the Settlement. Plaintiffs shall not file the
25 unopposed motion for Preliminary Approval or any other documents until Defendant has been
26 given five (5) business days to approve their contents.

27 93. On or before the date that Plaintiffs file the motion for Preliminary Approval,
28 Plaintiffs shall also submit to the LWDA a copy of the proposed Settlement pursuant to Labor

1 Code § 2699. Class Counsel shall draft the motion for Preliminary Approval and shall provide the
2 draft of the motion to Defendant's Counsel at least five (5) business days before filing the motion
3 with the Court.

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

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

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

25 ///

26 ///

27 ///

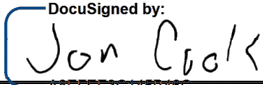
28 ///

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[SIGNATURES ON NEXT PAGE]

1 **Plaintiff JOHN COOK**

LAND O'LAKES, INC.

2 
3 John Cook

By: Laurie Olson
Its: Associate General Counsel

4
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
12 Guillermo Gonzalez

13
14 **AEGIS LAW FIRM, PC**

15
16 By: Jessica L. Campbell
17 Attorney for Plaintiffs

18 **LEBE LAW, APLC**

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

1 **Plaintiff JOHN COOK**

LAND O'LAKES, INC.

2
3 _____
John Cook

By: Laurie Olson
Its: Associate General Counsel

4
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

12
13
14 **AEGIS LAW FIRM, PC**

15 
16 _____
By: Jessica L. Campbell
Attorney for Plaintiffs

17
18 **LEBE LAW, APLC**

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

1 **Plaintiff JOHN COOK**

LAND O'LAKES, INC.

2
3 _____
John Cook

By: Laurie Olson
Its: Associate General Counsel

4
5 **ROSHANDA SMITH on behalf of**
6 **Plaintiff MICHAEL SMITH**

WINSTON & STRAWN LLP

7 _____
Roshanda Smith

8
9 **Plaintiff GUILLERMO GONZALEZ**

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

10 
11 _____
William Gonzalez (Jun 1, 2022 12:07 PDT)
Guillermo Gonzalez

12
13
14 **AEGIS LAW FIRM, PC**

15 _____
16 By: Jessica L. Campbell
17 Attorney for Plaintiffs

18 **LEBE LAW, APLC**

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

EXHIBIT A

THIS IS AN IMPORTANT COURT APPROVED NOTICE. READ CAREFULLY.

Michael Smith, et al. v. Land O'Lakes, Inc., Tulare County Superior Court
Case No. VCU282808

If you worked at Land O'Lakes, Inc.'s Tulare, California facility as a Land O' Lakes, Inc. production employee at any time from March 6, 2016, through July 30, 2021, a settlement of a class and PAGA representative action lawsuit may affect your rights.

This is a court-authorized notice. It is not a solicitation from a lawyer.

- A proposed settlement (the "Settlement") has been reached in the class and PAGA representative action lawsuit entitled *Michael Smith, et al. v. Land O'Lakes, Inc.*, Tulare County Superior Court, Case No. VCU282808 (the "Lawsuit"). The purpose of this Notice of Class Action Settlement ("Notice") is to briefly describe the Lawsuit, and to inform you of your rights and options in connection with the Lawsuit and the proposed settlement.
- The Court has preliminarily approved a class and PAGA representative action settlement with Defendant Land O'Lakes, Inc. ("Defendant" or "Land O'Lakes" or "LOL"), which will affect all current and former non-exempt hourly production employees employed by Land O'Lakes at its Tulare, California facility at any time from March 6, 2016 until July 30, 2021 (the "Class").
- If the Court grants final approval of the Settlement, there may be money available to you.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
PARTICIPATE IN THE SETTLEMENT – <u>NO ACTION REQUIRED</u>	Stay in this Lawsuit. Receive a payment. Cannot pursue your own lawsuit. By doing nothing, you become part of the Class and will collect a settlement award as detailed below. But you will not be able to bring your own lawsuit against LOL for wage and hour violations that relate to the claims brought in this Lawsuit.
OBJECT TO THE SETTLEMENT	Stay in this Lawsuit. Receive a payment. Object. Cannot pursue your own lawsuit. To object to the Settlement, you must write to the Settlement Administrator about why you do not like the settlement. You will remain a member of the Class, and if the Court approves the Settlement, you will be bound by the terms of the settlement in the same way as Class Members who do not object.
ASK TO BE EXCLUDED	Get out of this Lawsuit. Receive a smaller or no payment from it. Keep your right to pursue your own lawsuit for damages. If you ask to be excluded from the Settlement, you keep your right to sue Land O'Lakes separately about the legal claims in this Lawsuit, except as to the claim under the California Private Attorneys General Act ("PAGA"). If you choose this option, you must exclude yourself, in writing, from the Settlement. As a result, you may receive no payment at all. At most, you will receive a very small payment for resolution of the PAGA claim if you a member of the PAGA Representative Action Members, which is a subset of the Class.

- **Regardless of the option you choose, you will not be retaliated against for exercising your rights.** To object to the Settlement or to ask to be excluded, you must act before **[DATE – 60 Days After Mailing Notice of Settlement]**.
- **Any questions?** Read on or contact the Settlement Administrator listed below at 1-800-523-5773.

BASIC INFORMATION

1. Why did I get this notice?

Land O'Lakes' records show that you worked for Land O'Lakes as an hourly, non-exempt production employee at its Tulare, California facility at some point between March 6, 2016 and July 30, 2021.

The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable. Any final determination of those issues will be made at the final hearing. You have legal rights and options that you may exercise as part of this settlement. Judge David C. Mathais of the Superior Court of the State of California, County of Tulare, is overseeing this lawsuit.

2. What is this lawsuit about?

In this Lawsuit, Plaintiffs Michael Smith, John Cook, and Guillermo Gonzalez ("Plaintiffs") claim that Land O'Lakes: (1) failed to pay minimum wages for all hours worked; (2) failed to pay overtime wages for all hours worked and/or failed to pay overtime wages at the proper rate; (3) failed to pay reporting time pay; (4) failed to provide meal periods or pay appropriate compensation in lieu thereof; (5) failed to permit rest breaks or provide appropriate compensation in lieu thereof; (6) failed to provide accurate itemized wage statements; (7) failed to pay all wages due upon separation of employment; (8) committed unfair business practices under California's Unfair Competition Laws; (9) committed violations of the Fair Labor Standards Act ("FLSA"); and (10) sought civil penalties for Defendant's Labor Code violations pursuant to the Private Attorneys' General Act of 2004 ("PAGA"). Plaintiffs also claimed entitlement to restitution, interest, attorneys' fees, and costs. You can read Plaintiffs' allegations as stated in the First Amended Complaint, which is available at [www. Simpluris.com](http://www.Simpluris.com).

Throughout the litigation, Land O'Lakes has denied—and continues to deny—the factual and legal allegations in the case. Land O'Lakes does not believe that it violated any law or regulation relating to how it paid employees, when it paid employees, how much it paid employees, or how wage statements displayed information. Land O'Lakes denies any wrongdoing and asserts that its conduct at all times complied with the law. Land O'Lakes further denies that it owes the monies claimed in the Lawsuit. However, Land O'Lakes has voluntarily agreed to the terms of a negotiated settlement in order to avoid the burden and expense of continued litigation.

3. What is a class action and who is involved?

In a class action lawsuit such as this, a person called the "Class Representative" sues on behalf of other people who may have similar claims. The people together are a "Class" or "Class Members." The person who is the Class Representative is also called the plaintiff. The companies sued are called the defendant.

In class action litigation, one Court resolves the issues for everyone in the Class in one lawsuit, except for those people who choose to exclude themselves from the Class.

Here, this class action also includes a “Private Attorneys General Act” (PAGA) claim where the Plaintiffs are attempting to recover penalties for the State of California. In a PAGA action, the State receives 75% of the civil penalties, while employees receive 25%. This settlement will resolve all claims by the State for civil penalties arising from claims made by Plaintiffs or their counsel in the Lawsuit during the period of March 6, 2019 to July 30, 2021, and all other hourly, non-exempt production employees directly employed by Land O’Lakes and who worked at LOL’s Tulare, California facility during this period of time will be covered by the Lawsuit, and will be barred from bringing another lawsuit on behalf of the State for such penalties.

