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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13
14 JAKARI WILSON, an individual, on
15 behalf of himself and on behalf of all
16 persons similarly situated,

17 Plaintiff,

18 vs.

19 WHOLESOME HARVEST BAKING,
20 LLC, a Limited Liability Company;
21 BIMBO BAKEHOUSE LLC, a Limited
22 Liability Company; and DOES 1
23 through 50, inclusive,

24 Defendants.

CASE No. **4:20-cv-05186-YGR**

**DECLARATION OF KYLE
NORDREHAUG IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT**

Hearing Date: December 7, 2021
Hearing Time: 2:00 p.m.

District Judge: Hon. Yvonne Gonzalez
Rogers

Oakland Courthouse,
Courtroom 1 - 4th Floor

Action Filed: June 1, 2020

1 I, KYLE R. NORDREHAUG, declare as follows:

2 1. I am a partner in the law firm of Blumenthal Nordrehaug Bhowmik De
3 Blouw LLP, counsel of record for Plaintiff Jakari Wilson (“Plaintiff”). As such, I am
4 fully familiar with the facts, pleadings and history of this matter. The following facts are
5 within my own personal knowledge, and if called as a witness, I could testify
6 competently to the matters stated herein.

7 2. This declaration is being submitted in support of the Plaintiff’s Motion For
8 Preliminary Approval of Class Action Settlement. Lodged herewith as Exhibit #1 is a
9 copy of the fully executed Class Action Settlement Agreement (“Agreement”) with
10 Defendants Wholesome Harvest Baking, LLC and/or Bimbo Bakehouse LLC
11 (“Defendants”), along with exhibits thereto. Capitalized terms in this Declaration have
12 the same meaning as contained in the Agreement.

13
14 Fairness of Settlement

15 3. Counsel for the Parties, after litigation and contentious settlement
16 negotiations, agreed to a settlement that is fair, reasonable, and favorable to the Class.
17 The Class is defined as “all individuals who are or previously were employed by
18 Defendants in California who were classified as non-exempt employees during the Class
19 Period.” (Agreement at ¶ I(C).) The Class Period is June 1, 2016 through the earlier of
20 Preliminary Approval of the Settlement or November 18, 2021. (Agreement at ¶ I(J).)

21 4. Under the terms to which the Parties have agreed, Defendants agree to pay
22 One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000) (the “Gross Settlement
23 Amount”) in consideration for the settlement and the release of claims as described in
24 the Agreement. (Agreement at ¶ III(B).) The Gross Settlement Amount consists of
25 Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel
26 Litigation Expenses Payment, the Class Representative Service Payment, the PAGA
27 Payment, and the Net Settlement Amount to be distributed as Settlement Shares to
28 Participating Class Members. (Agreement at ¶ I(S).) The employer's share of payroll

1 taxes will be paid by Defendants in addition to the Gross Settlement Amount.
2 (Agreement at ¶ III(B).)

3 5. This is an all-in Settlement. There is no reversion of any portion of the
4 Gross Settlement Amount to Defendants, and no claim form is required to be paid.
5 (Agreement at ¶ III(B).) Class Members who do not opt-out of the Class by timely
6 submitting an opt-out request shall be paid their share of the Net Settlement Amount
7 based on the number of workweeks worked by the Class Member during the Class
8 Period. (Agreement at ¶ III(D).)

9 6. This is an excellent result for the members of the Class. The litigation risks
10 that the Plaintiff and Class Members face if the case were not settled include, among
11 other things, an adverse decision on the merits, loss of motions which would result in
12 limiting any exposure, the possibility that a trial would return a less favorable verdict,
13 and possible appellate review. Liability in this case was uncertain because the Court, as
14 the stipulated trier of fact, may have found that some or all of the Class Members were
15 properly compensated and/or that Defendants complied with applicable law. These
16 defenses could have reduced the amount recovered or a judgment in favor of Defendants
17 with no recovery at all for the members of the Class. Class Counsel and Plaintiff wish
18 to avoid these risks and uncertainties, as well as the consumption of time and resources
19 of litigation, through settlement pursuant to the terms and conditions of the Agreement,
20 which was reached through arm's length negotiations through an experienced and neutral
21 mediator.

22 23 Procedural History of the Litigation

24 7. On June 1, 2020, Plaintiff, on behalf of himself and all persons similarly
25 situated, filed a Class Action Complaint against Defendants in the Superior Court of
26 California, County of Contra Costa, alleging the following causes of action: (1) unfair
27 competition in violation of Cal. Bus. & Prof. Code §§ 17200, et seq.; (2) failure to pay
28 minimum wages in violation of Cal. Labor Code §§ 1194, 1197 and 1197.1; (3) failure

1 to pay overtime wages in violation of Cal. Labor Code §§ 510, et seq.; (4) failure to
2 provide meal periods in violation of Cal. Labor Code §§ 226.7 & 512 and the applicable
3 IWC Wage Order; (5) failure to provide rest periods in violation of Cal. Labor Code §§
4 226.7 & 512 and the applicable IWC Wage Order; (6) failure to provide reimbursement
5 of business expenses in violation of Cal. Labor Code § 2802; (7) failure to provide
6 accurate itemized wage statements in violation of Cal. Labor Code § 226; and, (8) failure
7 to pay wages when due in violation of Cal. Labor Code §§ 201, 202, and 203.

8 8. On July 28, 2020, Defendants removed this Action to the United States
9 District Court for the Northern District of California, where it is pending as Case No.
10 4:20-cv-05186-YGR (the "Action"). Defendants answered Plaintiff's original complaint
11 on July 28, 2020, denying all material allegations and asserting thirty-six (36) affirmative
12 defenses.

13 9. On September 14, 2020, Plaintiff filed a complaint against Defendants in
14 the Superior Court of the State of California, County of Contra Costa, Case No.
15 C20-01827 ("PAGA Action"). In the PAGA Action, Plaintiff asserted a claim under
16 PAGA seeking civil penalties for violations of California Labor Code §§ 201, 202, 203,
17 204 et seq., 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
18 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B). On
19 July 29, 2021, Plaintiff filed an amended complaint ("Amended Complaint") [Doc. No.
20 32] which adds the Fair Labor Standards Act ("FLSA") claim as a predicate violation to
21 the Unfair Competition Law ("UCL") cause of action in the Action, and the PAGA
22 claims as set forth in the PAGA Action, and the PAGA Action will be dismissed without
23 prejudice so that approval of the entire settlement could be sought in this Action.

24 10. Class Counsel conducted significant research and investigation in
25 furtherance of the prosecution of the Action. This investigation, research and litigation
26 included, among other things, (a) multiple conferences with Plaintiff's and Defendants'
27 counsel; (b) inspection and analysis of hundreds of pages of documents and other
28 information produced by Plaintiff and Defendants informally during the litigation of the

1 Action and in preparation for mediation (including class data); (c) analysis of the
2 numerous legal positions taken by Defendant; (d) investigation into the viability of class
3 treatment of the claims asserted in the Action; (e) analysis of potential class-wide
4 damages, including reviewing class data, and analyzing information sufficient to
5 understand Defendants' potential defenses thereto; (f) research of the applicable law with
6 respect to the claims asserted in the Complaint as well as the potential defenses thereto;
7 and (g) assembling and analyzing extensive data and information for calculating
8 damages.

9 11. Class Counsel has extensive experience in litigating wage and hour class
10 actions in California. The Parties have vigorously litigated the Action since its inception.
11 During the course of litigation, the Parties each performed analysis of the merits and
12 value of the claims. Plaintiff engaged in extensive investigation, requiring the
13 production of hundreds of pages of documents, including classwide records as to the
14 Class. Plaintiff and Defendants have engaged in substantial research, discovery, and
15 investigation in connection with the Action. Class Counsel has thoroughly analyzed the
16 value of the claims during the prosecution of this Action.

17 12. Following the investigation of claims by both Parties, the Parties agreed to
18 engage in private mediation. The Parties attended an all-day mediation on April 14,
19 2021 before Tripper Ortman, a respected and experienced mediator. The mediation
20 included discussion and examination of the parties' respective positions on the legal and
21 factual issues raised on behalf of the Class. At all times, the parties' settlement
22 negotiations have been non-collusive, adversarial, and at arm's length. At the conclusion
23 of the mediation, the Parties were unable to reach a settlement. Through continued
24 negotiations through the Mediator, culminating in a mediator's proposal, the Parties
25 agreed on the basic terms of a class settlement. The Parties then negotiated the final
26 Agreement now submitted for this Court's consideration.

1 The Settlement Terms and the Plan of Allocation

2 13. To implement the terms of this Settlement, Defendants agree to pay the
3 Gross Settlement Amount of One Million Seven Hundred Fifty Thousand Dollars
4 (\$1,750,000) in full and complete satisfaction of the Released Class Claims. (Agreement
5 at ¶ III(B).) The Gross Settlement Amount consists of all payments to Class Members
6 from the Net Settlement Amount, plus (i) the Settlement Administration Expenses, (ii)
7 the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, (iii)
8 the PAGA Payment, and (iv) the Class Representative Service Payment. (Agreement at
9 ¶ III(C)-(D).) The remainder of the Gross Settlement Amount after the deduction of the
10 Court-approved amounts for Settlement Administration Expenses, Class Counsel Fees
11 Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment and the Class
12 Representative Service Payment (called the “Net Settlement Amount”), shall be
13 distributed to Participating Class Members as their Settlement Shares. (Agreement at ¶¶
14 I(U) and (III)(D).)

15 14. Each Class Member who does not request exclusion (“Participating Class
16 Members”) shall be entitled to a pro rata portion of the Net Settlement Amount. The
17 Settlement Share for each Participating Class Member will be calculated by (a) dividing
18 the Net Settlement Amount by the total number of workweeks the Participating Class
19 Members were employed by Defendants during the Class Period to determine a dollar
20 amount per week (“Weekly Rate”); and (ii) multiplying the number of workweeks each
21 Participating Class Member was employed by Defendants by the Weekly Rate to
22 calculate each Participating Class Member's individual Settlement Share. (Agreement
23 at ¶ III(D)(2).)

24 15. The Gross Settlement Amount will be paid by Defendants within fifteen
25 (15) business days after the Effective Date. (Agreement at ¶ III(H)(10).) Any checks
26 issued shall remain valid and negotiable for one hundred eighty (180) days, and any
27 funds not distributed after the expiration of the settlement checks shall be paid to the
28 California Controller’s Unclaimed Property Fund to be held for the benefit of the

1 Participating Class Member. (Agreement at ¶ III(H)(11).)

2 16. The scope of the release by all Class Members who do not opt out tracks
3 the scope of the allegations in the Action. As of the Effective Date, Defendants shall
4 be entitled to a release from the Participating Class Members of all Released Class
5 Claims, which are:

6 any and all wage and hour claims, obligations, demands, actions, rights,
7 causes of action, and liabilities (including state statutory and common law
8 claims) alleged in the Action, or that could have been alleged based on the
9 facts alleged in the Action, that arose during the Class Period, including: (a)
10 failure to pay overtime; (b) failure to pay minimum wages; (c) failure to
11 timely pay wages during employment; (d) failure to pay final wages on
12 termination; (e) failure to provide accurate itemized wage statements; (f)
13 failure to provide compliant meal and rest periods; (g) failure to pay meal
14 and rest period premiums; (h) failure to reimburse for business-related
15 expenses; (i) failure to pay wages due to discharged and quitting
16 employees; (j) failure to maintain required records; (k) claims that are or
were asserted or that could have been asserted based on the facts alleged in
the Action; and (l) penalties (including civil and statutory penalties,
including penalties under PAGA), liquidated damages, punitive damages,
interest, attorneys' fees, litigation costs, restitution, equitable relief, or
additional damages which allegedly arise from the claims described in (a)
through (k) above under any applicable law, which arose during the Class
Period, and expressly excluding all other claims, including claims for
wrongful termination, unemployment insurance, disability, social security,
workers' compensation, and class claims outside of the Class Period and
PAGA claims outside of the PAGA Period.

17 (Agreement at ¶ III(I)(1).)

18 17. Subject to Court approval, the Parties have agreed on ILYM Group to
19 administer the settlement in this action ("Settlement Administrator"). (Agreement at ¶
20 III(G).) The Settlement Administration Expenses will not exceed \$20,000. (Agreement
21 at ¶ III(C)(3).)

22 18. Class Counsel will apply to the Court for an award of reasonable attorneys'
23 fees in an amount not to exceed 1/3 of the Gross Settlement Amount, and for
24 reimbursement of reasonable expenses in an amount not to exceed \$30,000, subject to
25 Court approval. (Agreement at ¶ III(C)(2).) Plaintiff will also apply for Court approval
26 of a service award in an amount not to exceed \$10,000 in consideration for his service
27 as the sole representative of the Class. (Agreement at ¶ III(C)(1).)

1 Factors Supporting Settlement Approval

2 19. This settlement is the result of extensive and hard fought negotiations.
3 Defendants deny each and every one of the claims and contentions alleged in this Action.
4 Defendants have asserted and continues to assert many defenses thereto, and has
5 expressly denied and continues to deny any wrongdoing or legal liability arising out of
6 the conduct alleged in the Action. Settlement negotiations took place between
7 experienced counsel. Counsel for the Parties engaged in formal mediation and
8 settlement negotiations and because the Parties were unable to reach a settlement on the
9 day of the mediation, had ongoing negotiations post-mediation. Only after extensive,
10 noncollusive negotiations, the Parties reached an agreement based on a mediator's
11 proposal, the experience of counsel, and the uncertainties of protracted litigation.
12 Importantly, Plaintiff and Class Counsel believe that this settlement is fair, reasonable
13 and adequate.

14 20. Class Counsel has conducted a thorough investigation into the facts of the
15 class action, including a review of relevant documents and data and a diligent
16 investigation of the Class Members' and Aggrieved Employees' claims against
17 Defendant. Class Counsel also retained an expert to prepare a damage valuation for use
18 in the mediation and negotiations. Class Counsel also has experience in settlements
19 involving similar claims brought on behalf of employees. The Parties and their counsel
20 recognize that, in the absence of an approved settlement, they would face a protracted
21 litigation course, including but not limited to a contested motion for certification, a
22 motion for summary judgment, and trial and appellate proceedings that would consume
23 time and resources and present each of them with ongoing litigation risks and
24 uncertainties.

25 21. Plaintiff and Class Counsel recognize the expense and length of continuing
26 to litigate and trying this Action against Defendants through possible appeals, which
27 could take several years, and are also mindful of and recognize the inherent problems of
28 proof under, and alleged defenses to, the claims asserted in the Action. In the absence

1 of an approved settlement, Plaintiff would face a protracted litigation course, including
2 a motion for summary judgment, and trial and appellate proceedings that would consume
3 time and resources and present each of them with ongoing litigation risks and
4 uncertainties. Based on the foregoing documents and data, and their own independent
5 investigation and evaluation, Class Counsel is of the opinion that the settlement with
6 Defendants for the consideration and on the terms set forth in the Settlement is fair,
7 reasonable, and adequate in light of all known facts and circumstances, including the risk
8 of significant delay, defenses asserted by Defendants, and potential appellate issues.

9 22. The proposed Settlement herein has no "obvious deficiencies" and is well
10 within the range of possible approval. All Class Members will receive an opportunity
11 to participate in and receive payment according to the same formula. The Gross
12 Settlement Amount provides an average value of \$2,278 per Class Member and \$40 per
13 workweek, and after deductions, the Net Settlement Amount provides an average
14 recovery of \$1,408 per Class Member and \$25 per work week. In advance of settlement
15 negotiations, Class Counsel received class data concerning the Class, which permitted
16 Class Counsel to make an intelligent evaluation. For the individuals whose claims are
17 at issue in this Action, Class Counsel reviewed the data and used information provided
18 by Defendants to determine the potential damage valuation.¹ The calculations to
19 compensate for the amount due for the Class at the time of the mediation were calculated
20 by Berger Consulting, Plaintiff's damage expert. Using the class data, based upon the
21 analysis of Plaintiff's expert, Plaintiff calculated that the maximum valuation for
22 mediation as follows: off the clock damages due to rounding were \$188,768, unpaid
23 overtime wages due to the miscalculation of the regular rate were \$39,733, meal period
24 damages were \$2,219,198 based upon an alleged 58% potential violation rate from time
25 punch data, rest period damages were \$3,660,320 based upon an alleged 100% violation

27 ¹ Defendants have provided Plaintiff with the Declaration required by the Agreement
28 at ¶ III(F) which confirmed the number of Class Members and workweeks through April
1, 2021 as 727 class members who worked 44,491 workweeks.

