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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

29 ANA SANTANA, individually and on behalf of
30 all similarly situated current and former and/or
31 aggrieved employees of DEFENDANTS in the
32 State of California,

33 Plaintiffs,

34 v.

35 HARBOR FOODS, INC., HARBOR FOODS #2,
36 INC., HARBOR FOODS #3, INC, HARBOR
37 FOODS #4, INC. and DOES 1 THROUGH 50,
38 Inclusive,

39 Defendants.

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Case No.: 37-2019-00059883-CU-OE-CTL

[IMAGED FILE]

**JOINT STIPULATION FOR CLASS ACTION
AND REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE**

Complaint Filed: July 30, 2020

INTRODUCTION AND RECITALS

1. This Stipulation for Class and Representative Action Settlement (“Stipulation” or “Agreement”) is made by and between Ana Santana and Maria Gomez (“Plaintiffs”), on behalf of themselves and all members of the Settlement Class and PAGA Employees, as defined below, on the one hand, and Defendants Harbor Foods, Inc., Harbor Foods #2, Inc., Harbor Foods #3, Inc., and Harbor Foods #4, Inc. (“Defendants” or “Harbor Foods”), on the other hand (collectively, the “Parties”) in the

actions entitled *Ana Santana. v. Harbor Foods, Inc., et al.* (San Diego County Superior Court Case No. 37-2020-00026743-CU-OE-CTL and *Maria Gomez v. Harbor Foods #3, Inc.* (San Diego County Superior Court Case No. 37-2020-00020125-CU-OE-CTL (together, the “Litigation”).

2. Plaintiff Ana Santana filed a class and PAGA action in San Diego County Superior Court on July 30, 2020 against Defendants Harbor Foods, Inc., Harbor Foods #2, Inc., Harbor Foods #3, Inc., and Harbor Foods #4, Inc. The operative complaint alleges the following causes of action on behalf of Plaintiff Santana, the members of the putative class, and allegedly aggrieved employees: (1) Failure to Provide Meal Periods; (2) Failure to Provide Rest Periods; (3) Failure to Pay Minimum & Regular Wages; (4) Failure to Pay Overtime Wages; (5) Failure to Reimburse All Necessary Business Expenses; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Failure to Timely Pay All Wages Due Upon Separation of Employment; (8) Violation of Business & Professions Code section 17200; and (9) Violation of Cal. Labor Code §§ 2698, *et seq.* (PAGA).

3. Plaintiff Maria Gomez filed a PAGA action in San Diego County Superior Court on June 12, 2020 against Harbor Foods #3, Inc. The operative complaint alleges a PAGA cause of action on behalf of Plaintiff Gomez and allegedly aggrieved employees for: (1) Failure to Provide Meal Periods; (2) Failure to Provide Rest Periods; (3) Failure to Pay Minimum & Regular Wages; (4) Failure to Pay Overtime Wages; (5) Failure to Provide Adequate Seating; (6) Failure to Provide Accurate Itemized Wage Statements; and (7) Failure to Timely Pay All Wages Due Upon Separation of Employment.

4. Defendants deny and continue to deny each of the claims and contentions alleged by Plaintiffs in the Litigation (as defined in Paragraphs 31 and 32 herein).

5. For settlement purposes only, the Parties agree to certify a settlement class (“Settlement Class Members”, “Class Members”, or “Class”) as defined in Paragraph 14(C) herein. By this Stipulation, the Parties expressly state their desire to settle the claims and allegations raised by Plaintiffs on behalf of all Class Members and PAGA Employees in the Litigation. The effective date of the settlement is the “Settlement Effective Date” as that term is defined in this Stipulation. If for any reason the settlement is not approved, this Stipulation shall become null and void and will be of no force or

1 effect and cannot be used for any purposes whatsoever, including in any litigation by any person or any
2 party.

3 6. Plaintiffs contend that Defendants violated California wage and hour laws, as described
4 in Plaintiffs' operative Complaints, and that this case is appropriate for class certification. Defendants
5 expressly deny any liability of any kind associated with the claims alleged in the Litigation, and further
6 deny that this Litigation is appropriate for class treatment for any purpose other than settling this
7 Litigation. Defendants contend, among other things, that they complied at all times all legal authority,
8 including but not limited to the California Labor Code, applicable California Wage Orders and the
9 California Business and Professions Code.

10 7. The Parties engaged in significant informal discovery in this action. Defendants
11 produced thousands of pages of responsive documents, and related data, including a sample of the time
12 and pay records for Class Members and PAGA Employees, the relevant employee handbooks, job
13 descriptions, and policies relating to meal periods and rest breaks. Defendants also provided all of
14 Plaintiffs' time and pay records, and personnel files. In addition, Plaintiffs obtained a representative
15 sample of the time and payroll records as well as a sample of the names and contact information for all
16 Class Members and PAGA Employees, and conducted detailed interviews with many of these
17 individuals.

18 8. The Parties have performed a thorough study of the facts and the law relating to the
19 claims alleged in the Litigation and based on that investigation and discovery, and taking into account
20 the heavily contested issues, the expense and time necessary to pursue prosecution and defense of the
21 Litigation through dismissal or trial, the risks and costs of further prosecution of the Litigation, the
22 uncertainty of complex litigation, the fairness and reasonableness of the settlement agreed to by the
23 Parties, and the best interest of the Class Members to whom substantial benefits will accrue, the Parties
24 have agreed to the settlement described in this Stipulation.

25 9. The Parties engaged in arms-length negotiations, and participated in a full-day mediation
26 on March 24, 2022, with Tripper Ortman, Esq. (the "Mediation"). With the help of Mr. Ortman through
27

subsequent negotiations after the mediation, over multiple calls and an extended period of negotiations, the Parties were able to reach a Settlement.

10. Nothing contained in this Stipulation, including its existence, shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants. Nothing in this Stipulation shall constitute an admission by Defendants that the Litigation was properly brought as a class or representative action, other than for settlement purposes only. Settlement of the Litigation, the negotiation and execution of this Stipulation, and all acts performed or documents executed pursuant to or in furtherance of this Agreement or the settlement: (i) are not, shall not be deemed to be, and may not be used, as an admission or evidence of any wrongdoing or liability on the part of Defendants or of the truth of any factual allegations in the Litigation; (ii) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Defendants in any civil or administrative proceeding in any court, administrative agency or other tribunal; and (iii) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for class certification or administration other than for purposes of administering this Stipulation.

11. Based on the available record, and their own independent investigation and evaluations, Class Counsel are of the opinion that the settlement for the consideration and on the terms set forth in this Stipulation is fair, reasonable and adequate and is in the best interest of the Plaintiffs, Settlement Class Members, and the PAGA Employees in the light of all known facts, circumstances and risks inherent in litigation, including potential appellate issues.

12. The purpose of this Stipulation is to settle and compromise all of the claims alleged by Plaintiffs, Settlement Class Members, and PAGA Employees against the Defendants and the Released Parties (as defined below) and as described in this Stipulation, including the wage and hour claims which were pled, or which could have been pled, based on the factual allegations asserted in the Litigation for the time period from April 6, 2016 to December 31, 2022 (the "Class Period").

13. It is agreed by and among Plaintiffs, in both their individual and representative capacities, and the Defendants, that this Litigation and the damages, injunctions, remedies, penalties and interest

1 potentially arising out of the Litigation be settled and compromised as between Plaintiffs, the Settlement
2 Class Members, PAGA Employees, and the Defendants, subject to the terms and conditions set forth in
3 this Stipulation and the preliminary and final approval of the Court, with judgment entered in
4 accordance with such order of final approval.

5 **DEFINITIONS**

6 14. In addition to the terms previously defined above, the terms below have the following
7 meanings, with the understanding that the definitions will have no meaning or effect if the settlement is
8 not approved:

9 A. **Action.** The term “Action” means and refers to the Class and PAGA representative cases
10 entitled *Ana Santana. v. Harbor Foods, Inc., et al.* (San Diego County Superior Court Case No. 37-
11 2020-00026743-CU-OE-CTL and *Maria Gomez v. Harbor Foods #3, Inc.* (San Diego County Superior
12 Court Case No. 37-2020-00020125-CU-OE-CTL.

