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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA**

RAYMOND PAIZ, on behalf of himself and  
all others similarly situated;

Plaintiff,

v.

FOODLINER, INC., and DOES 1 through  
10, inclusive,

Defendants.

Case No. RG20062272

**CLASS AND REPRESENTATIVE  
ACTION**

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

1 This Joint Stipulation for Class Action Settlement and Release of Claims is made and  
2 entered into by and between Class Representative Raymond Paiz ("Plaintiff"), individually and  
3 on behalf of the alleged putative class of all other similarly situated individuals and all similarly  
4 situated aggrieved employees, and Defendant Foodliner, Inc. ("Foodliner") (jointly, "the  
5 Parties") to resolve the class and representative action wage and hour disputes that led to the  
6 above-captioned Litigation.

7 THE PARTIES STIPULATE AND AGREE as follows:

8 **I. DEFINITIONS**

- 9 1. "Agreement," "Stipulation," and "Joint Stipulation" all mean this document.
- 10 2. "Class Counsel" shall mean Hunter Pyle and John J. Darin of Hunter Pyle Law.
- 11 3. "Class Counsel Fees and Costs Payment" means the amount of attorneys' fees  
12 and costs awarded by the Court pursuant to the terms of this Agreement.
- 13 4. "Class Member" shall mean a member of the Class.
- 14 5. "Class" shall mean all current and/or former non-exempt employees that worked  
15 for Foodliner as truck drivers in California during the Class Membership Period, and excluding  
16 any persons who opt out.
- 17 6. "Class Membership Period" means May 26, 2019 through August 15, 2020.
- 18 7. "Class Representative Service Payment" means the payments to any class  
19 representative described in Section IV of this Agreement.
- 20 8. "Court" means the Superior Court of the State of California for the County of  
21 Alameda.
- 22 9. "Court's Final Order and Judgment" means the Final Order Approving Class  
23 Action Settlement and Judgment in a form to be agreed upon by the Parties and as approved by  
24 the Court.
- 25 10. "Defendant" shall mean Foodliner, Inc.
- 26 11. "Defendant's Counsel" shall mean Gordon & Rees Scully Mansukhani LLP.
- 27 12. "Effective Date" shall have the meaning ascribed to it in Paragraph 68 below.
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1           13.    **“Employer Payroll Taxes”** means employer-funded taxes and contributions  
2 imposed on the wage portions of the Settlement Payment under the Federal Insurance  
3 Contributions Act, the Federal Unemployment Tax Act, and any similar state taxes and  
4 contributions required of employers, such as for unemployment insurance.

5           14.    **“Final Approval Hearing”** means the hearing at which the Court shall  
6 consider, without limitations, any timely objections to the Settlement from Class Members,  
7 testimony from the Parties or their counsel, declarations regarding the settlement process from  
8 the Settlement Administrator, and otherwise make a final determination regarding the fairness  
9 of the Settlement described herein.

10          15.    **“Gross Settlement Amount”** means Two-Hundred-Seventy-Five-Thousand  
11 Dollars and No Cents (\$275,000.00), payable by Defendant as provided by this Agreement and  
12 as ordered by the Court. The Gross Settlement Amount is inclusive of all payments to Class  
13 Members, the Class Counsel Fees and Costs Payment, the Class Representative Service  
14 Payment, the Settlement Administration Fees, and PAGA payments described in Paragraph  
15 51(b). It does not include the Employer’s Share of Payroll Taxes, if any. Other than the Gross  
16 Settlement Amount and the Employer’s Share of Payroll Taxes, if any, Defendant shall not be  
17 required to pay any further amounts to effectuate the Settlement.

18          16.    **“Individual Settlement Payment”** means the payment to be made from the Net  
19 Settlement Fund to Class Members who do not opt out, pursuant to the terms of this  
20 Agreement.

21          17.    **“Litigation”** means the lawsuit entitled *Raymond Paiz, on behalf of himself and*  
22 *all others similarly situated, vs. Foodliner, Inc.*, Alameda County Superior Court for the State  
23 of California, Case No. RG20062272.

24          18.    **“Net Settlement Fund”** means the remainder of the Gross Settlement Fund  
25 after all monies allocated for Court-approved Class Counsel Fees and Costs Payment, the  
26 Court-approved Class Representative Service Payment, the Court-approved Settlement  
27 Administration Fees, and the amount allocated to PAGA penalties. The Net Settlement Fund  
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1 shall be allocated among the Class Members who do not opt-out according to the formula and  
2 other terms described in Section VI of this Agreement.

3 19. **"Notice of Proposed Settlement"** means the Notice of Pendency of Class  
4 Action, Proposed Settlement, and Hearing Date for Final Court Approval in substantially the  
5 form attached hereto as **Exhibit A**, and as approved by the Court.

6 20. **"Operative Complaint"** means the pleadings described in Paragraphs 31-32 of  
7 this Agreement.

8 21. **"PAGA"** means the California Labor Code Private Attorneys General Act of  
9 2004, California Labor Code §§ 2698 *et seq.*

10 22. **"PAGA Subclass"** means all truck drivers employed by Foodliner in California,  
11 at any time between December 8, 2019 and August 15, 2020.

12 23. **"Parties"** shall refer to the Class Members and Foodliner, each of whom is a  
13 "Party."

14 24. **"Preliminary Approval of the Settlement"** means the Court's preliminary  
15 approval of the Settlement.

16 25. **"Released Parties"** collectively means: Defendant Foodliner, Inc., its agents,  
17 officers, employees, directors owners, subsidiaries, DBA's, affiliates and parent companies.