4. Why is this Lawsuit a class action?

For settlement purposes only, Plaintiffs and Land O’Lakes agreed that this case can proceed as a class action and to ask the Court to approve the settlement for the Class. The Court has not ruled on the merits of the case, and the decision to certify Class for settlement purposes should not be viewed as a prediction or agreement that Plaintiffs or the Class would ultimately prevail on the merits of the action.

5. What are the terms of the proposed Settlement?

Subject to final Court approval, the major terms of the Settlement are as follows:

1. Land O’Lakes has agreed to pay \$1,840,000 to settle the claims made in this Lawsuit. This amount is also known as the “Gross Settlement Amount”.
2. Plaintiffs have agreed to release all of their claims in this lawsuit against Land O’Lakes.
3. **Class Settlement Payments:** Plaintiffs seek the following deductions from the \$1,840,000 Gross Settlement Amount:
 - a. Up to one-third (1/3) of the Gross Settlement Amount (currently equal to \$613,333.33) for Class Counsel’s attorneys’ fees.
 - b. Up to \$15,000 for reimbursement of Class Counsel’s litigation costs.
 - c. An incentive award of up to \$7,500 to each of the named Plaintiffs for filing the Lawsuit, performing work in connection with the Lawsuit, and undertaking the risks of filing the Lawsuit (for a total of \$22,500, subject to the Court finally approving the proposed Settlement Agreement, and subject to the exhaustion of any and all appeals).
 - d. Up to \$9,650 to cover the costs of the Settlement Administrator.
 - e. Payment of \$20,000 for release of the PAGA claims asserted in this Lawsuit, 75%, or \$15,000, of which shall be paid to the California Labor and Workforce Development Agency, and 25%, or \$5,000, of which shall be evenly distributed to hourly, non-exempt

production employees employed by Land O'Lakes and who worked at LOL's Tulare, California facility during the period of March 6, 2019 to July 30, 2021.

If the Court approves the requested deductions, there will be approximately \$1,159,516.67 remaining, before deducting for taxes, to be distributed to Participating Class Members. The remaining funds will be referred to as the "Net Settlement Amount." Any amounts not requested or awarded by the Court will be included in the Net Settlement Amount. The Net Settlement Amount will be distributed to Class Members who do not request exclusion (the "Participating Class Members") on a pro rata basis, based on the number of qualifying workweeks a Class Member was employed by, and worked for, LOL as a non-exempt hourly production employee at Land O'Lakes' Tulare, California facility at any time from March 6, 2016 until July 30, 2021, excluding weeks when the Class Member did not work or was on leave for the entire week.

PAGA Settlement Payments. A portion of the Gross Settlement Amount in the amount of \$20,000 will be set aside for Class Members who worked for LOL as hourly non-exempt production employees at Land O'Lakes' Tulare, California facility at some point between March 6, 2019 and July 30, 2021 ("PAGA Representative Action Members"). If you are a PAGA Representative Action Member, you will receive a per capita share of the PAGA Payment, regardless of whether you opt-out of the settlement. You will not be able to pursue any claim on behalf of the State for such penalties.

Settlement Payments Generally. Any checks issued by the Settlement Administrator to Participating Class Members and PAGA Representative Action Members shall be negotiable for one hundred and eighty (180) calendar days from the date of their issuance. If a settlement check remains uncashed after 180 days from issuance, the check will become void and a stop payment will be placed on the uncashed check and the amount will be held with the Controller of the State of California's Unclaimed Property Fund to be held in the name of the Class Member under the Unclaimed Property Law.

Your estimated settlement payment is listed in Section 8 of this Notice. Applicable taxes will be withheld from your payment.

WHO IS IN THE CLASS?

6. Am I part of this Class?

The "Class" includes: All current and former non-exempt hourly production employees directly employed by Land O'Lakes at its Tulare, California facility at any time from March 6, 2016 until July 30, 2021. (the "Class Period").

7. I'm still not sure if I am included.

If you still are not sure whether you are included in the Class, you can get free help by contacting Simpluris, Inc. the "Settlement Administrator", at the designated phone number for this matter at (888) 369-3780 or by calling or writing the lawyers representing the Class in this case ("Class Counsel"), at the phone number or address listed in Section 19.

8. What is my approximate Individual Settlement Payment?

According to payroll records maintained by Land O'Lakes, the total number of Qualifying Workweeks you worked as an hourly, non-exempt production employee at Land O'Lakes Tulare, California facility during the Class Period as a LOL employee is [REDACTED].

Based on information provided above and anticipated court-approved deductions, your share of the settlement is estimated to be \$[REDACTED], less applicable taxes and withholdings. ("Individual Settlement Share")

You do not need to do anything further to receive your Individual Settlement Share payment, other than to ensure that the Settlement Administrator has an accurate mailing address for you. It is important that you contact and inform the Settlement Administrator listed in Section 16, below, of any changes to your mailing address for timely payment.

Disputing Your Payment Amount

If you believe your total weeks worked during the Class Period shown above are not correct, you may send a letter to the Settlement Administrator indicating what you believe is correct by no later than [DATE – 60 Days After Mailing]. You should also send any documents or other information that supports your belief. Absent evidence rebutting Defendant's records, Defendant's records will be presumed determinative. However, if a Class Member produces evidence to the contrary, the Parties will meet and confer and evaluate the evidence submitted by the Class Member. If the Parties are unable to resolve the dispute informally, the Court will make the final decision as to the number of eligible Qualifying Workweeks that should be applied.

9. What rights am I releasing if I participate in the Settlement?

If the Court grants final approval of the Settlement and you do not opt out of the Settlement, you will be deemed to have released Land O'Lakes, Inc., its present, former, or future parent and/or subsidiary corporations, and each of the foregoing's present, former, or future owners, officers, directors, shareholders, partners, employees, insurers, successors, predecessors, contractors, assigns, and managing agents and any and all agents, legal representatives, and/or attorneys of all of the foregoing entities or individuals (collectively the "Released Parties") from any and all claims, known or unknown, that: were asserted in any and/or all of the complaints in the Actions and/or in any of Plaintiffs' letter(s) to the LWDA (including any subsequently amended complaints or letters); and/or any and all claims, known or unknown, that could have been asserted based on any or all the factual allegations in any and/or all of the complaints in the Actions and/or in any of Plaintiffs' letter(s) to the LWDA (including any subsequently amended complaints or letters). This includes but is not limited to claims for or related to: minimum wages, overtime; pay for all hours worked/compensation due for services; off-the-clock work; calculation of the regular rate of pay; reporting time pay; including shift premiums and other incentive payments when calculating the overtime rate; meal periods; rest periods; meal and/or rest period premiums including all claims related to the calculation thereof; wage statements; timeliness of wages; payment of wages at termination; maintaining accurate and complete records; unfair competition related to any or all of the foregoing; any unpaid wages or compensation related to any or all of the foregoing; any premium payments related to any or all the foregoing; restitution related to any or all of the foregoing; any penalties, including statutory or civil penalties, related to any or all of the foregoing;

attorneys' fees or costs related to any or all of the foregoing; interest related to any of the foregoing; and/or any other damages or amounts related to any or all of the foregoing. This release includes any and all claims pursuant to: California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, and 1198; the California Business & Professions Code; the California Industrial Welfare Commission Wage Orders, and the Fair Labor Standards Act. ("Released Class Claims"). The release shall run through the Class Period of March 6, 2016 through July 30, 2021.