13 B. **Agreement.** The terms “Agreement” or “Settlement Agreement” are used synonymously
14 herein to mean this Stipulation.

15 C. **Class, Class Members, and Settlement Class Members.** For settlement purposes only,
16 the Parties agree pursuant to California Code of Civil Procedure section 382 to the certification of a
17 class (“Class”, “Class Members”, or “Settlement Class Members”) defined as all current and former
18 non-exempt employees who worked for Defendants in California during the Class Period and have not
19 already released their claims with Defendants through a Settlement Agreement (or if any such person is
20 incompetent, deceased, or unavailable due to military service, the person’s legal representative or
21 successor in interest evidenced by reasonable verification). The term “Settlement Class Members” shall
22 not include any person who submits a timely and valid request for exclusion. The total class size is
23 estimated to be approximately 1,520 employees.

24 D. **Class Counsel.** The term “Class Counsel” means, the law firms Graham Hollis, APC,
25 and Gaines & Gaines, APLC. The term “Class Counsel” shall be used synonymously with the term
26 “Plaintiffs’ Counsel.”

1 E. **Class Period.** The term “Class Period” as used herein means the period from April 6,
2 2016 to December 31, 2022.

3 F. **Compensable Workweek.** The term “Compensable Workweek” shall mean a workweek
4 during which a Class Member received pay for work performed during such week while employed by
5 one or more Defendants during the Class Period or the PAGA Period. A Compensable Workweek
6 includes any week in which a Class Member actively worked at least one day of the week. A
7 Compensable Workweek excludes every full week during which the Class Member was on vacation or
8 on an unpaid leave of absence, even if the Class Member was receiving workers’ compensation,
9 disability insurance, Social Security, or Paid Family Leave benefits during the unpaid leave. Workweeks
10 of Class Members that opt out of the Settlement will not be included in the total number of workweeks
11 for purposes of calculating and distributing the settlement payments to the Class Members. The total
12 compensable workweeks are estimated to be approximately 97,293 for the Class Period.

13 G. **Defendants.** The term “Defendants” means Harbor Foods, Inc., Harbor Foods #2, Inc.,
14 Harbor Foods #3, Inc., and Harbor Foods #4, Inc.

15 H. **Employee Taxes and Employer Taxes.** “Employee Taxes” are federal, state and local
16 income taxes, the employee’s share of contributions under the Federal Insurance Contribution Act
17 (“FICA”), including Social Security and Medicare contributions, and any other federal, state and local
18 taxes (including State Disability Insurance and Paid Family Leave contributions) required by law to be
19 withheld from the gross amount paid on an employee’s paycheck, which will be withheld from the wage
20 portions of the Net Settlement Payments made to the Class Members. “Employer Taxes” are taxes and
21 contributions imposed by law to be paid by the employer in addition to the gross wage amount paid on
22 an employee’s paycheck, including FICA, the Federal Unemployment Tax Act (“FUTA”), and any
23 similar state and local taxes and contributions required of employers (such as for unemployment
24 insurance), which will be paid by Defendants separate and apart from the Settlement Amount on the
25 wage portions of the Net Settlement Payments made to the Class Members.

I. **Enhancement Award.** The term “Enhancement Award” means the awards approved by the Court to be paid to the Plaintiffs as Class Representatives in exchange for their general release, and in recognition of their efforts and work in prosecuting the Action on behalf of all Class Members.

J. **Excluded Class Member.** The term “Excluded Class Member” means a Class Member who has timely submitted a written request to be excluded from the Settlement. To be valid, the Request for Exclusion must: (a) state the full name, address, telephone number and last four digits of the Social Security Number of the Class Member requesting exclusion; (b) clearly state that the Class Member wishes to opt-out of the Class and be excluded from the Settlement; (c) be signed by the Excluded Class Member; and (d) be properly and timely faxed or mailed to the Settlement Administrator prior to the Response Deadline (the “Request for Exclusion”). Except if the Class Member is a PAGA Employee, Excluded Class Members will not be included in the Settlement and will have no right to receive any money under the Settlement or to object to the Settlement.

K. **Final Approval.** Final Approval means the Court's order granting final approval of the Settlement based on the terms stated herein.

L. **Gross Settlement Amount or Settlement Amount.** The terms “Gross Settlement Amount” or “Settlement Amount” as used herein means the maximum amount of money that Defendants will be obligated to pay under this Settlement, on a non-reversionary basis, which shall be the maximum sum of Five Hundred Thousand Dollars (\$500,000) (unless increased pursuant to the Escalator Clause), and which includes all payments to Settlement Class Members, PAGA Employees, Class Counsel’s attorneys’ fees and litigation costs, third-party administration costs, payment to the Labor and Workforce Development Agency (“LWDA”), and the enhancement award to Plaintiffs. Defendants shall pay the Gross Settlement Amount, plus the additional amount required to cover the Employer Taxes, within ten (10) days of the Effective Date.

M. **“Individual PAGA Payment”** means each PAGA Employees’ pro rata share of the PAGA Award that a PAGA Group Member is eligible to receive and as calculated in accordance with the Individual PAGA Payment calculations described below.

N. **“Individual Settlement Payment”** means each Class Member’s (who does not exclude themselves from the Settlement) pro rata share of the Net Settlement Amount that they may be eligible to receive as calculated in accordance with the Individual Settlement Payment calculations described below.

O. **Net Settlement Amount.** The term “Net Settlement Amount” as used herein means the amount of funds available for distribution to the Settlement Class after deducting from the Gross Settlement Amount the following amounts: (i) the attorneys’ fees awarded to Class Counsel; (ii) the litigation costs awarded to Class Counsel, (iii) third-party administration costs, (iv) the LWDA’s portion of the PAGA Award, (v) the Aggrieved Employees’ portion of the PAGA Award, and (vi) the enhancement awards to Plaintiffs. From the Net Settlement Amount, as described herein, Net Settlement Payments (as that term is defined herein) will be distributed by the Settlement Administrator to Class Members as more fully described below.

The below chart provides an estimated calculation of the Net Settlement Amount to the Class Members:

<u>Gross Settlement Amount:</u>	\$500,000.00
Attorneys’ Fees	- \$ 175,000.00
Litigation Costs	- \$ 28,000.00
Enhancement Awards	- \$ 17,500.00
Third Party Administration Costs	- \$ 20,000.00
Payment to LWDA for PAGA	- \$ 15,000.00
Payment to PAGA Employees	- \$ 5,000.00
<u>Net Settlement Amount:</u>	\$ 239,500.00

V. **PAGA Period.** The PAGA Period means the time from April 6, 2019, through December 31, 2022.

BB. **Released Parties.** “Released Parties” means Defendants and their past, present and/or future, direct and/or indirect, owners, principals, officers, directors, members, volunteers, managers,

employees, agents, independent contractors, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, franchisors, divisions, predecessors, successors, assigns, joint venturers, and other related persons and entities.

CC. **Response Deadline.** “Response Deadline” means the date by which each Class Member must fax or mail to the Settlement Administrator a valid Request for Exclusion, or submit any disputes regarding the dates of service and/or the number of Compensable Workweeks during the Class Period to the Settlement Administrator, or submit any Objection to the Court. The Response Deadline will be forty-five (45) calendar days from the initial mailing of the Notice to the Class, except that the Response Deadline will be extended by ten (10) calendar days for any Class Member who is re-mailed the Notice by the Settlement Administrator, in which case the Response Deadline will be adjusted on the Notice to that Class Member.

DD. **“Request for Exclusion”** means a timely and valid letter submitted by a Class Member indicating a request to be excluded from the Class Settlement. The Request for Exclusion must: (a) contain the case name and number of the Action; (b) contain the full name, signature, and the last four digits of the Social Security Number of the Class Member requesting exclusion; (c) clearly state that the Class Member does not wish to be included in the Class Settlement; and (e) be submitted by mail or e-mail to the Settlement Administrator at the specified address or e-mail address, postmarked or e-mailed on or before the Response Deadline.