18 26. **"Released Claims"** means all claims all claims, charges, complaints, liens,  
19 demands, causes of action, obligations, damages and liabilities, known or unknown, suspected  
20 or unsuspected, that each Class Member had, now has, or may hereafter claim to have against  
21 Defendant Foodliner, Inc., and its agents, officers, employees, directors, owners, subsidiaries,  
22 DBA's, affiliates and parent companies, ("Released Parties") based on inaccurate wage  
23 statements as alleged in Plaintiff's operative Complaint, regardless of whether such claims  
24 arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other  
25 source of law. The Released Claims specifically include, but are not limited to (1) Inaccurate  
26 Wage Statements (Labor Code § 226); and (2) Civil Penalties under California's Private  
27 Attorney General's Act ("PAGA") (Labor Code § 2698 *et seq.*) in connection with a claim of  
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1 inaccurate wage statements. The enumeration of these specific statutes shall neither enlarge or  
2 narrow the scope of res judicata based on the claims that were asserted in the Action or could  
3 have been asserted in the Action based on the facts and circumstances alleged in the  
4 Complaint(s). Plaintiff will request that the Court dismiss the claims against Foodliner for  
5 Unpaid Detention Pay, and any related claims asserted in the operative Complaint, on the  
6 grounds that the factual evidence did not support those claims. As such, those claims are  
7 specifically excluded from the scope of the Released Claims.

8 27. **"Release Period"** means the earlier of (1) the date that the Court grants  
9 preliminary approval of this settlement, or (2) 60 days after the date that the Parties'  
10 Memorandum of Understanding was fully executed.

11 28. **"Settlement"** means the Parties' agreement to settle the Litigation on the terms  
12 described in this Agreement.

13 29. **"Settlement Administrator"** means the third-party claims administration firm  
14 selected by the Parties and approved by the Court. The Parties have agreed to propose  
15 Simpluris, Inc. as the Settlement Administrator for this Court's consideration and approval.

16 30. **"Settlement Administration Fees"** means the amount of fees and costs  
17 incurred by the Settlement Administrator awarded by the Court pursuant to the terms of this  
18 Agreement, which is not anticipated to exceed Twenty-Five Thousand Dollars and No Cents  
19 (\$25,000.00).

## 20 **II. THE LITIGATION**

21 31. On May 26, 2020, Plaintiff Raymond Paiz filed the instant wage and hour class  
22 action complaint in the Superior Court of California for the County of Alameda against  
23 Defendant Foodliner.

24 32. Following expiration of the statutory notice period, on December 8, 2020,  
25 Plaintiff filed a First Amended Complaint, adding representative PAGA pursuant to the Private  
26 Attorneys General Act of 2004.

1           33.     Investigation and Discovery. Class Counsel have conducted a thorough  
2 investigation of the facts in the Litigation and have diligently pursued an investigation of Class  
3 Members' claims against Foodliner. Plaintiff and Foodliner have engaged in substantial  
4 investigation in connection with the Litigation, including informal exchange of a large volume  
5 of information, including confidential information, regarding the claims asserted in the  
6 Litigation, the defenses available to Foodliner, and other relevant issues. Specifically, Plaintiff  
7 propounded formal discovery requests. Foodliner responded to Plaintiff's written discovery on  
8 November 30, 2020 and February 1, 2021 and the Parties continued to meet and confer  
9 regarding these responses until the Parties reached settlement as described in the Parties'  
10 Memorandum of Understanding.

11           34.     Foodliner has produced, and Class Counsel have reviewed and analyzed,  
12 relevant wage and hour policies, payroll information for the Class Members, wage statements  
13 for the Class Members, driver logs for Class Members and other documents related to the Class  
14 Members' employment with Foodliner.

15           35.     Settlement. On June 17, 2021, the Parties agreed to settle Plaintiff's "Released  
16 Claims" as defined in Paragraph 26 above and have since memorialized its terms in a  
17 Memorandum of Understanding.

18           36.     No Admission of Liability. The Parties have entered into this Settlement in  
19 order to reduce the risks and costs of further litigation, and to avoid further business  
20 distractions. Foodliner denies any liability or wrongdoing of any kind associated with the  
21 claims alleged in the Litigation, including all allegations made in the Operative Complaint.  
22 Foodliner further contends that, for any purpose other than settlement, this action is not  
23 appropriate for class treatment. Among other things, Foodliner contends that it complied in  
24 good faith with California wage and hour laws and the California Business and Professions  
25 Code, including, but not limited to, properly paying Class Members; providing Class Members  
26 with accurate, itemized wage statements in compliance with California law; and properly and  
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1 timely paying Class Members all wages due upon their separation from employment in  
2 compliance with California law.

3 37. Fair, Reasonable, and Adequate Settlement. Based on the investigation  
4 summarized above, Class Counsel are of the opinion that the Settlement on the terms set forth  
5 in this Agreement is fair, reasonable, and adequate and is in the best interest of the Class in  
6 light of all known facts and circumstances, the risk of significant delay, defenses asserted by  
7 Foodliner, unresolved legal issues that could have a material impact on the outcome of the  
8 Litigation, and numerous potential appellate issues. The Parties recognize that the issues  
9 presented in the Litigation are likely only to be resolved after extensive and costly pretrial  
10 proceedings, including a dispute as to whether any of the claims asserted can be certified as a  
11 class action, and that further litigation will cause inconvenience, distraction, disruption, delay  
12 and expense disproportionate to the potential benefits of continued litigation. The Parties agree  
13 that they have taken into account the risk and uncertainty of the outcome inherent in any  
14 complex litigation of this nature.

