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Attorneys for Plaintiff, JOSE ALVAREZ,
on behalf of himself and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

JOSE ALVAREZ, on behalf of himself and
all others similarly situated and aggrieved,

Plaintiff,

v.

KAZAK-MARS, INC., a California
corporation; EDUARD KARAPETYAN, an
individual; DAN SADOVSKY, an individual;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 20STCV42587

[Assigned to the Hon. Elihu M. Berle in
Dept. 6]

CLASS ACTION

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

Action Filed: November 6, 2020
Trial Date: None Set

This Joint Stipulation re: Class Action and Representative Action Settlement (“Settlement” or “Agreement” or “Settlement Agreement”) is made by, between and among plaintiff Jose Alvarez (“Plaintiff”), individually and on behalf of the Settlement Class, as defined below, on the one hand; and defendants Kazak-Mars, Inc. (“Kazak”), Eduard Karapetyan (“Karapetyan”) and Dan Sadovsky (“Sadovsky” and collectively, “Defendants”), on the other hand, in the lawsuit entitled *Jose Alvarez v. Kazak-Mars, Inc., et al.* filed in Los Angeles County Superior Court, Case No. 20STCV42587 (the “Action”). Plaintiff and Defendants shall be, at times, collectively referred to as the “Parties.” This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge and settle the claims as set forth herein, based upon and subject to the terms and conditions of this Agreement.

1 **1. DEFINITIONS**

2 **A. “Action”** means *Jose Alvarez v. Kazak-Mars, Inc., et al.* filed in Los Angeles
3 County Superior Court, Case No. 20STCV42587.

4 **B. “Aggrieved Employees”** means Class Members (defined below) working for
5 Defendants during the PAGA Period.

6 **C. “Class Counsel”** means: David Bibiyan, Jeffrey D. Klein and Diego F. Aviles of
7 Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term
8 “Plaintiff’s Counsel.”

9 **D. “Class Period”** means the period from November 6, 2016 through and including
10 June 29, 2021.

11 **E. “Court”** means the Superior Court of the State of California for the County of
12 Los Angeles.

13 **F. “Defendants”** shall refer to Defendants Kazak-Mars, Inc., Eduard Karapetyan
14 and Dan Sadovsky.

15 **G. “Employer Taxes”** means employer-funded taxes and contributions imposed on
16 the wage portions of the Individual Settlement Payments under the Federal Insurance
17 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
18 and contributions required of employers, such as for unemployment insurance.

19 **H. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
20 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
21 objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals
22 have been filed, the date on which they have been resolved or exhausted.

23 **I. “General Release”** means the general release of claims by Plaintiff, which is in
24 addition to his limited release of claims as a Participating Class Member.

25 **J. “Gross Settlement Amount”** means a non-reversionary fund in the sum of Three
26 Hundred and Fifty Thousand Dollars and Zero Cents (\$350,000.00),¹ which shall be paid by
27 Defendants ninety (90) days after final approval, subject to provision of a declaration from
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¹ As the same may be increased in accordance with Paragraph 16, below.

1 Defendants reflecting the need to pay on this timeline, and from which all payments for the
2 Individual Settlement Payments to Participating Class Members, Individual PAGA Payments to
3 Aggrieved Employees, and the Court-approved amounts for attorneys' fees and reimbursement
4 of litigation costs and expenses to Class Counsel, Settlement Administration Costs, a Service
5 Award to Plaintiff, and the payment made to the Labor and Workforce Development Agency
6 ("LWDA") for resolution of Plaintiff's cause of action for civil penalties under the Labor Code
7 Private Attorneys' General Act, codified at Labor Code Section 2698, *et seq.* ("PAGA"), interest
8 and certain taxes shall be paid. It expressly excludes Employer Taxes, which shall be paid by
9 Defendants separate and apart from the Gross Settlement Amount.

10 **K. "Individual Settlement Payment"** means a payment to a Participating Class
11 Member of his or her net share of the Net Settlement Amount, excluding any Individual PAGA
12 Payment to which he or she may be entitled if he or she is also an Aggrieved Employee.

13 **L. "Individual Settlement Share"** means the gross amount of the Net Settlement
14 Amount that a Settlement Class Member is eligible to receive based on the number of Workweeks
15 that he or she worked as a Settlement Class Member during the Class Period if he or she does not
16 submit a timely and valid Request for Exclusion, excluding any Individual PAGA Payment to
17 which he or she may be entitled if he or she is also an Aggrieved Employee.

18 **M. "LWDA Payment"** means the payment to the LWDA for its seventy-five percent
19 (75%) share of the total amount allocated toward penalties under the PAGA, which is to be paid
20 from the Gross Settlement Amount. The Parties have agreed that Ten Thousand Dollars and
21 Zero Cents (\$10,000.00) shall be allocated toward PAGA penalties, of which Seven Thousand,
22 Five Hundred Dollars and Zero Cents (\$7,500.00) will be paid to the LWDA (*i.e.*, the LWDA
23 Payment) and Two Thousand, Five Hundred Dollars and Zero Cents (\$2,500.00) will be
24 distributed to the Aggrieved Employees on a *pro rata* basis ("**PAGA Payment**").