EE. **Settlement.** The term “Settlement” means the agreement by the Parties to resolve the Litigation pursuant to the terms and procedures set forth in this Agreement.

FF. **Settlement Administrator.** The terms “Settlement Administrator” and “Administrator” means ILYM Group, Inc., which will be responsible for the administration of Settlement Notice and the Settlement Payment, as defined below, and all related matters, including the following duties: (i) issuing W-2 Forms for amounts deemed “wages”, (ii) providing IRS 1099 Forms for the portions allocated to penalties and interest, (iii) administering to PAGA claimants IRS 1099 Forms, and (iv) performing such other duties as are described in this Stipulation and/or as are customarily performed by settlement administrators.

GG. **Settlement Administration Costs.** All administrative costs of settlement, including cost of notice to the Settlement Class, claims administration (including preparation of required tax reporting forms and withholding of required taxes), and any fees and costs included or charged by the Settlement Administrator in connection with the execution of its duties under this Stipulation, shall not exceed a total amount of \$20,000.00 and shall be paid exclusively out of the Gross Settlement Amount.

HH. **Settlement Effective Date or Effective Date.** The settlement embodied in this Stipulation shall become effective after all of the following events have occurred: (1) this Stipulation has been executed by all Parties and their counsel; (2) the Court has given preliminary approval to the Settlement; (3) the notice packet has been sent to Class Members, providing them with an opportunity to verify their estimated share of the Net Settlement Payments, Opt-Out of the Settlement or Object to the terms of the Settlement; (4) the Court has held a final fairness hearing certifying the class, approving the Settlement; and (5) if no Objection(s) are filed on or before the Response Deadline, the date of entry of final approval, but if any Objection(s) are filed on or before the Response Deadline which are not subsequently withdrawn, five (5) calendar days following the date of expiration of the period for filing any appeal, or if an appeal is filed, then when the Settlement is subsequently approved following the appeal and there is no possibility of any subsequent appeal or other judicial review (the "Settlement Effective Date" or "Effective Date"). In the event that the Court does not approve the Settlement, or if the final approval order is reversed on appeal, then there shall be no Settlement Effective Date and this Settlement Agreement shall become null and void.

JURISDICTION

15. The Court refers to and means the Superior Court of the State of California, County of San Diego (the "Court"), and includes any Judge or Department assigned to approve the Settlement pursuant to this Stipulation. The Court has jurisdiction over the Parties and the subject matter of this Litigation. The Litigation includes claims that, while Defendants deny them in their entirety, would, if proven, authorize the Court to grant relief pursuant to the applicable statutes. After the Court grants final approval of the Settlement ("Final Approval"), the Court shall retain jurisdiction of this Action pursuant to California Code of Civil Procedure section 664.6 and as otherwise allowed by law solely for the

1 purpose of interpreting, implementing, and enforcing this Settlement consistent with the terms set forth
2 herein.

3 **STIPULATION OF CLASS CERTIFICATION**

4 16. The Parties stipulate to the certification of the Settlement Class solely for purposes of the
5 Settlement only. This Stipulation is contingent upon Preliminary Approval and Final Approval and
6 certification of the Settlement Class only for purposes of the Settlement. Should the Settlement not
7 become final, for whatever reason, the fact that the Parties were willing to stipulate provisionally to class
8 certification as part of the Settlement shall have no bearing on, and shall not be admissible for any
9 purpose, including but not limited to, in connection with, the issue of whether a class should be certified
10 in a non-settlement context in the Litigation. Defendants expressly reserve their right to oppose class
11 certification should this Settlement not become final.

12 **PRELIMINARY APPROVAL**

13 17. Plaintiffs will bring a motion before the Court for an order preliminarily approving the
14 Settlement, including the Notice as explained herein, and including a request for the Court to order the
15 conditional certification of the Settlement Class for settlement purposes only, which will be supported
16 and not opposed by Defendants. The date that the Court grants Preliminary Approval of the Settlement
17 will be the "Preliminary Approval Date." Class Counsel will prepare the Motion for Preliminary
18 Approval, and provide such Motion for review and comment by counsel for Defendants no later than
19 five (5) calendar days before it is filed. The Motion for Preliminary Approval will also include a request
20 for the Court to preliminarily appoint Plaintiffs' Counsel as Class Counsel, to preliminarily approve
21 Plaintiffs as the Class Representatives, to appoint ILYM Group, Inc. as the Settlement Administrator, to
22 set a date for the Final Approval Hearing, and to seek such other orders from the Court as are necessary
23 to obtain Preliminary Approval.

24 **STATEMENT OF NO ADMISSION**

25 18. Defendants deny any and all liability to Plaintiffs and the Settlement Class upon any
26 claim or cause of action. This Agreement does not constitute, and is not intended to constitute an
27 admission by Defendants as to the merits, validity, or accuracy of any of the allegations made against it

1 in the Litigation or of any liability, culpability or wrongdoing by Defendants or any of its agents or
2 employees. Nothing in this Settlement shall be construed to be an admission by Defendants of any
3 liability or wrongdoing as to each Plaintiff, the Settlement Class or any other person, and Defendants
4 have denied and continue to deny each and all of the allegations, claims, and contentions alleged by
5 Plaintiffs in the Action. Defendants expressly deny and continue to specifically disclaim any such
6 liability or wrongdoing, including specifically that they have violated any federal, state, or local law.
7 Defendants contend that they have complied in good faith with all legal obligations, including all
8 California wage and hour law and dealt fairly and legally with Plaintiffs, the Settlement Class, And
9 PAGA Employees. Nonetheless, Defendants have concluded that further proceedings in the Action
10 would be protracted and expensive, and that the Action, including any and all claims or causes of action
11 which could have been brought, be fully and finally settled in the manner and upon the terms and
12 conditions set forth in this Agreement in order to dispose of burdensome and protracted litigation. The
13 Parties have entered into this Settlement with the intention to avoid further disputes and litigation with
14 the attendant inconvenience, expenses and risks.

15 19. Nothing in this Agreement, nor any action taken in implementation thereof, nor any
16 statements, discussions, or communications, nor any materials prepared, exchanged, issued or used
17 during the course of the negotiations leading to this Agreement or the Settlement, is intended by the
18 Parties to constitute, nor will any of the forgoing constitute, be introduced, be used or be admissible in
19 any way in this Litigation or any other judicial, arbitral, administrative, investigative or other forum or
20 proceeding as evidence of any violation of any state, local law, statute, ordinance, regulation, rule or any
21 obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this
22 Agreement, directly or indirectly, in this Litigation or any other judicial, arbitral, administrative,
23 investigative or other forum or proceeding, or to any agency, as purported evidence of any violation of
24 any state, local law, statute, ordinance, regulation, rule or any obligation or duty at law or in equity, or
25 for any other purpose, other than to enforce the terms of the Agreement, including but not limited to use
26 as an affirmative defense or bar, in whole or in part. Notwithstanding the foregoing, this Agreement
27 may be used in any proceeding before the Court that has as its purpose the interpretation,

1 implementation, or enforcement of this Agreement or any orders or judgments of the Court entered in
2 connection with the Settlement.

3 20. None of the documents produced or created by Plaintiffs, the Settlement Class Members,
4 or PAGA Employees in connection with the claims procedures or claims resolution procedures
5 (including the Notice) constitutes, and is not intended to constitute, an admission by Defendants of any
6 violation of any federal, state, local law, statute, ordinance, regulation, rule or any obligation or duty at
7 law or in equity.