Additionally, if you worked during the period of March 6, 2019 through July 30, 2021 ("PAGA Period"), and irrespective of whether you opted out of the class action portion of the Settlement, you are a PAGA Representative Action Member and you will also release the right to bring any and all claims known or unknown, for civil penalties on behalf of the State (and other employees) under California Labor Code section 2698 et seq. (PAGA) that: were asserted in any complaint filed in the Actions and/or Plaintiffs' letter(s) to the LWDA (including any subsequently amended complaints or letters); and/or that could have been asserted in any complaint filed in the Actions and/or any of Plaintiffs' letter(s) to the LWDA (including any subsequently amended complaints or letters) based on or related to the facts and/or allegations in any complaint filed in the Actions and/or Plaintiffs' letter(s) to the LWDA (including any subsequently amended complaints or letters). This release includes, but is not limited to, claims for PAGA civil penalties premised on: California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, and 1198; failure to pay minimum wages and overtime; failure to pay for all hours worked/compensation due for services; off-the-clock work; failure to pay reporting time pay; failing to include shift premiums and other incentive payments when calculating the overtime rate; failure to provide meal periods; failure to authorize and permit rest periods; failure to pay meal or rest period premiums including any failure to pay meal or rest period premiums at the correct rate; failure to provide accurate itemized wage statements; failure to timely pay wages at termination; and failure to maintain accurate and complete records ("Released PAGA Claims"). The release shall run through the PAGA Period.

10. How do I object to the Settlement?

If you are a Class Member and would like to object to the Settlement, you must not submit a request for exclusion (i.e., must not opt out). In order to object, you may mail a written objection to the Settlement Administrator at the address in Section 16 below. To be valid, a Class Member must mail a notice of objection to the Settlement Administrator, signed by the Class Member, and stating the following: (i) the Class Member's name; (ii) current address; (iii) telephone number; and (iv) the basis of the objection. The Class Member must send a copy of his or her objection to the Settlement Administrator by the Response Deadline. The postmark date of the filing and service shall be deemed the exclusive means for determining that the notice of objection is timely. Class Members shall be permitted to withdraw their objections in writing by submitting a withdrawal statement to the Settlement Administrator not later than one (1) business day before the Court's Final Approval hearing, orally at the Final Approval hearing, or as otherwise ordered by the Court. Class Members who do not make and mail written objections in the manner and by the deadline specified above, or at the Final Approval hearing, shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. You can also hire an attorney at your own expense to represent you in your objection.

Your written objection to the Settlement Administrator must be postmarked on or before [DATE – 60 days after mailing]. ("Response Deadline"). You may appear in person at the Final Fairness and Approval Hearing to present any oral objections even if you do not submit a timely written objection.

11. Why would I ask to be excluded?

You have the right to exclude yourself from the Class (and the class settlement). If you exclude yourself from the Class—sometimes called "opting-out" of the Class – you won't get any money or benefits from the class settlement. However, you may then be able to sue or continue to sue Land O'Lakes for your own claims if permitted by law. If you exclude yourself, you will not be legally bound by the Court's ruling in this Lawsuit, except for the release by PAGA Representative Action Members, as explained above. Whether or not you submit a Request for Exclusion, you will still receive a small PAGA Settlement Share if you are determined to be a PAGA Representative Action Member.

12. How do I ask to be excluded from the Class?

If you are a Class Member and would like to exclude yourself from the Class ("opt-out"), you, or your authorized representative, need to submit a written statement requesting exclusion from the Class to the Settlement Administrator at the address in Section 16 below. The statement must be signed by you or your authorized representative and must be postmarked on or before [DATE – 60 days after mailing]. To be valid, your request for exclusion must: (1) state your full name, address, and telephone number and the last four digits of your Social Security Number; (2) state the following: I wish to opt-out of the class action portion of the Settlement of the lawsuit *Smith v. Land O' Lakes, Inc.* I understand that by requesting exclusion, I will not be eligible to receive any payment or other benefit for Class Members from the class action portion of the Settlement involving Land O'Lakes, Inc. (or words to a similar effect); and (3) be signed by you. Class Members shall be permitted to rescind their opt-out statements in writing by submitting a rescission statement to the Settlement Administrator not later than one (1) business day before the Court's Final Approval hearing, orally at the Final Approval hearing, or as otherwise ordered by the Court.

Any Class Member who properly and timely submits a written request to opt-out of the class action portion of the Settlement will not be entitled to any Individual Settlement Share payment and will not release any Class Claims against Land O'Lakes. Class Members who fail to submit a valid and timely request for exclusion will be bound by all terms of the Settlement and any ruling from the Court to give final approval of the Settlement. However, regardless of any class action opt-out submitted, eligible Class Members employed during the PAGA period will still receive a PAGA Settlement Share payment, will release the Released PAGA Claims, and will not have any right to object, appeal, or comment on the terms of the Settlement Agreement. Class Members cannot opt out of releasing PAGA claims, as those claims belong to the State of California and Plaintiffs have agreed to release those claims by acting as a proxy for the State.

THE LAWYERS REPRESENTING YOU

13. Who are the attorneys representing the Parties?

Lawyers for the Class

Samuel A. Wong (swong@aegislawfirm.com)
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Jessica L. Campbell (jcampbell@aegislawfirm.com)
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Land O'Lakes' Lawyers

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The Court has preliminarily decided that Aegis Law Firm, PC and Lebe Law, APLC ("Class Counsel") is qualified to represent you and all Class Members. Class Counsel's attorneys are experienced in handling similar cases against other employers. More information about Class Counsel, their practices, and their lawyers' experience is available at www.aegislawfirm.com; and at <https://lebelaw.com/>.

14. How will the lawyers be paid?

As part of the Settlement with Land O'Lakes, Class Counsel has requested one-third of the Gross Settlement Amount (currently equal to \$613,333.33) in attorneys' fees, plus costs not to exceed \$15,000, to be paid from the Gross Settlement Amount to compensate Class Counsel for their work on this matter. You will not have to pay Class Counsel's fees and costs from your Individual Settlement Payment.

15. How will Plaintiffs be paid?

As part of the Settlement with Land O'Lakes, Class Counsel has requested an enhancement payment of up to \$7,500 each (\$22,500 total for the Named Plaintiffs) to be paid to Plaintiffs for their efforts in this matter during initial investigation, discovery, mediation and the like, while serving as Class Representatives and taking on the burden and risks of litigation.

Separate and apart from the settlement of the wage and hour claims described herein, Plaintiff Cook has also agreed to settle his unique individual employment claims for alleged wrongful termination asserted against Defendant.

THE SETTLEMENT, APPROVAL, AND PAYMENT PROCESS

16. Who is handling the Settlement Administration process?

Simpluris, Inc.
P.O. Box 26170
Santa Ana, CA 92799
(888) 369-3780
www.simpluris.com/

17. When is the Final Fairness and Approval Hearing and do I have to attend?

The Final Fairness and Approval Hearing has been set for [DATE], at [TIME] in Department 1 of the Tulare County Superior Court for the State of California, located at 221 S Mooney Blvd, Visalia, CA 93291. You do not need to attend the hearing to be a part of the Settlement. However, if you wish to object to the Settlement, you may appear at the hearing. Please note that the hearing may be continued without further notice to the Class. Make sure you check the Court's website before attempting to come to Court in person. You may be required to appear only by phone or video, depending on the current safety requirements due to the pandemic.

18. When will I get money after the hearing?

The Court will hold a hearing on [DATE], to decide whether to approve the settlement. If the Court approves the settlement, then there may be appeals if anyone objects. It is always uncertain when these objections and appeals can be resolved, and resolving them can take time. If the Court approves the settlement and if you do not opt out, your individual payment set forth in Section 8 above is expected to be distributed after Land O'Lakes makes payment to the Settlement Administrator. If there are no objections or appeals, Land O'Lakes will transfer the settlement funds within 30 calendar days of approval, and the Administrator will then distribute the funds. If there are objections or appeals, the payment can be delayed by at least 60 days, or even over a year. To check on the progress of the settlement, contact the Settlement Administrator or Class Counsel at the phone number or address listed in Section 19.

GETTING MORE INFORMATION

19. Are more details available?

For more information, the pleadings and other records in this litigation, including copies of the Settlement Agreement, may be examined at any time during regular business hours at the office of the Clerk of the Superior Court of the State of California for Tulare County, at the Tulare County Superior Court, located at 221 S Mooney Blvd, Visalia, CA 93291. You can also view the case records online at the court's website: <https://efiling.tulare.courts.ca.gov/?q=node/349>. Follow the instructions for submitting the Case Number: VCU282808, and complete the "CAPTCHA" selection box. Then click "search" to view the case record.