25 **N. "Net Settlement Amount"** means the portion of the Gross Settlement Amount
26 that is available for distribution to Participating Class Members after deductions for the Court-
27 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
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1 of attorneys' fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA
2 Payment, and the PAGA Payment.

3 **O. "Individual PAGA Payment"** means a payment made to an Aggrieved
4 Employee of his or her share of the PAGA Payment, which may be in addition to their Individual
5 Settlement Share.

6 **P. "PAGA Period"** means the period from July 28, 2019 through and including June
7 29, 2021.

8 **Q. "Participating Class Members"** means all Settlement Class Members who do
9 not submit a timely and valid Request for Exclusion.

10 **R. "Parties"** shall refer to Plaintiff and Defendants.

11 **S. "Plaintiff"** shall refer to Plaintiff Jose Alvarez.

12 **T. "Preliminary Approval Date"** means the date on which the Court enters an
13 Order granting preliminary approval of the Settlement.

14 **U. "Released Parties"** shall mean Defendants and each of its past, present, and
15 future respective affiliates, parents, subsidiaries, predecessors, successors, divisions, joint
16 ventures and assigns, and each of these entities' past or present owners, directors, officers,
17 employees, partners, members, principals, agents, insurers, co-insurers, re-insurers, shareholders,
18 attorneys, and personal or legal representatives.

19 **V. "Response Deadline"** means the deadline for Settlement Class Members to mail
20 any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator,
21 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
22 and Spanish by the Settlement Administrator. The date of the postmark shall be the exclusive
23 means for determining whether a Request for Exclusion, Objection, or Workweek Dispute was
24 submitted by the Response Deadline. If a Class Member's notice is re-mailed, the Class Member
25 shall have fifteen (15) days from the re-mailing, or forty-five (45) days from the date of the initial
26 mailing, whichever is later, in which to postmark a Request for Exclusion or written objection.

27 **W. "Request for Exclusion"** means a written request to be excluded from the
28 Settlement Class pursuant to Section 9.C below.

1 **X. “Service Award”** means monetary amount to be paid to Plaintiff of up to Seven
2 Thousand, Five Hundred Dollars and Zero Cents (\$7,500) which, subject to Court approval, will
3 be paid out of the Gross Settlement Amount.

4 **Y. “Settlement Administration Costs”** means all costs incurred by the Settlement
5 Administrator in administration of the Settlement, including, but not limited to, translating the
6 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
7 and Spanish, calculating Individual Settlement Shares and Individual Settlement Payments and
8 associated taxes and withholdings, providing declarations, generating Individual Settlement
9 Payment checks and related tax reporting forms, doing administrative work related to unclaimed
10 checks, transmitting payment to Class Counsel for the Court-approved amounts for attorneys’
11 fees and reimbursement of litigation costs and expenses, to Plaintiff for his Service Award, and
12 to the LWDA from the LWDA Payment, providing weekly reports of opt-outs, objections and
13 related information, and any other actions of the Settlement Administrator as set forth in this
14 Agreement, all pursuant to the terms of this Agreement. The Settlement Administration Costs
15 are estimated not to exceed \$6,000. If the actual amount of the Settlement Administration Costs
16 is less than \$6,000, the difference between \$6,000 and the actual Settlement Administration Costs
17 shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
18 \$6,000 then such excess will be paid solely from the Gross Settlement Amount and Defendants
19 will not be responsible for paying any additional funds in order to pay these additional costs.

20 **Z. “Settlement Administrator”** means the Third-Party Administrator chosen by
21 Plaintiff that will be responsible for the administration of the Settlement including, without
22 limitation, translating the Class Notice in Spanish, the distribution of the Individual Settlement
23 Payments to be made by Defendants from the Gross Settlement Amount and related matters under
24 this Agreement.

25 **AA. “Settlement Class”, “Settlement Class Members” or “Class Members”** means
26 all current and former non-exempt, hourly paid employees who worked in California for Kazak-
27 Mars, Inc. at any time during the Class Period.

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1 **BB.** “**Workweeks**” means the number of workweeks that a Settlement Class Member
2 was employed by Defendants in a non-exempt, hourly position during the Class Period. If a
3 Settlement Class Member disputes his/her Individual Settlement Share, it shall be termed a
4 “Workweek Dispute.”

5 **2. BACKGROUND**

6 **A.** On July 28, 2020, Plaintiff filed with the LWDA and served on Defendants a
7 notice under Labor Code section 2699.3 (the “PAGA Notice”) stating Plaintiff intended to serve
8 as a proxy of the LWDA to recover civil penalties for Aggrieved Employees. The PAGA Notice
9 includes violations of law pled in the Class Action, in addition to a request for penalties for failure
10 to comply with Labor Code sections 204, 246, 404, 432, 1174, 1198.5, and 2810.5.