8 21. The Parties agree that class certification pursuant to California Code of Civil Procedure
9 section 382 under the terms of this Agreement is for settlement purposes only. Nothing in this
10 Agreement will be construed as an admission or acknowledgement of any kind that any class should be
11 certified or given collective treatment in the Litigation or in any other action or proceeding. Further, this
12 Agreement will not be admissible in any court or other tribunal regarding the propriety of class
13 certification or collective treatment, aside from use as an affirmative defense of bar to such claims or
14 related claims, in whole or in part. In the event that this Agreement is not approved by the Court or is
15 terminated, or otherwise fails to be enforceable, Plaintiffs will not be deemed to have waived, limited or
16 affected in any way any claims, rights or remedies in the Litigation, and Defendants will not be deemed
17 to have waived, limited, or affected in any way any of its objections or defenses in the Litigation.

18 **TERMS OF SETTLEMENT**

19 22. **Class Certification.** For settlement purposes only, the Parties stipulate that a class may
20 be certified (the "Settlement Class Members"), as described in Paragraph 5 of this Agreement. The
21 Parties agree that certification for settlement purposes under the lenient standard applied to settlements
22 is in no way an admission that class certification is proper under the more stringent standard applied for
23 litigation purposes, and that evidence of this limited stipulation for settlement purposes only will not be
24 deemed admissible in this or any other proceeding. It is Defendants' position that if the Litigation were
25 to be litigated, class certification would be inappropriate because, among other things, individual issues
26 predominate. Furthermore, Defendants deny, and continue to deny, any liability or wrongdoing, and, by
27 entering into this Settlement, does not admit to any violation of law.

23. **Settlement Amount.** Defendants' maximum non-reversionary payment of the Gross Settlement Amount under the Settlement is \$500,000, from which payments will be as follows subject to the Court's approval: (1) up to thirty five percent (i.e. \$175,000.00) in attorneys' fees to Class Counsel; (2) up to \$28,000 in Class Counsel's reasonable litigation costs; (3) up to \$7,500.00 for Ana Santana and up to \$10,000.00 for Maria Gomez as the Enhancement Award payment to each Plaintiff; (4) up to \$20,000.00 as third-party administration costs; (5) a payment to the LWDA in the amount of \$15,000.000, (6) Payment of \$5,000.00 to the PAGA Employees; and (6) the Net Settlement Payments to Settlement Class Members (other than Excluded Class Members). Defendants shall be jointly and severally liable to fund the Gross Settlement Amount no later than ten (10) calendar days after the Effective Date. In addition to the Gross Settlement Amount, Defendants shall pay the employers' portion of any payroll taxes on the portion of the settlement allocated as unpaid wages.

24. **Payment of Net Settlement Payments to Class Members.** After the Net Settlement Amount has been determined, Net Settlement Payments shall be made from the Net Settlement Amount to Settlement Class Members (other than Excluded Class Members). The value of each Class Member's claim shall be distributed on a pro rata basis based on his or her number of Compensable Workweeks as set forth below.

25. **Calculation of Individual PAGA Payments and Individual Settlement Payments to Class Members.** Individual PAGA Payments and Individual Settlement Payments will be calculated as follows:

- a. *Individual PAGA Payments.* The Settlement Administrator will calculate the total number of Compensable Workweeks for all PAGA Employees worked during the PAGA Period. The Individual PAGA Payment that each PAGA Employees will be eligible to receive will be calculated by dividing each PAGA Employees' individual number of Compensable Workweeks worked during the PAGA Period by the total number of Compensable Workweeks of all PAGA Employees worked during the PAGA Period, and multiplying the resulting fraction by the portion of the PAGA Award to PAGA Employees. The Settlement Administrator will determine the total

number of Compensable Workweeks worked during the PAGA Period for each PAGA Employee.

b. *Individual Settlement Payments.* The Settlement Administrator will calculate the total number of Compensable Workweeks for all Participating Class Members worked during the Class Period. The Individual Settlement Payment that each Participating Class Member will be eligible to receive will be calculated by dividing each Participating Class Member's individual number of Workweeks by the total number of Workweeks of all Participating Class Members worked during the Class Period, and multiplying the resulting fraction by the Net Settlement Amount. The Settlement Administrator will determine the total number of Compensable Workweeks worked during the Class Period for each Participating Class Member

26. **Settlement Payment Allocation.** The amount paid to each Settlement Class Member who has not opted-out of the Settlement shall be allocated as follows: ten percent (10%) shall be attributed to wages, and ninety percent (90%) shall be attributed to non-wage statutory damages and interest. The ten percent (10%) of the Net Settlement Payments to the Class Members that will be treated as payments in settlement of wage claims will be subject to W-2 reporting. The recipients of payments pursuant to this Agreement shall be exclusively responsible for all applicable tax obligations other than the employers' share of payroll taxes allocated to unpaid wages. Applicable tax deductions and payroll withholdings for Employee Taxes will be taken from this portion of the Net Settlement Payments. Defendants will be responsible to satisfy the Employer Tax obligations relating to the wage portion of the Net Settlement Payments prior to distribution of the settlement payments to the Settlement Class Members. The Settlement Administrator will issue a Form W-2 to each Settlement Class Member who has not opted-out of the Settlement reflecting the wage portion of each individual Net Settlement Payment. The Parties also agree that one hundred percent (100%) of the settlement payments to the PAGA Employees will be treated as payments in settlement of claims for penalties and interest sought in the Action. The settlement payments made to the PAGA Employee will be made subject to an IRS form 1099 payment, with no taxes or other withholdings taken

27. **No Credit Towards Benefit Plans.** Neither the terms of this Settlement nor any of the amounts paid to Plaintiffs or any Class Member shall have any effect on the eligibility or calculation of any employee benefits. The Parties agree that any Individual Settlement Payment amounts paid to Class Members under the terms of this Settlement do not represent any modification of any Class Member's previously credited hours of service or other eligibility criteria, and will not be utilized to calculate any additional benefits, vesting or credit under any employee pension benefit plan, employee welfare benefit plan or other program or policy sponsored by Defendants or any of their affiliates, including but not limited to any profit-sharing plans, pension plans, 401(k) plans, bonus plans, stock purchase plans, vacation plans, PTO plans, paid sick leave plans, or any other company sponsored plans or employee benefits. Further, the amounts paid to Class Members shall not be considered wages, compensation or annual earnings for benefits in any year for purposes of determining any rights, eligibility, hours of service, benefit accruals, calculations, contributions or amounts to which any Class Member may be entitled with respect to an such employee pension benefit plan, employee welfare benefit plan or other program or policy sponsored by Defendants or any of their affiliates

28. **Settlement Amount Funding and Settlement Payment Due Date.** Defendants will jointly and severally pay the Gross Settlement Amount into a Qualified Settlement Fund (as defined below) established by the Settlement Administrator no later than ten (10) calendar days after the Effective Date. Disbursement shall occur within five (5) days of receipt of funds.

WAIVER, RELEASE AND DISMISSAL

29. **Plaintiffs' Civil Code section 1542 Release.** In light of the Class Representative Enhancement Awards and other consideration given, subject to the occurrence of the Effective Date and Defendants' payment of all sums due hereunder, Plaintiffs make the additional following general release ("General Release") of all claims, known or unknown, that they have against the Released Parties. Plaintiffs, both in their individual and representative capacities, on their behalf and on behalf of their respective heirs, successors, beneficiaries, assigns, agents, attorneys, representatives and other related persons and entities that may claim by, through or under them, in consideration for the amounts paid to Plaintiffs under this Stipulation, including any enhancement awards that may be paid to Plaintiffs, upon

the Court's final approval of the Settlement, hereby fully and finally waive, release, acquit and forever discharge the Released Parties from all known and unknown claims he/she may have, whether brought or could have been brought, against Defendants of every nature or description whatsoever arising out of the Litigation, Plaintiffs' employment with Defendants, Plaintiffs' separation from employment, and their other dealings with Defendants. This General Release includes and any and all known or unknown contract, tort, statutory, common law, constitutional, public policy, and other claims of any type whatsoever, including, without limitation: (i) any and all claims actually alleged or which could have been alleged in connection with, or arising directly or indirectly out of or in any way connected with each Plaintiff's employment with any Released Party; (ii) any and all claims relating to or arising from each Plaintiff's relationship with any Released Party and the termination of that relationship; (iii) any and all claims for wrongful discharge of employment; breach of contract, both express and implied; breach of a covenant of good faith and fair dealing, both express and implied; negligent or intentional interference with contract or prospective economic advantage; and defamation; (iv) any and all claims against the Released Parties for any other tort, contract, common law, constitutional or other statutory claims, including, but not limited to, alleged violations of the California Labor Code or the federal Fair Labor Standards Act (except as prohibited by applicable law), the California Constitution, the California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the California Family Rights Act, the California Business and Professions Code, the Private Attorneys General Act, and any and all other federal, state and local laws, statutes, executive orders, regulations, and common law, along with all claims for attorneys' fees, costs and expenses (including any dispute over the non-withholding or other tax treatment of any of the proceeds received by Plaintiffs as a result of this Agreement). Plaintiffs also waive all rights under Section 1542 of the California Civil Code, which section reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

**MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.**

Plaintiffs acknowledge that they may 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 General Release, but upon the Effective Date, shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever settled and released any and all of the claims covered by the General Release, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or have existed, upon any theory of law or equity now existing, 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. The Parties understand and agree that this includes all actions, group actions (including any pending or future collective, class, private attorney general or representative actions for which the Plaintiffs may otherwise qualify as putative class members, aggrieved employees, or represented parties), complaints and grievances that could potentially be brought by them against the Released Parties.

30. Plaintiffs, in both their individual and representative capacity, agree and acknowledge that they are not required to settle all claims at this time, but voluntarily choose to do so by entering into this Stipulation.

31. **Limited Release by Class Members.** Subject to the occurrence of the Effective Date and Defendants' payment of all sums due hereunder, Plaintiffs and every member of the Settlement Class (except those who timely opt out) will fully and forever completely and irrevocably release and discharge the Released Parties from the Released Claims.

The Final Approval Order shall enter judgment and shall incorporate the terms of this Paragraph and the Release. The Parties acknowledge that this Settlement, including the releases provided in this Paragraph, reflects a compromise of disputed claims. The Parties further acknowledge that the Release does not release Defendants from their obligations as established by this Agreement.

32. **Release by PAGA Employees:** Subject to the occurrence of the Effective Date and Defendants' payment of all sums due hereunder, Plaintiffs and every PAGA Employee will fully and forever completely and irrevocably release and discharge the Released Parties from the PAGA Released Claims.

33. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Sup. Ct. (Angelo Dairy)* (2009) 46 Cal.4th 969 and *Cardenas v. McLane Foodservice, Inc.* (2011) 796 F.Supp.2d 1246, individuals otherwise meeting the definition of a Settlement Class Member who exclude themselves from the Class Settlement and are PAGA Employees shall nonetheless receive a payment for the amount of each such individual's estimated share of the PAGA Employees' portion of the PAGA Payment and shall be bound by the Release by PAGA Employees of all PAGA Released Claims.

SETTLEMENT ADMINISTRATOR

34. ILYM Group, Inc. will serve as the Settlement Administrator for this Settlement, subject to the Court's approval. All settlement administration costs, in an amount to be approved by the Court but not to exceed \$20,000.00, shall be paid out of the Gross Settlement Amount. The Settlement Administrator shall perform all of the duties as described in this Agreement, including those set forth in Paragraph 14.

35. Within ten (10) calendar days after the Court grants Preliminary Approval of the Settlement, Defendants will provide the Settlement Administrator, on a confidential basis and for use with regard to the settlement administration of the Litigation only, with the dates of employment for each Class Member and all other information necessary for the Settlement Administrator to calculate the number of Compensable Workweeks worked by each Class Member during the Class Period and PAGA Period. At the same time, Defendants will provide the Settlement Administrator with current contact information (i.e., last known addresses, telephone numbers and Social Security numbers) for all Class Members (the "Class List"). The Class List contains confidential, personal and/or private information of the Class Members and will be transmitted via password protected means. The Settlement Administrator shall keep the Class List strictly confidential and shall not disclose the information to any

1 other person or entity other than the Parties to this Agreement. Defendants further agree to consult with
2 the Settlement Administrator prior to the production of the Class List to ensure that the format will be
3 acceptable to the Settlement Administrator.

4 36. Among its other duties as described in this Settlement, the Settlement Administrator shall
5 publish and maintain a settlement website and provide counsel for the Parties with a weekly report
6 showing the number of Opt-Outs and Objections received.

7 37. As set forth below, the Settlement Administrator shall obtain the best possible address for
8 Class Members prior to the mailing. Incorrect address information for any of the Class Members shall,
9 in no way, affect the scope and extent of any releases provided herein.

10 38. Within ten (10) calendar days of receipt of the Class List, the Settlement Administrator
11 will mail the Notice to the Class Members as described below.

12 **NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

13 39. **Notice.** The Notice the Settlement Administrator shall send to each of the Class Members
14 will contain: (i) an estimated individual settlement payment, (ii) individual number of workweeks during
15 the Class Period, (iii) individual number of workweeks during the PAGA Period, (iv) how to opt-out of
16 the Settlement, and (v) how to object to the Settlement. Plaintiffs and Defendants, through their
17 respective attorneys, have jointly prepared a Notice, attached hereto as Exhibit 1 to this Agreement and
18 incorporated herein by reference, subject to Court approval, which in substance the Settlement
19 Administrator will provide to each of the members of the Settlement Class as follows.

20 40. The Settlement Administrator shall run all the addresses provided by Defendants through
21 the United States Postal Service National Change of Address ("NCOA") database (which provides
22 updated addresses for any individual who has moved in the previous four years who has notified the
23 U.S. Postal Service of a forwarding address) to obtain current address information. In addition, and prior
24 to mailing, the Settlement Administrator shall perform an Accurant (or substantially similar) in-depth
25 skip trace in order to obtain the best possible address for Class Members prior to the mailing.

26 41. The Settlement Administrator shall mail the Notice to the members of the Settlement
27 Class via first-class regular U.S. Mail using the most current mailing address information available,
28

1 within ten (10) calendar days after receiving the Class List from Defendants. The Notice shall provide
2 the members of the Settlement Class until the Response Deadline to take action to dispute their
3 Compensable Workweeks, exclude themselves from the Settlement Class, or object to the Settlement.

4 42. The Notice will include an estimated calculation of the Class Member's estimated
5 Compensable Workweeks and estimated share of the Net Settlement Amount.

6 43. If a Notice is returned from the initial notice mailing as undeliverable with a forwarding
7 address provided by the United States Postal Service on or by the Response Deadline, the Settlement
8 Administrator will promptly resend the Notice to that forwarding address along with a brief letter stating
9 that the recipient of the Notice has until the original deadline set forth on the Notice, or ten (10) calendar
10 days after the date of re-mailing of the Class Notice (whichever is later) to respond.

11 44. If a Notice is returned as undeliverable without a forwarding address from its first
12 mailing, the Settlement Administrator shall undertake reasonable efforts to locate a current address,
13 including performing an Experian (or substantially similar) in-depth skip trace or mass search on
14 LexisNexis databases based on set criteria. If the Settlement Administrator obtains a more current
15 address, the Settlement Administrator shall resend the Notice to that address along with a brief letter
16 stating that the recipient of the Notice has until the original deadline set forth on the Class Notice or ten
17 (10) calendar days after the date of re-mailing of the Notice (whichever is later) to respond.

18 45. If any Notice is returned from any mailing and/or re-mailed, the Settlement Administrator
19 will note for its own records and notify the Parties' Counsel of the date of such re-mailings as part of a
20 weekly status report provided to the Parties.

21 46. No later than fifteen (15) days prior to the Final Approval Hearing, the Settlement
22 Administrator shall provide counsel for Defendants and Class Counsel with a declaration attesting to the
23 completion of the Notice process, including the number of attempts to obtain valid mailing addresses for
24 and re-sending of any returned Notices, as well as the number of valid Opt-Outs, Objections and
25 deficiencies which the Settlement Administrator received.

