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18 MILK SPECIALTIES COMPANY

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 FOR THE COUNTY OF TULARE

21 Don Vasquez, Individually And On
Behalf Of All Others Similarly Situated,

22 Plaintiff,

23 vs.

24 Milk Specialties Company dba Milk Specialties
25 Global; And Does 1 Through 20, Inclusive,

26 Defendants.

Case No. VCU282778

ASSIGNED FOR ALL PURPOSES TO:
HONORABLE NATHAN IDE
DEPARTMENT 02

**SETTLEMENT AGREEMENT AND
STIPULATION TO RESOLVE:**
1. CLASS ACTION CLAIMS; and
2. PAGA CLAIMS

Date Action Filed: April 30, 2020
Trial Date: August 23, 2021

1 This Settlement Agreement and Stipulation To Resolve (1) Class Action Claims; and
2 (2) PAGA Claims is entered into to resolve the action entitled *Don Vasquez v. Milk Specialties*
3 *Company, et al.*, Tulare County Superior Court Case No. VCU282778.

4 **DEFINITIONS**

5 1. Action. “Action” means *Don Vasquez v. Milk Specialties Company, et al.*, Tulare
6 County Superior Court Case No. VCU282778.

7 2. Agreement or Settlement. “Agreement” or “Settlement” means this Settlement
8 Agreement and Stipulation To Resolve (1) Class Action Claims; and (2) PAGA Claims, entered
9 into by the Parties to resolve the Action.

10 3. Aggrieved Employees. “Aggrieved Employees” means Class Members who
11 worked during the PAGA Period (as defined in Paragraph 20).

12 4. Class Counsel. “Class Counsel” means Lebe Law, APLC and Aegis Law Firm,
13 PC.

14 5. Class or Class Members. “Class” or “Class Members” means all current and former
15 employees who worked in a non-exempt position for Milk Specialties Company within the state
16 of California during the Class Period.

17 6. Class Notice. “Class Notice” means the Notice of Class Action Settlement,
18 attached as **Exhibit A** to this Agreement, or a substantially similar notice approved by the Court.
19 The Class Notice will be translated into Spanish by the Settlement Administrator and mailed to
20 Class Members in both English and Spanish.

21 7. Class Period. “Class Period” means the period beginning on April 6, 2016 through
22 January 12, 2021.

23 8. Court. “Court” means the Tulare County Superior Court, where this Action is
24 currently pending.

25 9. Defendant. “Defendant” means Milk Specialties Company.

26 10. Effective Date. The “Effective Date” shall be the later of: (i) the 61st day after
27 service of notice of entry of the Final Order and Judgment, if no appeal, review, writ, or other
28 challenge has been filed; or (ii) if an appeal, review, writ, or other challenge is sought from the

1 Final Order and Judgment, the day after the Final Order and Judgment is affirmed or the appeal,
2 review, writ, or challenge is dismissed or denied, and the Final Order and Judgment is no longer
3 subject to further judicial review.

4 11. Final Hearing Date. “Final Hearing Date” means the date set by the Court for the
5 hearing on final approval of the Class Settlement.

6 12. Final Order and Judgment. “Final Order and Judgment” means the proposed order
7 granting final approval of the Class Settlement and entering judgment, which Plaintiff will submit
8 to the Court with the motion for final approval of the Settlement.

9 13. Gross Settlement Amount. “Gross Settlement Amount” means the total settlement
10 payment Defendant agreed to make under this Agreement. The Gross Settlement Amount is
11 \$550,000.00. The Parties agree that the Gross Settlement Amount of \$550,000.00 accounts for
12 the expected increase of workweeks worked by Class Members between the mediation on
13 November 12, 2020 and the close of the Class Period on January 12, 2021.

14 14. Individual Settlement Payment. “Individual Settlement Payment” means the
15 individual settlement payment allocated to each Participating Class Member based on the
16 Participating Class Member’s *pro rata* share of the Net Settlement Amount.

17 15. Named Plaintiff. “Named Plaintiff” means Don Vasquez.

18 16. Notice Period. “Notice Period” means the time period commencing on the date the
19 Class Notice is mailed to Class Members and ending 60 days thereafter.

20 17. Net Settlement Amount. “Net Settlement Amount” means the settlement amount
21 to be distributed to Participating Class Members after payment of Class Counsel’s attorneys’ fees
22 and costs, any enhancement payments to Named Plaintiff, the PAGA Payment, and settlement
23 administration costs.

24 18. PAGA Claims. “PAGA Claims” means those claims in the Action brought
25 pursuant to the California Private Attorneys General Act (PAGA).

26 19. PAGA Payment. “PAGA Payment” means the amount of \$10,000.00, which
27 represents the portion of the Settlement allocated to the settlement of the PAGA Claims. The
28 PAGA Amount is paid from the Gross Settlement Amount, and will be allocated as set forth in

1 Paragraph 38.d.

2 20. PAGA Period. “PAGA Period” means the period beginning on April 6, 2019 and
3 ending on January 12, 2021.

4 21. Parties. “Parties” means the Defendant and the Named Plaintiff, individually and
5 on behalf of all Class Members and Aggrieved Employees. Each of the Parties may be referred to
6 in the singular as a “Party.”

7 22. Participating Class Member. “Participating Class Member” means each Class
8 Member who has not timely opted out of the Class Settlement pursuant to Paragraph 43 of the
9 Agreement; “Plaintiff Class” means a class of all Participating Class Members.

10 23. Preliminary Approval Order. “Preliminary Approval Order” means an order from
11 the Court preliminarily approving this Settlement.

12 24. Released Parties. “Released Parties” means and includes Milk Specialties
13 Company and its past, present, and future predecessors, successors, assigns, shareholders,
14 members, owners, officers, directors, investors, employees, managers, managing agents, partners,
15 affiliated companies or entities, parents, holding companies, agents, attorneys, insurers, and
16 representatives.

17 25. Settled Claims or Released Claims. “Settled Claims” or “Released Claims” means
18 any and all claims, known or unknown, contingent or accrued, against Defendant and the other
19 Released Parties that arose at any time between April 6, 2016 and the date the Class Notice is
20 mailed to Class Members and that have been, or could have been, asserted against Defendant or
21 any of the other Released Parties and that (a) arise from the facts, matters, transactions or
22 occurrences alleged in the Action or that could have been alleged in the Action; or (b) arise from
23 the facts, matters, transactions or occurrences alleged, or that could have been alleged, in the letter
24 sent by Lebe Law, PLC to the Labor and Workforce Development Agency (“LWDA”) on or about
25 April 29, 2020, asserting that Defendant violated various provisions of the Labor Code. Without
26 limiting the foregoing, and in addition to the foregoing, the Settled Claims include claims for
27 failure to pay the minimum wage; failure to pay regular wages; failure to pay overtime
28 compensation and other premium wages; off-the-clock work; failure to pay all wages at the time

of termination; violations of alternative workweek election and adoption procedures; unlawful deductions from wages; failure to provide and maintain complete and accurate itemized wage statements that included all information required by the California Labor Code; failure to provide meal periods and rest breaks or additional pay in lieu thereof; untimely payment of wages at the time of termination; violations of California Labor Code §§ 201, 202, 203, 204, 210, 218.6, 221, 226, 225.5, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198; the applicable California Wage Order, including, without limitation, sections 3, 7, 11, and 12 of the applicable Wage Order; violation of the Fair Labor Standards Act; violation of California Business and Professions Code Section 17200 et seq.; and claims for penalties under California Labor Code Section 2698 et seq.

26. Settlement Administrator. “Settlement Administrator” means ILYM Group, Inc. or such other third-party administrator approved by the Court.

27. Settlement Hearing. “Settlement Hearing” means the hearing on the Final Hearing Date at which the Court will determine whether to fully and finally approve the fairness and reasonableness of this Agreement.

RECITALS

28. On April 30, 2020, Named Plaintiff filed the Action against defendant Milk Specialties Company. On or about July 22, 2020, Named Plaintiff filed a First Amended Complaint, adding a cause of action under the California Private Attorneys General Act. The First Amended Complaint alleges that Defendant violated various wage-and-hour laws, including causes of action for: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to timely pay all wages earned; (4) unlawful deduction from wages; (5) failure to provide meal periods; (6) failure to permit rest breaks; (7) failure to provide accurate itemized wage statements; (8) failure to pay all wages due upon separation of employment; (9) derivative claims under Business & Professions Code § 17200; and (10) derivative claims for PAGA penalties under Labor Code § 2698 *et seq.*

29. Defendant denies that it engaged in any misconduct in connection with the wage-and-hour practices associated with the Class Members or Aggrieved Employees. Defendant

1 further denies that it has any liability of any kind associated with the claims alleged in the Action.
2 Defendant contends that it has complied with both federal and state wage-and-hour laws, and all
3 other laws regulating its relationship with the Class Members, including the Named Plaintiff.

4 30. After a full-day mediation conducted by a retired Judge, the Parties agreed to a
5 settlement of the Action, subject to Court approval. The Parties further agreed to enter into this
6 Agreement to memorialize their settlement.