15 **III. SETTLEMENT AMOUNT**

16 38. Consideration. The maximum Gross Settlement Amount that Foodliner will be  
17 obligated to pay in connection with the Settlement is Two-Hundred-Seventy-Five-Thousand  
18 Dollars and No Cents (\$275,000.00), as set forth in Paragraph 15 above. The Gross Settlement  
19 Amount is inclusive of all payments to Class Members, the Class Counsel Fees and Costs  
20 Payment, the Class Representative Service Payment, the Settlement Administration Fees,  
21 withholdings for wage payments made to Class Members under this Settlement, and payment  
22 to the LWDA for its share of the PAGA penalties. Except as to Employer Payroll Taxes, if any,  
23 Foodliner will not be required to pay more than the Gross Settlement Amount, inclusive of all  
24 amounts set forth in this Agreement or that may otherwise be required to consummate the  
25 Agreement and effectuate the Settlement. The Gross Settlement Amount has been agreed to by  
26 Plaintiff and Foodliner based on the aggregation of the agreed-upon settlement value of  
27 individual claims of the Class Members.

1           39.    No reversion and Not "Claims-Made". This is a "non-reversionary" settlement.  
2 No part of the Gross Settlement Amount will revert to Foodliner unless the settlement is not  
3 finally approved by the Court with the material terms substantially identical to the terms of this  
4 Stipulation. In the event the settlement is void per this term, or is not given final approval by  
5 the Court, Defendant will only be obligated to pay half of the already-accrued costs of the  
6 Settlement Administrator, with Plaintiff's Counsel being obligated to pay the remainder. Class  
7 Members will not have to make a claim in order to receive a distribution. Distributions, in the  
8 form of Individual Settlement Payments, will be made directly to each Class Member who does  
9 not opt out by mail no later than thirty (30) days after the settlement funds are deposited or  
10 otherwise transferred to the Settlement Administrator.

11           40.    Allocation. For purposes of calculating employer taxes, the Parties agree the  
12 settlement proceeds shall be allocated to Class Members as follows: one hundred percent  
13 (100%) to penalties.

14           41.    Tax Consequences. Foodliner makes no representation about the taxability or  
15 non-taxability of any of the amounts distributed pursuant to the Agreement, and, except as  
16 otherwise expressly stated herein, assumes no tax liability with respect to such distributions.  
17 Each Class Member receiving an Individual Settlement Payment shall be responsible for  
18 determining and paying his or her own tax liability, or penalties thereon.

19           42.    Cy Pres Charity. This is a "non-reversionary" settlement. Under no  
20 circumstances will any of the settlement revert to Foodliner. Any remainder from the Net  
21 Settlement Fund, *i.e.*, uncashed checks delivered to Class Members by the Settlement  
22 Administrator pursuant to the terms of this Agreement, after reasonable efforts have been made  
23 to locate Class Members, will be paid to Legal Aid at Work, a nonprofit organization that  
24 furthers the objectives and purposes underlying this case and that provides civil legal services  
25 to the indigent.  
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1 **IV. CLASS REPRESENTATIVE SERVICE PAYMENTS**

2 43. As part of the Settlement Agreement Foodliner agrees not to oppose Plaintiff's  
3 application to the Court for a Class Representative Service Payment of Ten Thousand Dollars  
4 and No Cents (\$10,000.00) for Raymond Paiz as Class Representative to be paid out of the  
5 Gross Settlement Amount. This Service Payment is in addition to any payments Mr. Paiz is  
6 otherwise entitled to as a Class Member.

7 44. Should the Court approve a lesser amount for Class Representative Service  
8 Payments, the difference shall be added back to the Net Settlement Fund to be distributed to the  
9 Class Members who do not opt out. Any Court order awarding less than the amount sought by  
10 Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the  
11 Settlement. The Parties expressly agree that the Court's approval or denial of any request for a  
12 class representative enhancement is not a material condition to this agreement, and is to be  
13 considered by the Court separately from the fairness, reasonableness, adequacy, and good faith  
14 of the settlement. Any order or proceeding relating to the application by class counsel of a class  
15 representative enhancement shall not operate to terminate or cancel this agreement. To the  
16 extent the Court awards less than the amount of the requested class representative enhancement  
17 amount, the adequacy of the consideration supporting the general release shall not be affected  
18 and the requirement for and/or validity of an executed general release by the Class  
19 Representative shall remain in force and effect. To the extent the Court awards less than the  
20 amount of the requested class representative enhancement amount, any remaining amount will  
21 be redistributed on a pro rata basis amongst Class Members who do not opt out.

22 45. The Settlement Administrator will issue to each Plaintiff an IRS Form 1099  
23 reflecting the Class Representative Service Payment paid to him or her. Any tax liability that  
24 attaches to the treatment of the individual settlement payments shall be solely the responsibility  
25 of the individual Class Members.

1 **V. ATTORNEYS' FEES AND COSTS**

2 46. As part of the Settlement Agreement Foodliner agrees not to oppose an  
3 application by Plaintiff to the Court for the Class Counsel Fees payable to Class Counsel in the  
4 amount of up to one-third (33.33%) of the Gross Settlement Amount. This amount shall be  
5 included in the maximum Gross Settlement Amount described above in Paragraph 38.

6 47. As part of the Settlement Agreement Foodliner agrees not to oppose an  
7 application by Plaintiff to the Court for Class Counsel Costs payable to Class Counsel in the  
8 amount of up to \$20,000.00. This amount shall be included in the maximum Gross Settlement  
9 Amount described above in Paragraph 38.