Any questions regarding this Class Notice or the Lawsuit may be directed to the Claims Administrator at the below address and telephone number. Alternatively, you may contact your own attorney, at your own expense, to advise you, or you may contact the Lawyers for the Class at the address, telephone number or email address set forth above. If your address changes, or is different from the address on the envelope enclosing this Notice, please promptly notify the Settlement Administrator.

Settlement Administrator:

Simpluris, Inc.
P.O. Box 26170
Santa Ana, CA 92799
(888) 369-3780
www.simpluris.com/

**PLEASE DO NOT CALL OR WRITE TO THE COURT, OR TO ANY OF DEFENDANT'S
MANAGERS, SUPERVISORS, OR DEFENDANT'S ATTORNEYS WITH QUESTIONS
ABOUT THIS NOTICE**

EXHIBIT B

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Attorneys for Plaintiffs Michael Smith, John Cook, and Guillermo Gonzalez, as individuals, and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

MICHAEL SMITH; JOHN COOK; and
GUILLERMO GONZALEZ, as
individuals and on behalf of all others
similarly situated

Plaintiff,

vs.

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

Defendants.

Case No. 282808

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Pay Reporting Time Pay;
4. Failure to Provide Meal Periods;
5. Failure to Permit Rest Breaks;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Pay All Wages Due Upon Separation of Employment; and
8. Violation of Business and Professions Code §§ 17200, *et seq.*
9. Violation of California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698, *et seq.*)
10. Violation of Fair Labor Standards Act (29 U.S.C. § 203)

1 Plaintiffs Michael Smith, John Cook, and Guillermo Gonzalez, as individuals and on
2 behalf of others similarly situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Michael Smith, John Cook, and Guillermo Gonzalez (“Plaintiffs”)
5 bring this putative class action against defendants Land O’Lakes, Inc., and DOES 1 through 20,
6 inclusive (collectively, “Defendants”), on behalf of themselves individually and on behalf of a
7 putative class of non-exempt hourly production employees directly employed by Defendants at
8 their Tulare, California facility.

9 2. Defendants operate manufacturing centers which process dairy products in
10 Tulare, California.

11 3. Through this action, Plaintiffs allege that Defendants have engaged in a
12 systematic pattern of wage and hour violations under the California Labor Code and Industrial
13 Welfare Commission (“IWC”) Wage Orders, and federal Fair Labor Standards Act (“FLSA”),
14 all of which contribute to Defendants’ deliberate unfair competition.

15 4. Plaintiffs are informed and believes, and thereon alleges, that Defendants have
16 increased their profits by violating state wage and hour laws by, among other things:

- 17 (a) Failing to pay minimum wages;
18 (b) Failing to pay overtime wages;
19 (c) Failing to pay overtime and doubletime wages at the proper rates;
20 (d) Failing to pay Reporting Time Pay;
21 (e) Failing to provide meal periods or compensation in lieu thereof;
22 (f) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;
23 (g) Failing to provide accurate itemized wage statements; and
24 (h) Failing to pay all wages due upon separation of employment.

25 5. For at least four years prior to the filing of this action and through to the present,
26 Defendants consistently maintained and enforced against the class the following
27 unlawful practices and policies, in violation of California state wage and hour laws:
28

1 (a) Defendants forced class members to submit to unpaid “security checks”
2 when leaving the facility at the beginning and end of their shifts and during meal
3 and rest breaks.

4 (b) Although class members were under Defendants’ control while waiting
5 in line for and undergoing these security checks, Defendants did not compensate
6 class members for this time worked.

7 (c) Defendants forced class members to go through these same security
8 checks when leaving for their meal periods. The security checks, coupled with
9 Defendants’ other meal period policies, shorten the Class Members’ meal
10 periods to less than the thirty minutes required under California law. Thus,
11 Defendants have had a policy of requiring Class Members within the State of
12 California, including Plaintiffs, to work at least five (5) hours without a lawful
13 meal period and failing to pay such employees one (1) hour of pay at the
14 employees’ regular rate of compensation for each workday that the full thirty-
15 minute meal period was not provided, as required by California state wage and
16 hour laws.

17 (d) Defendants have failed to pay Reporting Time Pay to employees who
18 would report to work and sent home early without being paid half a day’s
19 wages.

20 (e) Defendants have failed to pay overtime and doubletime wages at the
21 regular rate of pay by failing to account for shift differentials and other earned
22 wages when calculating overtime and doubletime wages.

23 (f) Defendants have required class members to be “on duty” during meal
24 and rest periods such that they have not been provided with legally compliant
25 meal and rest periods under California law.

26 (g) Defendants have failed to provide second meal periods for shifts longer
27 than 10 hours or third rest periods for shifts longer than 10 hours.

28 6. Plaintiffs bring this lawsuit seeking monetary relief against Defendants on

1 behalf of themselves and all others similarly situated in California to recover, among other
2 things, unpaid wages and benefits, interest, attorneys' fees, costs and expenses and penalties
3 pursuant to Labor Code §§ 201-203, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1198, 2698
4 *et seq.*, and 29 U.S.C. § 201, *et seq.*

5 **JURISDICTION AND VENUE**

6 7. This is a class action, pursuant to California Code of Civil Procedure § 382, a
7 representative action brought under the Private Attorneys General Act of 2004, Cal. Lab. Code
8 § 2698 *et seq.* ("PAGA"), and a collective action under the FLSA, 29 U.S.C. §§ 201 *et seq.*
9 The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdictional
10 limits of the Superior Court and will be established according to proof at trial.

11 8. This Court has jurisdiction over this action pursuant to the California
12 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all
13 causes except those given by statutes to other courts. The statutes under which this action is
14 brought do not specify any other basis for jurisdiction.

15 9. This Court has jurisdiction over all Defendants because, upon information and
16 belief, they are citizens of California, have sufficient minimum contacts in California or
17 otherwise intentionally avail themselves of the California market so as to render the exercise of
18 jurisdiction over them by the California courts consistent with traditional notions of fair play
19 and substantial justice.

20 10. Venue is proper in this Court because, upon information and belief, Defendants
21 reside, transact business or have offices in this county and the acts and omissions alleged herein
22 took place in this county.

23 **THE PARTIES**

24 11. Plaintiffs are citizens of California. Plaintiffs were employed by Defendants
25 during the Class Period and FLSA Class Period in California.

26 12. Plaintiffs are informed and believe, and thereon alleges, that Defendants at all
27 times hereinafter mentioned, were and are employers as defined in and subject to the Labor
28 Code and IWC Wage Orders, and the FLSA, whose employees were and are engaged

1 throughout this county and the State of California.

2 13. Plaintiffs are unaware of the true names or capacities of the defendants sued
3 herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to
4 amend this Complaint and serve such fictitiously named defendants once their names and
5 capacities become known.

6 14. Plaintiffs are informed and believe, and thereon alleges, that each defendant
7 acted in all respects pertinent to this action as the agent of the other defendant, carried out a
8 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
9 defendant are legally attributable to the other defendant. Furthermore, defendants in all
10 respects acted as the employer and/or joint employer of Plaintiffs and the class members.

11 15. Plaintiffs are informed and believe, and thereon alleges, that each and all of the
12 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
13 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
14 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
15 the official policy of Defendants.

16 16. At all relevant times, Defendants, and each of them, acted within the scope of
17 such agency or employment, or ratified each and every act or omission complained of herein.
18 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
19 each and all the other Defendants in proximately causing the damages herein alleged.

20 17. Plaintiffs are informed and believe, and thereon alleges, that each of said
21 Defendants is in some manner intentionally, negligently or otherwise responsible for the acts,
22 omissions, occurrences and transactions alleged herein.

23 **CLASS ACTION ALLEGATIONS**

24 18. Plaintiffs bring this action under Code of Civil Procedure § 382 on behalf of
25 himself and all others similarly situated who were affected by Defendants' Labor Code,
26 Business and Professions Code §§ 17200 and IWC Wage Order violations.