11 **B.** On November 6, 2020, when 65 days passed without any communication from
12 the LWDA, Plaintiff filed a putative wage-and-hour class action as well as the PAGA action
13 against Defendants in the Superior Court of California for the County of Los Angeles, Case
14 Number 20STCV42587 (the “Action”). Plaintiff alleged that during the Class Period, with
15 respect to himself and the Settlement Class Members, Defendants, *inter alia*, failed to pay the
16 Settlement Class Members’ overtime wages and minimum wages. He further alleged that
17 Defendants failed to provide compliant meal and rest periods and associated premium payments;
18 failed to issue compliant and accurate itemized wage statements; failed to timely pay all wages
19 due and owing at the time of termination or resignation; and engaged in unfair competition due
20 to the alleged Labor Code Violations. Moreover, Plaintiff, on behalf of himself and all other
21 Aggrieved Employees in the PAGA Period, acted as a proxy of the LWDA to recover civil
22 penalties for the Labor Code violations set out in the PAGA Notice by holding that Defendants
23 were responsible for penalties under Labor Code sections 210, 226.3, 558, 1197.1 and 2699

24 **C.** Shortly after the filing of this Action, the Parties agreed to exchange informal
25 discovery and attend an early mediation. Prior to mediation, Class Counsel was provided with,
26 among other things: (1) the number of workweeks and Class Members during the Class Period;
27 (2) the number of Class Members separated from employment from November 6, 2017 through
28 mediation for the purpose of calculating waiting time penalties; (3) the number of Class Members

1 working from November 6, 2019 through mediation for the purpose of calculating wage
2 statement violations and PAGA penalties; (4) a sampling of time records and pay records for 50
3 out of 100 Class Members (*i.e.*, 50%); (5) Defendants' 2016, 2018, 2020, and 2021 employee
4 handbooks; and (6) Defendants' 2020 and 2021 Meal and Rest Policies.

5 **D.** On June 29, 2021, the Parties participated in a mediation before mediator Jeffrey
6 Krivis, a well-regarded mediator experienced in mediating complex civil disputes. With the aid
7 of the mediator's evaluation and after weeks of further negotiations, the Parties reached the
8 Settlement to resolve the Action.

9 **E.** Class Counsel has conducted significant investigation of the law and facts relating
10 to the claims asserted in the Action and has concluded that that the Settlement set forth herein is
11 fair, reasonable, adequate, and in the best interests of the Settlement Class, taking into account
12 the sharply contested issues involved, the expense and time necessary to litigate the Action
13 through trial and any appeals, the risks and costs of further litigation of the Action, the risk of an
14 adverse outcome, the uncertainties of complex litigation, the information learned through
15 informal discovery regarding Plaintiff's allegations, and the substantial benefits to be received
16 by the Settlement Class Members.

17 **F.** Defendants have concluded that, because of the substantial expense of defending
18 against the Action, the length of time necessary to resolve the issues presented herein, the
19 inconvenience involved, and the concomitant disruption to their business operations, it is in their
20 best interest to accept the terms of this Agreement. Defendants deny each of the allegations and
21 claims asserted against them in the Action. However, Defendants nevertheless desires to settle
22 the Action for the purpose of avoiding the burden, expense and uncertainty of continuing
23 litigation and for the purpose of putting to rest the controversies engendered by the Action.

24 **G.** This Agreement is intended to and does effectuate the full, final, and complete
25 resolution of all Released Claims of Plaintiff and Settlement Class Members, other than those
26 Settlement Class Members who submit a timely and valid Request for Exclusion.

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1 **3. JURISDICTION**

2 The Court has jurisdiction over the Parties and the subject matter of the Action. The
3 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
4 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
5 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
6 pursuant to California Rule of Court, rule 3.769, subdivision (h).

7 **4. STIPULATION OF CLASS CERTIFICATION**

8 The Parties stipulate to the certification of the Settlement Class under this Agreement for
9 purposes of settlement only.

10 **5. MOTION FOR PRELIMINARY APPROVAL AND DECLARATION OF**
11 **FINANCIAL STRAIN**

12 Plaintiff will move for an order granting preliminary approval of the Settlement,
13 approving and directing the mailing of the proposed Notice of Class Action Settlement (“Class
14 Notice”) attached hereto as Exhibit “A”, conditionally certifying the Settlement Class for
15 settlement purposes only, and approving the deadlines proposed by the Parties for the submission
16 of Requests for Exclusion, Workweek Disputes, and Objections, the papers in support of Final
17 Approval of the Settlement, and any responses to Objections or opposition papers to the Motion
18 for Final Approval. In support of a motion for preliminary approval of the Settlement,
19 Defendants shall concurrently file a declaration relating to the financial strain of Defendants with
20 the Court.

21 **6. STATEMENT OF NO ADMISSION**

22 Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiff
23 and the Settlement Class with respect to any claims or allegations asserted in the Action. This
24 Agreement shall not be deemed an admission by Defendants of any claims or allegations asserted
25 in the Action. Except as set forth elsewhere herein, in the event that this Agreement is not
26 approved by the Court, or any appellate court, is terminated, or otherwise fails to be enforceable,
27 Plaintiff will not be deemed to have waived, limited or affected in any way any claims, rights or
28 remedies, or defenses in the Action, and Defendants will not be deemed to have waived, limited,

1 or affected in any way any of its objections or defenses in the Action. The Parties shall be
2 restored to their respective positions in the Action prior to the entry of this Settlement.