10 48. Should the Court approve a lesser amount of Class Counsel Fees and Costs  
11 Payment than what is sought by Class Counsel, the difference shall be added back to the Net  
12 Settlement Fund to be distributed to the Class Members who do not opt out. Any Court order  
13 awarding less than the amount sought by Class Counsel shall not be grounds to rescind the  
14 Settlement Agreement or otherwise void the Settlement.

15 49. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099  
16 reflecting the amount of attorneys' fees and costs awarded by the Court.

17 **VI. CLASS MEMBER DISTRIBUTION FORMULA**

18 50. After deducting the Class Representative Service Award, the Class Counsel  
19 Fees and Costs Payment, and the Settlement Administration Fees from the Gross Settlement  
20 Amount, the remaining balance shall constitute the Net Settlement Fund which will be  
21 distributed as described in this Section VI.

22 51. The Settlement Administrator will calculate the number of workweeks for each  
23 Class Member who does not opt out and the total number of workweeks worked by all Class  
24 Members who do not opt out using the Class Data provided by Foodliner (as described in  
25 Paragraph 57). The Settlement Administrator will determine the Individual Settlement Payment  
26 for each Class Member who does not opt out according to the following formulas:  
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1           a.     **The Class.** The Net Settlement Fund shall be divided among all Class  
2 Members who do not opt out. Each such Class Member shall receive a proportionate share that  
3 is equal to (i) the number of workweeks he or she worked during the time period from May 26,  
4 2019 through August 15, 2020, divided by (ii) the total number of workweeks worked by all  
5 such Class Members during the time period from May 26, 2019 through August 15, 2020.  
6 However, in the event that a Class Member's proportionate share is less than \$100, that Class  
7 Member shall receive \$100.

8           b.     **The PAGA Subclass.** From the \$18,300.00 allocated to PAGA  
9 penalties, one-quarter (25%) or \$4,575.00 shall be distributed to the PAGA Subclass, which  
10 shall consist of all Class Members who were employed at any time during the time period  
11 December 8, 2019 through August 15, 2020 ("PAGA Period"). Each Class Member who does  
12 not opt out and who is a member of the PAGA Subclass will receive a proportionate share of  
13 money allocated to that subclass that is equal to (i) the number of workweeks he or she worked  
14 during the time period from December 8, 2019 through August 15, 2020, divided by (ii) the  
15 total number of workweeks worked by all such Class Members who are members of the PAGA  
16 Subclass during the time period from December 8, 2019 through August 15, 2020. Any tax  
17 liability that attaches to the treatment of the PAGA payments shall be solely the responsibility  
18 of the individual Class Members.

19         52.     Once determined, each Individual Settlement Payment will be reduced by any  
20 required legal deductions, including tax and other required withholdings, for each Class  
21 Member. The Settlement Administrator in consultation with the Defendant shall be responsible  
22 for issuing the payments and calculating and withholding all required state and federal taxes, if  
23 any. The Settlement Administrator shall never be empowered to make payments to Class  
24 Members exceeding the total Net Settlement Amount or deviate from the payment formula  
25 agreed upon by the parties.

26         53.     A Class Member's receipt of an Individual Settlement Payment shall not entitle  
27 him or her to additional compensation or benefits of any kind under any of Foodliner's  
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1 compensation or employee benefits plans, nor will it entitle any Class Member to any increased  
2 retirement or 401k plan benefits of any kind.

3 **VII. SETTLEMENT ADMINISTRATION**

4 54. Settlement Administrator. The Parties have agreed to and request that the Court  
5 appoint Simpluris, Inc., as Settlement Administrator for this Settlement. Simpluris offered the  
6 lowest bid out of three possible third party administrators. Neither Class Counsel, nor  
7 Defendant's Counsel has a separate business relationship with Simpluris. Following conclusion  
8 of the settlement administration, Simpluris will destroy all Class Member information that it  
9 received in order to carry out its duties under this Agreement.

10 55. Class Counsel. The Parties stipulate and agree to propose to the Court that  
11 Hunter Pyle and John J. Darin of Hunter Pyle Law be appointed as Class Counsel to carry out  
12 the duties described in this Agreement.

13 56. Stipulation to Conditional Certification. The Parties stipulate, for settlement  
14 purposes only, that the Court may conditionally certify the Class, as defined in this Joint  
15 Stipulation, as an opt-out class (the "**Class Stipulation**"). More specifically, the Parties agree  
16 as part of the Joint Stipulation that, for settlement purposes only, the legal requirements for an  
17 opt-out class are satisfied. This conditional Class Stipulation is made solely for purposes of the  
18 Settlement. The Class Stipulation is in no way an admission that class action certification is  
19 proper, and neither this Joint Stipulation nor the Class Stipulation will be admissible in this or  
20 any other action or proceeding as evidence either that (i) the claims advanced in the Litigation,  
21 or any other class, collective, or representative action claims, should be certified, or that (ii)  
22 Foodliner or any of the Released Parties are liable to Plaintiff, the Class Members, or any other  
23 putative class members.

24 57. Provision of Class Data to Settlement Administrator. Within thirty (30) days of  
25 the date of Preliminary Approval of the Settlement, Foodliner will provide to the Settlement  
26 Administrator each Class Member's (a) name, (b) last known address, and (c) employment dates  
27 during the Class Membership Period, including: date of separation (if applicable) (the "**Class**  
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**Data**”). The Class Data shall be based on Foodliner’s payroll and available business records in a format acceptable to the Settlement Administrator. From this data, the Settlement Administrator shall calculate the total number of workweeks worked from (a) May 26, 2019 through August 15, 2020, and (b) December 8, 2019 through August 15, 2020. The Settlement Administrator will run a check of the Class Members’ addresses against those on file with the U.S. Postal Service’s National Change of Address List; this check will be performed by the Settlement Administrator only once per Class Member. The Class Data provided to the Settlement Administrator will remain confidential and will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Foodliner’s express written consent, or by order of the Court.