7 31. Class Counsel has investigated the facts relating to the Action. Class Counsel are
8 of the opinion that the Settlement documented by this Settlement Agreement is fair, reasonable,
9 and adequate, and in the best interest of the Class in light of all known facts and circumstances,
10 including the risk of significant delay and defenses asserted to the merits of the Action. While
11 Defendant specifically denies any liability in the Action, Defendant has agreed to enter into this
12 Settlement to avoid the costs associated with defending the Action.

13 **TERMS AND CONDITIONS**

14 NOW, THEREFORE, in consideration of the recitals listed above and the promises and
15 warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of
16 the consideration and undertakings set forth below, Named Plaintiff, individually and on behalf of
17 the Class Members, and Defendant agree that the Action shall be and is finally and fully
18 compromised and settled on the following terms and conditions:

19 32. Non-Admission Of Liability. The Parties enter into this Agreement to resolve the
20 dispute that has arisen between them and to avoid the burden, expense and risk of continued
21 litigation. In entering into this Agreement, Defendant and the other Released Parties do not admit,
22 and specifically deny, that they have violated any federal, state, or local law; violated any
23 regulations or guidelines promulgated pursuant to any statute or any other applicable laws,
24 regulations or legal requirements; breached any contract; violated or breached any duty; engaged
25 in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to
26 the Class. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations
27 connected with it, shall be construed as an admission or concession by Defendant or any of the
28 other Released Parties of any such violations or failures to comply with any applicable law. Except

1 as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms
2 and provisions shall not be offered or received as evidence in any action or proceeding to establish
3 any liability or admission on the part of Defendant or to establish the existence of any condition
4 constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

5 33. Conditional Nature Of Class Settlement. For settlement purposes *only*, the Parties
6 agree that (a) a class may be certified in the Action pursuant to California Code of Civil Procedure
7 Section 382, and (b) the Action may proceed as a PAGA representative action.

8 a. The Parties intend their settlement to be contingent upon the preliminary
9 and final approval of each and every term of this Agreement, without material modification. The
10 Parties and their respective counsel shall use their respective best efforts to obtain Court approval
11 and implement this Agreement in accordance with its terms. If the Court does not so approve this
12 Agreement, the Parties agree to meet and confer to address the Court's concerns. If the Parties are
13 unable to agree upon a resolution, the Parties intend this Agreement to become null and void, and
14 unenforceable, in which event the settlement terms set forth in this Agreement, including any
15 modifications made with the consent of the Parties, and any action taken or to be taken in
16 connection with this Agreement, shall be terminated and shall become null and void and have no
17 further force or effect, and the class certified for settlement purposes pursuant to this Agreement
18 will be decertified for all purposes.

19 b. In the event the Court does not grant preliminary or final approval of the
20 Parties' settlement, or in the event this Agreement shall terminate or the settlement embodied in
21 this Agreement does not become effective for any reason, the Agreement and all negotiations,
22 court orders and proceedings relating to the Agreement shall be without prejudice to the rights of
23 the Named Plaintiff, Class Members and Defendant, each of whom shall be restored to their
24 respective positions existing prior to the execution of this Agreement, and evidence relating to the
25 Agreement and all negotiations shall not be discoverable or admissible in the Action or any other
26 litigation. Defendant does not waive, and instead expressly reserves, its rights to challenge the
27 propriety of class certification for any purpose should the Court not grant preliminary or final
28 approval of the Parties' settlement.

1 c. The Parties and their respective counsel shall use their respective best
2 efforts to obtain Court approval and implement this Agreement in accordance with its terms. If
3 the Court grants the Preliminary Approval Order, but does not grant final approval of the
4 Settlement, the Parties agree to meet and confer to address the Court's concerns. If the Parties are
5 unable to agree upon a resolution, then the Preliminary Approval Order will be vacated in its
6 entirety. In addition, if the Court does not grant final approval of the Settlement, neither this
7 Agreement, the Preliminary Approval Order, nor any other document in any way relating to the
8 foregoing, shall be relied upon, referred to, or used in any way for class certification proceedings
9 or representative action proceedings in the Action or any other action. Defendant does not waive,
10 and instead expressly reserves, its rights to challenge the propriety of class certification for any
11 purpose should the Court not grant final approval of the Settlement.

12 34. Participating Class Member Release Of Claims. As of the occurrence of the
13 Effective Date, the Named Plaintiff and all Participating Class Members shall be deemed to have
14 fully, finally, and forever released, settled, compromised, relinquished and discharged any and all
15 of the Released Parties of and from any and all Settled Claims.

16 a. This release by the Named Plaintiff and each Participating Class Member is
17 intended to settle any and all of the Settled Claims, whether known or unknown, that any of them
18 may have against the Released Parties, or any of them, during the Class Period.

19 b. As of the occurrence of the Effective Date, the Named Plaintiff and the
20 Participating Class Members shall be permanently enjoined and forever barred from prosecuting
21 any and all Settled Claims released pursuant to this Section 34 against the Released Parties. Thus,
22 subject to and in accordance with this Agreement, even if the Named Plaintiff or any Participating
23 Class Member may subsequently discover facts in addition to or different from those they now
24 know or believe to be true with respect to the subject matter of the Released Claims, they shall be
25 deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever
26 settled and released any and all Settled Claims, whether known or unknown, suspected or
27 unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist,
28 or have existed upon any theory of law or equity now existing or coming into existence in the

1 future, including, but not limited to, conduct that is negligent, intentional, with or without malice,
2 or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of
3 such different or additional facts.

4 c. The Parties agree for settlement purposes only that, because the Class
5 Members are so numerous, it is impossible or impracticable to have each Class Member execute
6 this Agreement. Accordingly, the Class Notice will advise all Class Members of the binding nature
7 of the release and such notice will have the same force and effect as if the Agreement were
8 executed by each Class Member.

9 d. The Named Plaintiff and Class Counsel represent, covenant, and warrant
10 that they have not directly or indirectly assigned, transferred, encumbered or purported to assign,
11 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
12 cause of action, or rights released and discharged by this Agreement, except as set forth in this
13 Agreement.

14 35. Aggrieved Employees Release of PAGA Claim: In exchange for the PAGA
15 Amount recited in this Agreement, the Named Plaintiff, as the representative for the State of
16 California and all Aggrieved Employees, and on behalf of their current, former, and future heirs,
17 executors, administrators, attorneys, agents, and assigns, will forever completely release and
18 discharge the Released Parties from the PAGA Claims that arose at any time between April 6,
19 2019 and the date the Class Notice is mailed to Class Members . The Aggrieved Employees and
20 the State of California will be deemed by operation of the Final Order and Judgment to have agreed
21 not to sue or otherwise make a claim against any of the Released Parties for any PAGA Claims
22 that arose at any time between April 6, 2019 and the date the Class Notice is mailed to Class
23 Members.

24 36. Full Release By The Named Plaintiff. As of the occurrence of the Effective Date,
25 the Named Plaintiff fully releases and discharges Defendant and the other Released Parties from
26 the Released Claims and any other claims that the Named Plaintiff ever had against the Released
27 Parties through the date of execution of the Agreement. Without limiting the generality of the
28 foregoing, the Named Plaintiff specifically and expressly releases to the maximum extent

1 permitted by law any claims against the Released Parties, arising out of or relating to the Named
2 Plaintiff's employment or the termination of his employment with Defendant and any other
3 Released Party. This general release by the Named Plaintiff includes a waiver of Named Plaintiff's
4 rights under Civil Code Section 1542, which provides: "A general release does not extend to
5 claims that the creditor or releasing party does not know or suspect to exist in his or her favor at
6 the time of executing the release and that, if known by him or her, would have materially affected
7 his or her settlement with the debtor or released party."

8 37. Settlement Payments And Calculation Of Claims. The following table summarizes
9 the allocation of the Gross Settlement Amount:

10 **Gross Settlement Amount of \$550,000.00 Is Allocated As Follows:**

- 11 • **Approximately \$327,166.67** paid to Class Members on a *pro rata* basis
- 12 • **\$10,000.00** for the PAGA Amount
 - 13 ○ **\$7,500.00** for the LWDA Payment
 - 14 ○ **\$2,500.00** for payments to Aggrieved Employees
- 15 • Class Counsel Attorneys' Fees not to exceed **\$183,333.33**
- 16 • Class Counsel Costs not to exceed **\$15,000**
- 17 • Up to **\$7,500.00** for Enhancements for Named Plaintiff (see definition in
18 Paragraph 38.c)
- 19 • Settlement Administration Costs, not to exceed **\$7,000**

20 38. Subject to final Court approval and the conditions specified in this Agreement, and
21 in consideration of the mutual covenants and promises set forth in this Agreement, Defendant
22 agrees to pay the Gross Settlement Amount of \$550,000.00. The Gross Settlement Amount
23 includes, but is not limited to, payments to be made to Participating Class Members, Class
24 Counsel's attorneys' fees and costs, any enhancement payments to the Named Plaintiff, the PAGA
25 Payment, settlement administration fees and costs, and all employee-side payroll taxes. Employer-
26 side payroll taxes arising from the payments made under this Settlement shall be paid by Defendant
27 separate from and in addition to the Gross Settlement Amount. For the avoidance of doubt,
28 Defendant shall not be required to pay any amount over \$550,000.00 for this Settlement, with the
express exception of any employer-side payroll taxes upon the Settlement and any pro rata increase
as described in paragraph 65. No part of the Gross Settlement Amount shall revert to Defendant.