1 rate under Plaintiff's theory of rest periods being cut short, and unreimbursed expenses
2 damages were \$325,346. As a result, Plaintiff's total damage valuation at mediation, not
3 counting potential penalties, was \$6,433,364. As to penalties, Plaintiff's expert
4 calculated the maximum wage statement penalties to be \$1,083,700 and the maximum
5 waiting time penalties to be \$2,035,683, however, these wage statement and waiting time
6 penalties claims potentially have a much smaller value, even if damages were awarded,
7 to the extent that they are derivative of the meal and rest break claims.² These claims
8 faced significant challenges to establish class-wide liability given Defendants' facially
9 lawful policies. The settlement of \$1,750,000, before deductions, represents more than
10 27% of the estimated maximum damages for the Class, assuming these amounts could
11 be proven in full at trial. Importantly, the above maximum calculations should then be
12 adjusted in consideration for both the risk of certification and the risk of establishing
13 class-wide liability on all claims. This settlement amount is fair and reasonable given the
14 defenses asserted by Defendants. Because the alternative to this Settlement could be the

15 _____
16 ² While Plaintiff alleged claims for statutory penalties pursuant to Labor Code
17 Sections 203 and 226, Plaintiff recognized that these claims were subject to various
18 defenses asserted by Defendants, including, but not limited to, a good faith dispute
19 defense as to whether any premium wages for meal or rest periods or other wages or
20 expenditures were owed. See generally *Reber v. AIMCO/Bethesda Holdings, Inc.*, 2008
21 WL 4384147, at *9 (C.D. Cal. 2008) (granting defendant's motion for summary
22 judgment on claim for failure to provide accurate itemized wage statements "because a
23 good faith dispute exists as to whether [plaintiffs] are exempt, [therefore, defendant] was
24 not 'knowing and intentional' in failing to provide [Section 226] statements"); See
25 *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful
26 failure to pay wages if the employer and employee have a good faith dispute as to
27 whether and when the wages were due."). Given the fact that the off-the-clock claim
28 based on interview time has been dismissed by some Courts, Defendants could certainly
contend this good faith defense. Additionally, the question of whether violations of the
meal period regulations, which require payment of a "premium wage" for each improper
meal period, give rise to claims under sections 203 and 226. See *Ling v. P.F. Chang's
China Bistor, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon
Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336 (2018). Thus, the viability of Plaintiff's
claims on these theories is very uncertain.

1 Class receiving nothing or less after trial, Plaintiff accepted the settlement as fair and
2 reasonable. Clearly the goal of this litigation to obtain redress for the Class has been
3 met.

4 23. Here, a number of defenses asserted by Defendants presented serious
5 threats to the claims of Plaintiff and the other Class Members. Defendants contend that
6 Defendants' employment practices complied with all applicable Labor laws. For
7 example, Defendants argued that all work time was paid for and that the regular rate
8 calculation was lawful. Defendants contend that their meal and rest period policies fully
9 complied with California law and that Defendants' timekeeping system recorded meal
10 periods, and was not required to record rest periods. Defendants argued that the
11 California Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004
12 (2012), weakened Plaintiff's claims, on liability, value, and class certifiability.
13 Defendants argued that any late or short meal periods were the voluntary decision of the
14 employee, and not the result of a failure of Defendants to provide a meal or rest period.
15 Defendants also argue that based on their facially lawful practices, they acted in good
16 faith and without willfulness, which if accepted would negate the claims for waiting time
17 penalties and/or inaccurate wage statements. In fact, under the current state of the law,
18 it is questionable whether these penalties could be awarded at all based upon the alleged
19 meal and rest period violations as several Courts have held that meal and rest period
20 violations do not give rise to wage statement or waiting time penalties. See e.g. *Ling v.*
21 *P.F. Chang's China Bistro, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016). Finally,
22 Defendants assert defenses to the amount of damages claimed and the imposition of any
23 penalties. If successful, Defendants' defenses could eliminate or substantially reduce
24 any recovery to the Class. While Plaintiff believes that these defenses could be
25 overcome, Defendants maintain these defenses have merit and therefore present a serious
26 risk to recovery.

27 24. Moreover, there was also a significant risk that, if the Action was not
28 settled, Plaintiff would be unable to obtain class certification and maintain a certified

1 class through trial or demonstrate that his PAGA claim is manageable, and thereby not
2 recover on behalf of any employees other than himself. Plaintiff is aware of cases where
3 class certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal.
4 App. 5th 885 (2019) (denying certification of meal and rest break claims). At the time
5 of the mediation, Defendants forcefully opposed the propriety of class certification and
6 the manageability of Plaintiff's PAGA claim, arguing that individual issues precluded
7 such findings. Further, as demonstrated by the California Supreme Court decision in
8 *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to
9 overcome for a class-wide recovery even where the class has been certified. While other
10 cases have approved class certification in wage and hour claims, class certification in this
11 action would have been hotly disputed and was by no means a foregone conclusion.

12 25. Finally, the proposed method of distribution will be effective as payments
13 will be made automatically to every Participating Class Member, without the need to
14 submit a claim form. The Agreement sets forth all the terms of Settlement, and there are
15 no other agreements between the Parties that would need to be identified under Rule
16 23(e)(3).

17 26. The stage of the proceedings at which this settlement was reached also
18 militates in favor of preliminary approval and ultimately, final approval of the settlement.
19 Class Counsel has conducted a thorough investigation into the facts of the class action.
20 Plaintiff obtained a production of documents and data points from the Defendant. In
21 advance of mediation, Defendant also provided information necessary for Class Counsel
22 to intelligently negotiate a settlement. Class Counsel engaged in a thorough review and
23 analysis of the relevant documents and data with the assistance of an expert, Berger
24 Consulting. Class Counsel was also experienced with the claims at issue here, as Class
25 Counsel previously litigated and settled similar claims in numerous other actions.
26 Accordingly, the agreement to settle did not occur until Class Counsel possessed
27 sufficient information to make an informed judgment regarding the likelihood of success
28 on the merits and the results that could be obtained through further litigation.

1 27. Plaintiff engaged in a full investigation of the claims with the necessary
2 data and documentation. The Parties then engaged in an all-day mediation, conducted
3 by a mediator with experience in employment class actions, engaged in additional
4 settlement negotiations post-mediation, and agreed to settle this Action pursuant to the
5 terms and conditions of a proposal provided by the mediator. Based on the foregoing
6 information and data and their own independent investigation and evaluation, Class
7 Counsel is of the opinion that the settlement with Defendants for the consideration and
8 on the terms set forth in the Agreement is fair, reasonable, and adequate, and is in the
9 best interest of the Class Members and in light of all known facts and circumstances,
10 including the risk of significant delay, defenses asserted by Defendants, and numerous
11 potential appellate issues. There can be no doubt that Counsel for the Parties possessed
12 sufficient information to make an informed judgment regarding the likelihood of success
13 on the merits and the results that could be obtained through further litigation.

14
15 Class Certification For Purposes of Settlement

16 28. The proposed settlement meets all of the requirements for certifying a
17 settlement class under Fed. R. Civ. Proc. 23(b)(2), and therefore, the Court may
18 appropriately approve the Class as defined in the Agreement. For purposes of settlement
19 only, this Court should conditionally certify the Class defined as “all individuals who are
20 or previously were employed by Defendants in California who were classified as non-
21 exempt employees during the Class Period.” (Agreement at ¶ I(C).)

22 a. Here, the Class is composed of approximately 768 individuals in the
23 Class, which Plaintiff contends is sufficiently numerous for settlement purposes.
24 Defendant provided the Declaration required by the Agreement at ¶ III(F) which
25 confirmed the number of Class Members as 727 through April 1, 2021.

26 b. Here, Plaintiff contends that common questions of law and fact are
27 present, specifically the common questions of whether Defendants’ employment
28 practices were lawful, whether Defendants miscalculated the regular rate when paying

1 overtime, whether Defendants failed to properly provide and/or pay for meal and rest
2 periods, whether the Defendants failed to provide reimbursement of cell phone expenses,
3 whether Defendants' conduct was willful, and whether the Class is entitled to
4 compensation and related penalties. Plaintiff contends that certification of this Class is
5 appropriate because Defendants purportedly engaged in uniform practices with respect
6 to the Class Members. As a result, these common questions of liability could be
7 answered on a class wide basis.

8 c. In the instant case, Plaintiff contends that the typicality requirement
9 is fully satisfied. Plaintiff, like every other member of the Class, was employed by
10 Defendants as non-exempt employee, and, like every other member of the Class, was
11 subject to the same employment practices concerning wages, meal and rest periods, and
12 expense reimbursement. Plaintiff, like every other member of the Class, also claims
13 owed compensation as a result of the Defendants' uniform policies and practices. Thus,
14 the claims of Plaintiff and the members of the Class arise from the same course of
15 conduct by Defendants, involve the same issues, and are based on the same legal
16 theories.

17 d. Plaintiff is well aware of his duties as the representatives of the Class
18 and has actively participated in the prosecution of this case to date. Plaintiff effectively
19 communicated with Class Counsel, provided documents and information to Class
20 Counsel, and participated extensively in the investigation of the Action. The personal
21 involvement of the Plaintiff was essential to the prosecution of the Action and the
22 monetary settlement reached.

23 e. Here, Plaintiff contends that the adjudication of the common issues
24 surrounding Defendants' uniform and systematic employment policies applicable to non-
25 exempt employees could establish Defendants' liability on a class-wide basis. Plaintiff
26 contends that Defendants engaged in a uniform course of failing to properly pay for
27 wages, provide meal/rest periods and provide expense reimbursement, which resulted
28 in a systematic failure to provide compensation as required by law and that Defendants'

1 policies with respect to these issues are uniform. The only question is whether
2 Defendants' conduct supports a meritorious claim for liability. Accordingly, Plaintiff
3 maintains that the common issues of law and fact present in this case predominate.

4 29. Class Counsel is experienced in prosecuting class action lawsuits and
5 can competently represent the Class. For example, other lawyers at my firm and I have
6 extensive class litigation experience. We have handled many class actions and complex
7 cases and have acted both as counsel and as lead and co-lead counsel in a variety of these
8 matters. We have successfully prosecuted and obtained significant recoveries in
9 numerous class action lawsuits and other lawsuits involving complex issues of law and
10 fact. Class Counsel has been involved as class counsel in over hundreds of wage and
11 hour class action and PAGA action matters. My firm has been approved as class counsel
12 by state and federal courts throughout California. A true and correct copy of the resume
13 of my firm is attached hereto as Exhibit #2.

14
15 Class Notice

16 30. The Class Notice includes information regarding the nature of the Action;
17 a summary of the substance of the Settlement, including Defendants' denial of liability;
18 the definition of the Class; the procedure and time period for objecting to the Settlement,
19 exclusion from the Settlement and participating in the Settlement; a statement that the
20 District Court has preliminarily approved the Settlement; and information regarding the
21 calculation of Settlement Shares. See Exhibit A to the Agreement. The Class Notice
22 further explains that Class Members who wish to participate in the settlement do not
23 have to anything to claim their share of the Settlement. The Class Notice also provides
24 that any Class Member may choose to opt out of the Class, and that any such person who
25 chooses to opt out of the Class will not be entitled to any recovery obtained by way of
26 the settlement and will not be bound by the settlement. The Class Notice further advises
27 Aggrieved Employees that they may not exclude themselves from the PAGA (or
28 non-class) portion of the settlement, as that claim is filed on behalf of the LWDA. The

1 Class Notice explains that all objections to the Settlement by members of the Class must
2 be submitted no later than forty-five (45) days from the mailing of the Notice. All
3 objections must state with particularity the basis on which they are asserted. In
4 accordance with *Mercury Interactive Corp. Secs. Litig. v. Mercury Interactive Corp.*, 618
5 F.3d 988 (9th Cir 2010), the application for attorneys' fees and costs will be filed thirty-
6 five (35) before the end of the objection period and posted on a website as indicated in
7 the Class Notice. Thus, all Class Members and Aggrieved Employees will have ample
8 opportunity to review and comment on the attorneys' fees before the objection deadline
9 and the motion for attorneys' fees will be heard at the Final Approval Hearing. The
10 motion for attorneys' fees and costs will be heard in conjunction with the motion for
11 final approval on the Final Approval Hearing date.

12 31. The Class Notice also informs Class Members about the release applicable
13 to the Class and Aggrieved Employees about the release applicable to them. This notice
14 program was designed to meaningfully reach the largest possible number of potential
15 Class Members and Aggrieved Employees. The notice program also provides for the use
16 of emails and electronic media to locate Class Members and Aggrieved Employees. The
17 mailing and distribution of the Class Notice satisfies the requirements of due process,
18 and is the best notice practicable under the circumstances and constitutes due and
19 sufficient notice to all persons entitled thereto.

20 21 Service Award

22 32. The payment of service awards to successful class representatives is
23 appropriate and the amount of \$10,000 is well within the currently accepted range. The
24 requested award is also reasonable by reference to the amounts that other California
25 courts have found to be reasonable in wage and hour class action settlements: *Baker v.*
26 *L.A. Fitness Int'l, LLC*, Case No. BC438654, L.A. County Superior Court (Dec. 12,
27 2012)(awarding \$10,000 service awards to three named plaintiffs); *Blue v. Coldwell*
28 *banker Residential Brokerage Co.*, Case No. BC417335, Los Angeles County Superior

1 Court (Mar. 21, 2011)(awarding \$10,000 service award); *Buckmire v. Jo-Ann Stores,*
2 *Inc.*, Case No. BC394795, Los Angeles County Superior Court (June, 11,
3 2010)(awarding \$10,000 service awards); *Coleman v. Estes Express Lines, Inc.*, Case
4 No. BC429042, Los Angeles County Superior Court (Oct. 3, 2013)(awarding \$10,000
5 service award); *Ethridge v. Universal Health Services, Inc.*, Case No. BC391958, Los
6 Angeles County Superior Court (May 27, 2011)(awarding \$10,000 service award);
7 *Hickson v. South Coast Auto Ins. Marketing, Inc.*, Case No. BC390395, Los Angeles
8 County Superior Court (Mar. 27, 2012)(awarding \$10,000 service award); *Hill v.*
9 *sunglass Hut Int'l, Inc.*, Case No. BC422934, Los Angeles County Superior Court (July
10 2, 2012)(awarding \$10,000 service award); *Kambamba v. Victoria's Secret Stores, LLC,*
11 Case No. BC368528, Los Angeles County Superior Court, (Aug. 19, 2011)(awarding
12 \$10,000 service award together with additional compensation for their general release);
13 *Magee v. American Residential Services, LLC*, Case No. BC423798, Los Angeles
14 County Superior Court (Apr. 21, 2011)(awarding \$15,000 service award); *Mares v. BFS*
15 *Retail & Commercial Operations, LLC*, Case No. BC375967, Los Angeles County
16 Superior Court (June 24, 2010)(awarding \$15,000 service award); *Nevarez v. Trader*
17 *Joe's Co.*, Case No. BC373910, Los Angeles County Superior Court (Jan. 29,
18 2010)(awarding \$10,000 service award); *Ordaz v. Rose Hills Mortuary, L.P.*, Case No.
19 BC386500, Los Angeles County Superior Court, (Mar. 19, 2010)(awarding \$10,000
20 service award); *Sheldon v. AHMC Monterey Park Hosp. LP*, Case No. BC440282, Los
21 Angeles County Superior Court (Feb. 22, 2013)(awarding \$10,000 service award); *Silva*
22 *v. Catholic Mortuary Services, Inc.*, Case No. BC408054, Los Angeles County Superior
23 Court (Feb. 8, 2011)(awarding \$10,000 enhancement award); *Weisbarth v. Banc West*
24 *Investment Services, Inc.*, Case No. BC422202, Los Angeles County Superior Court
25 (May 24, 2013)(awarding \$10,000 service award); *Zamora v. Balboa Life & Casualty,*
26 *LLC*, Case No. BC360036, Los Angeles County Superior Court (Mar. 7, 2013)(awarding
27 \$25,000 service award); *Lazar v. Kaiser Foundation Health Plan*, Case No. 14-cv-
28 273289, Santa Clara County Superior Court (Dec. 28, 2015) (awarding \$10,000 service

1 award); *Acheson v. Express, LLC*, Case No. 109CV135335, Santa Clara County Superior
2 Court (Sept. 13, 2011)(awarding \$10,000 service award); *Aguiar v. Cingular Wireless,*
3 *LLC*, Case No. CV 06-8197 DDP (AJWx)(C.D. Cal. Mar. 17, 2011)(awarding \$14,767
4 service award); *Bejarano v. Amerisave Mortgage Corp.*, Case No. EDCV 08-00599 SGL
5 (Opx)(C.D. Cal. June 22, 2010)(awarding \$10,000 service award); *Carbajal v. Sally*
6 *Beauty Supply LLC*, Case No. CIVVS 1004307, San Bernadino County Superior Court
7 (Aug. 6, 2012)(awarding \$10,000 service award); *Contreras v. Serco Inc.*, Case No.
8 10-cv-04526-CAS-JEMx (C.D. Cal. Sep. 10, 2012)(awarding \$10,000 service award);
9 *Guerro v. R.R. Donnelley & Sons Co.*, Case No. RIC 10005196, Riverside County
10 Superior Court (July 16, 2013)(awarding \$10,000 service award); *Kisliuk v. ADT*
11 *Security Services Inc.*, Case No. CV08-03241 DSF (RZx)(C.D. Cal. Jan. 10,
12 2011)(awarding \$10,000 service award); *Morales v. BCBG Maxazria Int'l Holdings, Inc.*,
13 Case No. JCCP 4582, Orange County Superior Court (Jan. 24, 2013)(awarding \$10,000
14 service award); *Barrett v. Doyon Security Services, LLC*, Case No. BS900199,
15 BS900517, San Bernardino County Superior Court (Apr. 23, 2010)(awarding \$10,000
16 service award).