27 19. All claims alleged herein arise under California law for which Plaintiffs seek
28 relief authorized by California law.

1 20. Plaintiffs' proposed Class consists of and is defined as follows:

2 Class

3 All California citizens currently or formerly directly employed as non-exempt
4 hourly production employees by Defendants at their Tulare, California facility
 within four years prior to the filing of this action to the date of class certification.

5 21. Plaintiffs also seek to certify the following Subclass of employees:

6 Waiting Time Subclass

7 All members of the Class who separated their employment from Defendants
8 within three years prior to the filing of this action to the date of class certification.

9 22. Members of the Class and Subclass described above will be collectively referred
10 to as "class members." Plaintiffs reserve the right to establish other or additional subclasses, or
11 modify any Class or Subclass definition, as appropriate based on investigation, discovery and
12 specific theories of liability.

13 23. This action has been brought and may properly be maintained as a class action
14 under the California Code of Civil Procedure § 382 because there are common questions of law
15 and fact as to the Class that predominate over questions affecting only individual members
16 including, but not limited to:

- 17 (a) Whether Defendants paid Plaintiffs and class members all minimum wage
18 compensation;
- 19 (b) Whether Defendants paid Plaintiffs and class members all overtime compensation;
- 20 (c) Whether Defendants paid Plaintiffs and class members all overtime and
21 doubletime compensation at the proper rates;
- 22 (d) Whether Defendants paid Plaintiffs and class members all Reporting Time Pay;
- 23 (e) Whether Defendants deprived Plaintiffs and class members of compliant meal
24 periods or required Plaintiffs and class members to work through meal periods
25 without compensation;
- 26 (f) Whether Defendants deprived Plaintiffs and class members of compliant rest
27 breaks;
- 28 (g) Whether Defendants failed to timely pay Plaintiffs and former class members all

wages due upon termination or within 72 hours of resignation;

(h) Whether Defendants failed to furnish Plaintiffs and class members with accurate, itemized wage statements; and

(i) Whether Defendants engaged in unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*;

(j) Whether Defendants engaged in improper record keeping and payment practices in violation of the Fair Labor Standards Act, 29 U.S.C. § 203.

24. There is a well-defined community of interest in this litigation and the Class is readily ascertainable:

(a) Numerosity: The members of the Class are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiffs at this time, on information and belief, the Class is estimated to be greater than 100 individuals. The identity of the class members are readily ascertainable by inspection of Defendants' employment and payroll records.

(b) Typicality: The claims (or defenses, if any) of Plaintiffs are typical of the claims (or defenses, if any) of the Class because Defendants' failure to comply with the provisions of California wage and hour laws and the FLSA entitled each class member to similar pay, benefits and other relief. The injuries sustained by Plaintiffs are also typical of the injuries sustained by the Class because they arise out of and are caused by Defendants' common course of conduct as alleged herein.

(c) Adequacy: Plaintiffs are qualified to, and will fairly and adequately represent and protect the interests of all members of the Class because it is in their best interest to prosecute the claims alleged herein to obtain full compensation and penalties due to him and the Class. Plaintiffs' attorneys, as proposed class counsel, are competent and experienced in litigating large employment class actions and are versed in the rules governing class action

1 discovery, certification and settlement. Plaintiffs have incurred and,
2 throughout the duration of this action, will continue to incur attorneys' fees
3 and costs that have been and will be necessarily expended for the
4 prosecution of this action for the substantial benefit of each class member.

5 (d) Superiority: The nature of this action makes the use of class action
6 adjudication superior to other methods. A class action will achieve
7 economies of time, effort and expense as compared with separate lawsuits,
8 and will avoid inconsistent outcomes because the same issues can be
9 adjudicated in the same manner and at the same time for each Class. If
10 appropriate this Court can, and is empowered to, fashion methods to
11 efficiently manage this case as a class action.

12 (e) Public Policy Considerations: Employers in the State of California and
13 other states violate employment and labor laws every day. Current
14 employees are often afraid to assert their rights out of fear of direct or
15 indirect retaliation. Former employees are fearful of bringing actions
16 because they believe their former employers might damage their future
17 endeavors through negative references and/or other means. Class actions
18 provide the class members who are not named in the complaint with a
19 type of anonymity that allows for the vindication of their rights at the
20 same time as affording them privacy protections.

21 **FLSA COLLECTIVE ACTION ALLEGATIONS**

22 20. Plaintiffs bring the Tenth Cause of Action below, for violations of the Fair Labor
23 Standards Act (FLSA), as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. §201, et
24 seq. on behalf of all non-exempt hourly production employees who were and/or are directly
25 employed by Defendants at their Tulare, California facility ("FLSA Covered Employees"), on or
26 after the date that is three years before the filing of the Complaint in this case ("FLSA Class
27 Period").
28

1 21. At all relevant times, Plaintiffs and the other FLSA Covered Employees are and
2 have been similarly situated and have been subject to Defendants' common practices, policies,
3 programs, procedures, protocols and plans of willfully failing and refusing to pay them minimum
4 and overtime wages for all their hours worked and properly calculate overtime wages owed, and
5 willfully failing to keep records required by the FLSA. The claims of Plaintiffs stated herein are
6 similar to those of the other FLSA Covered Employees.

7 22. The Claim for Relief is properly brought and maintained as an opt-in collective
8 action pursuant to section 16(b) of the FLSA, 29 U.S.C. § 201, *et seq.* The FLSA Covered
9 Employees are readily ascertainable. For purposes of notice and other purposes related to this
10 action, their names and addresses are readily available from Defendants. Notice can be provided
11 to the FLSA Collective Plaintiffs via first class mail to the last address known to their employer.

12 **GENERAL ALLEGATIONS**

13 25. At all relevant times mentioned herein, Defendants employed Plaintiffs and
14 other persons as non-exempt employees at their California manufacturing centers.

15 26. Plaintiffs were employed as non-exempt hourly production employees at
16 Defendants' Tulare, California facility.

17 27. Defendants continue to employ non-exempt hourly production employees at
18 their Tulare, California facility.

19 28. Plaintiffs are informed and believe, and thereon alleges, that at all times herein
20 mentioned, Defendants were advised by skilled lawyers, employees and other professionals
21 who were knowledgeable about California's wage and hour laws, employment and personnel
22 practices and the requirements of California law and the FLSA.

23 29. Plaintiffs are informed and believe, and thereon alleges, that Defendants failed
24 to pay all overtime wages owed and improperly calculated the overtime and doubletime rate of
25 pay for Plaintiffs and Class Members because the rates did not include non-discretionary
26 wages, including, but not limited to, shift premiums, and/or other incentive pay into the
27 computation of their regular rate of pay for purposes of calculating the overtime and
28 doubletime rate of pay.

1 30. Plaintiffs are informed and believe, and thereon alleges, that Defendants failed
2 to pay all Reporting Time Pay when Plaintiffs and Class Members would report to work on the
3 day of their scheduled shift, and Defendants failed to put Plaintiffs and Class Members to work
4 or furnished less than half of their usual day's work, and did not pay them Reporting Time Pay.

5 31. Upon information and belief, Defendants failed to provide Plaintiffs and class
6 members timely, uninterrupted, off-duty meal periods of no less than thirty minutes before their
7 fifth hour of work. Based on the lack of proper coverage and scheduling of meal periods
8 during these employees' shifts, Plaintiffs and class members were not able to take required off-
9 duty meal periods during their shifts. Defendants also required class members to be "on duty"
10 during meal and rest periods such that they have not been provided with legally compliant meal
11 and rest periods under California law. Defendants routinely failed to provide Plaintiffs and
12 class members with a second, off-the-clock meal break for shifts lasting longer than ten hours.
13 These policies, among others, have resulted in a denial of these employees' rights to 30-minute
14 meal periods in violation of California law.