3 **7. RELEASE OF CLAIMS**

4 **A. Release by All Participating Class Members.**

5 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
6 of Judgment, and payment by Defendants to the Settlement Administrator of the full Gross
7 Settlement Amount and Employer's Taxes necessary to effectuate the Settlement, Plaintiff and
8 all Participating Class Members waive, release, and discharge the Released Parties all claims
9 against the Released Parties asserted in the Complaint filed in the Action, or any and all claims
10 that may be asserted against the Released Parties based on the factual allegations in the Complaint
11 filed in the Action, as follows: For the duration of the Class Period, the release includes: (a) all
12 claims for failure to pay overtime wages; (b) all claims for failure to pay minimum wages; (c) all
13 claims for failure to provide compliant meal and rest periods and associated premium pay; (d) all
14 claims for the failure to timely pay wages; (e) failure to timely pay all wages due upon termination
15 or resignation; (f) all claims for non-compliant wage statements; and (g) all claims asserted
16 through California Business & Professions Code § 17200 *et seq.* arising out of the Labor Code
17 violations referenced in the Complaint (the "Released Claims"). For Aggrieved Employees, the
18 "Released Claims" also includes any and all claims for civil penalties under PAGA [Cal. Lab.
19 Code §§ 2699, *et seq.*] that are based upon or arise from the factual allegations in the Complaint
20 and the PAGA Notice, arising during the PAGA Period, including claims for civil penalties under
21 PAGA arising out of Labor Code Sections 210, 226.3, 558, 1197.1, and 2699 based on the factual
22 allegations and Labor Code sections alleged to have been violated in the Complaint, which
23 includes, without limitation, Labor Code sections 200, 201, 202, 203, 204, 226, 246, 404, 432,
24 510, 1174, 1194, 1197, 1198.5 and 2810.5.

25 **B. General Release.**

26 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
27 of Judgment, and payment by Defendants to the Settlement Administrator of the full Gross
28 Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, in addition to

1 the Released Claims, Plaintiff makes the additional following General Release: Plaintiff releases
2 the Released Parties from all claims, demands, rights, liabilities and causes of action of every
3 nature and description whatsoever, known or unknown, asserted or that might have been asserted,
4 whether in tort, contract, or for violation of any state or federal statute, rule, law or regulation
5 arising out of, relating to, or in connection with any act or omission of the Released Parties
6 through the date of full execution of this Agreement in connection with his employment or the
7 termination thereof. With respect to the General Release, Plaintiff stipulates and agrees that,
8 through the Final Approval Date, Plaintiff shall be deemed to have, and by operation of the Final
9 Judgment and payment to the Settlement Administrator, expressly waived and relinquished, to
10 the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
11 California Civil Code, or any other similar provision under federal or state law, which provides:

12 A general release does not extend to claims which the creditor does
13 not know or suspect to exist in his or her favor at the time of
14 executing the release, which if known by him or her must have
15 materially affected his or her settlement with the debtor or released
16 party.

17 **8. SETTLEMENT ADMINISTRATOR**

18 Plaintiff and Defendants, through their respective counsel, have selected ILYM Group,
19 Inc. to administer the Settlement, which includes but is not limited to translating the Class Notice
20 to Spanish, distributing and responding to inquiries about the Class Notice and calculating all
21 amounts to be paid from the Gross Settlement Amount. Charges and expenses of the Settlement
22 Administrator, currently estimated to be \$6,000 will be paid from the Gross Settlement Amount.
23 If the actual Settlement Administrator fees are less than \$6,000 the difference will remain a part
24 of the Net Settlement Amount.

25 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION PROCESS**

26 **A. Notice to the Settlement Class Members.**

27 (1) Within ten (10) calendar days after the Preliminary Approval Date,
28 Defendants' Counsel shall provide the Settlement Administrator with information with respect
to each Settlement Class Member, including his or her: (1) name, last known address(es) and last
known telephone number(s) currently in Defendants' possession, custody, or control; (2) Social

1 Security Number in Defendants' possession, custody, or control; and (3) the hire dates and
2 termination dates for each Settlement Class Member ("Class List"). The Settlement
3 Administrator shall perform an address search using the United States Postal Service National
4 Change of Address ("NCOA") database and update the addresses contained on the Class List
5 with the newly found addresses, if any. Within seven (7) calendar days of receiving the Class
6 List from Defendants, the Settlement Administrator shall mail the Class Notice in English and
7 Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most current
8 mailing address information available. The Settlement Administrator shall maintain a list with
9 names and all addresses to which notice was given, and digital copies of all the Settlement
10 Administrator's records evidencing the giving of notice to any Settlement Class Member, for at
11 least four (4) years from the Final Approval Date. Such information shall be available to Class
12 Counsel and Defendants' Counsel upon request.