17
18 I declare under penalty of perjury under the laws of the State of California and the
19 United States that the foregoing is true and correct. Executed this 29th day of October,
20 2021, at La Jolla, California.

21
22 By: /s/ Kyle R. Nordrehaug

23 KYLE R. NORDREHAUG
24
25
26
27
28

EXHIBIT #1

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

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Attorneys for Defendants
WHOLESOME HARVEST BAKING,
LLC and BIMBO BAKEHOUSE LLC
(formerly known as Wholesome Harvest
Baking, LLC)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JAKARI WILSON, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

WHOLESOME HARVEST BAKING, LLC, a
Limited Liability Company; BIMBO
BAKEHOUSE LLC, a Limited Liability
Company; and DOES 1 through 50, inclusive,

Defendants.

CASE No. 4:20-cv-05186-YGR

CLASS ACTION

**JOINT STIPULATION OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

Judge: Hon. Yvonne Gonzalez Rogers

Date: _____, 2021

Time:

Courtroom: 1, Fourth Floor

1 **JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

2 This Class Action Settlement Agreement (“Agreement”) is made by and between Plaintiff
3 Jakari Wilson (“Plaintiff”) and Defendants Wholesome Harvest Baking, LLC and/or Bimbo
4 Bakehouse LLC (“Defendants”). Plaintiff and Defendants collectively are referred to in this
5 Agreement as the “Parties.”

6 **I. DEFINITIONS**

7 In addition to other terms defined in this Agreement, the terms below have the following
8 meaning in this Agreement:

9 A. “Action” means the class and representative action pending in the United States
10 District Court in and for the Northern District of California, which is captioned *Wilson v.*
11 *Wholesome Harvest Baking, LLC, et al.*, Case No. 4:20-cv-05186-YGR, and was originally filed
12 in the Superior Court of the State of California, County of Contra Costa, Case No. C20-00989.

13 B. “Aggrieved Employees” means all individuals who are or previously were
14 employed by Defendants in California who were classified as non-exempt employees during the
15 PAGA Period.

16 C. “Class” means all individuals who are or previously were employed by Defendants
17 in California who were classified as non-exempt employees during the Class Period, approved for
18 settlement purposes only.

19 D. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit
20 Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP.

21 E. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
22 mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by
23 the Court, to compensate Class Counsel for their legal work in connection with the Action,
24 including their pre-filing investigation, their filing of the Action, all related litigation activities, all
25 Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed
26 in connection with the Action.

27 F. “Class Data” means, for each Class Member, his or her name; last-known mailing
28 address; Social Security number; employee identification number; personal email address (if

known); and weeks worked during the Class Period as a Class Member and pay periods worked during the PAGA Period.

G. “Class Member” is a member of the Class.

H. “Class Notice” means the Notice of Proposed Settlement of Class Action and Hearing Date for Final Court Approval substantively in the form attached hereto as Exhibit A to this Agreement and incorporated by reference into this Agreement.

I. “Class Notice Packet” means the Class Notice to be provided to the Class Members by the Settlement Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).

J. “Class Period” means the period of time from June 1, 2016 to the earlier of Preliminary Approval of the Settlement or November 18, 2021.

K. “Class Representative Service Payment” means the service payment, as approved by the Court, to be paid to the Plaintiff in his capacity as Class Representative in order to compensate him for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses in the event Plaintiff was unsuccessful in the prosecution of the Action, and for the general release of all claims by the Plaintiff.

L. “Court” means the United States District Court in and for the Northern District of California.

M. “Defendants” means Wholesome Harvest Baking, LLC and Bimbo Bakehouse LLC.

N. “Defendants’ Counsel” means Michael J. Puma, Kathy H. Gao and Claire M. Lesikar of Morgan, Lewis & Bockius LLP.

O. “Effective Date” means the date by which all of the following have occurred:

1. This Agreement is approved by the Court; and
2. The Judgment becomes Final as defined in Section I(Q) of this Agreement.

P. “Election Not to Participate in Settlement” means the written request by a Class Member to be excluded from the Settlement submitted in accordance with the instructions in the Class Notice.

1 Q. "Final" means the last of the following dates, as applicable:

- 2 1. If no objection to the Settlement is made, the date the Judgment is entered.
- 3 2. If an objection to the Settlement is made and Judgment is entered, the last
4 date on which a notice of appeal from the Judgment may be filed if no
5 appeal is filed.
- 6 3. If Judgment is entered and a timely appeal from the Judgment is filed, the
7 date the appeal is resolved resulting in final judicial approval of the
8 Settlement and the Judgment is no longer subject to appeal.

9 R. "Final Approval Hearing" means the hearing to be conducted by the Court to
10 determine whether to approve finally and implement the terms of this Agreement and enter the
11 Judgment.

12 S. "Gross Settlement Amount" means One Million Seven Hundred Fifty Thousand
13 Dollars (\$1,750,000) to be paid by Defendants as provided by this Agreement. This Gross
14 Settlement Amount is an all-in amount without any reversion to Defendants and shall be inclusive
15 of all payments of Settlement Shares to the Participating Class Members, Settlement
16 Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses
17 Payment, Class Representative Service Payment, and the PAGA Payment, and excluding
18 employer payroll taxes, if any, due on the portion of the Settlement Shares allocated to wages
19 which shall not be paid from the Gross Settlement and shall be the separate additional obligation
20 of Defendants. The Gross Settlement Amount shall be paid without the need to submit a claim
21 form for Participating Class Members.

22 T. "Judgment" means the Final Approval Order and Judgment entered by the Court
23 substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by
24 reference into this Agreement.

25 U. "Net Settlement Amount" means the Gross Settlement Amount less the Court-
26 approved amounts for the Class Representative Service Payment, the Class Counsel Fees
27 Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment , and the Settlement
28 Administration Expenses.

1 V. “Non-Participating Class Member” means a Class Member who submits a valid
2 and timely Election Not to Participate in Settlement.

3 W. “PAGA Period” means the period of time from July 11, 2019 to the earlier of
4 Preliminary Approval of the Settlement or November 18, 2021.

5 X. “Participating Class Member” means a Class Member who does not submit a valid
6 and timely Election Not to Participate in Settlement.

7 Y. “Preliminary Approval of the Settlement” means the Court’s Order Granting
8 Preliminary Approval of the Settlement substantially in the form attached hereto as Exhibit B to
9 this Agreement and incorporated by this reference herein.

10 Z. “Released Parties” collectively means: Defendants and all affiliated parties and
11 entities, including Defendants’ past and present affiliates, parents, subsidiaries, predecessors,
12 owners, successors, shareholders, divisions, and each of these entities’ past and present directors,
13 officers, employees, partners, benefit plans/administrators, shareholders, and representatives.

14 AA. “Settlement” means the settlement disposition of the Action and all related claims
15 effectuated by this Agreement.

16 BB. “Settlement Administrator” means ILYM Group, the third-party settlement
17 administrator proposed by the Parties, as approved by the Court.

18 CC. “Settlement Share” means each Participating Class Member’s share of the Net
19 Settlement Amount as provided by this Agreement.

20 **II. RECITALS**

21 A. On April 15, 2020, Plaintiff sent a correspondence to the LWDA and Defendants
22 outlining various alleged violations of the California Labor Code under Private Attorneys General
23 Act, Cal. Labor Code §§ 2698 *et seq.* (“PAGA”).

24 B. On June 1, 2020, Plaintiff filed a complaint against Defendants in the Superior
25 Court of the State of California, County of Contra Costa. Plaintiff asserted claims that
26 Defendants:

- 27 1. Violated California Business and Professions Code § 17200 *et seq.*;
28

2. Failed to pay minimum wages in violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1;
3. Failed to pay overtime wages in violation of California Labor Code § 510 *et seq.*;
4. Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
5. Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
6. Failed to reimburse employees for required expenses in violation of California Labor Code § 2802.
7. Failed to provide accurate itemized wage statements in violation of California Labor Code § 226; and,
8. Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203.

C. On July 28, 2020, Defendants filed a general denial along with 36 separate defenses to the Complaint.

D. On July 28, 2020, Defendants removed the Action to the United States District Court, Northern District of California.

E. On September 14, 2020, Plaintiff filed a complaint against Defendants in the Superior Court of the State of California, County of Contra Costa, Case No. C20-01827 (“PAGA Action”). In the PAGA Action, Plaintiff asserted a claim under PAGA seeking civil penalties for violations of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B).

F. On April 14, 2021, the Parties participated in an all-day mediation presided over by third-party neutral Tripper Ortman, a respected mediator of wage and hour representative and class actions. Following the mediation, each side, represented by its respective counsel, was able to agree to settle the Action based upon a mediator’s proposal which was memorialized in the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations

1 between the Parties except that the confidentiality provision of the Parties' Memorandum of
2 Understanding shall remain in effect in the event the Court does not approve the Settlement as
3 provided in this Agreement.

4 G. This Agreement represents a compromise and settlement of highly disputed
5 claims. Nothing in this Agreement is intended or will be construed as an admission by
6 Defendants that the claims in the Action and/or PAGA Action of Plaintiff, the Class, and/or the
7 Aggrieved Employees have merit or that Defendants bear any liability to Plaintiff, the Class,
8 and/or the Aggrieved Employees on those claims or any other claims, or as an admission by
9 Plaintiff that Defendants' defenses in the Action and/or PAGA Action have merit. Defendants
10 make no concessions or admissions that class or representative action treatment is appropriate,
11 warranted, or manageable. Defendants additionally maintain that for any purpose other than
12 Settlement, the Action and PAGA Action are not appropriate for class or representative action
13 treatment. Class Counsel agree not to cite or reference the Settlement or related documents in
14 connection with seeking certification in any other case involving Defendants. The Parties agree
15 to certification of the Class for purposes of this Settlement only. If for any reason the Effective
16 Date of the Settlement does not occur, Defendants reserve the right to contest certification of any
17 class for any reason and reserve all available defenses to the claims in the Action and PAGA
18 Action.

19 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

20 **III. SETTLEMENT TERMS AND CONDITIONS**

21 A. **Amended Complaint.** The Parties stipulated to the filing of and on July 29, 2021
22 Plaintiff filed an amended complaint ("Amended Complaint") [Doc. No. 32] which adds the Fair
23 Labor Standards Act ("FLSA") claim as a predicate violation to the Unfair Competition Law
24 ("UCL") cause of action in the Action, and the PAGA claims as set forth in the PAGA Action.

25 B. **Gross Settlement Amount.** Subject to the terms and conditions of this
26 Agreement, the Gross Settlement Amount that Defendants will pay under this Settlement is One
27 Million Seven Hundred Fifty Thousand Dollars (\$1,750,000). This amount is all-inclusive of all
28 payments contemplated in this resolution, excluding any employer-side payroll taxes on the

1 portion of the Settlement Shares allocated to wages which shall be separately paid by Defendants
2 to the Settlement Administrator. All of the Gross Settlement Amount will be disbursed pursuant
3 to this Agreement, but not to Non-Participating Class Members, without the need to submit a
4 claim form for Participating Class Members and none of the Gross Settlement Amount will revert
5 to Defendants.

6 C. **Payments from the Gross Settlement Amount.** Subject to the terms and
7 conditions of this Agreement, the Settlement Administrator will make the following payments out
8 of the Gross Settlement Amount:

- 9 1. **To Plaintiff:** In addition to Plaintiff's individual portion of the Settlement
10 Shares to be paid to Plaintiff, Plaintiff will apply to the Court for an award
11 of not more than \$10,000 as a Class Representative Service Payment.
12 Defendants will not oppose a Class Representative Service Payment of no
13 more than \$10,000 for the Plaintiff. The Settlement Administrator will pay
14 the Class Representative Service Payment approved by the Court out of the
15 Gross Settlement Amount. If the Court approves a Class Representative
16 Service Payment of less than \$10,000 for Plaintiff, the unapproved amount
17 will be retained in the Net Settlement Amount for distribution to
18 Participating Class Members if approved. Payroll tax withholding and
19 deductions will not be taken from the Class Representative Service
20 Payment and instead a Form 1099 will be issued to Plaintiff with respect to
21 the Class Representative Service Payment and Plaintiff will assume full
22 responsibility and liability for the taxes due on his Class Representative
23 Service Payment. To receive the Class Representative Service Payment,
24 Plaintiff agrees to a Section 1542 waiver and general release of all claims
25 as set forth below. Plaintiff agrees not to opt out from or object to the
26 Settlement.
- 27 2. **To Class Counsel:** Class Counsel will apply to the Court for an award of
28 not more than One-Third of the Gross Settlement Amount, which is

1 presently \$583,333, as their Class Counsel Fees Payment and an amount
2 not more than \$30,000 for all expenses incurred as documented in Class
3 Counsel's billing records as their Class Counsel Litigation Expenses
4 Payment. Defendants will not oppose the request for a Class Counsel Fees
5 Payment and Class Counsel Litigation Expenses Payment consistent with
6 this Agreement and approved by the Court. The Settlement Administrator
7 will pay the amounts approved by the Court out of the Gross Settlement
8 Amount. If the Court approves a Class Counsel Fees Payment and/or a
9 Class Counsel Litigation Expenses Payment of less than these amounts,
10 which are presently \$583,333 and \$30,000 respectively, the unapproved
11 amount(s) will be retained in the Net Settlement Amount for distribution to
12 Participating Class Members if approved. Payroll tax withholding and
13 deductions, if any, will not be taken from the Class Counsel Fees Payment
14 and Class Counsel Litigation Expenses Payment and, instead, one or more
15 Forms 1099 will be issued to Class Counsel with respect to those
16 payments. The payment of the Class Counsel Fees Payment and Class
17 Counsel Litigation Expenses Payment shall be made to Class Counsel.

- 18 3. **The PAGA Payment.** The Parties will seek approval from the Court for
19 the PAGA Payment of \$25,000 out of the Gross Settlement Amount, which
20 shall be allocated 75% (\$18,750) to the LWDA as the LWDA's share of
21 the Settlement of civil penalties paid under this Agreement pursuant to
22 PAGA and 25% (\$6,250) will be distributed *pro rata* to the Aggrieved
23 Employees based on their respective pay periods worked during the PAGA
24 Period if approved. If the Court approves a PAGA Payment of less than
25 \$25,000, the unapproved amount will be retained in the Net Settlement
26 Amount for distribution to Participating Class Members if approved. All
27 Aggrieved Employees will be sent their share of the PAGA Payment and
28 will be subject to the release of the Released PAGA Claims as set forth

below, whether or not they opt out of the Settlement. One hundred percent (100%) of the PAGA Payment is for the settlement of claims for penalties, are not subject to wage withholdings, and shall be reported on IRS Forms 1099.

4. **To the Settlement Administrator.** The Settlement Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses that are documented and approved by the Court in an amount not to exceed \$20,000 (“Settlement Administration Expenses”). To the extent the Settlement Administration Expenses that are documented and approved by the Court are less than \$20,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members if approved.