1 The Parties agree, subject to Court approval, that the Gross Settlement Amount shall be
2 apportioned as follows:

3 a. Class Counsel Fees/Costs: At the final approval hearing, Class Counsel will
4 apply to the Court for an award of attorneys' fees of no more than one-third of the Gross Settlement
5 Amount, which equals \$183,33.33. Class Counsel will also apply to the Court for an award of
6 documented costs incurred by Class Counsel not to exceed the amount of \$15,000.00. These fees
7 and costs are included in, and shall come from, the Gross Settlement Amount. Class Counsel will
8 be issued an IRS Form 1099 for any fees and costs awarded by the Court pursuant to this
9 Section 38a. Except as provided in this Section 38a, each Party will bear his or its own attorneys'
10 fees, costs, and expenses incurred in the prosecution, defense, or settlement of the Action. If the
11 Court awards a lower amount of attorneys' fees or costs (or both) than the amount requested, any
12 amount not awarded will be part of the distribution to the Participating Class Members and shall
13 not be a reason to invalidate/terminate this Agreement.

14 b. Settlement Administrator Costs: At the final approval hearing, Class
15 Counsel will apply to the Court for approval of settlement administration costs not to exceed the
16 amount of \$7,000.00. These costs are included in, and shall come from, the Gross Settlement
17 Amount.

18 c. Named Plaintiff Enhancement: At the final approval hearing, Class
19 Counsel will apply to the Court for an award of \$7,500.00 to be paid to the Named Plaintiff as an
20 enhancement award for his services and for assuming the risks associated with this litigation, and
21 as consideration for providing a general release. Defendant will not oppose such application. The
22 enhancement award is included in, and shall come from, the Gross Settlement Amount. Named
23 Plaintiff will be issued an IRS Form 1099 for any enhancement award approved by the Court
24 pursuant to this Section. The enhancement award payable to the Named Plaintiff shall be in
25 addition to any payment he may receive pursuant to Section 38e, below. If the Court awards less
26 than the amount of enhancement award requested, any amount not awarded will be part of the
27 distribution to the Participating Class Members and shall not be a reason to invalidate/terminate
28 this Agreement.

1 d. PAGA Payment: At the final approval hearing, Class Counsel will apply to
2 the Court for approval of the PAGA Amount of \$10,000.00 for claims for civil penalties asserted
3 under PAGA. Class Counsel will submit notice of this Settlement to the LWDA, as required by
4 Labor Code § 2699(l)(2). The Parties agree that 75% of the PAGA Amount (\$7,500.00) will be
5 paid to the LWDA as the LWDA Payment, and the remaining 25% (\$2,500.00) of civil penalties
6 will be allocated to the Aggrieved Employees. The amount allocated to the Aggrieved Employees
7 will be paid using the same formula as set forth in Section 38e, but will be limited to weeks worked
8 during the PAGA Period. Any Class Members who worked during the PAGA Period and who opt
9 out of the Settlement will still be considered Aggrieved Employees for purposes of this Section 38d
10 and, therefore, will (i) receive their portion of the PAGA Payment; and (ii) release all PAGA
11 claims against the Released Parties that were, or could have been, alleged in the Action.

12 e. Class Member Payments: After deducting the approved amounts specified
13 in Sections 38a-38d above, each Participating Class Member will be entitled to a *pro rata* portion
14 of the remaining amount. Individual Settlement Payments will be calculated from the Net
15 Settlement Amount based on the respective number of weeks worked by each Participating Class
16 Member in a non-exempt position during the Class Period, rounded up. Each Participating Class
17 Member's share of the Net Settlement Amount will be calculated by dividing the Participating
18 Class Member's weeks worked in a non-exempt position by the total number of weeks worked by
19 all Class Members during the Class Period and multiplying this figure by the Net Settlement
20 Amount. The Class Notice will include the number of weeks that the Class Member worked during
21 the Class Period and the amount the Class Member is estimated to receive under the terms of the
22 Settlement.

23 Example: Class Member A worked 200 workweeks during the Class
24 Period. All Class Members who worked during the Class Period worked a total of 13,000
25 workweeks. Class Member A's Individual Settlement Payment would be calculated as
26 follows: $\$327,166.67 \div 13,000 \times 200 = \$5,033.33$.

27 f. The Parties acknowledge and agree that the formula used to calculate the
28 Individual Settlement Payments does not mean that all of the elements of damages, restitutionary

1 relief, and penalties alleged in the Action are not being taken into account. The above formula
2 was devised as a practical and logistical method to simplify the participation process.

3 g. Individual Settlement Payments shall be distributed only to Participating
4 Class Members. PAGA Payments will be distributed to all Aggrieved Employees. The Individual
5 Settlement Payments allocated to Class Members who opt out of the Settlement will be distributed
6 to Participating Class Members on a *pro rata* basis based on the formula set forth in Section 38e.

7 h. The Parties agree that, under no circumstances shall Defendant be obligated
8 to pay any amount under this Agreement to any Class Member other than Participating Class
9 Members, with the exception of the PAGA Payments. In addition, the Parties agree that under no
10 circumstances shall Defendant be obligated to pay more than the Gross Settlement Amount in full
11 settlement of the Action, with the express exception for any employer taxes upon the settlement,
12 as noted in Paragraph 38a and the pro rata increase described in Paragraph 65. The Parties further
13 agree that no amount of the Gross Settlement Amount shall revert to Defendant.

14 39. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
15 Participating Class Members under this Agreement and the PAGA Payments made to Aggrieved
16 Employees will not be utilized to calculate any additional benefits under any benefit plans for
17 which any Participating Class Member or Aggrieved Employees may be eligible including, but
18 not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation
19 plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention
20 that this Agreement will not affect any rights, contributions, or amounts to which any Participating
21 Class Member or Aggrieved Employee may be entitled under any benefit plans.

22 40. Taxation Of Settlement Proceeds. All settlement payments paid to Participating
23 Class Members, Aggrieved Employees, and the Named Plaintiff, will be paid in a net amount after
24 applicable state and federal tax withholdings, including employee-side payroll taxes (with the
25 employer-side payroll taxes being paid by Defendant), have been deducted.

26 a. The Individual Settlement Payment shall be reported for taxation purposes
27 as follows: (i) one-third of the amount distributed to each Participating Class Member will be
28 considered wages, and will be reported as such to each Participating Class Member on a W-2

1 Form; (ii) one-third of the amount distributed to each Participating Class Member will be
2 considered interest on the unpaid wages, and will be reported as such to each Participating Class
3 Member on an IRS Form 1099; and (iii) one-third of the amount distributed to each Participating
4 Class Member will be considered statutory penalties, and will be reported as such to each
5 Participating Class Member on an IRS Form 1099. The PAGA Payments will be considered
6 penalties and will be reported on an IRS Form 1099.

7 b. Prior to mailing Individual Settlement Payments to Participating Class
8 Members, the Settlement Administrator will calculate, withhold from the Individual Settlement
9 Payment, and remit to applicable governmental agencies sufficient amounts as may be owed by
10 Participating Class Members for required withholdings and taxes, including all payroll taxes. The
11 Settlement Administrator will issue appropriate tax forms to each Participating Class Member
12 consistent with the foregoing breakdown. The Parties understand that the Named Plaintiff and
13 Participating Class Members who receive an Individual Settlement Payment pursuant to this
14 Agreement shall be solely responsible for any and all employee-side tax obligations associated
15 with such receipt.

16 c. The Parties stipulate that the Settlement Fund (as defined at Section 45) will
17 qualify as a settlement fund pursuant to the requirements of Section 468(B)(g) of the Internal
18 Revenue Code of 1986, as amended, and Section 1.468B-1 *et seq.* of the federal income tax
19 regulations. Furthermore, the Settlement Administrator is designated as the “Administrator” of
20 the qualified settlement funds for purposes of Section 1.468B-2(k) of the income tax regulations.
21 Accordingly, all taxes imposed on the gross income of the Settlement Fund and any tax-related
22 expenses arising from any income tax return or other reporting document that may be required by
23 the Internal Revenue Service or any state or local taxing body will be paid from the Settlement
24 Fund.

25 d. All Parties represent and acknowledge that nothing in this Agreement
26 constitutes tax advice regarding the tax treatment of payments under federal, state, or local law.
27 Participating Class Members will assume any such employee-side tax obligations or consequences
28 that may arise from this Agreement, and Class Members shall not seek any indemnification from

1 the Parties or any of the Released Parties in this regard. In the event that any taxing body
2 determines that additional taxes are due from any Class Member, such Class Member assumes all
3 responsibility for the payment of such taxes.