26 47. **Objections.** A Class Member who wishes to object to the Settlement must notify the
27 Settlement Administrator of his or her objection, in writing, on or prior to the Response Deadline. The

Settlement Administrator shall promptly provide all objections as received to Class Counsel and Defendants' Counsel, as well as file all such objections with the Court. Excluded Class Members are not permitted to object to the Settlement. Any Objection to the Settlement must (i) clearly identify the case name and number (*Ana Santana, et al. v. Harbor Foods, Inc., et al.* (San Diego County Superior Court Case No. 37-2020-00026743-CU-OE-CTL); (ii) set forth in writing the legal and factual grounds for the objection; (iii) include the address and phone number of the Class Member or counsel for the Class Member; (iv) be signed by the Class Member; and (v) be submitted to the Settlement Administrator, along with all supporting papers. The Class Member may also appear personally or through an attorney, at his or her own expense, at the Final Approval hearing. However, it is not necessary for the Class Member or his or her attorney to appear at the Final Approval Hearing in order for the objection to be considered by the Court. No Class Member will be precluded from appearing at the Final Approval Hearing if he/she fails to submit an objection. Any attorney who represents a Class Member objecting to this Settlement must file a notice of appearance with the Court on or prior to the Response Deadline and serve Class Counsel and Defense Counsel. Plaintiffs and Defendants will be permitted to respond in writing to any such Objections no later than seven (7) calendar days before the Final Approval hearing.

48. If a Class Member objects to this Settlement, the Class Member will remain a member of the Settlement Class and if the Court approves the Settlement, the Class Member will be bound by the terms of the Settlement and Final Approval Order in the same way and to the same extent as a Settlement Class Member who does not object. The Court retains final authority with respect to the consideration and admissibility of any Objections. Provided that the Settlement Administrator mailed the Notice to a member of the Settlement Class, this deadline to file an Objection shall apply notwithstanding any assertion by any member of the Settlement Class of non-receipt of the Notice.

49. Class Members who fail to file and timely serve written Objections or appear at the Final Approval Hearing in accordance with the procedures set forth in this Agreement have waived all objections to the Settlement and are forever foreclosed from making any objection to the Settlement or any aspect of the Settlement, whether by appeal or otherwise, and are similarly barred from ever

asserting any of the Released Claims. Plaintiffs waive any right to object to the Settlement, and hereby endorse the Settlement as fair, reasonable and adequate and in the best interests of the Settlement Class. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage any Class Member to opt out, submit written objections to the Settlement, or file any appeal from the Final Approval Order.

50. **Workweek Disputes.** If any member of the Settlement Class or PAGA Employee fails to dispute the number of eligible Compensable Workweeks set forth in their Notice, such person need not take further action in order to participate in the Settlement. If any member of the Settlement Class or PAGA Employee disputes the number of eligible Compensable Workweeks set forth in the Notice, or asserts that they should have been included as a member of the Settlement Class, such person must follow the directions in the Notice (copy of which is attached hereto), including preparing a statement setting forth the number of eligible Compensable Workweeks that such person believes in good faith is correct and stating that the member of the Settlement Class authorizes the Settlement Administrator to review the Settlement Class member's personnel file to determine such information and attaching any relevant documentation in support thereof. The member of the Settlement Class or PAGA Employee must mail the signed and completed statement no later than sixty (60) calendar days after the date of the mailing of the Notice (or extension thereof pursuant to Paragraph 13.Y, or the number of eligible Compensable Workweeks set forth in the Notice will govern the Net Settlement Payments to the members of the Settlement Class).

51. Upon timely receipt of any such challenge, the Settlement Administrator, in consultation with Class Counsel and counsel for Defendants, will review the pertinent payroll records showing the dates the Settlement Class member or PAGA Employee was employed and the pertinent leave(s) taken, which records Defendants agree to make available to the Settlement Administrator. After consulting with Class Counsel and counsel for Defendants, the Settlement Administrator shall compute the number of eligible Compensable Workweeks to be used in computing the Settlement Class Member's or PAGA Employee's pro rata share of the Net Settlement Amount and/or PAGA Award. In the event there is a disparity between the dates a Settlement Class member claims he or she worked during the Settlement

1 Period and the dates indicated by Defendants' records, Defendants' records will control unless
2 inconsistent with paycheck stub(s) (or bona fide copies thereof) provided by the Settlement Class
3 member, in which case the paycheck stub(s) will control. The Settlement Administrator's decision as to
4 the total number of eligible Compensable Workweeks shall be final and non-appealable. The Settlement
5 Administrator shall send written notice of the decision on any such claim to the Settlement Class
6 member or PAGA Employee, to Class Counsel, and counsel for Defendants within ten (10) calendar
7 days of resolution of the dispute.

8 **52. Opportunity to be Excluded.** In order for any Settlement Class member to validly
9 exclude himself or herself from the Settlement Class and this Settlement (i.e., to validly "Opt-Out"), a
10 timely submitted written Request for Exclusion must: (i) clearly identify the case name and number
11 (*Ana Santana, et al. v. Harbor Foods, Inc., et al.* (San Diego County Superior Court Case No. 37-2020-
12 00026743-CU-OE-CTL)); (ii) set forth in writing "I wish to exclude myself from the settlement, I
13 understand I will not receive payment"; (iii) include the address and phone number of the Class Member
14 or counsel for the Class Member; (iv) be signed by the Class Member; and (v) be submitted to the
15 Settlement Administrator, postmarked on or before the Response Deadline. The Notice (a copy of which
16 is attached hereto as Exhibit "1") shall contain instructions on how to Opt-Out, including the
17 requirements to submit a valid Request for Exclusion as described in Paragraph 14(I) above. The date of
18 the initial mailing of the Notice, and the date the signed Request for Exclusion was timely postmarked,
19 shall be conclusively determined according to the records of the Settlement Administrator. Any
20 Settlement Class member who timely and validly requests exclusion from the Settlement Class and this
21 Settlement will not be entitled to any individual settlement payment, will not be bound by the terms and
22 conditions of this Settlement, and will not have any right to object, appeal, or comment thereon. Any
23 member of the Settlement Class who does not timely file and mail notice of his or her request to be
24 excluded from the Settlement Class will be deemed included in the Settlement Class in accordance with
25 this Settlement. Plaintiffs waive any right to be excluded from the Settlement Class. Within ten (10)
26 calendar days of the expiration of the Response Deadline the Settlement Administrator will inform
27 counsel for the Parties via email, of the number of valid Requests for Exclusions it received.

53. Neither Party, including their counsel, will encourage any Class Member to opt out of or object to this Settlement. If a Settlement Class Member contacts Class Counsel, Class Counsel may only discuss the terms of the Settlement and the Settlement Class Member's options, as stated herein, but may not make any recommendations to such Class Member to opt out.

54. Class Members who are PAGA Employees will not be able to exclude themselves from the PAGA Award and will fully release the PAGA Released Claims.

55. **Qualified Settlement Fund.** The Gross Settlement Amount and employer taxes paid by Defendants shall be deposited into an account established by the Settlement Administrator as a "Qualified Settlement Fund" within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, *et seq.*, (the "Settlement Fund") and shall be administered by the Settlement Administrator pursuant to the final terms of the Settlement as approved by the Court. The Administrator shall request and obtain from the IRS an appropriate Tax ID for the Settlement Fund. The Administrator shall serve as a Trustee of the Settlement Fund and shall act as a fiduciary with respect to the handling, management and distribution of the Settlement Fund, including the handling of all tax-related issues, reporting and payments. The Administrator shall act in a manner necessary to qualify and maintain the Settlement Fund as a Qualified Settlement Fund and the Parties shall cooperate to ensure such treatment and shall not take a position in any filing or before any tax authority inconsistent with such treatment.

56. Within five (5) calendar days after the Effective Date, the Settlement Administrator will provide the Parties with an accounting of all anticipated payments from the Settlement Fund Account as specified in this Settlement Agreement and approved by the Court, including: (a) Plaintiffs' Enhancement Awards; (b) the Class Counsel Fees Award; (c) the Class Counsel Costs Award; (d) Settlement Administration Costs; (e) the PAGA Award; and (f) Individual Settlement Payments and related taxes thereon.