D. **Payments From the Net Settlement Amount.** The Net Settlement Amount shall include the following payments after the deductions have been made from the Gross Settlement Amount as described in this Agreement. The Net Settlement Amount shall include the following:

1. **Settlement Shares.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay to each Participating Class Member his or her individual Settlement Share from the Net Settlement Amount. The submission of a claim form is not required to participate in the Settlement.
2. **Calculation.** Each Participating Class Member will be entitled, provisionally, to a share of the Net Settlement Amount. The Settlement Share for each Participating Class Member will be calculated as follows: (i) the Settlement Administrator shall divide the Net Settlement Amount by the total number of workweeks the Participating Class Members were employed by Defendants during the Class Period to determine a dollar amount per week (“Weekly Rate”); and (ii) the Settlement Administrator shall then take the number of workweeks each Participating Class Member

was employed by Defendants and multiply it by the Weekly Rate to calculate each Participating Class Member's individual Settlement Share.

3. **Withholding.**

a. Subject to approval by the Court, One-Third of each Participating Class Member's Settlement Share is for the settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings, shall be reported on IRS Forms W-2, and shall be paid from the Net Settlement Amount. The Settlement Administrator shall be responsible for remitting to the tax authorities all Participating Class Members' and the employer's share of payroll taxes on the Wage Portion.

b. Subject to approval by the Court, Two-Thirds of each Participating Class Member's Settlement Share is for the settlement of claims for interest and penalties allegedly due to employees (the "Non-Wage Portion"). The Non-Wage Portion shall not be subject to wage withholdings, and shall be reported on IRS Forms 1099.

c. The Participating Class Members agree to hold harmless Defendants, Class Counsel, and Defendants' Counsel for any tax liability, including penalties and interest, arising out of or relating to the Participating Class Members' failure to pay taxes on any amounts paid pursuant to this Settlement.

E. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no portion of the Settlement Shares, and their Election Not to Participate in Settlement will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Their respective portion of the Settlement Shares will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to the Participating Class Members' portion of the Settlement Shares.

F. **Class Size Modification.** Defendants have represented that there are

1 approximately 768 Class Members who worked approximately 42,683 workweeks from June 1,
2 2016 to April 14, 2021. Defendants will provide a declaration under penalty of perjury prior to
3 the filing of the motion for preliminary approval confirming the number of Class Members and
4 workweeks they worked between June 1, 2016 and April 14, 2021. If the number of Class
5 Members and/or workweeks (between June 1, 2016 and April 14, 2021) is more than 10% of the
6 estimate Defendants declare in the declaration, then Defendants will confer with Plaintiff in good
7 faith to discuss a potential adjustment, which may include either a proportionate increase to the
8 Gross Settlement Amount by the percentage the total workweeks exceeds 10% more than 42,683
9 workweeks or a reduction to the Class Period so that the workweeks included is no more than
10 10% more than 42,683 workweeks.

11 **G. Appointment of Settlement Administrator.** After obtaining a quote from
12 mutually acceptable and qualified settlement administrators, the Parties have mutually agreed to
13 ask the Court to appoint ILYM Group as the qualified administrator, to serve as the Settlement
14 Administrator, which, as a condition of appointment, will agree to be bound by this Agreement
15 with respect to the performance of its duties and its compensation and will execute a
16 confidentiality agreement satisfactory to Defendants. The Settlement Administrator's duties will
17 include preparing, printing, and mailing the Class Notice Packet to all Class Members;
18 conducting a National Change of Address search to update Class Member addresses before
19 mailing the Class Notice Packets; re-mailing to the Class Member's new address Class Notice
20 Packets that are returned; setting up a toll-free telephone number to receive calls from Class
21 Members; receiving and reviewing for validity completed Elections Not to Participate in
22 Settlement; providing the Parties with weekly status reports about the delivery of Class Notice
23 Packets and receipt of completed Elections Not to Participate in Settlement; calculating
24 Settlement Shares; issuing the checks to effectuate the payments due under the Settlement;
25 issuing the tax reports and payments to taxing authorities required under this Settlement; and
26 otherwise administering the Settlement pursuant to this Agreement. The Settlement
27 Administrator will have the authority to resolve all disputes concerning the calculation of a
28 Participating Class Member's Settlement Share, subject to the dollar limitations and calculations

1 set forth in this Agreement. The Settlement Administration Expenses, including the cost of
2 printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount.

3 The Parties agree that the Settlement Administrator shall establish a Qualified Settlement
4 Fund (“QSF”) that is intended to be pursuant to Section 468B of the Code and Treas. Reg.
5 §1.468B-1, 26 CFR § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator
6 as such. With respect to the QSF, the Settlement Administrator shall: (1) open and administer a
7 settlement account in such a manner as to qualify and maintain the qualification of the QSF as a
8 “Qualified Settlement Fund” under Section 468B of the Code and Treas. Reg. §1.468B-1; (2)
9 satisfy all federal, state and local income and other tax reporting, return, and filing requirements
10 with respect to the QSF; and (3) satisfy out of the QSF all fees, expenses, and costs incurred in
11 connection with the opening and administration of the QSF and the performance of its duties and
12 functions as described in this Agreement. The aforementioned fees, costs, and expenses shall be
13 treated as and included in the costs of administering the QSF and as Settlement Administration
14 Expenses.

15 H. **Procedure for Approving Settlement.**

16 1. **Motion for Preliminary Approval of Settlement by the Court.**

17 a. After Execution of this Settlement Agreement, Plaintiff will file a
18 Preliminary Approval Motion with the Court for an order giving
19 Preliminary Approval of the Settlement, setting a date for the Final
20 Approval Hearing, approving the Class Notice (the “Motion for
21 Preliminary Approval”). Contemporaneous with the filing of
22 Plaintiff’s Preliminary Approval Motion, the Parties shall file a
23 Joint Stipulation of Dismissal of the PAGA Action. The Superior
24 Court for the County of Contra Costa’s dismissal of the PAGA
25 Action without prejudice in the matter agreed to by the Parties is a
26 material precondition to Defendants’ obligation to pay the Gross
27 Settlement Amount. Any disagreement among the Parties
28 concerning the Class Notice, the proposed orders, or other

documents necessary to implement the Settlement will be referred to the mediator for resolution.

- b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit an Order Granting Preliminary Approval of the Settlement substantially in the form evidenced by Exhibit B to this Agreement and incorporated by reference into this Agreement.
- c. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval.
- d. Within ten (10) days of the filing the Motion for Preliminary Approval, Defendants will send the required notice(s) of the Settlement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1711 *et seq.*

2. **Notice to Class Members.** After the Court enters an Order Granting Preliminary Approval of the Settlement, every Class Member will be sent the Class Notice Packet (which will include the Class Notice completed to reflect the Order Granting Preliminary Approval of the Settlement) as follows:

- a. No later than 15 business days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendants will provide to the Settlement Administrator in electronic format a spreadsheet containing each Class Member's Class Data. If any or all of the Class Data is unavailable to Defendants, Defendants will so inform Class Counsel and the Parties will make their best efforts

1 to reconstruct or otherwise agree upon the Class Data prior to when
2 it must be submitted to the Settlement Administrator. This
3 information will otherwise remain confidential and will not be
4 disclosed to anyone, except as required to applicable taxing
5 authorities, in order to carry out the reasonable efforts described in
6 section III.H.2.c., or pursuant to Defendants' express written
7 authorization or by order of the Court. All Class Data will be used
8 for settlement notification and settlement administration, shall be
9 kept confidential by the Settlement Administrator, and shall not be
10 provided to Class Counsel or used for any other purpose. This
11 provision shall not be construed to impede Class Counsel's ability
12 to discharge their fiduciary duties to the Class, and if additional
13 disclosures are necessary, Class Counsel will obtain written
14 authorization of Defendants and/or an order from the Court.

15 b. The Settlement Administrator shall update the Class Data using the
16 National Change of Address database prior to mailing the Class
17 Notice Packets. Using best efforts to mail it as soon as possible,
18 and in no event later than 14 days after receiving the Class Data, the
19 Settlement Administrator will mail the Class Notice Packets to all
20 Class Members via first-class regular U.S. Mail using the mailing
21 address information provided by Defendants, unless modified by
22 any updated address information that the Settlement Administrator
23 obtains in the course of administration of the Settlement.

24 c. If a Class Notice Packet is returned because of an incorrect address,
25 the Settlement Administrator will promptly, and not longer than
26 fourteen (14) days from receipt of the returned packet, search for a
27 more current address for the Class Member and re-mail the Class
28 Notice Packet to the Class Member. The Settlement Administrator

1 will use the Class Data and otherwise work with Defendants to find
2 a more current address. The Settlement Administrator will be
3 responsible for taking reasonable steps, consistent with its agreed-
4 upon job parameters and Federal Rule of Civil Procedure 23(c)(2),
5 Court orders, and fee, as agreed to with Class Counsel and
6 according to the following deadlines, to trace the mailing address of
7 any Class Member for whom a Class Notice Packet is returned by
8 the U.S. Postal Service as undeliverable. These reasonable steps
9 shall include, at a minimum, the tracking of all undelivered mail;
10 performing address searches for all mail returned without a
11 forwarding address using available email addresses, phone
12 numbers, social security numbers, credit reports and social media;
13 and promptly re-mailing to Class Members for whom new
14 addresses are found. If the Class Notice Packet is re-mailed, the
15 response date for written objections, disputes and opt-outs will be
16 extended an additional 15 days for those Class Members who are
17 sent re-mailed Class Notice Packets, and the Settlement
18 Administrator will note for its own records and notify Class
19 Counsel and Defendants' Counsel of the frequency of each such re-
20 mailing as part of a weekly status report provided to the Parties.

21 d. As part of its weekly status report, the Settlement Administrator
22 will inform Class Counsel and Defendants' Counsel of the number
23 of Elections Not to Participate in Settlement it receives (including
24 the numbers of valid and deficient), and number of objections
25 received.

26 e. Not later than 10 days before the date by which Plaintiff files the
27 motion for final approval of the Settlement, the Settlement
28 Administrator will provide the Parties for filing with the Court a

1 declaration of due diligence setting forth its compliance with its
2 obligations under this Agreement and detailing the Class Notice
3 Packets mailed and remailed including any mail tracing efforts,
4 Elections Not to Participate in Settlement it received (including the
5 numbers of valid and deficient Elections), and objections received.
6 Prior to the Final Approval Hearing, the Settlement Administrator
7 will supplement its declaration of due diligence if any material
8 changes occur from the date of its prior declaration.

9 **3. Objections to Settlement; Elections Not to Participate in Settlement.**

10 Participating Class Members may submit objections to the Settlement
11 and/or objections to the Class Counsel Fees Payment, Class Counsel
12 Litigation Expenses Payment, and/or Class Representative Service
13 Payment pursuant to the following procedures. Objections must comply
14 with Federal Rule of Civil Procedure 23(E)(5):

- 15 a. **Objections to Settlement.** The Class Notice will provide that
16 Participating Class Members who wish to object to the Settlement,
17 Class Counsel Fees Payment, Class Counsel Litigation Expenses
18 Payment, and/or the Class Representative Service Payment may
19 object to the proposed Settlement, either in writing or orally at the
20 Final Approval Hearing. Objections in writing must be submitted
21 to the Court in compliance with Federal Rules of Civil Procedure
22 23(e)(5), received or postmarked not later than forty-five (45)
23 calendar days after the Settlement Administrator mails the Class
24 Notice Packets. Written objections must set forth the grounds for
25 the objection(s) and comply with the instructions in the Class
26 Notice. If a Class Notice Packet is re-mailed, the response date for
27 written objections will be extended an additional 15 days for those
28 Class Members who are sent re-mailed Class Notice Packets. Non-

1 Participating Class Members shall have no ability to comment on or
2 object to the Settlement.

3 b. **Election Not to Participate in Settlement.** The Class Notice also
4 will provide that Class Members who wish to exclude themselves
5 from the Settlement must mail to the Settlement Administrator
6 postmarked not later than forty-five (45) calendar days after the
7 Settlement Administrator mails the Class Notice Packets, a signed
8 Election Not to Participate in Settlement. If a Class Notice Packet
9 is re-mailed, the response date for opt-outs will be extended an
10 additional 15 days for those Class Members who are sent re-mailed
11 Class Notice Packets. To be valid, an Election Not to Participate in
12 Settlement must be timely and must comply with the instructions in
13 the Class Notice. If a question is raised about the authenticity of a
14 signed Election Not to Participate in Settlement, the Settlement
15 Administrator will have the right to demand additional proof of the
16 Class Member's identity. A Non-Participating Class Member will
17 not participate in or be bound by the Settlement and the Judgment,
18 except that an Aggrieved Employee will still be paid their
19 allocation of the PAGA Payment and will remain bound by the
20 release of the Released PAGA Claims regardless of their request for
21 exclusion and/or whether they cash their check for their allocation
22 of the PAGA Payment. Defendants will remain free to contest any
23 claim brought by any Class Member that would have been barred
24 by this Agreement, and nothing in this Agreement will constitute or
25 be construed as a waiver of any defense Defendants have or could
26 assert against such a claim. A Class Member who does not
27 complete and mail a timely Election Not to Participate in
28 Settlement in the manner and by the deadline specified above and in

1 the Class Notice will automatically become a Participating Class
2 Member and will be bound by all terms and conditions of the
3 Settlement, including the Released Class Claims by the Class, if the
4 Settlement is approved by the Court, and by the Judgment,
5 regardless of whether he or she has objected to the Settlement or
6 cash their check for their individual Settlement Share. Persons who
7 submit an Election Not to Participate in Settlement shall not be
8 permitted to file objections to the Settlement or appear at the Final
9 Approval Hearing to voice any objections to the Settlement.
10 All Participating Class Members who do not submit a valid and
11 timely Election Not to Participate in Settlement will receive their
12 individual Settlement Share, without the need to file a claim form,
13 and will be bound by all of the terms of the Settlement, including
14 without limitation, the release of the Released Class Claims by the
15 Participating Class Members set forth in this Agreement regardless
16 of whether they cash their check for their individual Settlement
17 Share.

18 c. **Report.** Not later than ten (10) calendar days after the deadline for
19 submission of Elections Not to Participate in Settlement, the
20 Settlement Administration will provide Class Counsel and
21 Defendants' Counsel with a complete and accurate list of all Non-
22 Participating Class Members.

23 d. A Participating Class Member may challenge his or her dates of
24 employment worked for Defendants by notifying the Settlement
25 Administrator in writing of the dates of employment they contend
26 to have worked for Defendants during the Class Period,
27 accompanied by supporting documentation or other evidence. Any
28 such challenge must be postmarked not later than forty-five (45)

1 calendar days after the Settlement Administrator mails the Class
2 Notice Packets. The Settlement Administrator shall immediately
3 notify both Class Counsel and Defendants' Counsel of any disputes
4 submitted by Class Members. Defendants will promptly provide
5 any information or documents reasonably requested by the
6 Settlement Administrator to assist in making its determination. The
7 dates of employment provided by Defendants shall be rebuttably
8 presumed to be correct and Defendants' records shall be rebuttably
9 presumed to be correct. If the Participating Class Member does not
10 provide any relevant documents or other evidence, the challenge
11 will be rejected by the Settlement Administrator. All other
12 challenges will be resolved at the exclusive discretion and authority
13 of the Settlement Administrator prior to the Final Approval
14 Hearing, after seeking input from counsel for the Parties. The
15 Settlement Administrator's decision shall be binding and non-
16 appealable by Plaintiff, Defendants, or the Class Member.

- 17 4. **Right of Defendants to Reject Settlement.** If (a) the number of Class
18 Members who timely submit valid Elections Not to Participate in
19 Settlement equals or exceeds four percent (4%) of the Class, (b) the
20 Settlement is construed in such a fashion that Defendants are required to
21 pay more than the Gross Settlement Amount (except employer's share of
22 payroll taxes), or (c) the Court does not approve the Settlement releasing
23 the claims set forth in this Agreement, or otherwise makes an order
24 inconsistent with any of the terms of this Agreement, Defendants, at their
25 sole discretion, shall have the right but not the obligation to revoke the
26 Settlement. Defendants shall exercise their revocation rights, if at all,
27 within fourteen (14) days of the last triggering event described in (a)-(c)
28 above by providing written notice to Class Counsel. If Defendants exercise

1 their revocation rights, the Parties will have no further obligations under
2 the Settlement, including any obligation by Defendants to pay the Gross
3 Settlement Amount, or any amounts that otherwise would have been owed
4 under this Agreement, except that Settlement Administration Expenses as
5 of the date that Defendants exercise the right to void the Settlement
6 pursuant to this Paragraph will be paid by Defendants.