13 (2) The Class Notice will set forth:

- 14 (a) the Settlement Class Member's estimated payment and the basis
15 for it;
- 16 (b) the information required by California Rule of Court, rule 3.766,
17 subdivision (d);
- 18 (c) the material terms of the Settlement;
- 19 (d) the proposed Settlement Administration Costs;
- 20 (e) the definition of the Settlement Class;
- 21 (f) a statement that the Court has preliminarily approved the
22 Settlement;
- 23 (g) how the Settlement Class Member can obtain additional
24 information, including contact information for Class Counsel;
- 25 (h) information regarding opt-out and objection procedures;
- 26 (i) the date and location of the Final Approval Hearing; and
- 27 (j) that the Settlement Class Member must notify the Settlement
28 Administrator no later than the Response Deadline if the

1 Settlement Class Member disputes the accuracy of the number of
2 Workweeks as set forth on his or her Class Notice (“Workweek
3 Dispute”). If a Settlement Class Member fails to timely dispute
4 the number of Workweeks attributed to him or her in conformity
5 with the instructions in the Class Notice, then he or she shall be
6 deemed to have waived any objection to its accuracy and any claim
7 to any additional settlement payment based on different data.

8 (3) If a Class Notice from the initial notice mailing is returned as
9 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
10 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
11 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
12 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
13 is successful in obtaining a new address, it will promptly re-mail the Class Notice to the
14 Settlement Class Member. Further, any Class Notices that are returned to the Settlement
15 Administrator with a forwarding address before the Response Deadline shall be promptly re-
16 mailed to the forwarding address affixed thereto.

17 (4) No later than seven (7) calendar days from the Response Deadline, the
18 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
19 completion of the notice process, including the number of attempts to obtain valid mailing
20 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
21 and copies of all Requests for Exclusion and objections/comments received by the Settlement
22 Administrator.

23 **B. Objections.**

24 Only Settlement Class Members who do not opt out of the Settlement (*i.e.*, Participating
25 Class Members) may object to the Settlement. In order for any Settlement Class Member to
26 object to this Settlement in writing, or any term of it, he or she must do so by mailing a written
27 objection to the Settlement Administrator at the address or phone number provided on the Class
28 Notice no later than the Response Deadline. The Settlement Administrator shall email a copy of

1 the Objection forthwith to Class Counsel and Defendants' counsel. Defendants' Counsel shall
2 lodge a copy of the Objection with the Court at least sixteen (16) court days before the hearing
3 on the Motion for Final Approval. The Objection should set forth in writing: (1) the objector's
4 name and address, and (2) the reason(s) for the Objection, along with whatever legal authority,
5 if any, the objector asserts in support of the Objection. If a Settlement Class Member objects to
6 the Settlement, the Settlement Class Member will remain a member of the Settlement Class and
7 if the Court approves this Agreement, the Settlement Class Member will be bound by the terms
8 of the Settlement in the same way and to the same extent as a Settlement Class Member who
9 does not object. The date of mailing of the Class Notice to the objecting Settlement Class
10 Member shall be conclusively determined according to the records of the Settlement
11 Administrator. Settlement Class Members need not object in writing to be heard at the Final
12 Approval Hearing; they may object or comment in person at the hearing at their own expense.
13 Class Counsel and Defendants' Counsel may respond to any objection lodged with the Court up
14 to five (5) court days before the Final Approval Hearing.

15 **C. Requesting Exclusion.**

16 Any Settlement Class Member may request exclusion from (i.e., "opt out" of) the
17 Settlement by mailing a written request to be excluded from the Settlement ("Request for
18 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
19 To be valid, a Request for Exclusion must include the Class Member's name, social security
20 number and signature and the following statement or something to its effect: "Please exclude me
21 from the Settlement Class in the *Jose Alvarez v. Kazak-Mars, Inc., et al.* matter" or a statement
22 of similar meaning. The Settlement Administrator shall immediately provide copies of all
23 Requests for Exclusion to Class Counsel and Defendants' Counsel and shall report the Requests
24 for Exclusions that it receives, to the Court, in its declaration to be provided in advance of the
25 Final Approval Hearing. Any Settlement Class Member who requests exclusion using this
26 procedure will not be entitled to receive any payment from the Settlement and will not be bound
27 by the Settlement Agreement or have any right to object to, appeal, or comment on the
28 Settlement. Any Settlement Class Member who does not opt out of the Settlement by submitting

1 a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including
2 those pertaining to the Released Claims, as well as any Judgment that may be entered by the
3 Court if Final Approval of the Settlement is granted. A Settlement Class Member cannot submit
4 both a Request for Exclusion and an objection. If a Settlement Class Member submits an
5 objection and a Request for Exclusion, the Request for Exclusion will control and the Objection
6 will be void. Settlement Class Members who submit a valid Request for Exclusion will still be
7 deemed Aggrieved Employees (if applicable), will still receive their *pro rata* share of the PAGA
8 Payment, and will be bound by any release of claims under PAGA related to the Released Claims.

9 **D. Disputes Regarding Settlement Class Members' Workweek Data.**

10 Class Members will have an opportunity to dispute the information provided in their Class
11 Notice. To the extent Class Members dispute the number of Workweeks to which they have been
12 credited, Class Members may produce evidence to the Settlement Administrator showing that
13 such information is inaccurate. Absent evidence rebutting Defendants' records, Defendants'
14 records will be presumed determinative. However, if a Class Member produces evidence to the
15 contrary, the Settlement Administrator will evaluate the evidence submitted by the Class Member
16 and will make the final decision as to the number of Workweeks that should be applied. All such
17 disputes are to be resolved not later than ten (10) calendar days after the Response Deadline.