4 41. Notice Procedure. Within 15 business days after entry of the Preliminary Approval
5 Order, Defendant will provide to the Settlement Administrator a list of Class Members that
6 identifies each Class Member by name, Social Security Number, and last-known address; specifies
7 the employment dates of each Class Member in a non-exempt position during the Class Period;
8 and provides the number of weeks worked by each Class Member in a non-exempt position during
9 the Class Period and the PAGA Period and the amount payable to each Class Member (the “Class
10 List”). Defendant will provide the Class List in an Excel file or other format reasonably acceptable
11 to the Settlement Administrator. The Settlement Administrator will keep the list confidential and
12 use it only for the purposes described in this Agreement.

13 a. Defendant will provide to Class Counsel a copy of the Class List (without
14 names, contact information, or social security numbers) to verify Defendant’s calculation of
15 workweeks worked and amounts payable to Class Members. Class Counsel will review the same
16 to determine if the calculation of payments to Class Members and Aggrieved Employees is
17 consistent with this Settlement Agreement. Class Counsel will notify Defendant’s counsel and the
18 Settlement Administrator within seven calendar days if any of the calculations are incorrect.

19 b. Upon receipt of the Class List, the Settlement Administrator will check
20 Defendant’s calculations of amounts payable to Class Members and Aggrieved Employees to
21 confirm the accuracy of Defendant’s calculations.

22 c. Upon receipt of the Class List, the Settlement Administrator will perform a
23 search based upon the National Change of Address Database to update and correct any known or
24 identifiable address changes. The Settlement Administrator shall exercise its best judgment to
25 determine the current mailing address for each Class Member. Within 15 calendar days after
26 receipt of the Class List from Defendant, the Settlement Administrator will send the Class Notice,
27 in English and in Spanish, to each Class Member via First Class U.S. Mail. Receipt of the Class
28 Notice shall be presumed as to each and every Class Member whose Class Notice is not returned

1 to the Settlement Administrator as undeliverable within 15 calendar days after mailing.

2 d. The Settlement Administrator will re-mail any notice packet returned by the
3 United States Postal Service with a forwarding address on or before the expiration of the Notice
4 Period. It shall be conclusively presumed that those Class Members whose re-mailed Class Notice
5 is not returned to the Settlement Administrator as undeliverable within 15 calendar days after re-
6 mailing, received the Class Notice. Class Members who receive a re-mailed Class Notice shall
7 have their Notice Period extended 15 calendar days.

8 e. The Settlement Administrator will use appropriate skip-tracing and
9 National Change of Address searches to increase the likelihood of delivery of the Class Notice to
10 Class Members, and to re-mail the notice packets returned by the Postal Service without a
11 forwarding address upon locating new or alternate addresses after a reasonable search.

12 f. Class Counsel will provide to the Court, in connection with seeking final
13 approval of the Settlement, a declaration from the Settlement Administrator confirming that the
14 Class Notice was mailed to all Class Members as required by this Agreement, as well as any
15 additional information Class Counsel deems appropriate to provide to the Court.

16 42. Challenge Procedure. The Class Notice will include a procedure by which a Class
17 Member may challenge the number of workweeks allocated to the Class Member by submitting a
18 written challenge sent via U.S. Mail to the Settlement Administrator postmarked no later than the
19 expiration of the Notice Period. A Class Member challenging the workweeks must also submit
20 documentary evidence sufficient to prove that Defendant's calculation of the workweeks for the
21 Class Member is incorrect. Upon receipt of notice of any such dispute, the Settlement
22 Administrator shall promptly serve Class Counsel and Defendant's counsel with a copy of the
23 notice of dispute and any accompanying papers. No such notice of dispute shall be effective or
24 considered for any purpose unless it is timely mailed by U.S. mail to and received by the Settlement
25 Administrator as provided above. Defendant shall have the right to respond to the challenge by
26 any Class Member. All information and documents relating to any such disputes will be provided
27 to Class Counsel. The Settlement Administrator will resolve the challenge and make a final and
28 binding determination without hearing or right of appeal. The Settlement Administrator's

determination will be subject to review by the Court at the time of the Final Approval Hearing so long as the Participating Class Member submits an objection to the Settlement Administrator's determination at or before the Final Approval Hearing.

a. Within 10 calendar days after the close of the Notice Period, the Settlement Administrator will provide Class Counsel and Defendant's counsel with a report listing the amount of all Individual Settlement Payments and PAGA Payments to be made to Participating Class Members and Aggrieved Employees. The report to Class Counsel will not include the names or contact information of Participating Class Members and Aggrieved Employees. After receiving the Settlement Administrator's report, Class Counsel and Defendant's counsel shall review the same to determine if the calculation of payments to Participating Class Members and Aggrieved Employees is consistent with this Settlement Agreement.

43. Opt-Out Procedure. Unless a Class Member opts out of the settlement described in this Agreement, the Class Member will be bound by the terms and conditions of this Agreement, including the release provisions and the Court's Order enjoining all Participating Class Members from pursuing, or seeking to re-open, any of the Settled Claims against the Released Parties. A Class Member will not be entitled to opt out of the settlement established by this Agreement unless the Class Member does all of the following: (i) makes a written request expressing the Class Member's desire to be excluded from (or opt out of) the Settlement; (ii) signs the opt-out request; and (iii) returns the opt-out request so that it is postmarked on or before the expiration of the Notice Period.

a. Upon receipt of any opt-out request within the Notice Period, the Settlement Administrator shall review the request to confirm that the request complies with the opt-out requirements of this Agreement.

b. Any Class Member who fails to submit a timely, complete and valid request to opt out of the settlement will be barred from opting out of this Agreement or the settlement, unless otherwise ordered by the Court. If the Settlement Administrator receives a timely opt out request that is incomplete, it will make reasonable attempts to contact the class member to cure the defect. The Settlement Administrator will not consider any opt-out request postmarked after

1 the end of the Notice Period, but will report its receipt of any such requests to Class Counsel and
2 counsel for Defendant. It shall be presumed that, if an opt-out request is not postmarked on or
3 before the end of the Notice Period, the Class Member did not make the request in a timely manner,
4 unless the Class Member's Notice Period was extended pursuant to Section 41.d, above. A
5 declaration submitted by any Class Member attesting to the mailing of an opt-out request on or
6 before the expiration of the Notice Period shall be insufficient to overcome the conclusive
7 presumption that the opt-out request was untimely. Under no circumstances shall the Settlement
8 Administrator have the authority to extend the deadline for Class Members to submit a request to
9 opt out of the settlement without Defendant's written consent, except for the 15-day extension of
10 a Class Member's Notice Period due to a re-mailed Class Notice, as set forth in Section 41.d,
11 above.

12 c. If 7.5% or more of the Class Members timely opt out of the settlement,
13 Defendant will have the sole and absolute discretion to withdraw from this Agreement within
14 seven business days after Defendant receives notice of the number of opt outs. Defendant will
15 provide written notice to Class Counsel if it intends to withdraw from this Agreement. In the event
16 that Defendant elects to so withdraw, the withdrawal shall have the same effect as a termination
17 of this Agreement for failure to satisfy a condition of settlement, and the Agreement shall become
18 null and void and have no further force or effect, and the class certified pursuant to this Agreement
19 will be decertified for all purposes. If Defendant chooses to terminate this Settlement Agreement
20 under this provision, it shall be responsible to pay the Settlement Administrator's fees and costs.
21 If the Settlement Agreement is terminated for any other reason, including the Court's failure to
22 grant final approval of the Parties' settlement, then Class Counsel and Defendant will be jointly
23 responsible for the Settlement Administrator's fees and costs.

24 44. Objections To Settlement. Any Class Member may object to the Settlement. Any
25 written objection must be mailed to the Settlement Administrator (who shall promptly provide a
26 copy to Class Counsel and counsel for Defendant) by the close of the Notice Period. Class Counsel
27 will ensure that any written objections get filed with the Court concurrently with the final approval
28 documents. Class Members may also appear at the final fairness hearing to object to the

1 Settlement, whether or not they have objected in writing or notified the Parties that they intend to
2 appear. If a Class Member does not submit a written objection or appear in person to object, either
3 personally or through counsel, such objection shall be deemed waived, unless otherwise ordered
4 by the Court.

5 a. Written objections to the Settlement must contain at least the following:
6 (i) the objecting Class Member's full name, current address, and signature (the address will be
7 redacted by Class Counsel in any court filing); (ii) a clear reference to the Action; and (iii) a
8 statement of the specific reasons why the objector believes the Settlement is unfair or objects to
9 the Settlement. All objections shall be signed by the objecting Class Member or the Class
10 Member's legally authorized representative.

11 b. Class Counsel or Defendant's counsel may, before the final approval
12 hearing, file responses to any written objections submitted to the Court.