7 5. **Voided Settlement or Effective Date Does Not Occur.** If Defendants
8 void the Settlement pursuant to the above Paragraph or if the Effective
9 Date does not occur, the Parties to this Agreement shall be deemed to have
10 reverted to their respective status as of the date and time immediately prior
11 to the execution of this Agreement. In such an event, this Agreement
12 (except for those provisions relating to non-admission, denial of liability
13 set forth above, and the confidentiality agreements entered into by the
14 Parties) shall be deemed null and void, its terms and provisions shall have
15 no further force and effect with respect to the Parties and shall not be used
16 in the Action and/or PAGA Action or in any other proceeding for any
17 purpose, and any Judgment or order entered by the Court in accordance
18 with the terms of the Agreement shall be treated as vacated *nunc pro tunc*
19 and may not be referenced in this case or any other case. Notwithstanding
20 any other provision of this Agreement, no order of the Court, modification,
21 or reversal on appeal of any order of the Court that reduces the amount of
22 any attorneys' fees or costs to be paid by Defendants to Class Counsel, or
23 reduces the amount of the Class Representative Service Payment, shall
24 constitute grounds for cancellation or termination of the Agreement or
25 grounds for limiting any other provision of the Judgment.

26 6. **No Solicitation.** The Parties and their respective counsel represent that
27 neither the Parties nor their respective counsel have or will solicit or
28 otherwise encourage directly or indirectly any Class Member to object to

1 the Settlement, appeal from the Judgment, or elect not to participate in the
2 Settlement.

3 **7. Additional Briefing and Final Approval.**

- 4 a. Unless otherwise ordered by the Court, Class Counsel will file with
5 the Court their motion for the Class Counsel Fees Payment, Class
6 Counsel Litigation Expenses Payment, and Class Representative
7 Service Payment no later than thirty-five (35) days before the
8 deadline for written objections and shall be posted on a website as
9 indicated in the Class Notice. This motion will be scheduled to be
10 heard by the Court at the Final Approval Hearing.
- 11 b. Not later than thirty-five (35) days before the Final Approval
12 Hearing, Plaintiff will file with the Court a motion for final
13 approval of the Settlement. Class Counsel will send to Defendants'
14 Counsel the draft Motion for Final Approval at least two weeks
15 before filing it without the Court and will confer with Defendants'
16 Counsel and use their best efforts to incorporate Defendants'
17 reasonable changes.
- 18 c. If any opposition is filed to the Motion for Final Approval and/or
19 the motion for the Class Counsel Fees Payment, Class Counsel
20 Litigation Expenses Payment, and Class Representative Service
21 Payment, then not later than five (5) court days before the Final
22 Approval Hearing, both Parties may file a reply in support of the
23 Motion for Final Approval, and Plaintiff and Class Counsel may
24 also file a reply in support of their motion for the Class
25 Representative Service Payment, the Class Counsel Fees Payments,
26 and the Class Counsel Litigation Expenses Payment.
- 27 d. If the Court does not grant final approval of the Settlement or grants
28 final approval conditioned on any material change to the Settlement

(including, but not limited to, the scope of release to be granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiff and Class Counsel for the PAGA Payment, Class Representative Service Payment, the Class Counsel Fees Payment, and/or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this paragraph.

e. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment substantially in the form attached hereto as Exhibit C. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

8. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiff and Participating Class Members who did not timely submit an objection to the Settlement, Defendants, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal

1 is taken from the Judgment, the time for consummation of the Settlement
2 (including making payments under the Settlement) will be suspended until
3 such time as the appeal is finally resolved and the Judgment becomes Final.

4 9. **Vacating, Reversal, or Material Modification of Judgment on Appeal**
5 **or Review.** If, after a notice of appeal, a petition for review, or a petition
6 for *certiorari*, or any other motion, petition, or application is filed with
7 respect to the Judgment, the reviewing Court vacates, reverses, or modifies
8 the Judgment such that there is a material modification to the Settlement
9 (including, but not limited to, the scope of release to be granted by
10 Participating Class Members), and that Court's decision is not completely
11 reversed and the Judgment is not fully affirmed on review by a higher
12 Court, then the Parties shall work together in good faith to address any
13 concerns raised by the reviewing Court and propose a revised Settlement
14 for the approval of the Court not later than fourteen days after the
15 reviewing Court's decision vacating, reversing, or materially modifying the
16 Judgment becomes Final. A vacation, reversal, or modification of the
17 Court's award of the Class Representative Service Payment, the Class
18 Counsel Fees Payment, and/or Class Counsel Litigation Expenses Payment
19 will not constitute a vacation, reversal, or material modification of the
20 Judgment within the meaning of this paragraph, provided that Defendant's
21 obligation to make payments under this Settlement will remain limited by
22 the Gross Settlement Amount.

23 10. **Timing of Settlement Funding and Provision of Settlement Shares and**
24 **Other Payments.** Defendants shall fund the Gross Settlement Amount by
25 depositing the money with the Settlement Administrator. Defendants shall
26 fund the Gross Settlement Amount and the amount necessary to pay
27 Defendants' share of payroll taxes within fifteen (15) business days after
28 the Effective Date provided that the Settlement Administrator sends to

1 Defendants' counsel the QSF's IRS Form W-9 on or before the Effective
2 Date. Within ten (10) business days after Defendants fund the Gross
3 Settlement Amount, the Settlement Administrator will make payment of all
4 Settlement Shares to Participating Class Members, as well as payment of
5 Settlement Administration Expenses, the Class Counsel Fees Payment, the
6 Class Counsel Litigation Expenses Payment, the Class Representative
7 Service Payment, and 75% of the PAGA Payment to the LWDA in
8 accordance with this Agreement.

9 11. **Uncashed Settlement Share Checks.** A Participating Class Member must
10 cash his or her Settlement Share check within 180 days after it is mailed to
11 him or her. If a Participating Class Member's Settlement Share check is
12 not cashed within 120 days after its last mailing to the Participating Class
13 Member, the Settlement Administrator will also send the affected
14 Participating Class Member a notice informing him or her that unless the
15 check is cashed in the next 60 days, it will expire and become non-
16 negotiable, and offer to replace the check if it was lost or misplaced but not
17 cashed. If the check remains uncashed by the expiration of the 180-day
18 check-cashing period, the funds from such uncashed checks will be paid to
19 the California State Controller's Unclaimed Property Fund in the name of
20 the Participating Class Member, and the Participating Class Member shall
21 remain bound by the Settlement. The Parties agree that this disposition
22 results in no "unpaid residue" within the meaning of California Code of
23 Civil Procedure Section 384, as the entire Net Settlement Amount will be
24 paid out to Participating Class Members, whether or not they all cash their
25 Settlement Share checks.

26 12. **Final Report by Settlement Administrator to Court.** Within ten days
27 after final disbursement of all funds from the Gross Settlement Amount,
28 the Settlement Administrator will provide the Parties with a declaration

1 providing a final report on the disbursements of all funds from the Gross
2 Settlement Amount.

3 I. **Release of Claims.**

4 1. **Participating Class Members.** As of the Effective Date, all Participating
5 Class Members will release Defendants and the Released Parties from any
6 and all wage and hour claims, obligations, demands, actions, rights, causes
7 of action, and liabilities (including state statutory and common law claims)
8 alleged in the Action, or that could have been alleged based on the facts
9 alleged in the Action, that arose during the Class Period, including: (a)
10 failure to pay overtime; (b) failure to pay minimum wages; (c) failure to
11 timely pay wages during employment; (d) failure to pay final wages on
12 termination; (e) failure to provide accurate itemized wage statements; (f)
13 failure to provide compliant meal and rest periods; (g) failure to pay meal
14 and rest period premiums; (h) failure to reimburse for business-related
15 expenses; (i) failure to pay wages due to discharged and quitting
16 employees; (j) failure to maintain required records; (k) claims that are or
17 were asserted or that could have been asserted based on the facts alleged in
18 the Action; and (l) penalties (including civil and statutory penalties,
19 including penalties under PAGA), liquidated damages, punitive damages,
20 interest, attorneys' fees, litigation costs, restitution, equitable relief, or
21 additional damages which allegedly arise from the claims described in (a)
22 through (k) above under any applicable law, which arose during the Class
23 Period, and expressly excluding all other claims, including claims for
24 wrongful termination, unemployment insurance, disability, social security,
25 workers' compensation, and class claims outside of the Class Period and
26 PAGA claims outside of the PAGA Period ("Released Class Claims").
27
28

1 For purposes of clarity, the Released Class Claims specifically include the
2 following claims:

3 Statutory Claims: any and all claims based on the facts alleged in this
4 action arising under the Cal. Labor Code, including, §§ 201-204, 210,
5 218.6, 221-224, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5,
6 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1199, 2800, 2802,
7 2698-2699.5, Cal. Business & Professions Code §§ 17200 *et seq.*, Cal.
8 Civil Code §§ 3287-3288, and Cal. Code of Civil Procedure §1021.5, to the
9 extent that such claims arise out of the alleged facts, circumstances, and
10 occurrences underlying the allegations as set forth in this Action, including
11 any versions of the complaints.

12
13 Common Law and/or Equitable Claims: Any and all common law or
14 equitable claims, under any theory whatsoever, to the extent that such
15 claims arise out of the alleged facts, circumstances, and occurrences
16 underlying the allegations as set forth in the Action, including any versions
17 of the complaints.

18 The release of the Released Class Claims shall be effective as to all
19 Participating Class Members regardless of whether they objected to the
20 Settlement and/or cashed their check for their individual Settlement Share.

- 21 2. **Aggrieved Employees.** As of the Effective Date, the Aggrieved
22 Employees will release Defendants and the Released Parties from all
23 PAGA claims for civil penalties alleged in any versions of the complaints
24 filed in the Action and letters to the LWDA which arose during the PAGA
25 Period, excluding all other claims and PAGA claims outside of the PAGA
26 Period (“Released PAGA Claims”). The release of the Released PAGA
27 Claims shall be effective as to all Aggrieved Employees regardless of
28 whether an Aggrieved Employee submitted a request for an exclusion from

1 the Class, objected to the Settlement, and/or cashed their check(s) for their
2 individual Settlement Share and/or allocation of the PAGA Payment, and
3 the Action shall be dismissed with prejudice as to the Released PAGA
4 Claims.

- 5 3. **Plaintiff.** As of the Effective Date, Plaintiff generally, releases and
6 discharges Defendants and the Released Parties from any and all claims,
7 transactions or occurrences between them that occurred during the Class
8 Period (“Plaintiff’s Released Claims”). This release of Plaintiff’s Released
9 Claims releases Defendants and the Released Parties from any claim that
10 Plaintiff could maintain in any action against any Released Party that
11 occurred during the Class Period. Notwithstanding the foregoing, this
12 waiver and release of claims does not extend to any rights which as a
13 matter of law cannot be waived and released by private agreement,
14 including rights to sue to enforce this Agreement and rights to vested
15 benefits, unemployment benefits, disability benefits, social security
16 benefits, workers’ compensation benefits and claims outside the Class
17 Period.

18 Plaintiff acknowledges that he may discover facts or law different from, or
19 in addition to the facts or law that he knows or believes to be true with
20 respect to the claims and matters released by way of this Agreement and
21 agrees, nonetheless, that this Agreement and the releases contained in it
22 shall be and remain effective in all respects, notwithstanding such different
23 or additional facts or the discovery of them. The Parties declare and
24 represent that they intend this Agreement to be complete and not subject to
25 any claim of mistake, and that the releases herein express full and complete
26 releases, and that they intend that the releases herein shall be final and
27 complete.
28

1 4. **Plaintiff's Waiver of Rights Under California Civil Code Section 1542.**

2 As partial consideration for the Class Representative Service Payment, the
3 Plaintiff's Released Claims shall include all such claims, whether known or
4 unknown by the releasing party. Thus, even if Plaintiff discovers facts
5 and/or claims in addition to or different from those that he now knows or
6 believes to be true with respect to the subject matter of the Plaintiff's
7 Released Claims, those claims will remain released and forever barred.
8 Therefore, with respect to Plaintiff's Released Claims, Plaintiff expressly
9 waives and relinquishes the provisions, rights and benefits of section 1542
10 of the California Civil Code, which reads:

11 **A general release does not extend to claims that the creditor or**
12 **releasing party does not know or suspect to exist in his or her**
13 **favor at the time of executing the release, and that if known by**
14 **him or her, would have materially affected his or her settlement**
 with the debtor or released party.

15 5. **Class Counsel.** As of the date Defendants fully fund the Gross Settlement
16 Amount, and except as otherwise provided by this Agreement and the
17 Judgment, Class Counsel and any counsel associated with Class Counsel
18 waive any claim to costs and attorneys' fees and expenses against
19 Defendants arising from or related to the Action and/or PAGA Action.

20 J. **No Effect on Other Benefits.** The Settlement Shares will not result in any
21 additional benefit payments (such as 401(k), pension, or bonus) beyond those provided by this
22 Agreement to Plaintiff or Participating Class Members, and Plaintiff and Participating Class
23 Members will be deemed to have waived all such claims, whether known or unknown by them, as
24 part of their release of claims under this Agreement.

25 K. **Limitation on Public Statements About Settlement.** Neither Class Counsel nor
26 Defendants' Counsel shall publicize the Settlement other than filing documents with the Court.
27 Plaintiff and Class Counsel and Defendants and Defendants' Counsel agree that they will not
28 issue any press releases or initiate any contact with the media about the fact, amount, or terms of

1 the Settlement and/or publicize the Action, the PAGA Action, or the Settlement, including but not
2 limited to on any website or social media account (including, for avoidance of doubt, any website
3 maintained by Class Counsel). If Plaintiff or Class Counsel or Defendants or Defendant's
4 Counsel receives an inquiry about the Settlement from the media, they will decline to comment
5 unless otherwise agreed in writing. This provision shall not prohibit Class Counsel from
6 communicating with Class Members after preliminary approval is granted for the sole purpose of
7 administering the Settlement. This provision also does not limit Class Counsel from complying
8 with ethical obligations or from posting court-filed documents on their website for viewing (if
9 necessary) by Class Members after preliminary approval, which will be removed upon the
10 Effective Date. Nothing in this provision shall prevent Defendants or Plaintiff from making any
11 required disclosures.

12 **L. Miscellaneous Terms.**

13 **1. No Admission of Liability or Class Certification for Other Purposes.**

14 a. Defendants and the Released Parties deny that they have engaged in
15 any unlawful activity, have failed to comply with the law in any
16 respect, have any liability to anyone under the claims asserted in the
17 Action, or that but for the Settlement a class should be certified in
18 the Action or a representative action claim is manageable in the
19 PAGA Action. This Agreement is entered into solely for the
20 purpose of compromising highly disputed claims. Nothing in this
21 Agreement is intended or will be construed as an admission of
22 liability or wrongdoing by Defendants or the Released Parties, or an
23 admission by Plaintiff that any of the claims were non-meritorious
24 or any defense asserted by Defendants was meritorious. This
25 Settlement and the fact that Plaintiff and Defendants were willing to
26 settle the Action and PAGA Action will have no bearing on, and
27 will not be admissible in connection with, any litigation (other than
28 solely in connection with effectuating the Settlement pursuant to

1 this Agreement). Nothing in this Agreement shall be constructed as
2 an admission by Defendants of any liability or wrongdoing as to
3 Plaintiff, Class Members, Aggrieved Employees, or any other
4 person, and Defendants specifically disclaim any such liability or
5 wrongdoing. Moreover, it is not, and it should not be construed as,
6 any admission of fact or law in this matter or any other matter that a
7 class action is appropriate or that a representative action is
8 manageable. The Parties have entered into this Settlement with the
9 intention of avoiding further disputes and litigation with the
10 attendant inconvenience, expenses and risks. Nothing in this
11 Agreement shall be construed as an admission by Plaintiff that
12 Plaintiff's claims do not have merit that class action is
13 inappropriate.

14 b. Whether or not the Judgment becomes Final, neither the Settlement,
15 this Agreement, any document, statement, proceeding or conduct
16 related to the Settlement or the Agreement, nor any reports or
17 accounting of those matters, will be (i) construed as, offered or
18 admitted in evidence as, received as, or deemed to be evidence for
19 any purpose adverse to Plaintiff or Defendants or any of the
20 Released Parties, including, but not limited to, evidence of a
21 presumption, concession, indication or admission by any of the
22 Released Parties of any liability, fault, wrongdoing, omission,
23 concession or damage; or (ii) disclosed, referred to or offered in
24 evidence against any of the Released Parties, in any further
25 proceeding in the Action and/or PAGA Action, or any other civil,
26 criminal or administrative action or proceeding except for purposes
27 of effectuating the Settlement pursuant to this Agreement.