18 **E. Extension of Response Deadline for Remailing**

19 Class Members who are re-mailed a Class Notice shall have an additional fifteen (15)
20 calendar days to submit a Request for Exclusion, objection or to dispute estimated payments.
21 However, no Class Member shall have more than sixty (60) days in total to respond to respond
22 in any manner to the Class Notice.

23 **10. INDIVIDUAL SETTLEMENT PAYMENTS TO PARTICIPATING CLASS**
24 **MEMBERS**

25 Individual Settlement Payments will be calculated and distributed to Participating Class
26 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
27 Members' respective number of Workweeks during the Class Period. Individual PAGA
28 Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees

1 from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective
2 number of Workweeks during the PAGA Period. Specific calculations of the Individual
3 Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as
4 follows:

5 **A.** The Settlement Administrator will determine the total number of Workweeks
6 worked by each Settlement Class Member during the Class Period ("Class Member's
7 Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class
8 Members during the Class Period ("Class Workweeks"). Additionally, the Settlement
9 Administrator will determine the total number of Workweeks worked by each Aggrieved
10 Employee during the PAGA Period ("Aggrieved Employee's Workweeks"), as well as the
11 aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period
12 ("PAGA Workweeks").

13 **B.** To determine each Settlement Class Member's Individual Settlement Share, the
14 Settlement Administrator will use the following formula: Individual Settlement Share =
15 (Settlement Class Member's Workweeks ÷ Class Workweeks) × Net Settlement Amount.

16 **C.** To determine each Participating Class Member's Individual Settlement Share,
17 the Settlement Administrator will determine the aggregate number of Workweeks worked by
18 all Participating Class Members during the Class Period ("Participating Class Workweeks")
19 and use the following formula: Individual Settlement Share = (Participating Class Member's
20 Workweeks ÷ Participating Class Workweeks) × Net Settlement Amount.

21 **D.** The net amount of the Individual Settlement Share is to be paid out to
22 Participating Class Members by way of check and is referred to as "Individual Settlement
23 Payment(s)."

24 **E.** To determine each Aggrieved Employee's Individual PAGA Payment, the
25 Settlement Administrator will use the following formula: Aggrieved Employee's Individual
26 PAGA Payment = (Aggrieved Employee's Workweeks ÷ PAGA Workweeks) × \$2,500.00 (the
27 PAGA Payment). This amount is to be paid out to Aggrieved Employees by way of check. The
28 Settlement payment for a Participating Class Member who is also an Aggrieved Employee will

1 therefore include the Participating Class Member's Individual Settlement Share and Individual
2 PAGA Payment. A Settlement Class Member who is also an Aggrieved Employee who submits
3 a valid Request for Exclusion will nevertheless be bound by any release of claims under PAGA
4 related to the Released Claims and will still receive their Individual PAGA Payment.

5 **11. DISTRIBUTION OF PAYMENTS**

6 **A. Distribution of Individual Settlement Payments.**

7 Settlement Class Members who do not submit a timely and valid Request for Exclusion
8 (i.e., Participating Class Members) will receive an Individual Settlement Payment. All PAGA
9 Aggrieved Employees, regardless of whether they submit a valid Request for Exclusion or not,
10 will receive their portion of the PAGA Payment. Individual Settlement Payment checks and
11 checks to Aggrieved Employees for their portion of the PAGA Payment shall remain valid and
12 negotiable for one hundred and eighty (180) calendar days after the date of their issuance.
13 Within seven (7) calendar days after expiration of the 180-day period, checks for such
14 payments shall be canceled and funds associated with such checks shall be considered unpaid,
15 unclaimed or abandoned cash residue pursuant to Code of Civil Procedure section 384
16 ("Unpaid Residue"). The Unpaid Residue plus accrued interest, if any, as provided in Code of
17 Civil Procedure section 384, shall be transmitted as follows: to Legal Aid at Work, 180
18 Montgomery St., Suite 600, San Francisco, California 94104 for use in Los Angeles
19 County. The Settlement Administrator shall prepare a report regarding the distribution plan
20 pursuant to Code of Civil Procedure section 384 and the report shall be presented to the Court
21 by Class Counsel along with a proposed amended judgment that is consistent with the
22 provisions of Code of Civil Procedure section 384.

23 **B. Funding of Settlement.**

24 Defendants shall make a payment of Three Hundred and Fifty Thousand Dollars and Zero
25 Cents (\$350,000.00), the Gross Settlement Amount, to the Settlement Administrator in addition
26 to Employer's Taxes, ninety (90) days after final approval. All amounts must be paid to the
27 Settlement Administrator pursuant to Internal Revenue Code section 1.468B-1 for deposit in an
28 interest-bearing qualified settlement account ("QSA") with an FDIC insured banking institution,

1 for distribution in accordance with this Agreement and the Court's Orders and subject to the
2 conditions described herein. All interest accrued in the QSA shall be in favor of Participating
3 Class Members. Individual Settlement Payments for Class Members and Individual PAGA
4 Payments for Aggrieved Employees shall be paid exclusively from the QSA, pursuant to the
5 settlement formulas set forth herein.