13 c. Unless they opt out of the Settlement as specified in Section 43, Class
14 Members who object to the proposed settlement or the Agreement will remain Participating Class
15 Members, and shall be deemed to have voluntarily waived their right to pursue an independent
16 remedy against Defendant and the other Released Parties. To the extent any Participating Class
17 Member objects to the proposed settlement or Agreement and such objection is overruled in whole
18 or in part, such individuals will be bound by the Court's Final Approval Order.

19 d. In the event that any person objects to or opposes this proposed settlement
20 or the Agreement, or attempts to intervene in or otherwise enter the Action, the Parties and Class
21 Counsel will use their best efforts to defend the Settlement.

22 e. In the event that a Class Member timely submits both an objection and an
23 opt-out request, the opt-out request will be rejected and the objection accepted.

24 45. Funding And Distribution Of Settlement. Within 7 calendar days of the close of
25 the Notice Period, the Settlement Administrator will provide written notice to Class Counsel and
26 Defendant's counsel of the number of Participating Class Members, the total amount payable to
27 all Participating Class Members, the PAGA Payment, attorneys' fees and costs, the enhancement
28 award, and the costs of settlement administration. Within five business days after the Effective

1 Date, Defendant shall remit to the Settlement Administrator the Gross Settlement Amount of
2 \$550,000.00, or the increased amount if the pro rata increase is triggered (the “Settlement Fund”).
3 The delivery by Defendant of the Settlement Fund to the Settlement Administrator along with
4 employer-side payroll taxes to be paid separately by Defendant will constitute the full and
5 complete discharge of the entire obligation of Defendant under this Agreement. No Released Party
6 will have any further obligation or liability to the Named Plaintiff, Participating Class Members,
7 Aggrieved Employees, or Class Counsel under this Agreement, regardless of whether the Named
8 Plaintiff, Participating Class Members, Aggrieved Employees, or Class Counsel receive the
9 payments from the Settlement Administrator as set forth in this Agreement.

10 a. The distribution of Individual Settlement Payments to Participating Class
11 Members and PAGA Payments to Aggrieved Employees will occur no later than 15 business days
12 after receipt of the Settlement Fund from Defendant (“Settlement Proceeds Distribution
13 Deadline”). The Settlement Administrator shall be deemed to have timely distributed Individual
14 Settlement Payments and PAGA Payments if it places in the mail Individual Settlement Payments
15 for all Participating Class Members and PAGA Payments for all Aggrieved Employees by the
16 Settlement Proceeds Distribution Deadline. No person will have any claim against the Settlement
17 Administrator, Defendant, Class Counsel, Defendant’s counsel, or any other agent designated by
18 the Named Plaintiff or Class Counsel based upon the distribution of Individual Settlement
19 Payments and PAGA Payments made substantially in accordance with this Agreement or further
20 orders of the Court.

21 b. The distribution of the LWDA Payment, attorneys’ fees, costs, and the
22 enhancement award shall occur no later than 15 business days after the Settlement Administrator
23 receives the Settlement Fund from Defendant.

24 c. If a Participating Class Member’s or Aggrieved Employee’s check is
25 returned to the Settlement Administrator, the Settlement Administrator will make reasonable
26 efforts to re-mail it to the Participating Class Member or Aggrieved Employee at the correct
27 address. It is expressly understood and agreed that the checks for the Individual Settlement
28 Payments and PAGA Payments will become void and no longer available if not cashed within 180

1 days after mailing. The funds from uncashed and voided checks will be transferred to the State of
2 California's Unclaimed Property Fund in the name of the Participating Class Member.

3 d. Defendant will not be obligated to make any payments contemplated by this
4 Agreement unless and until the Court enters the Final Order and Judgment, and after the Effective
5 Date of the Agreement.

6 46. Binding Effect Of Agreement On Class Members. Subject to final Court approval
7 and the occurrence of the Effective Date, and unless otherwise provided in this Agreement, all
8 Participating Class Members will be bound by this Agreement. In addition, unless a Class Member
9 opts out of the settlement described in this Agreement, the Class Member shall be bound by the
10 Court's Order enjoining all Class Members from pursuing, or seeking to reopen, Settled Claims
11 against the Released Parties.

12 47. Binding Effect Of Agreement On Aggrieved Employees and State of California.
13 The Aggrieved Employees and the State of California are deemed by operation of the Final Order
14 and Judgment to have agreed not to sue or otherwise make a claim against any of the Released
15 Parties for civil penalties under Labor Code § 558 and Labor Code §§ 2698 *et seq.* for the Released
16 Claims.

17 48. Provisional Approval Of Settlement. Upon execution of this Agreement, the
18 Named Plaintiff will promptly file a motion in the Action requesting that the Court enter the
19 Preliminary Approval Order. Defendant will not oppose Class Counsel's motion for preliminary
20 approval of the settlement so long as the motion and supporting papers are consistent with the
21 terms of this Agreement. Class Counsel will provide Defendant's counsel with a reasonable
22 opportunity to review, and provide comments to, the motion for preliminary approval of the
23 settlement before the motion and supporting papers are filed with the Court. Notwithstanding the
24 foregoing, Defendant may, without opposing the preliminary approval motion, advise the Court if
25 Defendant disagrees with any of the factual statements included by the Named Plaintiff in the
26 motion and supporting papers. Defendant's counsel will meet and confer with Class Counsel
27 regarding any disputed factual statements before notifying the Court of any disputes.

28 49. Non-Interference With Claims Procedure. The Parties and their counsel agree that

1 they will not advise, solicit or otherwise encourage any Class Members to submit requests for
2 exclusion or objections to the settlement or to appeal from the Final Order or Final Judgment.

3 50. Final Order and Judgment. The Named Plaintiff will request that the Court enter,
4 after the Settlement Hearing finally approving this Agreement, a Final Order and Judgment.
5 Named Plaintiff will request that the Final Order and Judgment certify the Participating Class; find
6 that this Agreement is fair, just, equitable, reasonable, adequate and in the best interests of the
7 Class and the Aggrieved Employees; permanently enjoin all Participating Class Members from
8 pursuing, or seeking to reopen, Settled Claims against the Released Parties; permanently enjoin
9 the Aggrieved Employees and the State of California from pursuing a PAGA Claim against the
10 Released Parties for any of the Released Claims; and require the Parties to carry out the provisions
11 of this Agreement.

12 51. Automatic Voiding Of Agreement If Settlement Not Finalized. If for any reason
13 the settlement set forth in this Agreement does not become final, the settlement will be null and
14 void and the orders, judgment, and dismissal to be entered pursuant to this Agreement shall be
15 vacated, and the Parties will be returned to the status quo prior to entering this Agreement with
16 respect to the Action, as if the Parties had never entered into this Agreement, and the class certified
17 pursuant to this Agreement will be decertified for all purposes. In addition, in such event, the
18 Agreement and all negotiations, court orders and proceedings relating to this Agreement shall be
19 without prejudice to the rights of any and all parties to this Agreement, and evidence relating to
20 the Agreement and all negotiations shall not be admissible or discoverable in the Action or
21 otherwise.

22 52. No Publicity. The Named Plaintiff and Class Counsel agree that they shall not
23 discuss, answer questions about, promote, or publicize the filing of the Action, the Parties'
24 settlement, this Agreement and its terms, or the negotiations leading to this Agreement with anyone
25 other than the Court or those individuals necessary to effectuate the terms of the Agreement. The
26 prohibition set forth in this Section 52 includes, but is not limited to: (i) publication on any website
27 (including, without limitation, publishing on any Twitter account, Facebook, other social media,
28 or blog) of the amount or terms of the settlement, with or without identifying information; and

1 (ii) the submission of information to Verdicts & Settlements or any other publication that
2 summarizes the results of jury verdicts and settlements. The prohibition set forth above does not
3 preclude Class Counsel from (a) discussing the Settlement internally; (b) disclosing to a mediator
4 the terms of the Settlement, provided that Class Counsel does not disclose the Settlement was with
5 Defendant; and (c) providing a copy of the Settlement to a mediator, provided that case-identifying
6 information is redacted.

7 a. Notwithstanding the foregoing, Class Counsel may respond to questions
8 received from, and discuss any aspect of this Agreement with, Class Members.

9 b. The Named Plaintiff and Class Counsel agree that all data and information
10 informally produced by Defendant in connection with this Action will be maintained in
11 confidence, and will be returned or destroyed within 15 calendar days after the Effective Date.

12 53. Invalidation Of Agreement For Failure To Satisfy Conditions. If the Court makes
13 material changes to the material terms or conditions of Sections 1 through 52 of this Agreement
14 that are not agreed to by the Defendant, Defendant shall have the right to terminate this Agreement,
15 in which case Defendant would not be obligated to make any payments to any Class Member, to
16 Class Counsel, or to the Named Plaintiff. Defendant agrees to construe the term “material
17 changes” based on its plain and obvious meaning, and will not attempt to terminate this Agreement
18 based on any minor changes by the Court that attempt to clarify the agreement of the Parties.

19 54. Modification In Writing. This Agreement may be altered, amended, modified or
20 waived, in whole or in part, only in a writing signed by Class Counsel and Defendant’s counsel.
21 This Agreement may not be amended, altered, modified or waived, in whole or in part, orally.