15 32. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew
16 or should have known that, Plaintiffs and class members were entitled to receive all required
17 meal periods or payment of one (1) additional hour of pay at Plaintiffs' and class members'
18 regular rate of pay when they did not receive a timely meal period. In violation of the Labor
19 Code and IWC Wage Orders, and the FLSA, Plaintiffs and class members did not receive all
20 timely meal periods or payment of one (1) additional hour of pay at Plaintiffs' and class
21 members' regular rate of pay when they did not receive a timely, uninterrupted meal periods.

22 33. Upon information and belief, Defendants failed to provide Plaintiffs and class
23 members timely, uninterrupted, on-the-clock rest period of no less than ten minutes for every
24 four hours worked, or every major fraction thereof. Defendants also routinely failed to provide
25 Plaintiffs and class members with a third rest period for shifts lasting longer than ten hours.
26 These policies, among others, have resulted in a denial of these employees' rights to a ten-
27 minute rest period in violation of California law.

28 34. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew

1 or should have known that, Plaintiffs and class members were entitled to receive all rest breaks
2 or payment of one (1) additional hour of pay at Plaintiffs and class members' regular rate of
3 pay when a rest break was missed. In violation of the Labor Code and IWC Wage Orders,
4 Plaintiffs and class members did not receive all rest breaks or payment of one (1) additional
5 hour of pay at Plaintiffs' and class members' regular rate of pay when a rest break was missed.

6 35. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew
7 or should have known that Plaintiffs and class members were entitled to receive itemized wage
8 statements that accurately showed their gross and net wages earned, inclusive dates of pay
9 periods, total hours worked and all applicable hourly rates in effect and the number of hours
10 worked at each hourly rate in accordance with California law. In violation of the Labor Code,
11 Plaintiffs and class members were not provided with accurate itemized wage statements.

12 36. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew
13 or should have known that Plaintiffs and Waiting Time Subclass members were entitled to
14 timely payment of wages due upon separation of employment. In violation of the Labor Code,
15 Plaintiffs and Waiting Time Subclass members did not receive payment of all wages within
16 permissible time periods.

17 37. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew
18 or should have known they had a duty to compensate Plaintiffs and class members, and
19 Defendants had the financial ability to pay such compensation but willfully, knowingly and
20 intentionally failed to do so all in order to increase Defendants' profits.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY MINIMUM WAGES**

23 **(Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order § 3)**

24 38. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
25 though fully set forth herein.

26 39. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
27 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
28 wage than the minimum so fixed is unlawful.

1 40. During the relevant time period, Defendants paid Plaintiffs and class members
2 less than minimum wages when, for example, Defendants required Plaintiffs and class
3 members to work off-the-clock during meal breaks, during security checks when Plaintiffs and
4 class members were under Defendants' control, and when Defendants failed to provide
5 Plaintiffs and class members with required Reporting Time Pay. To the extent these hours do
6 not qualify for the payment of overtime or doubletime, Plaintiffs and class members were not
7 being paid at least minimum wage for their work.

8 41. During the relevant time period, Defendants regularly failed to pay at least
9 minimum wage to Plaintiffs and class members for all hours worked pursuant to Labor Code
10 §§ 1194 and 1197.

11 42. Defendants' failure to pay Plaintiffs and class members the minimum wage as
12 required violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiffs and class
13 members are entitled to recover the unpaid balance of their minimum wage compensation as
14 well as interest, costs and attorney's fees.

15 43. Pursuant to Labor Code § 1194.2, Plaintiffs and class members are entitled to
16 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
17 thereon for violations arising from work performed for Defendants.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME WAGES**

20 **(Violation of Labor Code §§ 510, 1194 and 1198; Violation of IWC Wage Order)**

21 44. Plaintiffs hereby re-alleges and incorporates by reference all paragraphs above
22 as though fully set forth herein.

23 45. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
24 unlawful to employ persons without compensating them at a rate of pay either one and one-half
25 or two times the person's regular rate of pay, depending on the number of hours worked by the
26 person on a daily or weekly basis.

27 46. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time
28 period, Defendants were required to compensate Plaintiffs and class members for all overtime

1 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours
2 worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first
3 eight (8) hours of the seventh consecutive work day, with doubletime after eight (8) hours on
4 the seventh day of any work week, or after twelve (12) hours in any work day.

5 47. Plaintiffs and class members were non-exempt employees entitled to the
6 protections of California Labor Code §§ 510 and 1194 for work performed for Defendants.

7 48. During the relevant time period, Defendants failed to pay Plaintiffs and class
8 members all overtime wages owed and overtime and doubletime wages at the correct rate
9 because they failed to include non-discretionary wages, including, but not limited to, shift
10 premiums, and/or other incentive pay in the computation of their overtime and doubletime rate
11 of pay, which caused Plaintiffs and Class Members to not be paid all overtime and doubletime
12 wages owed. Defendants failed to pay Plaintiffs and class members overtime and doubletime
13 wages for all overtime hours worked when, for example, they required Plaintiffs and class
14 members to work off-the-clock during meal breaks, or for work performed during off-the-clock
15 security checks, and when Defendants failed to provide Reporting Time Pay. Because
16 Plaintiffs and class members worked shifts of eight hours or more, and twelve hours or more,
17 this unpaid time qualified for overtime premium payment, and doubletime premium payment.

18 49. In violation of state law, Defendants have knowingly and willfully refused to
19 perform their obligations and compensate Plaintiffs and class members for all wages earned as
20 alleged above.

21 50. Defendants' failure to pay Plaintiffs and class members the unpaid balance of
22 overtime and doubletime compensation, as required by California law, violates the provisions
23 of Labor Code §§ 510 and 1198, and is therefore unlawful.

24 Pursuant to Labor Code § 1194, Plaintiffs and class members are entitled to
25 recover their unpaid overtime and doubletime compensation as well as interest, costs and
26 attorneys' fees.

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY REPORTING TIME PAY**

3 **(Violation of IWC Wage Order)**

4 51. Plaintiffs re-allege and incorporate herein by this reference each and every
5 allegation set forth in all previous paragraphs of the Complaint as if fully set forth herein.

6 52. Section 5 of the applicable IWC Wage Order requires that on each workday that
7 an employee reports for work as scheduled but is not put to work or is furnished less than half
8 of the employee's usual or scheduled day's work, the employee shall be paid for half the usual
9 or scheduled day's work, but in no event for less than two (2) hours nor more than four (4)
10 hours at the employee's regular rate of pay, which shall not be less than the minimum wage.
11 Section 5 of the applicable Wage Order denominates this as "Reporting Time Pay."

12 53. During the Class Period, Plaintiffs and the Class were required to report to work
13 but were not put to work and would be sent home early. Accordingly, for those times that
14 Plaintiffs and the Class were required to report to work but were not put to work or were
15 furnished with less than half of their usual scheduled day's work, Plaintiffs and the rest of the
16 Class are entitled to recover from Defendants compensation for half a day's work, plus interest
17 thereon, together with their reasonable attorneys' fees and costs.

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE MEAL PERIODS**

20 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)**

21 54. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
22 though fully set forth herein.

23 55. Labor Code § 226.7 provides that no employer shall require an employee to work
24 during any meal period mandated by the IWC Wage Orders.

25 56. Section 11 of the applicable IWC Wage Order states, "no employer shall employ
26 any person for a work period of more than five (5) hours without a meal period of not less than
27 30 minutes, except that when a work period of not more than six (6) hours will complete the
28 day's work the meal period may be waived by mutual consent of the employer and the

1 employee.”

2 57. Labor Code § 512(a) provides that an employer may not require, cause or permit
3 an employee to work for a period of more than five (5) hours per day without providing the
4 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
5 the total work period per day of the employee is not more than six (6) hours, the meal period
6 may be waived by mutual consent of both the employer and the employee.

7 58. Labor Code § 512(a) also provides that an employer may not employ an
8 employee for a work period of more than ten (10) hours per day without providing the employee
9 with a second meal period of not less than thirty (30) minutes, except that if the total hours
10 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
11 consent of the employer and the employee only if the first meal period was not waived.