57. Within 15 calendar days after the Settlement Effective Date, the Settlement Administrator shall cause the Individual Settlement Payments, Court approved Enhancement Awards to Plaintiffs, PAGA Award, Settlement Administration Costs, and Court approved attorneys' fees and costs to be paid

as provided in this Agreement as approved by the Court. If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. If any settlement check is uncashed after 180 days it will become void and the Settlement Administrator will place a stop-payment on the check. On the back of each check the Settlement Administrator will include a pre-printed notice informing the Class Member that he or she has 180 days to cash the check or it will become void. The Settlement Administrator will also recalculate and correct any Employee Taxes withheld or Employer Taxes paid to adjust for the uncashed check. The residue, if any, including (1) funds from checks which were unable to be delivered due to the Settlement Administrator's inability to obtain a valid mailing address as set forth in this provision, (2) funds from checks that remain uncashed after 180 days from the date of the check, and (3) any related tax refunds or returns, will be delivered to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et seq.*, for the benefit of those Settlement Class Members who did not cash their checks until such time that they claim their property. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Settlement Class Members, whether or not they all cash their Settlement Checks.

ATTORNEYS' FEES AND COSTS

58. Plaintiffs request, and Defendants shall not oppose, an application by Class Counsel to the Court seeking an award of attorneys' fees not to exceed thirty-five percent (35%) of the Gross Settlement Amount, to compensate Class Counsel for all past and future attorneys' fees necessary to prosecute, settle and administer the Litigation and this Settlement, including for the work performed and all work remaining to be performed in documenting the Settlement, securing the Court's approval of the Settlement, administering the Settlement, ensuring that the Settlement is fairly administered and implemented, and obtaining judgment, to be paid out of the Gross Settlement Amount and not from any additional payment by Defendants. Class Counsel's fees shall be split as follows, regardless of lodestar and how much the Court awards: 60% to GrahamHollis, APC and 26 2/3% to Gaines & Gaines, APLC,

1 with the remaining 13 1/3% to Davtyan Law Firm, Inc., with which Class Counsel has agreed to split
2 fees. Plaintiffs have acknowledged and consented to this fee split through a separate Joint Prosecution
3 Agreement and acknowledge and consent to this fee split by signing this Settlement Agreement.

4 59. Additionally, Plaintiffs request, and Defendants shall not oppose, an application by Class
5 Counsel to the Court seeking payment to Class Counsel of their reasonable litigation costs, in a total
6 amount not to exceed \$28,000.00, which represents all past and future attorneys' costs and expenses
7 necessary to prosecute, settle and administer the Litigation and implementing the terms of this
8 Settlement incurred by Class Counsel, to be paid out of the Gross Settlement Amount and not from any
9 additional payment by Defendants.

10 60. Any attorneys' fees or costs awarded to Class Counsel by the Court shall be deducted
11 from the Gross Settlement Amount for the purpose of determining the Net Settlement Amount. The
12 Parties further agree that this Settlement is not conditioned on the Court awarding the full amount of
13 attorneys' fees and costs requested by Class Counsel and if the Court should approve a lesser percentage
14 or amount of fees and/or costs than the amount that Class Counsel ultimately seeks, then the unapproved
15 portion or portions shall become part of the Net Settlement Amount and shall be distributed to Class
16 Members on a pro rata basis based on the total number of Compensable Workweeks. The Settlement
17 Administrator will issue an IRS Form 1099 to Class Counsel with respect to the fees and costs awarded
18 to Class Counsel.

19 **ENHANCEMENT AWARDS TO PLAINTIFFS**

20 61. Defendants shall not oppose an application by Plaintiffs to the Court, and Plaintiffs shall
21 not seek or receive an aggregate amount in excess of \$17,500.00 (\$7,500.00 for Ana Santana and
22 \$10,000.00 for Maria Gomez) to be paid out of the Gross Settlement Amount, as an enhancement for
23 their service as Class Representatives and for their participation in and assistance with the Litigation (the
24 "Enhancement Award"), subject to approval by the Court and conditioned on Plaintiffs' execution of the
25 General Release as set forth in Paragraph 29 above, by Plaintiffs signing this Stipulation, in addition to
26 any payment they may otherwise receive as a Class Member. Any enhancement awarded to Plaintiffs by
27 the Court shall be deducted from the Gross Settlement Amount for the purpose of determining the Net

1 Settlement Amount. Plaintiffs understand and agree that this Settlement is not conditioned on the Court
2 awarding the full amount of the Enhancement Award requested by Plaintiffs. The Settlement
3 Administrator will issue an IRS Form 1099 to Plaintiffs for their enhancement payment, and Plaintiffs
4 will be fully responsible for correctly characterizing this compensation for tax purposes and for paying
5 any taxes owing on said amount.

6 **PAGA CIVIL PENALTIES**

7 62. Defendants shall pay a total amount of Twenty Thousand Dollars and Zero Cents
8 (\$20,000.00) from the Gross Settlement Amount in settlement of all claims for civil penalties asserted
9 under the PAGA, as described in the PAGA Released Claims. Within fifteen (15) calendar days after
10 the Settlement Effective Date, the Settlement Administrator shall send an amount totaling 75% of the
11 PAGA Award (i.e., Fifteen Thousand Dollars and Zero Cents (\$15,000.00)) to the LWDA. The
12 remaining 25% of the PAGA Award, Five Thousand Dollars and Zero Cents (\$5,000.00), shall be
13 distributed to the PAGA Employees who worked for Defendants during the PAGA Period on a pro-rata
14 basis, based on their respective Compensable Workweeks during the PAGA Period. The Settlement
15 Administrator shall responsible for calculating these payments using the same method outlined in
16 Paragraph 25.

17 **TAX RESPONSIBILITY**

18 63. Neither Defendants nor Class Counsel are making any representations as to the tax
19 treatment or legal effect of the payments called for under this Settlement, and Plaintiffs and the Class
20 Members are not relying on any statement or representation by Class Counsel or Defendants in this
21 regard. Additionally, notwithstanding any prior agreement, practice or policy of Defendants or any
22 Released Party to the contrary, Plaintiffs and each Class Member shall be solely and fully responsible
23 for any and all taxes under all federal, state and local tax laws with respect to the Individual Settlement
24 Payment to be made to each Class Member, except for the Employee Taxes withheld by the Settlement
25 Administrator and the Employer Taxes to be paid by Defendants and the Settlement Administrator,
26 following the Settlement Administrator providing Individual Settlement Payment information for each
27
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1 of the Class Members, from which the Defendants can pay the Employer Taxes due on the Individual
2 Settlement Payments attributable to wages.

3 **COURT APPROVAL**

4 64. This Agreement and the Settlement is contingent upon the Court granting Final Approval
5 of the Settlement and entering the Final Approval Order. Plaintiffs and Defendants agree to take all
6 steps as may be reasonably necessary to secure both Preliminary Approval and Final Approval of the
7 Settlement by the Court, to the extent not inconsistent with the terms of this Agreement and will not take
8 any action adverse to each other in obtaining the Court's Final Approval of the Settlement in all respects.
9 Plaintiffs and Defendants expressly agree that they will not file any objection (as opposed to request for
10 correction) to the terms of this Stipulation of Settlement or assist, advise, counsel, or otherwise
11 encourage any person or entity to file any such objection or opt out.

12 65. Promptly upon the execution of this Stipulation, Plaintiffs shall file a motion for
13 Preliminary Approval of the Settlement (which Defendants shall not oppose). Specifically, Plaintiffs
14 will apply to the Court for the entry of an Order:

- 15 (a) That the proposed Settlement should be preliminary approved as fair, reasonable
16 and adequate as to the Class;
- 17 (b) Approving as to form and content the proposed Notice to the Class;
- 18 (c) Directing the mailing of the Notice by first-class mail as to the Class Members;
- 19 (d) Preliminarily certifying the Class for purposes of Settlement only;
- 20 (e) Approving Class Counsel, the Class Representatives, and the Settlement
21 Administrator; and
- 22 (f) Setting a Final Approval Hearing date with sufficient time to allow the Parties and
23 the Settlement Administrator to complete the Notice process, calculate the
24 settlement payments and tax and reporting obligations for each of the Class
25 Members, and prepare and file the Motion for Final Approval.