22 55. Ongoing Cooperation. The Named Plaintiff and Defendant will execute all
23 documents and perform all acts necessary and proper to effectuate the terms of this Agreement.
24 The execution of such documents must take place prior to the Final Hearing Date. In the event the
25 Parties are unable to reach agreement on the form or content of any document needed to implement
26 the Settlement, or any supplemental provisions that may become necessary to effectuate the terms
27 of the Settlement, the Parties agree to seek the assistance of the Court.

28 56. Notices. All notices, requests, demands and other communications required or

permitted to be given pursuant to this Agreement shall be in writing, and shall be delivered personally or by first class mail to the Settlement Administrator approved by the Court and the undersigned persons at their respective addresses as set forth below:

CLASS COUNSEL

LEBE LAW, APLC
Jonathan M. Lebe (State Bar No. 284605)
Zachary Gershman (State Bar No. 328004)
777 S. Alameda Street, Second Floor
Los Angeles, California 90021
Telephone: (213) 358-7046

AEGIS LAW FIRM, PC
Samuel A. Wong (State Bar No. 217104)
Jessica A. Campbell (State Bar No. 280626)
Alexander G.L. Davies (State Bar No. 328125)
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949)379-6251

COUNSEL FOR DEFENDANT

James L. Morris, Esq.
Brian C. Sinclair, Esq.
RUTAN & TUCKER, LLP
18575 Jamboree Road, 9th Floor
Irvine, California 92612
Telephone: (714) 641-5100

57. Binding on Successors. This Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors, assigns, executors, administrators, heirs and legal representatives.

58. Entire Agreement. This Agreement constitutes the full, complete and entire understanding, agreement and arrangement between the Named Plaintiff, the Class Members, and the Aggrieved Employees, on the one hand, and Defendant, on the other hand, with respect to the settlement of the Action. This Agreement supersedes any and all prior oral or written understandings, agreements and arrangements between the Parties with respect to the settlement of the Action. Except for those set forth expressly in this Agreement, there are no other

1 agreements, covenants, promises, representations or arrangements between the Parties with respect
2 to the settlement of the Action and the Settled Claims against the Released Parties. The Parties
3 explicitly recognize California Civil Code § 1625 and California Code of Civil Procedure §
4 1856(a), which provide that a written agreement is to be construed according to its terms, and may
5 not be varied or contradicted by extrinsic evidence, and agree that no such extrinsic oral or written
6 representations or terms shall modify, vary, or contradict the terms of this Agreement.

7 59. Execution In Counterparts. This Agreement may be signed in one or more
8 counterparts. All executed copies of this Settlement Agreement, and photocopies of the
9 Agreement (including facsimile and e-mail copies of the signature pages), shall have the same
10 force and effect and shall be as legally binding and enforceable as the original.

11 60. Captions. The captions, section numbers, and paragraph numbers, in this
12 Agreement are inserted for the reader's convenience, and in no way define, limit, construe, or
13 describe the scope or intent of the provisions of this Agreement.

14 61. Governing Law. This Agreement shall be interpreted, construed, enforced, and
15 administered in accordance with the laws of the State of California, without regard to conflict of
16 law rules.

17 62. Reservation Of Jurisdiction. Notwithstanding the dismissal of the Action and entry
18 of the Final Order and Judgment, the Court shall retain jurisdiction for purposes of interpreting
19 and enforcing the terms of this Agreement.

20 63. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
21 and conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly
22 against one Party than another merely by virtue of the fact that it may have been prepared by
23 counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
24 between the Parties, all Parties have contributed to the preparation of this Agreement.

25 64. Severability. The Parties to this Agreement agree, covenant, and represent that
26 each and every provision of this Agreement shall be deemed to be contractual, and shall not be
27 treated as mere recitals at any time or for any purpose. Therefore, the Parties further agree,
28 covenant, and represent that each and every provision of this Agreement shall be considered

1 severable, except for the release provisions of Paragraphs 25 and 34 of this Agreement. If a court
2 of competent jurisdiction finds the release provisions of Paragraphs 25 or 34 of this Agreement to
3 be unenforceable or invalid, then this Agreement shall be voidable in Defendant's sole discretion
4 and, if voided by Defendant, all payments made pursuant to this Agreement will be returned to
5 Defendant. If a court of competent jurisdiction finds any provision other than the release
6 provisions of Paragraphs 25 or 34 of this Agreement, or part thereof, to be invalid or unenforceable
7 for any reason, that provision, or part thereof, shall remain in full force and effect to the extent
8 allowed by law, and all of the remaining provisions of this Agreement shall remain in full force
9 and effect.

10 65. Pro Rata Increase. The parties reached this agreement based on a calculation of
11 12,557 workweeks. If the number of workweeks increases by more than 10% (which is more than
12 13,813 workweeks) as of the end of the Class Period, there will be a pro rata adjustment to the Net
13 Settlement equal to \$23.65 per additional workweek above 13,813.

14 66. Representation and Warranties. Class Counsel and the Named Plaintiff jointly and
15 severally represent and warrant to Defendant that, to their knowledge, there are no attorneys
16 beyond those named as Class Counsel who have claims for fees arising out of the Action or the
17 Settlement contemplated by this Agreement. To the extent Class Counsel's and the Named
18 Plaintiff's representations are knowingly false or erroneous, or other attorneys do have claims for
19 fees arising out of the Action or this Settlement, Class Counsel and the Class jointly and severally
20 agree to fully indemnify Defendant for any damages it incurs as a result of those claims, including,
21 but not limited to, all attorneys' fees and costs.

22 67. Authorization to Act. Each Party to this Agreement covenants and warrants that
23 (a) such Party has full power and authority to enter into and consummate all transactions
24 contemplated by this Agreement and have duly authorized the execution, delivery and performance
25 of this Agreement and (b) the person executing this Agreement for such Party has the full right,
26 power and authority to enter into this Agreement on behalf of such Party, and the full right, power
27 and authority to execute any and all necessary instruments in connection with the Settlement, and
28 to fully bind such Party to the terms and obligations of this Agreement.

1 68. Representation By Counsel. The Parties acknowledge that each of them has been
2 represented by their respective counsel throughout all negotiations that preceded the execution of
3 this Agreement, and that this Agreement has been executed with the consent and advice of their
4 respective counsel. Further, the Named Plaintiff and Class Counsel warrant and represent that
5 there are no liens on the Settlement Agreement, and that after entry by the Court of the Final Order
6 and Judgment, the Settlement Administrator may distribute funds to Participating Class Members,
7 Aggrieved Employees, Class Counsel, the LWDA, and the Named Plaintiff as provided by this
8 Agreement.

9 69. Authorization By The Named Plaintiff. The Named Plaintiff authorizes Class
10 Counsel to sign this Agreement and further agrees not to request to be excluded from the Class
11 and not to object to any terms of this Agreement. Any such request by the Named Plaintiff for
12 exclusion or objection shall be void and of no force or effect.

13 70. Attorneys' Fees and Costs. No Participating Class Member, Aggrieved Employee,
14 or Class Counsel, or any other attorney acting for any Participating Class Member or Aggrieved
15 Employee, may recover or seek to recover any amounts for fees, costs, or disbursements from the
16 Released Parties or the Gross Settlement Amount except as expressly provided in this Agreement.

17 71. No Reliance on Representations. The Parties have made such investigations of the
18 facts and the law pertaining to the matters described in this Agreement as they deem necessary,
19 and have not relied, and do not rely, on any statement, promise, or representation of fact or law,
20 made by any other Party, or any of their agents, employees, attorneys, or representatives, with
21 regard to any of their rights or asserted rights, or with regard to the advisability of making and
22 executing this Agreement, or with respect to any such matters. No representations, warranties, or
23 inducements have been made to any Party concerning this Agreement.

24 72. No Collateral Attack. This Agreement will not be subject to collateral attack by
25 any Class Member or any recipient of the Class Notice after the Final Order and Dismissal. Such
26 prohibited collateral attacks shall include but not be limited to claims that the Class Member failed
27 for any reason to receive timely notice of the procedure for disputing the calculation of his or her
28 Individual Settlement Payment, PAGA Payment, or for opting out of the Class Settlement.

1 IT IS SO AGREED:

2 Dated: December ____, 2020

By: _____
Don Vasquez
Named Plaintiff

4

5 Dated: December ____, 2020

MILK SPECIALTIES COMPANY

6

By: _____

7

Title: _____

8

9 APPROVED AS TO FORM AND CONTENT AND
10 AGREE TO BE BOUND BY PARAGRAPH 52:

11 Dated: December ____, 2020

LEBE LAW, APLC

12

By: _____
Attorneys for Named Plaintiff

13

14

15 Dated: December ____, 2020

AEGIS LAW, PC

16

By: _____
Attorneys for Named Plaintiff

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EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE

Don Vasquez, Individually And On Behalf Of All
Others Similarly Situated,

Plaintiff,

vs.