#### **VIII. NOTICE AND CLASS MEMBER APPROVAL PROCESS**

58. Notice to Putative Class Members. Each Class Member will be fully advised of the fact of settlement and will be provided with a summary of the provisions of the Stipulation of Settlement (“Notice of Proposed Settlement”). Within ten (10) calendar days following receipt of the Class Data, the Notice of Proposed Settlement (“**Notice**”) shall be sent by the Settlement Administrator to the Class Members, by first class mail. The proposed Notice, subject to Court Approval is attached hereto as Exhibit A. If the information listed on the Notice is disputed, the Class Member disputing the information may produce information to the Settlement Administrator through the dispute process described in Paragraph 64 below.

#### **IX. APPROVAL PROCESS**

59. Opt-In Not Required. Class Members are not required to submit any type of claim form in order to receive settlement payments from the Net Settlement Fund. However, if a new address is obtained by way of a returned Notice, then the Settlement Administrator shall promptly forward the original Notice to the updated address via first-class regular U.S. Mail indicating on the original Notice the date of such re-mailing. Notices will be re-mailed to any Class Member for whom an updated address is located within thirty (30) calendar days following the date of initial mailing of the Notice by the Settlement Administrator. The Notice shall be identical to the original Notice, except that it shall notify the Class Member that the exclusion

(opt-out) request must be returned within thirty (30) calendar days of the re-mailing or by the Exclusion Deadline, whichever is later.

60. Opt-Out. Class Members who request exclusion from the Settlement in accordance with the terms set forth in the Notice of Proposed Settlement will be deemed timely only if postmarked on or before sixty (60) calendar days following the date of initial mailing of the Notice by the Settlement Administrator ("**Exclusion Deadline**"). Such request for exclusions should contain the full name; all other names used during employment with Foodliner; date of birth; the last four digits of the social security number or the employee identification number; and the telephone number of the person requesting exclusion, and must be returned by mail to the Settlement Administrator at the specified address, and must be postmarked on or before the Exclusion Deadline. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. The Settlement Administrator will timely certify jointly to Plaintiff's Counsel and Defendant's Counsel the forms that were timely and correctly submitted. Defendant's records will be presumptively determinative in any dispute over entitlement to payment or over membership in the Class.

61. Effect of Opt-Out. Class Members who validly and timely opt out of the Class will not be entitled to any recovery under the Settlement, will not be bound by the Settlement, and will not have any right to object, appeal, or comment thereon. Class Members who do not submit a valid and timely request for exclusion shall be bound by all the terms of this Agreement and any final judgment or order in this Litigation, and shall be deemed to have waived all unstated objections and opposition to the fairness, reasonableness, and adequacy of this Agreement.

62. Option to Void the Settlement. If ten (10) percent or more of Class Members request exclusion from the Settlement (i.e., opt out), Defendant may exercise the option to withdraw from the Settlement, in which case the Settlement shall be null and void. The withdrawing party shall exercise this option within ten (10) days after notification by the

1 Settlement Administrator of the total number of Class Members who submitted a valid request  
2 for exclusion.

3 63. Opt-Out List. At the conclusion of the Notice period and at any time upon  
4 request, the Settlement Administrator shall provide counsel for the Parties with a complete list  
5 of all Class Members who have timely requested exclusion from the Class.

6 64. Disputes Regarding Class Data. If a Class Member disputes the number of  
7 workweeks listed on the Notice, the Class Member may produce evidence to the Settlement  
8 Administrator disputing the identified number of workweeks. Foodliner's records will be  
9 presumed determinative, absent evidence to rebut Foodliner's records, but the Settlement  
10 Administrator will evaluate the evidence submitted by the Class Member and provide the  
11 evidence submitted to the Parties who agree to meet and confer in good faith about the  
12 evidence to determine the Class Member's actual number of workweeks and estimated  
13 Individual Settlement Payment. If the Parties are unable to agree, the Parties agree to submit  
14 the dispute to the Settlement Administrator to render a final decision.

15 65. Objection to Settlement. Any Class Member who has not submitted a request for  
16 exclusion may object to this Joint Stipulation, or any portion thereof, by filing a written  
17 objection with the Court, and supporting papers, if any, and mailing a copy to the Settlement  
18 Administrator at the address that is set forth in the Notice of Proposed Settlement, and the  
19 Settlement Administrator shall provide the objection to Plaintiff's counsel and Defense counsel  
20 within three (3) days of receipt, and Plaintiff's counsel shall file the same with the Court within  
21 three (3) days of receipt from the Settlement Administrator. To be timely, all objections must  
22 be postmarked no later than sixty (60) calendar days following the date of the first mailing of  
23 the Notice by the Settlement Administrator ("**Objection Deadline**"). A written objection  
24 should contain the objecting person's full name, current address, and include all objections and  
25 the reasons therefore, and include any and all supporting papers (including, without limitation,  
26 all briefs, written evidence, and declarations). A Class Member who desires to object but who  
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1 fails to comply with the objection procedure set forth herein shall be deemed not to have  
2 objected.