6 Payments from the QSA shall be made for (1) the Service Award to Plaintiff as specified
7 in this Agreement and approved by the Court; (2) the Attorneys' Fees and Cost Award to be paid
8 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
9 Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA
10 Payment, as specified in this Agreement and approved by the Court; and (5) the PAGA Payment,
11 as specified in this Agreement and approved by the Court. The balance and any accrued interest
12 thereon remaining shall constitute the Net Settlement Amount from which Individual Settlement
13 Payments shall be made to Participating Class Members, less applicable taxes and withholdings.
14 All interest accrued shall be for the benefit of the Class Members and Aggrieved Employees and
15 distributed in a pro-rata basis.

16 **C. Time for Distribution.**

17 No more than fourteen (14) calendar days after payment of the full Gross Settlement
18 Amount by Defendants, as well as Employer Taxes, the Settlement Administrator shall distribute
19 all payments due under the Settlement, including the Individual Settlement Payments to
20 Participating Class Members and Individual PAGA Payments to Aggrieved Employees, as well
21 as the Court-approved payments for the Service Award to Plaintiff, attorneys' fees and litigation
22 costs and expenses to Class Counsel, Administration Costs to the Settlement Administrator, and
23 the LWDA Payment.

24 **11. ATTORNEYS' FEES AND LITIGATION COSTS**

25 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
26 fees of up to thirty-five percent (35%) of the Gross Settlement Amount, or One Hundred Twenty-
27 Two Thousand, and Five Hundred Dollars and Zero Cents (\$122,500.00). Class Counsel shall
28 further apply for, and Defendants shall not oppose, an application or motion by Class Counsel

1 for reimbursement of actual costs associated with Class Counsel's prosecution of this matter as
2 set forth by declaration testimony in an amount up to Twenty-Five Thousand Dollars and Zero
3 Cents (\$25,000.00). Awards of attorneys' fees and costs shall be paid out of the Gross Settlement
4 Amount, for all past and future attorneys' fees and costs necessary to prosecute, settle, and obtain
5 Final Approval of the settlement in the Action. The "future" aspect of the amounts stated herein
6 includes, without limitation, all time and expenses expended by Class Counsel (including any
7 appeals therein). There will be no additional charge of any kind to either the Settlement Class
8 Members or request for additional consideration from Defendants for such work. Should the
9 Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than
10 the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net
11 Settlement Amount.

12 **12. SERVICE AWARD TO PLAINTIFF**

13 Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an amount not
14 to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for participation in
15 and assistance with the Action. Any Service Award awarded to Plaintiff shall be paid from the
16 Gross Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves
17 Service Awards to Plaintiff in less than the amounts sought herein, then the unapproved
18 portion(s) shall be a part of the Net Settlement Amount.

19 **13. TAXATION AND ALLOCATION**

20 **A.** Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
21 be reported on an IRS Form W2); and 80% as interest, premiums, and penalties (to be reported
22 on an IRS Form 1099). The Individual PAGA Payments to the Aggrieved Employees shall be
23 characterized as non-wages (to be reported on an IRS Form 1099). The Parties agree that the
24 employee's share of taxes and withholdings with respect to the wage-portion of the Individual
25 Settlement Share will be withheld from the Individual Settlement Share in order to yield the
26 Individual Settlement Payment. The amount of federal income tax withholding will be based
27 upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg. §
28

1 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made
2 pursuant to applicable state and/or local withholding codes or regulations.

3 **B.** Forms W-2 and/or Forms 1099 will be distributed by the Settlement
4 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
5 “Code”) and consistent with this Agreement. If the Code, the regulations promulgated
6 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
7 set forth in this Section may be modified in a manner to bring Defendants into compliance with
8 any such changes.

9 **C.** All Employer Taxes shall be paid by Defendants separate, apart and above from
10 the Gross Settlement Amount. Defendants shall remain liable to pay the employer’s share of
11 payroll taxes as described above.

12 **D.** Neither Counsel for Plaintiff nor Defendants intend anything contained in this
13 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
14 be relied upon as such within the meaning of United States Treasury Department Circular 230
15 (31 C.F.R. Part 10, as amended) or otherwise.

16 **14. PRIVATE ATTORNEYS’ GENERAL ACT ALLOCATION**

17 The Parties agree to allocate Ten Thousand Dollars and Zero Cents (\$10,000.00) of the
18 Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent
19 (75%) of the amount allocated toward PAGA (\$7,500.00) will be paid to the LWDA (*i.e.*, the
20 LWDA Payment), and twenty-five percent (25%) (\$2,500.00) will be distributed to Aggrieved
21 Employees on a *pro rata* basis, based upon their respective Workweeks in the PAGA Period (*i.e.*,
22 the Individual PAGA Payments).