28 c. This section and all other provisions of this Agreement

1 notwithstanding, any and all provisions of this Agreement may only
2 be admitted in evidence and otherwise used in any and all
3 proceedings for the limited purpose of enforcing any or all terms of
4 this Agreement or defending any claims released or barred by this
5 Agreement.

6 2. **Representation by Class Counsel/Knowledge of Class Counsel.** Class
7 Counsel represents that other than Plaintiff himself, Class Counsel does not
8 represent any other current or former employees of Defendants in
9 connection with any claims, charges, complaints or other matters against
10 Defendants, and Class Counsel is not aware of any individuals who are
11 planning to bring any claims, charges, complaints, or other matters against
12 Defendants. Class Counsel also represents that no other attorneys and/or
13 law firms participated in the Action and/or PAGA Action and Class
14 Counsel is not aware of any other attorney and/or law firm that would have
15 a claim for attorneys' fees, costs, lien, or any other relief with respect to the
16 Action and/or PAGA Action.

17 3. **Integrated Agreement.** After this Agreement is signed and delivered by
18 all Parties and their counsel, this Agreement and its exhibits will constitute
19 the entire agreement between the Parties relating to the Settlement, and it
20 will then be deemed that no oral representations, warranties, covenants, or
21 inducements have been made to any Party concerning this Agreement or its
22 exhibits other than the representations, warranties, covenants, and
23 inducements expressly stated in this Agreement and its exhibits.

24 4. **Attorney Authorization.** Class Counsel and Defendants' Counsel warrant
25 and represent that they are authorized by Plaintiff and Defendants,
26 respectively, to take all appropriate action required or permitted to be taken
27 by such Parties pursuant to this Agreement to effectuate its terms, and to
28 execute any other documents required to effectuate the terms of this

1 Agreement including any amendments to this Agreement. The Parties and
2 their counsel will cooperate with each other and use their best efforts to
3 effect the implementation of the Settlement. In the event the Parties are
4 unable to reach agreement on the form or content of any document needed
5 to implement the Agreement, or on any supplemental provisions that may
6 become necessary to effectuate the terms of this Agreement, the Parties
7 will seek the assistance of the mediator for resolution and will split the
8 mediator's additional fees (if any).

9 5. **No Prior Assignments:** The Parties represent, covenant and warrant that
10 they have not directly or indirectly assigned, transferred, encumbered or
11 purported to assign, transfer, or encumber to any person or entity and
12 portion of any liability, claim, demand, action, cause of action, or right
13 released and discharged in this Settlement.

14 6. **No Tax Advice:** Neither Class Counsel nor Defendants' Counsel intend
15 anything contained in this Settlement to constitute advice regarding taxes
16 or taxability, nor shall anything in this Settlement be relied upon as such
17 within the meaning of United States Treasury Department Circular 230 (31
18 CFR Part 10, as amended) or otherwise.

19 7. **Modification of Agreement.** Except as set forth in section III.L.4
20 hereinabove, this Agreement, and any and all parts of it, may be amended,
21 modified, changed, or waived only by an express written instrument signed
22 by all Parties or their authorized representatives.

23 8. **Agreement Binding on Successors.** This Agreement will be binding
24 upon, and inure to the benefit of, the successors of each of the Parties and
25 Released Parties.

26 9. **Applicable Law.** All terms and conditions of this Agreement and its
27 exhibits will be governed by and interpreted according to the laws of the
28 State of California.

- 1 10. **Cooperation in Drafting.** The Parties have cooperated in the drafting and
2 preparation of this Agreement. This Agreement will not be construed
3 against any Party on the basis that the Party was the drafter or participated
4 in the drafting.
- 5 11. **Fair Settlement.** The Parties and their respective counsel believe and
6 warrant that this Agreement reflects a fair, reasonable, and adequate
7 settlement of the Action and have arrived at this Agreement through arms-
8 length negotiations, taking into account all relevant factors, current and
9 potential.
- 10 12. **Use and Return of Documents and Data.** All originals, copies, and
11 summaries of documents and data provided to Class Counsel by
12 Defendants in connection with the mediation or other settlement
13 negotiations in this matter may be used only with respect to this
14 Settlement, and no other purpose, and may not be used in any way that
15 violates any existing contractual agreement, statute, or rule. Within thirty
16 days after the Effective Date, Class Counsel will return or destroy and
17 confirm in writing to Defendants the destruction of all such documents and
18 data.
- 19 13. **Headings.** The descriptive heading of any section or paragraph of this
20 Agreement is inserted for convenience of reference only and does not
21 constitute a part of this Agreement.
- 22 14. **Notice.** All notices, demands or other communications given under this
23 Agreement will be in writing and deemed to have been duly given as of the
24 third business day after mailing by United States mail, addressed as
25 follows:
- 26 *To Plaintiff and the Class:*
- 27 Norman B. Blumenthal
28 Kyle R. Nordrehaug
 Blumenthal Nordrehaug Bhowmik De Blouw LLP

2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: norm@bamlawca.com
kyle@bamlawca.com

To Defendants:

Michael J. Puma
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
Tel.: (215) 963-5305
Fax: (215) 908-1581
E-Mail: Michael.puma@morganlewis.com

Kathy H. Gao
Morgan, Lewis & Bockius LLP
300 South Grand Avenue
Twenty-Second Floor
Los Angeles, CA 90071
Tel.: (213) 612-2500
Fax: (213) 612-2501
E-Mail: kathy.gao@morganlewis.com

15. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
16. **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement, and Class Counsel will not assert any Released Claims against any Released Parties pending final approval.
17. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of

1 this Settlement.

2 18. **Severability.** If any provision of this Agreement or the application thereof
3 is held invalid, such invalidation shall not affect other provisions or
4 applications of this Agreement (except as otherwise expressly provided
5 herein).

6 **IV. EXECUTION BY PARTIES AND COUNSEL**

7 The Parties and their counsel hereby execute this Agreement.

8 Dated: _____, 2021

PLAINTIFF JAKARI WILSON

9 By  Jakari Wilson (Sep 28, 2021 10:52 PDT)

Plaintiff JAKARI WILSON

10 Dated: _____, 2021

DEFENDANTS WHOLESOME HARVEST
BAKING, LLC AND BIMBO BAKEHOUSE
LLC

11 By _____

Defendant WHOLESOME HARVEST
BAKING, LLC AND BIMBO
BAKEHOUSE LLC

12 Dated: 9/28, 2021

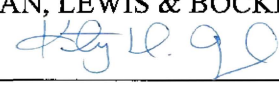
13 BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOW LLP

14 By 

Norman Blumenthal
Attorneys for Plaintiff JAKARI WILSON

15 Dated: October 5, 2021

16 MORGAN, LEWIS & BOCKIUS LLP

17 By 

Kathy H. Gao
Attorneys for Defendants WHOLESOME
HARVEST BAKING, LLC and
BIMBO BAKEHOUSE LLC

1 this Settlement.

2 18. **Severability.** If any provision of this Agreement or the application thereof
3 is held invalid, such invalidation shall not affect other provisions or
4 applications of this Agreement (except as otherwise expressly provided
5 herein).

6 **IV. EXECUTION BY PARTIES AND COUNSEL**

7 The Parties and their counsel hereby execute this Agreement.

8 Dated: _____, 2021

PLAINTIFF JAKARI WILSON

9 By _____
10 Plaintiff JAKARI WILSON

11 Dated: ^{10/5/2021}_____, 2021

DEFENDANTS WHOLESOME HARVEST
BAKING, LLC AND BIMBO BAKEHOUSE
LLC

12 By Leticia Garcia
13 Defendant WHOLESOME HARVEST
14 BAKING, LLC AND BIMBO
BAKEHOUSE LLC

15 Dated: _____, 2021

BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP

16 By _____
17 Norman Blumenthal
18 Attorneys for Plaintiff JAKARI WILSON

19 Dated: _____, 2021

MORGAN, LEWIS & BOCKIUS LLP

20 By _____
21 Kathy H. Gao
22 Attorneys for Defendants WHOLESOME
23 HARVEST BAKING, LLC and
24 BIMBO BAKEHOUSE LLC

EXHIBIT A

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT
AND HEARING DATE FOR COURT APPROVAL**

**(*Jakari Wilson v. Wholesome Harvest Baking, LLC et al.*,
United States District Court, Northern District of California Case No. 4:20-cv-05186-YGR)**

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a monetary payment from the Settlement, you do not have to do anything. Your estimated Settlement Share is: \$<<[REDACTED]>>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this Notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the payment, you will release claims against the Defendants as detailed below.
Exclude Yourself	To exclude yourself, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement and you will not be bound by the Settlement. However, if you are an Aggrieved Employee who opts out, you will still be paid your allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless of whether you submit a request for exclusion. Instructions are set forth below.
Object	To make an oral objection to the Settlement, either write to the Court about why you do not agree with the Settlement or appear at the Final Approval Hearing on _____ to make an oral objection. Directions are provided below.

Your options are further explained in this Class Notice. To exclude yourself from, or object to, the Settlement you must take action by certain deadlines. If you want the Settlement as proposed, you don't need to do anything to obtain your share of the Settlement. Defendants will not retaliate against you for any actions you take with respect to the Settlement.

1. Why did I get this Notice?

A proposed class action and Private Attorneys General Act ("PAGA") settlement (the "Settlement") of the above-captioned action pending in the United States District Court for the Northern District of California (the "Court") has been reached between Plaintiff Jakari Wilson ("Plaintiff") and Defendants Wholesome Harvest Baking, LLC and Bimbo Bakehouse LLC ("Defendants") and has been granted preliminary approval by the Court. **You may be entitled to receive a monetary payment from this Settlement. The Court has not made a determination about any of the contentions of the parties. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claims or defenses asserted by either side.**

You have received this Notice because you have been identified as a member of the Class and/or an Aggrieved Employee, which are defined as:

The **Class** is defined as: “all individuals who are or previously were employed by Defendants in California who were classified as non-exempt employees during the period June 1, 2016 to _____ [the earlier of Preliminary Approval or November 18, 2021] (the “Class Period”).”

Aggrieved Employees are defined as: “all individuals who are or previously were employed by Defendants in California who were classified as non-exempt employees during the period of time from July 11, 2019 to _____ [the earlier of Preliminary Approval or November 18, 2021] (the “PAGA Period”).”

This Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On June 1, 2020, Plaintiff filed a Complaint against Defendants in the in the Superior Court of the State of California, County of Contra Costa (Case No. C20-00989). Plaintiff asserted claims against Defendants for wage and hour violations under the California Labor Code, including claims for failure to pay minimum wages, failure to pay overtime wages, failure to provide meal and rest periods, failure to provide expense reimbursement, failure to provide accurate wage statements and failure to provide wages when due at termination. On July 28, 2020, Defendants removed the Action to federal court, the United States District Court, Northern District of California, where it is currently pending as *Wilson v. Wholesome Harvest Baking, LLC et al.*, Case No. 4:20-cv-05186-YGR (the “Action”). On July 29, 2021, Plaintiff filed an amended complaint (“Amended Complaint”) [Doc. No. 32] which adds, *inter alia*, the Fair Labor Standards Act (“FLSA”) claim as a predicate violation to the Unfair Competition Law (“UCL”) cause of action in the Action, and a claim under PAGA seeking civil penalties for violations of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.3, 226.7, 351, 510, 512, 558(a)(1)(2), 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B).

Through mediation on April 14, 2021, the Parties reached a Settlement in order to avoid the risk, inconvenience and expense of further litigation. Plaintiff and his attorneys believe the proposed Settlement is fair, adequate, and in the best interest of the class members to whom it applies given the outcome of their investigation, the consumption of time and resources required in connection with further litigation, and the uncertainty in the law governing some of the claims presented.

Defendants vigorously dispute all claims asserted in this litigation, and further deny that the Action is appropriate for class or representative treatment for any purpose other than this Settlement. Specifically, Defendants maintain that they have properly complied with all laws and regulations, including the California Labor Code. Nothing in this Notice, the Settlement, or actions to carry out the Settlement means that the Defendants admit any fault, guilt, negligence, wrongdoing or liability whatsoever. The Court has not made any findings regarding Plaintiff’s claims. Defendants enter into this Settlement for the sole purpose of avoiding the operational burden, expense, and uncertainty of continuing litigation.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firm Blumenthal Nordrehaug Bhowmik De Blouw LLP to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendants have agreed to pay an “all in” amount of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000) (the “Gross Settlement Amount”) to fully resolve the claims in the Action. The Gross Settlement Amount includes all payments of Settlement Shares to the Participating Class Members, as contemplated by the Settlement, Class Counsel’s attorneys’ fees and costs, Settlement Administration Expenses, the Class Representative Service Payment to the Plaintiff, and the PAGA Payment for civil penalties. Any employer-side payroll taxes on the portion of the Settlement Shares allocated to wages shall be separately paid by Defendants. The entirety of the Gross Settlement Amount will be disbursed. No amount of the Gross Settlement Amount will revert to Defendants for any reason.

Amounts to be Paid From the Gross Settlement Amount. The following proposed payments, subject to Court approval, will be deducted from the Gross Settlement Amount before Settlement Shares are made to Class Members who do not request exclusion (“Participating Class Members”):

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$20,000, for the expenses of administering the Settlement, including without limitation, expenses of notifying the Class Members of the Settlement, processing opt outs, and distributing Settlement Shares and tax forms, and handling inquiries and uncashed checks.
- Attorneys’ Fees and Costs. Payment to Class Counsel of reasonable attorneys’ fees not to exceed one-third (1/3) of the Gross Settlement Amount, which is presently \$583,333 (the “Class Counsel Fees Payment”), and an additional amount to reimburse actual litigation expenses not to exceed \$30,000 (the “Class Counsel Litigation Expenses Payment”). Class Counsel has been prosecuting the Action on behalf of Plaintiff and the proposed Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.
- Class Representative Service Payment. A Class Representative Service Payment that will not exceed Ten Thousand Dollars (\$10,000.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for his services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Payment. A payment of \$25,000 relating to the claim for penalties under PAGA, which shall be allocated 75% (\$18,750) to the State of California’s Labor and Workforce Development Agency (“LWDA Payment”), and 25% (\$6,250) to be distributed *pro rata* to the Aggrieved Employees based on their respective pay periods worked during the PAGA Period (July 11, 2019 to the earlier of Preliminary Approval or November 18, 2021)). PAGA Payment shall be allocated to all Aggrieved Employees regardless of whether they request exclusion from the Class.

Calculation of Payments to Participating Class Members. After all of the payments of the court-approved Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the amount remaining is the Net Settlement Amount, which is estimated to be \$1,081,667. The Net Settlement Amount shall be distributed to class members who do **not** request exclusion (“Participating Class Members”). The submission of a claim form is not required to be paid. The Net Settlement Amount shall be paid as described below.

The amount paid to each Participating Class Member (individual “Settlement Share”) will be calculated as follows: (i) the Settlement Administrator shall divide the Net Settlement Amount by the total number of workweeks the Participating Class Members were employed by Defendants during the Class Period to determine a dollar amount per week (“Weekly Rate”); and (ii) the Settlement Administrator shall then take the number of workweeks each Participating Class Member was employed by Defendants and multiply it by the Weekly Rate to calculate each Participating Class Member’s individual Settlement Share.

If the Settlement is approved by the Court and you do not opt out, you will automatically be mailed a check for your Settlement Share to the same address as this Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. One-third (1/3) of each Participating Class Member's Settlement Share shall be treated as wages, subject to normal wage withholdings, and shall be reported on IRS Form W-2s. Two-Thirds (2/3) of each Participating Class Member's Settlement Share shall be treated as interest and penalties, which will not subject to wage withholdings and shall be reported on IRS Form 1099s.

The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members. Neither Class Counsel nor Defendants' Counsel intend anything contained in this Notice to constitute advice regarding taxes or taxability. The tax issues for each Participating Class Member are unique to each person, and each Participating Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement.

4. What Do I Release Under the Settlement?

Released Class Claims. As of the Effective Date, all Participating Class Members will release Defendants and the Released Parties from any and all wage and hour claims, obligations, demands, actions, rights, causes of action, and liabilities (including state statutory and common law claims) alleged in the Action, or that could have been alleged based on the facts alleged in the Action, that arose during the Class Period, including: (a) failure to pay overtime; (b) failure to pay minimum wages; (c) failure to timely pay wages during employment; (d) failure to pay final wages on termination; (e) failure to provide accurate itemized wage statements; (f) failure to provide compliant meal and rest periods; (g) failure to pay meal and rest period premiums; (h) failure to reimburse for business-related expenses; (i) failure to pay wages due to discharged and quitting employees; (j) failure to maintain required records; (k) claims that are or were asserted or that could have been asserted based on the facts alleged in the Action; and (l) penalties (including civil and statutory penalties, including penalties under PAGA), liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, equitable relief, or additional damages which allegedly arise from the claims described in (a) through (k) above under any applicable law, which arose during the Class Period, and expressly excluding all other claims, including claims for wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period and PAGA claims outside of the PAGA Period ("Released Class Claims").