3 66. If a Class Member wishes to appear at the Final Approval Hearing and present  
4 his or her objection to the Court orally, he or she may do so. Any Class Member who files an  
5 objection remains eligible to receive monetary compensation from the Settlement. The Parties  
6 shall not be responsible for any fees, costs, or expenses incurred by any Class Member and/or  
7 his or her counsel related to any objections to the Settlement and/or appeals arising therefrom.

8 67. Deadline for Cashing Settlement Checks; Cy Pres. Class Members shall have  
9 180 days from the date checks are mailed by the Settlement Administrator to cash the checks  
10 representing their Individual Settlement Payments. If any such checks mailed remain uncashed  
11 after the expiration of this period, or an envelope mailed to a Class Member is returned and no  
12 forwarding address can be located for that individual after reasonable efforts have been made,  
13 then the total amount of such checks shall be distributed as described in Paragraph 42, above.

14 68. Effective Date of Settlement. The Settlement shall become effective when the  
15 Settlement is considered as "Final." For purposes of this Agreement, "Final" means (A) in the  
16 event that the Settlement has received final approval by the Court and there were no timely  
17 objections filed or presented, or that any timely objections have been withdrawn, then the date  
18 of the Court's Order granting final approval of the Settlement; or, (b) in the event that one or  
19 more timely objections has/have been filed or presented and not withdrawn at the time of final  
20 approval, then upon the passage of the applicable date for an objector to seek appellate review  
21 of the trial court's order of final approval of the Settlement, without a timely appeal having  
22 been filed; or, (c) in the event that a timely appeal of the court's order of final approval has  
23 been filed, then when the applicable appellate court has rendered a final decision or opinion  
24 affirming the Superior Court's final approval without material modification, and the applicable  
25 date for seeking further appellate review has passed, or the date that any such Appeal has been  
26 either dismissed or withdrawn by the appellant.

1 **X. DELIVERY OF FUNDS TO SETTLEMENT ADMINISTRATOR**

2 69. Within thirty (30) calendar days after the Settlement is considered "Final" as  
3 described in Paragraph 68 above, Foodliner shall deposit the Gross Settlement Amount in a  
4 Qualified Settlement Fund maintained by the Settlement Administrator.

5 **XI. DISTRIBUTION OF FUNDS**

6 70. Within 15 days after receipt of Foodliner's payment to fund the Settlement as  
7 provided in this Agreement, the Settlement Administrator shall do the following:

- 8 a. Calculate, withhold, and remit to applicable governmental agencies  
9 each employee's share of the payroll taxes, or other taxes, in  
10 accordance with this Agreement;
- 11 b. Mail the Individual Settlement Payment to each Class Member's  
12 last-known address, as determined from the Notice process;
- 13 c. Disburse, by such means as Class Counsel may direct, the amount  
14 of the Class Representative Service Payment and Class Counsel  
15 Fees and Costs Payment;
- 16 d. Distribute seventy-five percent (75%) \$13,725.00 of the amount  
17 allocated to PAGA penalties to the California Labor and Workforce  
18 Development Agency; and
- 19 e. Calculate and apprise Foodliner of its share of taxes owed, if any.

20 **XII. RELEASE OF CLAIMS**

21 71. Class Members' Release. The Parties desire to fully, finally, and forever settle,  
22 compromise, and discharge all Released Claims. Upon the Effective Date, each and every Class  
23 Member who does not opt out, including Plaintiff, will forever release, discharge, and agree to  
24 hold harmless Foodliner and all of the other Released Parties, and each of them, from any and  
25 all Released Claims (as that term is defined in Paragraph 26 above) up through the Release  
26 Period (as that term is defined in Paragraph 27 above).

1           72. Plaintiff's Additional General Release. In addition to the release and covenants  
2 set forth in Paragraphs 71-72, the Parties also intend that, with respect to the Plaintiff, the  
3 Settlement described in this Agreement will provide the Released Parties with a general release  
4 from all claims, demands, rights, liabilities and causes of action of every nature and description  
5 whatsoever, known or unknown, asserted or that might have been asserted, whether in tort,  
6 contract, or for violation of any state or federal statute, rule or regulation arising out of, relating  
7 to, or in connection with any act or omission by or on the part of any of the Released Party  
8 committed or omitted prior to the execution hereof.

9           a. Without limiting the generality of the foregoing general release  
10 provided by Plaintiff in any way, and subject to the exceptions  
11 stated above, Plaintiff's Released Claims include, but are not  
12 limited to, any and all claims, charges, complaints, claims,  
13 liabilities, obligations, promises, agreements, controversies,  
14 damages, penalties, actions, causes of action, suits, rights, demands,  
15 costs, losses, debts, and expenses (including attorney fees and  
16 costs), known or unknown, at law or in equity, which they or any of  
17 them may have against Foodliner or any of the other Released  
18 Parties up through and including the date of execution of the general  
19 release.

20           b. Plaintiff stipulates and agrees that he is not due and owing any  
21 additional monies and expressly waives and relinquishes, to the  
22 fullest extent permitted by law, the provisions, rights and benefits of  
23 section 1542 of the California Civil Code, or any other provision  
24 under federal or state law, which provides:

25                   *"A general release does not extend to claims that the*  
26                   *creditor or releasing party does not know or suspect to*  
27                   *exist in his or her favor at the time of executing the*  
28

*release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”*

- c. Plaintiff specifically acknowledges that he is aware of and familiar with the provisions of Section 1542 of the California Civil Code, and being aware of Section 1542, hereby expressly waives and relinquishes all rights and benefits that he individually may have under Section 1542, as well as any other statute or common law principle of a similar effect.
- d. Plaintiff further agrees that, to the extent permitted by law, if a claim is prosecuted in their name against Foodliner or any of the other Released Parties before any court, arbitrator, or administrative agency, Plaintiff waives, and agrees not to take, any award of money or other damages from such proceeding. Plaintiff, agrees that, unless otherwise compelled by law, if a claim is prosecuted in his name against Foodliner or any of the other Released Parties that, upon a written request by Foodliner’s counsel, Plaintiff, will immediately request in writing that the claim on his behalf be withdrawn.