Milk Specialties Company dba Milk Specialties
Global; And Does 1 Through 20, Inclusive,

Defendants.

Case No. VCU282778

ASSIGNED FOR ALL PURPOSES TO
HON. NATHAN D. IDE, DEPARTMENT 2

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
AND FINAL FAIRNESS HEARING

YOU MAY BE ENTITLED TO BENEFITS FROM THIS SETTLEMENT. YOUR ESTIMATED SETTLEMENT PAYMENT IS \$_____. PLEASE CONTINUE READING TO LEARN HOW THIS SETTLEMENT AFFECTS YOUR RIGHTS.

Notice is hereby given that a proposed Class Action Settlement Agreement and Stipulation (the “Settlement” or “Settlement Agreement”) has been reached between plaintiff Don Vasquez (“Plaintiff”), on the one hand, and Milk Specialties Company dba Milk Specialties Global (“Defendant”), on the other hand, in *Don Vasquez v. Milk Specialties Company*, Tulare County Superior Court Case No. VCU282778 (the “Action”)

The Action is filed as a class action and a PAGA representative action lawsuit. Plaintiff and Defendant have reached a settlement of the Action, and the Tulare County Superior Court (the “Court”) has granted preliminary approval of the settlement.

The proposed Settlement will resolve all Settled Claims made against Defendant and other Released Parties (defined below and in the Settlement Agreement) on behalf of all current and former employees who worked in a non-exempt position for Milk Specialties Company within the state of California at any time from April 6, 2016 through January 12, 2021 (the “Class Period”) and from April 6, 2019 through January 12, 2021 (the “PAGA Period”). If you satisfy these criteria, you are eligible to participate in the Settlement.

A. PURPOSE OF THIS NOTICE

The Court has ordered that this Class Notice be sent to you because Defendant’s records reflect that you are a potential member of the Class, as defined above.

The purpose of this Notice is to: (a) provide a brief description of the Action; (b) inform you of the proposed Settlement; and (c) discuss your rights and options with respect to the Action and the Settlement.

B. DESCRIPTION OF THE ACTION

The Action was filed by Plaintiff on behalf of all current and former non-exempt employees who worked for Defendant in the state of California during the Class Period. As alleged in the Action, Plaintiff

claims that Class Members were wrongfully denied wages and overtime compensation, meal periods and rest breaks, accurate wage statements, and other rights guaranteed under the California Labor Code.

The Action pleaded class allegations against Defendant for (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to timely pay all earned wages; (4) unlawful deduction of wages; (5) failure to provide meal periods; (6) failure to permit rest breaks; (7) failure to provide accurate itemized wage statements; (8) failure to pay all wages due upon separation of employment and within the required time; (9) violation of Cal. Bus. & Prof. Code §§ 17200, et seq.; and (10) enforcement of Labor Code § 2698, et seq. (“PAGA”).

The Court has made no ruling on the merits of Plaintiff’s claims or Defendant’s defenses. The Court has, however, preliminarily approved the proposed Settlement between Plaintiff and Defendant. The Court will decide whether to give final approval to the Settlement at a hearing scheduled for _____, 2021, at _____:_____ a.m., in Department 2 of the Tulare County Superior Court, located at Tulare Superior Court, County Civic Center, 221 South Mooney Blvd., Visalia, California 93291.

Attorneys for the Class (“Class Counsel”) in the Action are:

LEBE LAW, APLC
Jonathan M. Lebe, Esq.
Zachary Gershman, Esq.
jon@lebelaw.com
zachary@lebelaw.com
777 S. Alameda Street, Second Floor
Los Angeles, California 90021
Telephone: (213) 358-7046

and

AEGIS LAW FIRM, PC
Samuel A. Wong, Esq.
Jessica L. Campbell
Alexander G.L. Davies, Esq.
swong@aegislaw.com
jcampbell@aegislaw.com
adavies@aegislawfirm.com
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251

Defendant's counsel in the Action is:

RUTAN & TUCKER, LLP
James L. Morris, Esq.
Brian C. Sinclair, Esq.
jmorris@rutan.com
bsinclair@rutan.com
18575 Jamboree Road, 9th Floor
Irvine, California 92612
Telephone: (714) 641-5100
Facsimile: (714) 546-9035

C. YOUR OPTIONS

If you fit within the above description of the Class, you have several options. Your rights regarding each option, and the procedure you must follow to select each option, are explained below.

1. OPTION 1: Do Nothing and Remain a Member of the Class and Participate in the Settlement.

If you want to participate in the Settlement and receive a settlement payment, DO NOT TAKE ANY ACTION. You will automatically be included in the Settlement and will receive a Settlement Payment and a portion of the PAGA Payment as detailed below. If you move, make sure you contact the Settlement Administrator at the following address or phone number:

MILK SPECIALTIES SETTLEMENT ADMINISTRATOR
ILYM Group, Inc.
14771 Plaza Dr., Suite 1
Tustin, CA 92780
(888) 250-6810

YOUR ESTIMATED SETTLEMENT PAYMENT IS \$_____. This amount is based on the number of workweeks you worked in a non-exempt position during the Class Period, which is ____ workweeks. Your estimated share of the Settlement Amount was calculated by dividing the number of workweeks you worked in a non-exempt position during the Class Period by the total number of workweeks worked by all Class Members during the Class Period and multiplying this figure by the Net Settlement Amount (the Gross Settlement Amount of \$550,000 minus Class Counsel's attorneys' fees and costs, any enhancement payments to Plaintiff, payments under PAGA to the Labor and Workforce Development Agency ("LWDA"), and settlement administration fees and costs).

YOUR ESTIMATED PORTION OF THE PAGA PAYMENT IS \$_____. This amount is based on the number of workweeks you worked in a non-exempt position during the PAGA Period (the time period from April 6, 2019 through January 12, 2021), which is ____ workweeks. If you worked for the Defendant during the PAGA Period, then you are considered an Aggrieved Employee. Your PAGA Payment was calculated by dividing the number of workweeks you worked in a non-exempt position during the PAGA Period by the total number of workweeks worked by all Aggrieved Employees during the PAGA Period and multiplying this figure by the PAGA Payment (defined below). Even if you opt out of the Settlement (see Section C.2 below), you will still be considered an Aggrieved Employee, you will still receive your portion of the PAGA Payment, and you will have released any PAGA claim that arose at any time between April 6, 2019 and [Class Notice mailing Date].

Your Settlement Payment and portion of the PAGA Payment above are just estimates of your individual Settlement Payment and portion of the PAGA Payment. The exact amounts you will receive will not be determined until the class notice process is completed and the Court grants final approval of the Settlement.

If you believe the number of workweeks stated above is incorrect and you wish to challenge them, you must send a letter to the Settlement Administrator at ILYM Group, Inc., 14771 Plaza Dr., Suite 1, Tustin, CA 92780, stating that you believe the number of workweeks is incorrect. This letter must be postmarked no later than [insert date 60 days after mailing of Class Notice]. You must include documentary evidence sufficient to prove that Defendant's calculation of workweeks for you is incorrect. You must also provide your name, address, and daytime telephone number. Defendant will have the right to respond to all challenges made by Class Members. The Settlement Administrator will resolve the challenges and make a final and binding determination without hearing or right of appeal. The Settlement Administrator's determination will be subject to review by the Court at the time of the Final Approval Hearing so long as you submit an objection to the Settlement Administrator's determination at or before the Final Approval Hearing. If you want confirmation that your correspondence has been received by the Settlement Administrator, you may send your letter by certified U.S. Mail with a return receipt request.

If you choose to participate in the Settlement, you will be bound by all the terms set forth in the Settlement, including a full release of claims for the matters being settled in the Action.

2. OPTION 2: Opt Out of the Class and Receive Nothing Under the Settlement.

If you do not want to remain a member of the Class, you can request exclusion from the Class (i.e., "opt out"). In order to opt out of the Class and the Settlement, you must mail a written, signed request for exclusion to the Settlement Administrator at ILYM Group, Inc., 14771 Plaza Dr., Suite 1, Tustin, CA 92780, postmarked no later than [insert date 60 days after mailing of Class Notice]. This request for exclusion must contain the following information:

- (a) your printed full name (and any other names used while employed by Defendant);
- (b) a clear reference to the Action; and
- (c) language clearly stating that you want to opt out of the Settlement (for example: "I want to opt out of the class action settlement described in the Class Notice I received. I understand that by opting out, I will not be eligible to receive any payment or other benefit from the Settlement.").

This request must be **signed** by you.

If you opt out of the Class, you will no longer be a member of the Class, and you will be barred from participating in the class action portion of the Settlement. By opting out of the Class, you will retain whatever individual rights or claims you may have, if any, against Defendant, and you will be free to pursue them on an individual basis if you choose to do so. If you opt-out of the Settlement, you may still receive a payment representing PAGA penalties, in which case you would still be bound by the PAGA portion of the Settlement.