For purposes of clarity, the Released Class Claims specifically include the following claims: Statutory Claims: any and all claims based on the facts alleged in this action arising under the Cal. Labor Code, including, §§ 201-204, 210, 218.6, 221-224, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1199, 2800, 2802, 2698-2699.5, Cal. Business & Professions Code §§ 17200 et seq., Cal. Civil Code §§ 3287-3288, and Cal. Code of Civil Procedure §1021.5, to the extent that such claims arise out of the alleged facts, circumstances, and occurrences underlying the allegations as set forth in this Action, including any versions of the complaints. Common Law and/or Equitable Claims: Any and all common law or equitable claims, under any theory whatsoever, to the extent that such claims arise out of the alleged facts, circumstances, and occurrences underlying the allegations as set forth in the Action, including any versions of the complaints.

The release of the Released Class Claims shall be effective as to all Participating Class Members regardless of whether they objected to the Settlement and/or cashed their check for their individual Settlement Share.

This means that, if you do not timely exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants and any other Released Party about the Released Class Claims resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

Released PAGA Claims. As of the Effective Date, the Aggrieved Employees will release Defendants and the Released Parties from all PAGA claims for civil penalties alleged in any versions of the complaints filed in the Action and letters to the LWDA which arose during the PAGA Period, excluding all other claims and PAGA claims outside of the PAGA Period ("Released PAGA Claims"). The release of the Released PAGA Claims shall be effective as to all Aggrieved Employees regardless of whether an Aggrieved Employee submitted a request for an exclusion from the Class, objected to the Settlement, and/or cashed their check(s) for their individual Settlement Share and/or allocation of the PAGA Payment.

5. How much will my payment be?

[Your approximate dates of employment with Wholesome Harvest Baking, LLC and/or Bimbo Bakehouse LLC are <<_____>>. Your estimated Settlement Share is: \$<<_____>>.]

The actual amount that you receive could be more or less than the above estimated amount(s), depending on the final settlement terms approved by the Court.

If you wish to dispute your dates of employment set forth above, you must submit a written, signed dispute setting forth the basis for the dispute, along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____, [forty-five (45) calendar days after the Notice or 60 days in the case of re-mailing].

6. How can I get a payment?

To be mailed a monetary payment from the Settlement, you do not have to do anything. A check for your Settlement Share will be mailed to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: _____ (800) _____.

The Court will hold a hearing on _____ to decide whether to approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within approximately two months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." If you opt out, you will not receive a Settlement Share from the Settlement, and you will not be bound by the Settlement which means you will retain the right to sue Defendants for Released Class Claims. However, Aggrieved Employees who opt out will still be paid their allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless of whether they submit a request for exclusion.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request to opt-out postmarked no later than _____ [forty-five (45) calendar days after the Notice or 60 days in the case of re-mailing]. The request to opt-out should state in substance: "I have read the Class Notice and I wish to opt-out of the class action and settlement of the case *Wilson v. Wholesome Harvest Baking, LLC*, Case No. Case No. 4:20-cv-05186-YGR." The request to opt-out must contain your name, address and signature. To be valid, the request to opt-out must be completed by you and must be timely submitted to the

Settlement Administrator. No other person may opt-out for a living member of the Class.

The address for the Settlement Administrator is _____. Written requests for exclusion that are postmarked after _____ [forty-five (45) calendar days after the Notice or 60 days in the case of re-mailing], or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the releases described above.

8. How do I tell the Court that I don't like the Settlement?

Any Class Member who has not opted out but believes that the Settlement should not be finally approved by the Court for any reason may object to the proposed Settlement or to the motion for attorneys' fees, costs and service award (which will be posted for viewing on or before _____ [35 days before objection deadline] on Class Counsel's website at www.bamlawca.com under "Class Notices" for *Wilson v. Wholesome Harvest Baking, LLC*). You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be made in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number which is *Wilson v. Wholesome Harvest Baking, LLC* in the United States District Court for the Northern District of California, Case No. 4:20-cv-05186-YGR, (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, Oakland Courthouse, located at 1301 Clay Street, Oakland, CA 94612, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before _____ [forty-five (45) calendar days after the Notice or 60 days in the case of re-mailing]. Written objections should also state your (the Class Member's) name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the Final Approval Hearing. Class Members may appear at the Final Approval Hearing on _____ to make an oral objection.

Any written objections must be delivered or postmarked and mailed to the Settlement Administrator by no later than _____ [forty-five (45) calendar days after the Notice or 60 days in the case of re-mailing]. The address for the Settlement Administrator is _____.

To object to the Settlement, you must not opt out, and if the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at 00:00 AM/PM on _____, at the United States District Court for the Northern District of California, Oakland Courthouse, located at 1301 Clay Street, Oakland, CA 94612, in Courtroom 1 on the 4th Floor before District Judge Yvonne Gonzalez Rogers. This hearing may be rescheduled by the Court without further notice to you.

At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval of the Settlement and to fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as a service payment to Plaintiff. If there

are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing. Please note that currently the Court is holding hearing remotely via Zoom and instructions can be found at <https://www.cand.uscourts.gov/judges/gonzalez-rogers-yvonne-ygr/>. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at _____ or write to *Wilson v. Wholesome Harvest Baking, LLC* Settlement Administrator, c/o _____; or contact Class Counsel.

The addresses for Parties' counsel are as follows:

Class Counsel:

Norman Blumenthal
Blumenthal Nordrehaug Bhowmik
De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel: 858-551-1223 / Fax: 858-551-1232
Email: Norm@bamlawca.com
Website: www.bamlawca.com

Counsel for Defendant:

Kathy H. Gao
Morgan, Lewis & Bockius LLP
300 South Grand Avenue
Twenty-Second Floor
Los Angeles, CA 90071

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement. You may receive a copy of the Settlement Agreement, the motions for approval, the motion for attorneys' fees, costs, and service award, the Final Judgment or other Settlement documents by writing to Class Counsel as listed above or by going to Class Counsel's website at www.bamlawca.com under "Class Notices" for *Wilson v. Wholesome Harvest Baking, LLC*. You may also get more details by examining the Court's file using PACER at <http://www.cand.uscourts.gov/> and entering the Case No. 4:20-cv-05186, or by going to the Clerk's Office located 1301 Clay Street, Oakland, CA 94612, in Suite 400S, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT CALL THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure proper mailing of your Settlement Payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. If the check of a Participating Class Member remains uncashed by the expiration date, the funds from such uncashed checks will be paid to the California Controller's Unclaimed Property Fund in the name of and for the benefit of the Participating Class Member who did not cash their check where the funds may be claimed. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT B

EXHIBIT "B"

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAKARI WILSON, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

WHOLESOME HARVEST
BAKING, LLC, a Limited Liability
Company; BIMBO BAKEHOUSE
LLC, a Limited Liability Company;
and DOES 1 through 50, inclusive,

Defendants.

CASE NO. **4:20-cv-05186-YGR**

Assigned to:
Hon. Yvonne Gonzalez Rogers

[PROPOSED] ORDER:

- (1) GRANTING PRELIMINARY
APPROVAL OF SETTLEMENT;**
- (2) APPROVING CLASS NOTICE;**
- (3) APPOINTING SETTLEMENT
ADMINISTRATOR; AND**
- (4) SCHEDULING FINAL
APPROVAL HEARING**

1 On _____, a hearing was held on the motion of Plaintiff
2 Jakari Wilson (“Plaintiff”) for preliminary approval of the parties’ proposed
3 settlement (“Settlement”) with Defendants Wholesome Harvest Baking, LLC and
4 Bimbo Bakehouse LLC (“Defendants”), approval of the notice to be sent to the
5 class about the Settlement, and the setting of a date for the hearing on final approval
6 of the Settlement.

7 The Court having read and considered the papers on the motion, the
8 arguments of counsel, and the law, and good cause appearing therefore,

9 **IT IS ORDERED:**

10 1. This Order incorporates the defined terms in the Joint Stipulation of
11 Class and Representative Action Settlement (the “Agreement”) (Declaration of
12 Kyle Nordrehaug, Exhibit ____). Pursuant to the terms of the Agreement, Plaintiff
13 and Participating Class Members will take only that which is stated in the
14 Agreement as approved by the Court.

15 2. Pursuant to the Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.*
16 (“CAFA”), Defendants caused the mailing of the CAFA Notice to the Attorney
17 General of the United States and the appropriate state official in each state in which
18 a Class Member reportedly resides at the time of CAFA Notice according to
19 Defendant’s records and as updated following a National Change of Address
20 search. Accordingly, the Court finds that Defendants have discharged their
21 obligations under CAFA to provide notice to the appropriate federal and state
22 officials.

23 3. Pursuant to the Agreement, the Class is conditionally certified for
24 settlement purposes only and is defined as all individuals who are or previously
25 were employed by Defendants in California who were classified as non-exempt
26 employees during the period June 1, 2016 to _____ (the “Class
27 Period”). The Court finds for settlement purposes only that this Class satisfies the
28 requirements of Fed. R. Civ. Proc. 23. - 1 -

1 4. The parties' Agreement is granted preliminary approval as it meets the
2 criteria for preliminary settlement approval. The Settlement falls within the range
3 of possible approval as fair, adequate and reasonable, and appears to be the product
4 of arm's-length and informed negotiations and to treat all Class Members fairly.
5 Continued litigation would have been expensive for both sides. The Parties
6 acknowledge that litigating and trying this action may have resulted in delay of any
7 recovery, involved significant risk as to liability and certification, and led to
8 possible appeals. Class Counsel received the relevant information for the Class.
9 Plaintiff has adequately demonstrated that the agreement to settle did not occur
10 until Class Counsel possessed sufficient information to evaluate the case and make
11 an informed decision about settlement.

12 5. The Parties' proposed notice plan is constitutionally sound because
13 individual notices will be mailed to all Class Members whose identities are known
14 to the parties, and such notice is the best notice practicable. The parties' proposed
15 Notice of Pendency of Class Action Settlement and Hearing Date for Court
16 Approval ("Class Notice") attached to the Agreement as Exhibit A, sufficiently
17 informs Class Members of the terms of the Settlement, their rights under the
18 Settlement, their rights to object to the Settlement, their right to receive a
19 Settlement Share or elect not to participate in the Settlement, and the processes for
20 doing so, and the date and location of the Final Approval Hearing. Therefore, the
21 Class Notice is approved.

22 6. Any Class Member who does not submit a valid request for exclusion
23 will be deemed a Participating Class Member and will be entitled to receive a
24 Settlement Share based upon the allocation formula in the Agreement. However,
25 Aggrieved Employees who opt out will still be paid their allocation of the PAGA
26 Payment and will remain bound by the release of the Released PAGA Claims
27 regardless of whether they submit a request for exclusion.

1 7. Any Class Member who wishes to comment on or object to the
2 Settlement, the attorneys' fees and costs, and/or the proposed Class Representative
3 Service Payment, or who elects not to participate in the Settlement, has until 45
4 days after the mailing of the Class Notice Packets to submit his or her comment,
5 objection, dispute, or request for exclusion in Settlement pursuant to the procedures
6 set forth in the Class Notice. If the Class Notice Packet is re-mailed, the response
7 date for written objections, disputes and opt-outs will be extended an additional 15
8 days for those Class Members who are sent re-mailed Class Notice Packets. Class
9 Counsel must file their application for the attorneys' fees and costs and post the
10 motion for viewing as indicated in the Class Notice no later than 35 days prior to
11 the end of the objection period, and the application will be heard at the Final
12 Approval Hearing. Class Members may appear at the Final Approval Hearing to
13 make an oral objection, but no appearance is required.

14 8. ILYM Group is appointed to act as the Settlement Administrator,
15 pursuant to the terms set forth in the Settlement. Blumenthal Nordrehaug Bhowmik
16 De Blouw LLP is approved as Class Counsel and the Plaintiff is approved as the
17 representative of the Class.

18 9. Defendant is directed to provide the Settlement Administrator with the
19 Class Data for each Class Member as specified by the Agreement no later than 15
20 business days after the date of entry of this order. Pursuant to the terms set forth in
21 the Agreement, the Class Data, its contents and any files containing Class Data
22 shall remain strictly confidential for the Settlement Administrator, not to be
23 disclosed to Plaintiff, Class Counsel, and/or to any Class Member.

24 10. The Settlement Administrator shall update the Class Data using the
25 National Change of Address database prior to mailing the Class Notice Packets The
26 Settlement Administrator is directed to mail the approved Class Notice by first-
27 class mail to the Class Members at their last known address no later than 14 days
28 after receipt of the Class Data.

1 11. A Final Approval Hearing will be held on _____, at
2 _____ in Courtroom 1 of the Oakland Courthouse, to determine whether
3 the Settlement should be granted final approval as fair, reasonable, and adequate as
4 to the Class Members. The Court will hear all evidence and argument necessary to
5 evaluate the Settlement and will consider the request for approval of attorneys' fees
6 and costs and for approval of the Class Representative Service Payment. Class
7 Members and their counsel may support or oppose the Settlement and the motion
8 for an award of attorneys' fees and costs and the Class Representative Service
9 Payment, if they so desire, as set forth in the Class Notice.

10 12. Any Class Member may appear at the Final Approval Hearing in
11 person or by their own attorney and show cause why the Court should not approve
12 the Settlement, or object to the motion for an award of attorneys' fees and costs and
13 the service award. For any written comments or objections to be considered at the
14 hearing, the Class Member must submit the written objections to the Settlement
15 Administrator in compliance with the instructions in the Class Notice and describe
16 the nature of the Class Member's comments, support or objection.

17 13. The Court reserves the right to continue the date of the final approval
18 hearing without further notice to Class Members. The Court retains jurisdiction to
19 consider all further applications arising out of or in connection with the Settlement.

20 14. Should for whatever reason the Settlement not become final, the fact
21 that the parties were willing to stipulate to certification of the Class for settlement
22 purposes shall have no bearing on, nor be admissible in connection with, the issue
23 of whether a class should be certified in a non-settlement context, the Settlement
24 shall be deemed null and void, and the parties to the Settlement shall be deemed to
25 have reverted to their respective status as of the date and time immediately prior to
26 the execution of the Agreement.

27 15. If (a) the number of Class Members who timely submit valid requests
28 for exclusion equals or exceeds four percent (4%) of the Class, (b) the Settlement is

1 construed in such a fashion that Defendants are required to pay more than the Gross
2 Settlement Amount (except employer's share of payroll taxes), or (c) the Court does
3 not finally approve the Settlement releasing the claims set forth in the Agreement,
4 or otherwise makes an order inconsistent with any of the terms of the Agreement,
5 Defendants, at their sole discretion, shall have the right but not the obligation to
6 revoke the Settlement pursuant to the procedures provided in the Agreement.

7 16. This Order, which conditionally certifies a class action only for
8 settlement purposes, shall not be cited in this or any matter for the purpose of
9 seeking class certification, opposing decertification, or for any other purpose, other
10 than enforcing the terms of the Settlement.

11 17. Pending further orders of this Court, all proceedings in this matter
12 except those contemplated in this Preliminary Approval Order and in the
13 Agreement are stayed. To the extent permitted by law, pending final determination
14 as to whether the Settlement should be approved, the Court hereby orders that the
15 Class Representative and all Class Members, whether directly, representatively, or
16 in any other capacity, shall not prosecute any claims or actions against the Released
17 Parties that would be released by the Released Class Claims and/or Released PAGA
18 Claims if final approval of the Settlement is granted.

19 18. If the Court grants Final Approval, each Participating Class Member
20 and their successors shall conclusively be deemed to have released the Released
21 Class Claims and Released PAGA Claims set forth in the Agreement and Class
22 Notice, against the Released Parties (as defined in the Agreement), and all such
23 Participating Class Members and their successors shall be permanently enjoined
24 and forever barred from asserting any Released Class Claims and/or Released
25 PAGA Claims against the Released Parties.