### **XIII. RETENTION OF JURISDICTION**

73. The Parties stipulate that the Court may retain jurisdiction over any further disputes relating to this Agreement, the implementation of the Agreement, the interpretation of the Agreement or any of its terms, or further issues regarding the claims in the Litigation, until the Settlement Administrator and the Parties notify the Court that all issues have been resolved and the Settlement has been fully effectuated. The Parties shall endeavor to give such notice within 180 days from the Final Approval Order.

1 **XIV. GENERAL PROVISIONS**

2           74.     Class Size. Foodliner represents that the number of Class Members is estimated  
3 to include approximately 88 employees. Foodliner will provide the Settlement Administrator  
4 directly with a complete and confidential list of the Class Members within thirty days following  
5 preliminary approval of the Settlement. To the extent the number of pay periods in which these  
6 Class Members worked increases by more than 10% from the numbers Foodliner represented  
7 existed on February 1, 2021, Plaintiff will have the option to terminate the Settlement in its  
8 entirety and the Parties will be returned to their respective positions as if no settlement had  
9 been contemplated.

10           75.     Interpretation. The Parties have had a full opportunity to negotiate the terms and  
11 conditions of this Agreement. Accordingly, the Parties expressly waive the common-law and  
12 statutory rule of construction that ambiguities should be construed against the drafter of an  
13 agreement. The Parties agree that the language in this Agreement shall not be construed in  
14 favor or against any Party. The Parties further agree, covenant, and represent that the language  
15 in all parts of this Agreement shall be in all cases construed as a whole, according to its fair  
16 meaning. Each term of this Agreement is contractual and not merely a recital.

17           76.     Rescission. The Parties agree that if, at any time before the Effective Date, any  
18 portion of the release of claims, the notice, and/or the distribution provisions of this Agreement  
19 are determined to be illegal, invalid, or unenforceable, then the Parties agree to meet and confer  
20 in order to attempt to resolve outstanding issue(s) and to seek the help of a mediator to resolve  
21 any dispute they are unable to resolve informally. If the Parties cannot resolve such issue(s),  
22 this Agreement shall be rescindable at the option of either Party. The rescinding Party must  
23 rescind by written notice filed with the Court and served on counsel for the opposing Party  
24 within thirty (30) days after any order or written ruling that declares any such portion to be  
25 illegal, invalid, or unenforceable.

26           77.     Effect If No Final Approval. If the Court denies final approval of the Settlement,  
27 or if the Court's final approval is reversed or fundamentally changed on appellate review, then  
28

1 this Settlement shall become null and void. If the Settlement is voided through any of the  
2 mechanisms described herein, the Parties will have no further obligations under the Settlement,  
3 including any obligation by Foodliner to pay the Gross Settlement Amount, or any amounts  
4 that otherwise would have been owed under this Settlement.

5 78. Cooperation. The Parties agree to fully cooperate with each other to accomplish  
6 the terms of this Agreement, including but not limited to, execution of such documents and to  
7 take such action as may reasonably be necessary to implement the terms of this Agreement.  
8 The Parties shall use their best efforts, including all efforts contemplated by this Agreement  
9 and any other efforts that may become necessary by order of the Court, or otherwise, to  
10 effectuate the terms of this Agreement. As soon as practical after execution of this Agreement,  
11 Class Counsel shall, with the assistance and cooperation of Foodliner and its counsel, take all  
12 reasonable and necessary steps to secure the Court's final approval of this Agreement.

13 79. Dispute Resolution; Attorneys' Fees and Costs. Prior to instituting legal action  
14 to enforce the provisions of this Agreement or to declare rights and/or obligations under this  
15 Agreement, a Party shall provide written notice to all Parties and an opportunity to cure the  
16 alleged deficiencies, and the Parties agree to seek the help of a mediator to resolve any dispute  
17 they are unable to resolve informally. During this period, all Parties shall bear their own  
18 attorneys' fees and costs. If either Foodliner or Plaintiff, the signatories to this Agreement,  
19 institutes a legal action or other proceeding against any other Party to enforce the provisions of  
20 this Agreement or to declare rights and/or obligations under this Agreement, the successful  
21 Party shall be entitled to recover from the unsuccessful Party reasonable attorneys' fees and  
22 costs at the Court's discretion. This provision shall not apply to any legal action or other  
23 proceeding instituted by any person or entity other than Plaintiff or Foodliner.