12 59. During the relevant time period, Plaintiffs and class members did not receive
13 compliant meal periods for each five hours worked per day as a result of, among other things,
14 lack of proper coverage and scheduling of meal periods during these employees’ shifts.
15 Defendants have also required class members to be “on duty” during meal and rest periods such
16 that they have not been provided with legally compliant meal and rest periods under California
17 law. Finally, Defendants also routinely failed to provide Plaintiffs and class members with a
18 second, off-the-clock meal break for shifts lasting longer than ten hours.

19 60. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
20 an employer to pay an employee one additional hour of pay at the employee’s regular rate of
21 compensation for each work day that a meal period is not provided.

22 61. At all relevant times, Defendants failed to pay Plaintiffs and class members all
23 meal period premiums due for meal period violations pursuant to Labor Code § 226.7(b) and
24 section 11 of the applicable IWC Wage Order.

25 62. As a result of Defendants’ failure to pay Plaintiffs and class members an
26 additional hour of pay for each day a meal period was not provided, Plaintiffs and class
27 members suffered and continue to suffer a loss of wages and compensation.

28 ///

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PERMIT REST BREAKS**

3 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order)**

4 63. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 64. Labor Code § 226.7(a) provides that no employer shall require an employee to
7 work during any rest period mandated by the IWC Wage Orders.

8 65. Section 12 of the applicable IWC Wage Order states “every employer shall
9 authorize and permit all employees to take rest periods, which insofar as practicable
10 shall be in the middle of each work period” and the “authorized rest period time shall be
11 based on the total hours worked daily at the rate of ten (10) minutes net rest time per
12 four (4) hours or major fraction thereof” unless the total daily work time is less than
13 three and one-half (3½) hours.

14 66. During the relevant time period, Plaintiffs and class members did not receive a
15 ten (10) minute rest period for every four (4) hours or major fraction thereof worked.

16 67. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
17 requires an employer to pay an employee one additional hour of pay at the employee’s regular
18 rate of compensation for each workday that the rest period is not provided.

19 68. At all relevant times, Defendants failed to pay Plaintiffs and class members all
20 rest period premiums due for rest period violations pursuant to Labor Code § 226.7(b) and
21 section 12 of the applicable IWC Wage Order.

22 69. As a result of Defendants’ failure to pay Plaintiffs and class members an
23 additional hour of pay for each day a rest period was not provided, Plaintiffs and class members
24 suffered and continue to suffer a loss of wages and compensation.

25 **SIXTH CAUSE OF ACTION**

26 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

27 **(Violation of Labor Code § 226; Violation of IWC Wage Order)**

28 70. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as

1 though fully set forth herein.

2 71. Labor Code § 226(a) requires Defendants to provide each employee with an accurate
3 wage statement in writing showing nine pieces of information, including: (1) gross wages
4 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and
5 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
6 provided that all deductions made on written orders of the employee may be aggregated and
7 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
8 employee is paid, (7) the name of the employee and the last four digits of his or her social
9 security number or an employee identification number other than a social security number, (8)
10 the name and address of the legal entity that is the employer, and (9) all applicable hourly rates
11 in effect during the pay period and the corresponding number of hours worked at each hourly
12 rate by the employee.

13 72. During the relevant time period, Defendants have knowingly and intentionally
14 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiffs
15 and class members. The deficiencies include, among other things, the failure to correctly state
16 the gross and net wages earned, accurate inclusive dates of the pay period, and all applicable
17 hourly rates in effect and the number of hours worked at each hourly rate by Plaintiffs and class
18 members.

19 73. As a result of Defendants' violation of California Labor Code § 226(a),
20 Plaintiffs and class members have suffered injury and damage to their statutorily protected
21 rights. Specifically, Plaintiffs and class members have been injured by Defendants' intentional
22 violation of California Labor Code § 226(a) because they were denied both their legal right to
23 receive, and their protected interest in receiving, accurate itemized wage statements under
24 California Labor Code § 226(a). Plaintiffs have had to file this lawsuit in order to determine
25 the extent of the underpayment of wages, thereby causing Plaintiffs to incur expenses and lost
26 time. Plaintiffs would not have had to engage in these efforts and incur these costs had
27 Defendants provided the accurate wages earned. This has also delayed Plaintiffs' ability to
28 demand and recover the underpayment of wages from Defendants.

74. California Labor Code § 226(a) requires an employer to pay the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus attorney's fees and costs, to each employee who was injured by the employer's failure to comply with California Labor Code § 226(a).

75. Defendants' violations of California Labor Code § 226(a) prevented Plaintiffs and class members from knowing, understanding and disputing the wages paid to them, and resulted in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiffs and class members have suffered an injury, and the exact amount of damages and/or penalties is all in an amount to be shown according to proof at trial.

76. Plaintiffs and class members are also entitled to injunctive relief under California Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226, and seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

SEVENTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT AND

WITHIN THE REQUIRED TIME

(Violation of Labor Code §§ 201, 202 and 203; Violation of IWC Wage Order)

77. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as though fully set forth herein.

78. California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his employment, his wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his intention to quit, in which case the employee is entitled to his wages at the time of quitting.

79. During the relevant time period, Defendants willfully failed to pay Plaintiffs and

1 Waiting Time Subclass members all their earned wages upon termination including, but not
2 limited to, proper minimum wages, Reporting Time Pay, and overtime and doubletime
3 compensation, either at the time of discharge or within seventy-two (72) hours of their leaving
4 Defendants' employ.

5 80. Defendants' failure to pay Plaintiffs and Waiting Time Subclass members all
6 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving
7 Defendants' employ is in violation of Labor Code §§ 201 and 202.

8 81. California Labor Code § 203 provides that if an employer willfully fails to pay
9 wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201
10 and 202, then the wages of the employee shall continue as a penalty from the due date at the
11 same rate until paid or until an action is commenced; but the wages shall not continue for more
12 than thirty (30) days.

13 82. Plaintiffs and Waiting Time Subclass members are entitled to recover from
14 Defendants the statutory penalty which is defined as Plaintiffs' and Waiting Time Subclass
15 members' regular daily wages for each day they were not paid, at their regular hourly rate of
16 pay, up to a thirty (30) day maximum pursuant to Labor Code § 203.

17 **EIGHTH CAUSE OF ACTION**

18 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

19 83. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
20 though fully set forth herein.

21 84. Defendants' conduct, as alleged herein, has been and continues to be unfair,
22 unlawful and harmful to Plaintiffs and class members. Plaintiffs seek to enforce important
23 rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

24 85. Defendants' activities, as alleged herein, violate California law and constitute
25 unlawful business acts or practices in violation of California Business and Professions Code
26 §§ 17200, *et seq.*

27 86. A violation of Business and Professions Code §§ 17200, *et seq.* may be predicated on
28 the violation of any state or federal law.

1 87. Defendants' policies and practices have violated the FLSA by failing to
2 compensate Plaintiffs and class members with all required minimum wage and overtime wages.

3 88. Defendants' policies and practices have violated state law in at least the
4 following respects:

5 (a) Failing to pay all minimum wages owed to Plaintiffs and class members
6 in violation of Labor Code §§ 1194.2, and 1197;

7 (b) Failing to pay all overtime and doubletime wages at the proper rate to
8 Plaintiffs and class members in violation of Labor Code §§ 510, 1194
9 and 1198;

10 (c) Failing to pay all Reporting Time Pay in violation of Section 5 of the
11 applicable IWC Wage Order;

12 (d) Failing to provide timely meal periods without paying Plaintiffs and
13 class members premium wages for every day said meal periods were not
14 provided in violation of Labor Code §§ 226.7 and 512;

15 (e) Failing to authorize or permit rest breaks without paying Plaintiffs and
16 class members premium wages for every day said rest breaks were not
17 authorized or permitted in violation of Labor Code § 226.7;

18 (f) Failing to provide Plaintiffs and class members with accurate itemized
19 wage statements in violation of Labor Code § 226; and

20 (e) Failing to timely pay all earned wages to Plaintiffs and Waiting Time
21 Subclass members upon separation of employment in violation of Labor
22 Code §§ 201, 202 and 203.

23 89. Defendants intentionally avoided paying Plaintiffs and class members' wages
24 and monies, thereby creating for Defendants an artificially lower cost of doing business in
25 order to undercut their competitors and establish and gain a greater foothold in the marketplace.