23 **15. COURT APPROVAL**

24 This Agreement is contingent upon an order by the Court granting Final Approval of the
25 Settlement, and that the LWDA does not intervene and/or object to the Settlement. In the event
26 it becomes impossible to secure approval of the Settlement by the Court and the LWDA, the
27 Parties shall be restored to their respective positions in the Action prior to entry of this Settlement.
28 If this Settlement Agreement is voided, not approved by the Court or approval is reversed on

1 appeal, it shall have no force or effect and no Party shall be bound by its terms except to the
2 extent: (a) the Court reserves any authority to issue any appropriate orders when denying
3 approval; and/or (b) there are any terms and conditions in this Settlement Agreement specifically
4 stated to survive the Settlement Agreement being voided or not approved, and which control in
5 such an event.

6 **16. INCREASE IN SHIFTS**

7 Defendants represent that there are no more than approximately 9,515 Workweeks
8 worked during the Class Period. In the event the actual total number of Workweeks worked
9 during the Class Period exceeds 9,515 Workweeks by more than five percent (5%) or 475
10 Workweeks, for a total greater than 9,990 Workweeks, then Defendants shall increase the Gross
11 Settlement Amount by the Workweek Value per Workweek in excess of 9,515 Workweeks.
12 The Workweek Value shall be calculated by dividing the Gross Settlement Amount
13 (\$350,000.00) by 9,515 Workweeks, which amounts to a Workweek Value of Thirty-Six
14 Dollars and Seventy-Eight Cents (\$36.78). Thus, for example, should there be 10,000
15 Workweeks worked in the Class Period, then the Gross Settlement Amount shall be increased
16 by Seventeen Thousand Eight Hundred Thirty-Eight Dollars and Thirty Cents (\$17,838.30).
17 (10,000 Workweeks – 9,515 Workweeks x \$36.78/Workweek.)

18 **17. NOTICE OF JUDGMENT**

19 In addition to any duties set out herein, the Settlement Administrator shall provide
20 notice of the Final Judgment entered in the Action by posting the same on its website for at least
21 three (3) years after the Judgment becomes final.

22 **18. MISCELLANEOUS PROVISIONS**

23 **A. Interpretation of the Agreement.**

24 This Agreement constitutes the entire agreement between Plaintiff and Defendants with
25 respect to its subject matter. Except as expressly provided herein, this Agreement has not been
26 executed in reliance upon any other written or oral representations or terms, and no such extrinsic
27 oral or written representations or terms shall modify, vary or contradict its terms. In entering
28 into this Agreement, the Parties agree that this Agreement is to be construed according to its

1 terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be
2 interpreted and enforced under the laws of the State of California, both in its procedural and
3 substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or
4 relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively
5 in the Superior Court of the State of California for the County of Los Angeles, and Plaintiff and
6 Defendants hereby consent to the personal jurisdiction of the Court in the Action over it solely
7 in connection therewith. Plaintiff, on Plaintiff's own behalf and on behalf of the Settlement
8 Class, and Defendants participated in the negotiation and drafting of this Agreement and had
9 available to them the advice and assistance of independent counsel. As such, neither Plaintiff
10 nor Defendants may claim that any ambiguity in this Agreement should be construed against the
11 other. The Agreement may be modified only by a writing signed by counsel for the Parties and
12 approved by the Court.

13 **B. Further Cooperation.**

14 Plaintiff, Defendants, and their respective attorneys shall proceed diligently to prepare
15 and execute all documents, to seek the necessary approvals from the Court, and to do all things
16 reasonably necessary to consummate the Settlement as expeditiously as possible.

17 **C. Counterparts.**

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

21 **D. Authority.**

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

24 **E. No Third-Party Beneficiaries.**

25 Plaintiff, Participating Class Members, Class Counsel, and Defendants are direct
26 beneficiaries of this Agreement, but there are no third-party beneficiaries.

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1 **F. Deadlines Falling on Weekends or Holidays.**

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

4 **G. Severability.**

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

10 **H. Confidentiality.**

11 The Parties hereby expressly agree that any settlement that occurs between the Parties,
12 including this Settlement Agreement, shall remain confidential until a stipulation for preliminary
13 approval is filed with the Court.

14 **IT IS SO AGREED:**

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17 Dated: _____, 2021

JOSE ALVAREZ
Plaintiff and Class Representative

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20 Dated: 10.14.2021, 2021

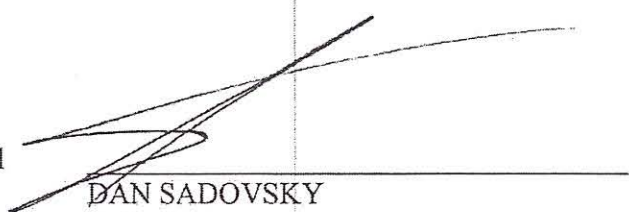
KAZAK-MARS, INC.
Defendant
By:
Its:

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25 Dated: 10-14-2021, 2021

EDUARD KARAPETYAN
Defendant

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Dated: 10.14.2021, 2021


DAN SADOVSKY
Defendant

AGREED AS TO FORM:

Dated: October 19, 2021


DAVID D. BIBIYAN
Bibiyan Law Group, P.C.
Counsel for Plaintiff Jose Alvarez

Dated: October 14, 2021


ALFRED J. LANDEGGER
EVELYN ZARRAGA
Landegger Verano & Davis, A Law Corporation
Counsel for Defendants Kazak-Mars, Inc.,
Eduard Karapetyan and Dan Sadovsky