26 66. After completion of the Notice process, Class Counsel shall be responsible for preparing
27 and filing the Motion for Final Approval with the Court in sufficient time prior to the Final Approval
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1 Hearing date, including all necessary supporting Declarations, [Proposed] Orders, motions for attorneys’
2 fees and costs, and the Enhancement Awards, but all subject to final review and approval by Defendants
3 prior to filing with the Court.

4 67. Counsel for the Parties shall have the right, subject to approval by the Court as to the new
5 date, to continue or reschedule the original scheduled Final Approval Hearing date without providing
6 any notice to the Class Members of the new date for the hearing, except for any Class Members who
7 have timely submitted any Objections to the Settlement.

8 **MISCELLANEOUS PROVISIONS**

9 68. This Agreement constitutes the entire agreement between Plaintiffs and Defendants.
10 Except as expressly provided herein, this Agreement has not been executed in reliance upon any other
11 written or oral representations or terms, and no such prior or subsequent extrinsic oral or written
12 representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the
13 Parties agree that this Agreement is to be construed according to its terms and may not be varied or
14 contradicted by prior or subsequent extrinsic evidence. The Agreement will be interpreted and enforced
15 under the laws of the State of California, both in its procedural and substantive aspects, without regard
16 to its conflict of law provisions. Any claim arising out of or relating to the Agreement, or the subject
17 matter hereof, will be resolve solely and exclusively in the Superior Court of the State of California for
18 the County of San Diego, and Plaintiffs and Defendants hereby consent to the personal jurisdiction of
19 the Court over them solely in connection therewith. Plaintiffs, on their own behalf and on behalf of the
20 Settlement Class, and Defendants participated in the negotiation and drafting of this Agreement. As
21 such, neither Plaintiffs nor Defendants may claim that any ambiguity in this Agreement should be
22 construed against the other.

23 69. The terms and conditions of this Agreement constitute the exclusive and final
24 understanding and expression of all agreements between Plaintiffs and Defendants with respect to the
25 Settlement of the Litigation. The Agreement may be modified only by a writing signed by the original
26 signatories and approved by the Court.

70. Plaintiffs, Defendants and their respective attorneys shall proceed diligently to prepare and execute all documents, to seek the necessary Court approvals, and to do all things reasonably necessary or convenient to consummate the Agreement as expeditiously as possible.

71. The Agreement may be executed in one or more actual or non-original counterparts, all of which will be considered one and the same instrument and all of which will be considered duplicate originals.

72. Each individual signing below warrants that he or she has the authority to execute this Agreement on behalf of the party for whom or which that individual signs.

73. Plaintiffs, members of the Settlement Class, Class Counsel and Defendants are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

74. To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

75. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendants and Class Counsel, on behalf of the parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

76. If the Court does not grant final approval of this Settlement, or if any part of the Court's final approval of this Settlement is reversed, then this Settlement will become null and void. In such case, the Settlement shall not be asserted, filed, published, used or be admissible for any purpose, in any subsequent proceedings in any Court or forum.

77. The Parties represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

78. Nothing contained in this Settlement shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants. Each of the Parties has

1 entered into this Settlement with the intention to avoid further disputes and litigation with the attendant
2 inconvenience and expense. This Settlement shall be inadmissible in evidence in any proceeding, except
3 in an action or proceeding by one of the Parties, or Released Parties, to approve, interpret, or enforce its
4 terms, including but not limited to use as an affirmative defense or bar to the involved or other claims or
5 actions, in whole or in part. In connection with any such proceeding to approve, interpret or enforce the
6 Settlement, the Parties agree that this Settlement shall be binding and enforceable between them, and
7 admissible in a Court of law, including for purposes of California Evidence Code section 1123.

8 79. In the event that one or more of the Parties institutes any legal action, or other proceeding
9 against any other Party or Parties to enforce the provisions of this Settlement, or to declare rights or
10 obligations under this Settlement, the successful Party or Parties shall be entitled to recover from the
11 unsuccessful Party or Parties reasonable attorneys' fees and costs incurred in connection with any
12 enforcement actions.

13 80. This Settlement shall be binding upon and inure to the benefit of the Parties and their
14 respective heirs, trustees, executors, administrators, successors, and assigns.

15 81. Neither Class Counsel nor defense counsel intend anything contained in this Stipulation
16 for Settlement to constitute legal advice regarding the taxability of any amount paid hereunder, nor shall
17 it be relied upon as such.

18 82. **Mutual Agreement to Cooperate.** The Parties acknowledge that it is their intent to
19 consummate this Agreement, and they agree to cooperate to the extent reasonably necessary to
20 effectuate and implement all terms and conditions of this Agreement and to exercise their best efforts to
21 accomplish the foregoing terms and conditions of this Agreement. The Parties agree that they will not
22 solicit, facilitate, or assist in any way, requests for exclusions or objections by putative or actual Class
23 Members.

24 83. **Confidentiality.** The Class Representatives and Class Counsel agree that the terms of
25 this Settlement, the negotiations leading to this Settlement, and all documents related to the Settlement
26 shall not be discussed with, advertised, marketed, publicized, published, reported, or promoted to the
27 public, except as necessary to effectuate and/or enforce the terms of this Settlement Agreement. The
28

1 Class Representatives and Class Counsel will not publicize the terms of this Settlement Agreement and
2 will not issue any press releases except that the Class Representatives and Class Counsel may disclose in
3 legal proceedings a summary of the terms of the Settlement Agreement and may communicate with
4 Class Members regarding the Settlement, its terms, its history (apart from settlement communications).
5 Nothing herein will restrict Class Counsel from including publicly available information regarding
6 this Settlement in future judicial submissions regarding Class Counsel's qualifications and experience.
7 Furthermore, Plaintiffs and Class Counsel will undertake any and all disclosures required to be made
8 to the LWDA in conformity with PAGA.

9 84. **Waiver of Right to Appeal.** Defendants, Plaintiffs and those Class Members who did
10 not timely file and serve an opt out or objection to the Settlement or appear at the Final Approval
11 Hearing, hereby waive any and all rights to appeal from the Final Order approving the settlement,
12 including all rights to any post-judgment proceeding and appellate proceeding, such as motion to vacate
13 or set-aside judgment, a motion for new trial, and any extraordinary writ, and the Final Order approving
14 the settlement therefore will become final and non-appealable at the time it is entered. This waiver does
15 not include any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment
16 proceedings.

17 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates
18 indicated below.

19 Dated:

20
21 By: _____
ANA SANTANA

22
23
24 Dated:

25 By: _____
26 MARIA GOMEZ
27

1
2 Dated:

HARBOR FOODS, INC

3
4 By: _____

5 Dated:

HARBOR FOODS #2, INC

6
7 By: _____

8 Dated:

HARBOR FOODS #3, INC

9
10 By: _____

11 Dated:

HARBOR FOODS #4, INC

12
13 By: _____

14 Dated:

GRAHAMHOLLIS APC

15
16 By: _____

17
18 GRAHAM S.P. HOLLIS
19 VILMARIE CORDERO
20 HALI M. ANDERSON
21 ERIK A. DOS SANTOS
22 Attorneys for Plaintiffs

23 Dated:

GAINES & GAINES, APLC

24
25 By: _____

26 DANIEL F. GAINES
27 ALEX P. KATOFISKY
28 EVAN S. GAINES
Attorneys for Plaintiffs

Dated:

ATKINSON, ANDELSON, LOYA, RUUD &
ROMO

By:

MICHAEL J. O’CONNOR
Attorneys for Defendants

GRAHAM HOLLIS APC
3555 FIFTH AVENUE
SAN DIEGO, CALIFORNIA 92103