26 90. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiffs and class
27 members are entitled to restitution of the wages unlawfully withheld and retained by
28 Defendants during a period that commences four years prior to the filing of the Complaint; an

1 award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable
2 laws; and an award of costs.

3 **NINTH CAUSE OF ACTION**

4 **ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. ("PAGA")**

5 91. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
6 though fully set forth herein.

7 92. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that
8 provides for a civil penalty to be assessed and collected by the Labor and Workforce
9 Development Agency ("LWDA") or any of its departments, divisions, commissions, boards,
10 agencies or employees for violation of the code may, as an alternative, be recovered through a
11 civil action brought by an aggrieved employee on behalf of himself or herself and other current
12 or former employees pursuant to the procedures specified in Labor Code § 2699.3.

13 93. For all provisions of the Labor Code except those for which a civil penalty is
14 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one
15 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violations
16 and two hundred dollars (\$200.000) for each aggrieved employee per pay period for each
17 subsequent pay period in which Defendants violated these provisions of the Labor Code.

18 94. The Private Attorneys General Act applies to time Plaintiffs and class members
19 spent performing work for Defendants.

20 95. Defendants' conduct with respect to Plaintiffs and other aggrieved employees
21 violates numerous Labor Code sections including, but not limited to, the following:

- 22 a. Violation of Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558,
23 1174, 1174.5, 1194, 1197, 1198, and the IWC Wage Orders for failure to
24 timely pay all earned wages (including minimum wages, overtime wages,
25 and reporting time pay) owed to Plaintiffs and other aggrieved employees
26 during employment and upon separation of employment as herein alleged;
27
28

- 1 b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal
2 periods to Plaintiffs and other aggrieved employees and failure to pay
3 premium wages for missed meal periods as herein alleged;
- 4 c. Violation of Labor Code § 226.7 for failure to permit paid rest breaks to
5 Plaintiffs and other aggrieved employees and failure to pay premium wages
6 for missed rest periods as herein alleged;
- 7 d. Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate
8 and complete records showing the hours worked daily by Plaintiffs and other
9 aggrieved employees as herein alleged; and
- 10 e. Violation of Labor Code § 226 for failure to provide accurate itemized wage
11 statements to Plaintiffs and other aggrieved employees as herein alleged.

12 96. Plaintiffs are “aggrieved employees” because they were employed by the alleged
13 violator and each Plaintiff had one or more of the alleged violations committed against him,
14 and therefore are properly suited to represent the interests of all other aggrieved employees.

15 97. Plaintiffs have exhausted the procedural requirements under Labor Code §
16 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of
17 themselves and all other aggrieved employees under PAGA.

18 98. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to
19 recover civil penalties for violations of the Labor Code sections cited above.

20 99. For bringing this action, Plaintiffs are entitled to attorney’s fees and costs incurred
21 herein.

22 **TENTH CAUSE OF ACTION**

23 **UNLAWFUL FAILURE TO PAY WAGES**

24 **(Violation of Fair Labor Standards Act, 29 U.S.C. § 201 et seq.)**

25 **(Brought by Plaintiffs on Behalf of Themselves and FLSA Collective Plaintiffs)**

26 100. Plaintiffs, on behalf of themselves and all FLSA Collective Plaintiffs, hereby re-
27 alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.
28

1 101. On information and belief, at all relevant times, each Defendant has been, and
2 continues to be, an employer engaged in interstate commerce within the meaning of the FLSA,
3 29 U.S.C. §201, et seq. At all relevant times, each Defendant has employed, and continues to
4 employ the Covered Employees as employee[s] within the meaning of the FLSA. At all
5 relevant times, each Defendant has had gross operating revenues in excess of \$500,000.

6 102. Attached hereto as Exhibit 2 is the consent to join form signed by Plaintiffs in
7 this action pursuant to section 16(b) of the FLSA, 29 U.S.C. sections 216(b) and 256.

8 103. The FLSA requires each covered employer, such as Defendant, to compensate
9 all non-exempt employees for all hours worked and overtime at a rate of not less than one and
10 one-half times the regular rate of pay for work performed in excess of forty hours in a
11 workweek. The FLSA defines the regular rate to include all remuneration for employment paid
12 to, or on behalf of, the employee.

13 104. The FLSA Collective Plaintiffs were entitled to be paid minimum wages and
14 appropriate overtime compensation for all overtime hours worked.

15 105. At all relevant times, each Defendant has had, and continues to have common
16 policies, programs, practices, procedures, protocols, routines, and rules of willfully failing and
17 refusing to pay Plaintiffs and Covered Employees for all their hours worked, including
18 withholding minimum wages and overtime compensation, and failing to pay all overtime wages
19 at the regular rate of pay.

20 106. At all relevant times, each Defendant willfully, regularly and repeatedly failed,
21 and continues to fail to make, keep, and preserve accurate records required by the FLSA with
22 respect to plaintiffs and the other FLSA Covered Employees, including records sufficient to
23 accurately determine the wages and hours of employment pertaining to Plaintiffs and the other
24 Covered Employees.

25 107. By failing to compensate Plaintiffs and FLSA Collective Plaintiffs, at a rate not
26 less than one and one-half times the regular rate of pay for work performed in excess of forty
27 hours in a workweek, Defendant violated the FLSA, 29 U.S.C. sections 201 et seq., including
28 29 U.S.C. sections 207(a)(1) and 215(a).

108. By failing to record, report, and/or preserve records of hours worked by Plaintiffs and FLSA Collective Plaintiffs, Defendant has failed to make, keep, and preserve records with respect to each of its employees sufficient to determine their wages, hours, and other conditions and practice of employment, in violation of the FLSA, 29 U.S.C. sections 201 et seq., including 29 U.S.C. sections 211(c) and 215(a).

109. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. section 255(a).

110. Plaintiffs, on behalf of themselves and the FLSA Collective Plaintiffs, seek recovery of attorneys' fees and costs of action to be paid by Defendant, as provided by the FLSA, 29 U.S.C. section 216(b).

111. Plaintiffs, on behalf of himself and the FLSA Collective Plaintiffs, seek damages in the amount of their respective unpaid minimum wages, overtime compensation, liquidated damages as provided by the FLSA, 29 U.S.C. section 216(b), interest, and such other legal and equitable relief as the Court deems just and proper.

PRAYER FOR RELIEF

Plaintiffs, on their own behalf and on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification of this action as a class action, including certifying the Class and Subclass alleged by Plaintiffs;
2. For appointment of Michael Smith, John Cook, and Guillermo Gonzalez as the class representatives;
3. For appointment of Lebe Law, APLC, and Aegis Law Firm, PC as class counsel for all purposes;
4. For compensatory damages in an amount according to proof with interest thereon;
5. For economic and/or special damages in an amount according to proof with interest thereon;
6. For civil penalties against Defendants on behalf of all aggrieved employees;

1 7. For reasonable attorneys' fees, costs of suit and interest to the extent permitted
2 by law, including pursuant to FLSA, Code of Civil Procedure § 1021.5, Labor Code §§ 226(e)
3 and 1194;

4 8. For statutory penalties to the extent permitted by law, including those pursuant
5 to the Labor Code and IWC Wage Orders;

6 9. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

7 10. For an order requiring Defendants to restore and disgorge all funds to each
8 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair
9 or fraudulent and, therefore, constituting unfair competition under Business and Professions
10 Code §§ 17200, *et seq.*;

11 11. For an award of damages in the amount of unpaid compensation including, but
12 not limited to, unpaid wages, benefits and penalties, including interest thereon;

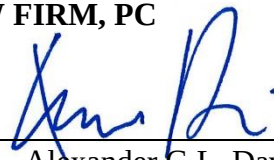
13 12. For pre-judgment interest; and

14 13. For such other relief as the Court deems just and proper.

15
16 Dated: March 3, 2022

AEGIS LAW FIRM, PC

17
18 By: _____



Alexander G.L. Davies
Attorneys for Plaintiffs Michael Smith,
John Cook, and Guillermo Gonzalez