3. OPTION 3: Object to the Settlement.

If you are a Class Member who does not opt out of the Class, you may object to the Settlement, personally or through an attorney, by submitting your objection to the Settlement Administrator (ILYM Group, Inc.), at ILYM Group, Inc., 14771 Plaza Dr., Suite 1, Tustin, CA 92780. Your objection **must be signed** and must include the following:

- (a) your printed full name (and any other names used while employed by Defendant);

- (b) your full current address;
- (c) a clear reference to the Action; and
- (d) language clearly explaining why you believe the Settlement is unfair or why you are objecting to it.

All written objections must be postmarked on or before **[insert date 60 days after mailing of Class Notice]**. Failure to submit a written objection does not waive any Class Member's right to appear at the Final Fairness Hearing to object orally to the Settlement. If you object to the Settlement and if the Court approves the Settlement as set forth in the Settlement Agreement, you will be bound by the terms of the Settlement in the same way as a Class Member who does not object.

D. SUMMARY OF TERMS OF SETTLEMENT

The principal terms of the Settlement reached between Plaintiff and Defendant are summarized below.

1. Settlement Terms. The Settlement provides that (a) Defendant will pay \$550,000 (the "Gross Settlement Amount") to resolve all claims asserted in the Action, Plaintiff's enhancement award, and Class Counsel's attorneys' fees and costs, as described more fully below; and (b) Defendant will stipulate to the certification of the Class for settlement purposes only, conditioned upon the Court granting final approval of the Settlement.
 - Attorneys' Fees and Costs. Class Counsel will apply to the Court for an award of attorneys' fees of no more than \$183,333.33, which is approximately 33⅓% of the Gross Settlement Amount. Class Counsel will also seek reimbursement of costs of no more than \$15,000. In addition, Class Counsel will apply to the Court for payment of the costs of settlement administration, in an amount not to exceed \$7,000. The attorneys' fees and costs will be paid out of the Gross Settlement Amount.
 - LWDA Payment. A payment of \$7,500 will be made to the Labor and Workforce Development Agency, pursuant to PAGA. The LWDA payment will be paid out of the Gross Settlement Amount.
 - Class Representative Enhancement Award. Plaintiff will request an enhancement award of \$7,500. The enhancement award will be paid out of the Gross Settlement Amount.
 - Payments To Aggrieved Employees. Class Members who are also Aggrieved Employees will receive a prorated portion of \$2,500 (the "PAGA Payment"), based on the number of workweeks worked as set forth in section C.1. The PAGA Payment represents penalties under the Labor Code Private Attorneys General Act. Class Members who opt out of the Settlement will still receive their portion of the PAGA Payment, if they are also Aggrieved Employees. The PAGA Payment will be paid out of the Gross Settlement Amount.
 - Payments To Participating Class Members. After all of the deductions from the Gross Settlement Amount, the amount of approximately \$327,166.67 will remain to be distributed to Participating Class Members based on the number of workweeks Class Members worked during the Class Period as set forth in section C.1.
2. Settlement Payment To You. Section C of this Notice includes the estimated amount that you are entitled to receive under the Settlement. The individual settlement payments to Class

Members will vary based on a number of factors, including the number of Class Members who participate. Your Settlement Payment and portion of the PAGA Payment will be mailed to you within approximately 90 days of the Court's Order granting Final Approval of the Settlement. If you change your address, please notify the Settlement Administrator.

3. Taxes. For purposes of this settlement, 33⅓% of your Settlement Payment and portion of the PAGA Payment will be considered wages, 33⅓% of your Settlement Payment and portion of the PAGA Payment will be considered interest, and 33⅓% of your Settlement Payment and portion of the PAGA Payment will be considered penalties. Prior to mailing your Settlement Payment and portion of the PAGA Payment, the Settlement Administrator will calculate and deduct from your Settlement Payment and portion of the PAGA Payment an amount necessary to pay the required withholdings and taxes, including all payroll taxes attributable to employees. The Settlement Administrator will remit that money to the appropriate governmental agencies. The Settlement Administrator will also issue you appropriate tax forms, including an IRS Form 1099 and W-2 Form. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

4. Release

The Settlement provides that each Class Member who does not opt out of the Settlement (a "Participating Class Member") fully releases and discharges Defendant and the other Released Parties from any and all claims, known or unknown, contingent or accrued, against Defendant and the other Released Parties that arose at any time between April 6, 2016 and [Class Notice mailing Date] and that have been, or could have been, asserted against Defendant or any of the other Released Parties and that (a) arise from the facts, matters, transactions or occurrences alleged in the Action or that could have been alleged in the Action; or (b) arise from the facts, matters, transactions or occurrences alleged, or that could have been alleged, in the letter sent by Lebe Law, PLC to the Labor and Workforce Development Agency ("LWDA") on or about April 29, 2020, asserting that Defendant violated various provisions of the Labor Code. Released Parties means and includes Milk Specialties Company and its past, present, and future predecessors, successors, assigns, shareholders, members, owners, officers, directors, investors, employees, managers, managing agents, partners, affiliated companies or entities, parents, holding companies, agents, attorneys, insurers, and representatives.

Without limiting the foregoing, and in addition to the foregoing, the Settled Claims include claims for failure to pay the minimum wage; failure to pay regular wages; failure to pay overtime compensation and other premium wages; off-the-clock work; failure to pay all wages at the time of termination; violations of alternative workweek election and adoption procedures; unlawful deductions from wages; failure to provide and maintain complete and accurate itemized wage statements that included all information required by the California Labor Code; failure to provide meal periods and rest breaks or additional pay in lieu thereof; untimely payment of wages at the time of termination; violations of California Labor Code §§ 201, 202, 203, 204, 210, 218.6, 221, 226, 225.5, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198; the applicable California Wage Order, including, without limitation, sections 3, 7, 11, and 12 of the applicable Wage Order; violation of the Fair Labor Standards Act; violation of California Business and Professions Code Section 17200 et seq.; and claims for penalties under California Labor Code Section 2698 et seq.

Participating Class Members will be permanently enjoined and forever barred from prosecuting any and all Settled Claims released pursuant to the Settlement Agreement against the Released Parties. Thus, even if Participating Class Members may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Settled Claims, they shall be deemed to have fully, finally, and forever settled and released any and all Settled Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist,

or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts.

A complete statement of the release of claims is contained in the Settlement Agreement and is binding on all Class Members who do not opt out of the Settlement. A copy of the Settlement Agreement may be obtained from the Settlement Administrator.

5. Conditions Of The Settlement

The Settlement is conditioned upon the Court entering an Order at or following the Final Fairness Hearing approving the Settlement as fair, reasonable, and adequate and in the best interests of the Class.

6. No Admission Of Liability

Defendant does not admit any wrongdoing or liability, and specifically deny any liability or wrongdoing. The proposed Settlement reflects a compromise of disputed claims and does not mean that Defendant violated any state or federal wage-hour legal requirements or is liable for any of the allegations made by Plaintiff.

E. FAIRNESS HEARING ON PROPOSED SETTLEMENT

You are not required to attend the final fairness hearing or file an objection, although you may do either or both. The final fairness hearing on the fairness and adequacy of the proposed Settlement, the plan of distribution, costs of administration, the enhancement award to Plaintiff, and Class Counsel's request for attorneys' fees and costs will be held on _____ a.m., in Department 2 of the Tulare County Superior Court, County Civic Center, located at 221 South Mooney Blvd., Visalia, California 93291. The Final Fairness Hearing may be continued to another date without further notice. If you plan to attend the Final Fairness Hearing, you may contact Class Counsel to confirm the date and time.

Any Class Member who does not object in the manner provided above shall be deemed to have approved the Settlement and to have waived any objections, and shall be forever foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the plan of distribution, the payment of attorneys' fees and costs, the administration process, the enhancement award to Plaintiff, or any other aspect of the Settlement. If the Settlement is not approved, the Action will continue to be litigated for purposes of class certification, trial, or other judicial resolution.

F. ADDITIONAL INFORMATION

This Class Notice only summarizes the Action, the Settlement, and related matters. You may inspect the Court files at the Tulare County Superior Court, County Civic Center, located at 221 South Mooney Blvd., Visalia, California 93291, from 8:30 a.m. to 3:00 p.m., Monday through Friday, except Court holidays. The Department is closed for lunch between 12:00 p.m. and 1:30 p.m. There may be restrictions on inspecting the files in person due to the COVID-19 pandemic, so you should contact the Court in advance. Alternatively, you can view the case records online at the court's website: <http://www.tularesuperiorcourt.ca.gov/index.php?section=online-services>. Click on the Case Index Search bar, then click on Search Cases. For the Action, enter the Case Number VCU282778 into the "Case Access Search" search bar, and click "Search" to view the case record.

Any questions regarding this Class Notice or the Action may be directed to the Settlement Administrator at ILYM Group, Inc., 14771 Plaza Dr., Suite 1, Tustin, CA 92780; and 888.250.6810.

Alternatively, you may contact Class Counsel at the address and telephone number set forth above or your own attorney, at your own expense, to advise you. If your address changes, or is different from the address on the envelope enclosing this Notice, please promptly notify the Settlement Administrator.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.