1 DATED: _____
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4 HON. YVONNE GONZALEZ ROGERS
5 U.S. DISTRICT COURT JUDGE
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EXHIBIT C

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAKARI WILSON, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

WHOLESOME HARVEST
BAKING, LLC, a Limited Liability
Company; BIMBO BAKEHOUSE
LLC, a Limited Liability Company;
and DOES 1 through 50, inclusive,

Defendants.

CASE NO. **4:20-cv-05186-YGR**

Assigned to:
Hon. Yvonne Gonzalez Rogers

[PROPOSED] ORDER:

- (1) GRANTING FINAL APPROVAL
OF SETTLEMENT; AND**
- (2) ENTERING FINAL JUDGMENT**

1 On _____, a hearing was held on the motion of
2 Plaintiff Jakari Wilson (“Plaintiff”) for final approval of the class and representative
3 action settlement (the “Settlement”) with Defendants Wholesome Harvest Baking,
4 LLC and Bimbo Bakehouse LLC (“Defendants”), approval of the resolution of the
5 PAGA claim and the PAGA Payment, and approval of the payments to the Class,
6 the Plaintiff, Class Counsel, and the Settlement Administrator.

7 The Parties have submitted their Settlement, which this Court
8 preliminarily approved by its _____ order (Docket No. __) (the
9 “Preliminary Approval Order”). In accordance with the Preliminary Approval
10 Order, Class Members have been given notice of the terms of the Settlement and
11 the opportunity to comment on or object to it or to exclude themselves from its
12 provisions.

13 Having received and considered the Settlement, the supporting papers
14 filed by the Parties, and the evidence and argument received by the Court before
15 entering the Preliminary Approval Order and at the final approval hearing, the
16 Court grants final approval of the Settlement, enters this Order and Judgment, and
17 HEREBY ORDERS and MAKES DETERMINATIONS as follows:

18
19 1. Except as otherwise specified herein, the Court for purposes of this
20 Final Approval Order adopts all defined terms set forth in the Joint Stipulation of
21 Class and Representative Action Settlement (“Agreement”).

22 2. The Court has jurisdiction over this Action and the Settlement pursuant
23 to 28 U.S.C. sections 1132(a) and 1332(d).

24 3. In the Preliminary Approval Order, this Court certified the Class for
25 settlement purposes only. For settlement purposes only, the Court confirms the
26 certification of the Class which is defined as all individuals who are or previously
27 were employed by Defendants in California who were classified as non-exempt
28 employees during the period June 1, 2016 to _____ (the “Class

1 Period”). The individuals who requested exclusion
2 are: [REDACTED].

3 4. Pursuant to the Preliminary Approval Order, the Notice of Pendency of
4 Class Action Settlement and Hearing Date for Court Approval (“Class Notice”) was
5 sent to each Class Member by first-class mail. The Class Notice informed Class
6 Members of the terms of the Settlement, their right to receive a Settlement Share,
7 their right to comment on or object to the Settlement and/or the attorneys’ fees and
8 costs, their right to elect not to participate in the Settlement and pursue their own
9 remedies, and their right to appear in person or by counsel at the Final Approval
10 Hearing and be heard regarding approval of the Settlement. Adequate periods of
11 time were provided by each of these procedures.

12 5. The Court finds and determines that this notice procedure afforded
13 adequate protections to Class Members and provides the basis for the Court to
14 make an informed decision regarding approval of the Settlement based on the
15 responses of Class Members. The Court finds and determines that the Class Notice
16 provided in this case was the best notice practicable, which satisfied the
17 requirements of law and due process.

18 6. [REDACTED] Class Members filed written objections to the proposed Settlement
19 as part of this notice process. [As applicable] The Court overrules the objections
20 raised by objecting Class Members. [REDACTED]

21 7. For the reasons stated in the Preliminary Approval Order, the Court
22 finds and determines that the terms of the Settlement are fair, reasonable, and
23 adequate to the Class and to each Class Member and that the Participating Class
24 Members will be bound by the Settlement, that the Settlement is ordered finally
25 approved, and that all terms and provisions of the Settlement should be and hereby
26 are ordered to be consummated.

27 8. The Court finds and determines that the Gross Settlement Amount in
28 the maximum amount of One Million Seven Hundred Fifty Thousand Dollars

1 (\$1,750,000) and the Settlement Shares to be paid to the Participating Class
2 Members as provided for by the Settlement are fair and reasonable. The Court
3 hereby grants final approval to and orders the payment of those amounts be
4 distributed to the Participating Class Members out of the Net Settlement Amount in
5 accordance with the Agreement. Pursuant to the terms of the Agreement, the
6 Settlement Administrator is directed to make the payments to each Participating
7 Class Member in accordance with the Agreement. If a Participating Class Member
8 fails to cash or deposit their Settlement check within 180 days of mailing, including
9 if a Settlement check is returned undeliverable and a valid mailing address cannot
10 be ascertained, the Settlement check shall be sent to the California Controller's
11 Unclaimed Property Fund. Participating Class Members who fail to cash their
12 check within 180 calendar days of mailing will still be bound by the Settlement,
13 including the Released Class Claims and Released PAGA Claims, and this
14 Judgment.

15 9. The Court finds and determines that the fees and expenses of the
16 Settlement Administrator (_____) in administering the settlement, in
17 the amount of \$_____ [not to exceed \$20,000], are fair and reasonable. The Court
18 hereby grants final approval to and orders that the payment of that amount be paid
19 out of the Gross Settlement Amount in accordance with the Agreement.

20 10. The Court finds and determines that the request by Plaintiff and Class
21 Counsel to the Class Representative Service Payment and the attorneys' fees and
22 costs pursuant to the Agreement are fair and reasonable. The Court hereby grants
23 final approval to and orders that the payment of the amounts of \$ _____ to the
24 Plaintiff for his Class Representative Service Payment [not to exceed \$10,000],
25 \$_____ for attorneys' fees to Class Counsel [not to exceed \$583,333], and
26 \$_____ for reimbursement of costs [not to exceed \$30,000] be paid out of the
27 Gross Settlement Amount in accordance with the Settlement.
28

1 11. Upon the Effective Date, all Participating Class Members will release
2 Defendants and the Released Parties from any and all wage and hour claims,
3 obligations, demands, actions, rights, causes of action, and liabilities (including
4 state statutory and common law claims) alleged in the Action, or that could have
5 been alleged based on the facts alleged in the Action, that arose during the Class
6 Period, including: (a) failure to pay overtime; (b) failure to pay minimum wages;
7 (c) failure to timely pay wages during employment; (d) failure to pay final wages
8 on termination; (e) failure to provide accurate itemized wage statements; (f) failure
9 to provide compliant meal and rest periods; (g) failure to pay meal and rest period
10 premiums; (h) failure to reimburse for business-related expenses; (i) failure to pay
11 wages due to discharged and quitting employees; (j) failure to maintain required
12 records; (k) claims that are or were asserted or that could have been asserted based
13 on the facts alleged in the Action; and (l) penalties (including civil and statutory
14 penalties, including penalties under PAGA), liquidated damages, punitive damages,
15 interest, attorneys' fees, litigation costs, restitution, equitable relief, or additional
16 damages which allegedly arise from the claims described in (a) through (k) above
17 under any applicable law, which arose during the Class Period, and expressly
18 excluding all other claims, including claims for wrongful termination,
19 unemployment insurance, disability, social security, workers' compensation, and
20 class claims outside of the Class Period and PAGA claims outside of the PAGA
21 Period ("Released Class Claims").

22 12. For purposes of clarity, the Released Class Claims specifically include
23 the following claims: Statutory Claims: any and all claims based on the facts
24 alleged in this action arising under the Cal. Labor Code, including, §§ 201-204,
25 210, 218.6, 221-224, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5,
26 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1199, 2800, 2802, 2698-
27 2699.5, Cal. Business & Professions Code §§ 17200 *et seq.*, Cal. Civil Code §§
28 3287-3288, and Cal. Code of Civil Procedure §1021.5, to the extent that such

1 claims arise out of the alleged facts, circumstances, and occurrences underlying the
2 allegations as set forth in this Action, including any versions of the complaints.
3 Common Law and/or Equitable Claims: Any and all common law or equitable
4 claims, under any theory whatsoever, to the extent that such claims arise out of the
5 alleged facts, circumstances, and occurrences underlying the allegations as set forth
6 in the Action, including any versions of the complaints.

7 13. The release of the Released Class Claims shall be effective as to all
8 Participating Class Members regardless of whether they objected to the Settlement
9 and/or cash their check for their individual Settlement Share. The Court hereby
10 orders that Plaintiff and Class Members who did not timely object to the Settlement
11 are barred from prosecuting or pursuing any appeal of the Court's final approval of
12 the Settlement and Judgment.

13 14. Pursuant to the terms of the Agreement, as of the Effective Date,
14 Plaintiff generally, releases and discharges Defendants and the Released Parties
15 from any and all claims, transactions or occurrences between them that occurred
16 during the Class Period ("Plaintiff's Released Claims"). This release of Plaintiff's
17 Released Claims releases Defendants and the Released Parties from any claim that
18 Plaintiff could maintain in any action against any Released Party that occurred
19 during the Class Period. Notwithstanding the foregoing, this waiver and release of
20 claims does not extend to any rights which as a matter of law cannot be waived and
21 released by private agreement, including rights to sue to enforce this Agreement
22 and rights to vested benefits, unemployment benefits, disability benefits, social
23 security benefits, workers' compensation benefits and claims outside the Class
24 Period.

25 15. Plaintiff and all other Class Members, except the Class Members who
26 requested exclusion, as identified above, are hereby enjoined from filing or
27 prosecuting any other cases, claims, suits, and/or administrative proceedings
28 involving the Released Class Claims and the Released PAGA Claims.

1 16. The PAGA Payment is approved, which is to be distributed as set forth
2 in the Agreement. As of the Effective Date, the Aggrieved Employees will release
3 Defendants and the Released Parties from all PAGA claims for civil penalties
4 alleged in any versions of the complaints filed in the Action and letters to the
5 LWDA which arose during the PAGA Period, excluding all other claims and
6 PAGA claims outside of the PAGA Period (“Released PAGA Claims”). The
7 release of the Released PAGA Claims shall be effective as to all Aggrieved
8 Employees regardless of whether an Aggrieved Employee submitted a request for
9 an exclusion from the Class, objected to the Settlement, and/or cash their check(s)
10 for their individual Settlement Share and/or allocation of the PAGA Payment. This
11 Action shall be dismissed with prejudice as to the Released PAGA Claims in their
12 entirety as to all Aggrieved Employees.

13 17. Nothing in this order shall preclude any action to enforce the parties’
14 obligations under the Settlement or under this order, including the requirement that
15 Defendants make payment in accordance with the Agreement.

16 18. If, for any reason, the Effective Date (as defined by the Settlement)
17 does not occur, this Order will be vacated; the parties will return to their respective
18 positions in this action as those positions existed immediately before the parties
19 executed the Agreement; and nothing stated in the Agreement or any other papers
20 filed with this Court in connection with the Settlement will be deemed an admission
21 of any kind by any of the parties or used as evidence against, or over the objection
22 of, any of the parties for any purpose in this action or in any other action.

23 19. The parties entered into the Settlement solely for the purpose of
24 compromising and settling disputed claims. Defendants in no way admit any
25 violation of law or any liability whatsoever to Plaintiff, the Class, and/or the
26 Aggrieved Employees, individually or collectively, all such liability being
27 expressly denied by Defendants.
28

1 20. Without affecting the finality of this Final Approval Order in any way,
2 the Court retains jurisdiction of all matters relating to the interpretation,
3 administration, implementation, effectuation and enforcement of this Order and the
4 Settlement.

5 21. Each side will bear its own costs and attorneys' fees except as
6 provided by the Settlement and this Order.

7 22. By means of this Order, this Court hereby enters final judgment in this
8 action, as defined in Rule 58(a)(1), Federal Rules of Civil Procedure.

9 23. The parties are hereby ordered to comply with the terms of the
10 Agreement.

11 24. This Action is dismissed with prejudice as to the claims released by the
12 Settlement.

13 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

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15 DATED: _

16 HON. YVONNE GONZALEZ ROGERS
17 U.S. DISTRICT COURT JUDGE
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EXHIBIT #2

Blumenthal Nordrehaug Bhowmik De Blouw LLP

2255 Calle Clara, La Jolla, California 92037

Tel: (858) 551-1223

Fax: (858) 551-1232

FIRM RESUME

Areas of Practice: Employee, Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation, Business Litigation.

ATTORNEY BIOGRAPHIES

Norman B. Blumenthal

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Consumer and Securities Class Action, Civil Litigation, Wage and Hour Class Actions, Transactional Law

Admitted: 1973, Illinois; 1976, California

Biography: Law Clerk to Justice Thomas J. Moran, Illinois Supreme Court, 1973-1975, while on Illinois Court of Appeals. Instructor, Oil and Gas Law: California Western School of Law, 1981; University of San Diego School of Law, 1983. Sole Practitioner 1976-1987. Partner, Blumenthal & Ostroff, 1988-1995. Partner, Blumenthal, Ostroff & Markham, 1995-2001. Partner, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2018. Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP, 2018 - present.

Member: San Diego County, Illinois State and American Bar Associations; State Bar of California.

Educated: University of Wisconsin (B.A., 1970); Loyola University of Chicago (J.D., 1973);

Summer Intern (1971) with Harvard Voluntary Defenders

Kyle R. Nordrehaug

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation

Admitted: 1999, California

Biography: Associate, Blumenthal, Ostroff & Markham, 1999-2001. Associate, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Member: State Bar of California, Ninth Circuit Court of Appeals, Third Circuit Court of Appeals

Educated: University of California at Berkeley (B.A., 1994); University of San Diego School of Law (J.D. 1999)

Awards: Top Labor & Employment Attorney 2016; Top Appellate Reversal - Daily Journal 2015; Super Lawyer 2015-2018

Aparajit Bhowmik

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2006, California

Educated: University of California at San Diego (B.A., 2002); University of San Diego School of Law (J.D. 2006)

Biography: Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Awards: Rising Star 2015

Nicholas J. De Blouw

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2011, California

Educated: Wayne State University (B.A. 2008); California Western School of Law (J.D. 2011)

Piya Mukherjee

Associate Attorney

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2010, California

Educated: University of California, San Diego (B.S. 2006); University of Southern California, Gould School of Law (J.D. 2010)

Victoria Rivapalacio

Associate Attorney

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2011, California

Educated: University of California at San Diego (B.A., 2003); George Washington University Law School (J.D. 2010)

Ricardo Ehmann

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2018, California; 2004, Nevada

Educated: University of California, San Diego (B.A. 1998); Loyola Law School (J.D. 2001)

Jeffrey S. Herman

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2011, California; 2016 Arizona

Educated: University of Michigan (B.A. 2008); California Western School of Law (J.D. 2011)

Charlotte James

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2016, California

Educated: San Diego State University; California Western School of Law

Christine Levu

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2012, California

Educated: University of California, Irvine; California Western School of Law

Andrew Ronan

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2016, California

Educated: Arizona State University; University of San Diego School of Law

Scott Blumenthal

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2020, New Mexico

Educated: University of Southern California; California Western School of Law

REPORTED CASES

Sakkab v. Luxottica Retail N. Am., Inc., 803 F.3d 425 (9th Cir. 2015) (The panel reversed the district court's order granting Luxottica Retail North America, Inc.'s motion to compel arbitration of claims and dismissing plaintiff's first amended complaint, in a putative class action raising class employment-related claims and a non-class representative claim for civil penalties under the Private Attorney General Act.);

Securitas Security Services USA, Inc. v. Superior Court, 234 Cal. App. 4th 1109 (Cal. Feb. 27, 2015) (Court of Appeal concluded the trial court correctly ruled that *Iskanian* rendered the PAGA waiver within the parties' dispute resolution agreement unenforceable. However, the Court of Appeal then ruled the trial court erred by failing to invalidate the non-severable class action waiver from the agreement and remanded the entire complaint, including class action and PAGA claims, be litigated in the Superior Court);

Sussex v. United States Dist. Court for the Dist. of Nev., 781 F.3d 1065 (9th Cir. 2015) (The panel determined that the district court clearly erred in holding that its decision to intervene mid-arbitration was justified under *Aerojet-General*. Specifically, the panel held that the district court erred in predicting that an award issued by the arbitrator would likely be vacated because of his "evident partiality" under 9 U.S.C. § 10(a)(2).);

Provost v. YourMechanic, Inc., 2020 Cal. App. Lexis 955 (Oct. 15, 2020) (Court of Appeals affirmed denial of arbitration of PAGA claim, and held in a case of first impression, that there was no additional standing rules for PAGA claim brought by independent contractor);

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