24 80. Notice Requirements. Unless otherwise specifically provided herein, all notices,  
25 demands, or other communications given hereunder shall be in writing and shall be deemed to  
26 have been duly given as of the fifth business day after mailing by United States registered or  
27 certified mail, return receipt requested, addressed as follows:  
28

To Plaintiff and the Class:

**HUNTER PYLE LAW**

Hunter Pyle, Esq. (SBN 191125)  
hunter@hunterpylelaw.com  
John J. Darin, Esq. (SBN 323730)  
jdarin@hunterpylelaw.com  
428 Thirteenth Street, Eleventh Floor  
Oakland, California 94612  
Telephone: (510) 444-4400  
Facsimile: (510) 444-4410

To Defendant:

MOLLIE BURKS

SAT SANG S. KHALSA

GORDON & REES

SCULLY MANSUKHANI

275 Battery Street, Suite 2000

San Francisco, CA 94111

D: 415-875-3365 | P: 415-986-5900 | F: 510-984-1721

83. Entire Agreement. This Joint Stipulation constitutes the entire agreement between the Parties and their respective counsel relating to the Settlement, this Joint Stipulation, and the transactions contemplated thereby. All prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

84. Notice to Class Members. Counsel for the Parties agree that because the members of the Class are so numerous, it is impossible or impractical to have each member of the Class execute this Agreement. The Notice of Pendency of Class Action and Proposed Settlement, attached as **Exhibit A** hereto, will advise all Class Members of the binding nature of the release, and the release shall have the same force and effect as if this Agreement were executed by each member of the Class.

85. Warranty of No Prior Assignment. The Parties represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to

1 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,  
2 action, cause of action, or rights herein released and discharged.

3 86. No Modification by Extrinsic Evidence. With respect to the subject matter  
4 hereof, except this Agreement, the Parties acknowledge that no representations, statements, or  
5 promises made by the other Party, or by their respective agents or attorneys, have been relied  
6 upon in entering into this Agreement. The Parties explicitly recognize California Civil Code  
7 Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a  
8 written agreement is to be construed according to its terms, and may not be varied or  
9 contradicted by extrinsic evidence, and agree that no such extrinsic oral or written  
10 representations or terms shall modify, vary, or contradict the terms of this Agreement.

11 87. Modification in Writing. This Agreement may be modified or amended only if  
12 such modification or amendment is agreed to in writing and signed by the duly authorized  
13 representatives of the Parties hereto, and approved by the Court which writing shall expressly  
14 state the intent of the Parties to modify this Agreement.

15 88. Enforceability. If the Court finds any material provision of this Agreement to be  
16 unenforceable or invalid, then this Agreement shall become voidable. Notwithstanding any  
17 other provision of this Agreement, no distributions shall be required until the enforceability or  
18 validity of this Agreement has been finally determined.

19 89. Binding Effect. This Agreement shall be binding upon and shall inure to the  
20 benefit of the respective heirs, assigns, executors, administrators, successors, subsidiaries,  
21 divisions and affiliated corporations and partnerships, past and present, and trustees, directors,  
22 officers, shareholders, partners, agents and employees, past and present, of Plaintiff, Class  
23 Members who do not opt out, Foodliner, and the Released Parties.

24 90. Counterparts. This Agreement may be executed in counterparts and/or electronic  
25 and/or facsimile signatures, and when each Party has signed and delivered at least one such  
26 counterpart, electronic and/or facsimile signature, each said signature shall be deemed an  
27 original, and, when taken together with other signed counterparts, shall constitute one Joint  
28

1 Stipulation, which shall be binding upon and effective as to all parties.

2 91. Governing Law. This Agreement shall be subject to, governed by, construed,  
3 enforced and administered in accordance with the laws of the State of California, both in its  
4 procedural and substantive aspects.

5 92. Effect of Voiding Settlement. Should any Party elect to withdraw from the  
6 Settlement under the terms set forth above and/or in the Memorandum of Understanding, that  
7 Party will be obligated to pay any settlement administration costs incurred on or before the date  
8 that that Party gave notice of its intent to withdraw from the Settlement.

9  
10 \* \* \* \*

11 THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

12 SIGNATURES CONTINUE ON NEXT PAGE.  
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1 THE UNDERSIGNED ACKNOWLEDGE THAT EACH HAS READ THE  
2 FOREGOING AGREEMENT AND ACCEPTS AND AGREES TO THE PROVISIONS  
3 CONTAINED THEREIN, AND HEREBY EXECUTES IT VOLUNTARILY WITH FULL  
4 KNOWLEDGE OF ITS CONSEQUENCES.

5 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

6 IT IS SO AGREED:

7  
8 Dated: 11/10/2021

DocuSigned by:  
  
7114563AB50B452...  
Raymond Paiz

9  
10  
11 Dated:

  
**Mike Birkett**  
Foodliner, Inc.  
Defendant

12  
13  
14  
15  
16 Approved as to form:

17  
18  
19 **HUNTER PYLE LAW**  
Hunter Pyle  
20 John J. Darin  
Attorneys for Plaintiff and the Putative Class

21  
22  
23 Approved as to form:

24  
25 **GORDON REES SCULLY MANSUKHANI, LLP**  
26 Mollie M. Burks  
27 Sat Sang S. Khalsa  
Attorneys for Defendant Foodliner Inc.  
28

**EXHIBIT A**  
**to Exhibit 1**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA**

**NOTICE OF SETTLEMENT OF CLASS ACTION**

**Paiz v. Foodliner, Inc.**

**If you were employed by Foodliner, Inc. as a truck driver in California between May 26, 2019, and August 15, 2020, a class action settlement may affect your rights.**

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.** The Superior Court of the State of California for the County of Alameda has authorized this notice in the matter of *Paiz v. Foodliner, Inc.*, Case No. RG20062272 (the “**Litigation**”). This is not a solicitation from a lawyer.

- Raymond Paiz (called the “**Plaintiff**” in this notice), was a truck driver employed by Foodliner, Inc. (“**Foodliner**”). Plaintiff filed a lawsuit against Foodliner on May 26, 2020, in California Superior Court.
- Plaintiff claims that Foodliner failed to issue accurate itemized wage statements and violated the Private Attorneys General Act (“**PAGA**”).
- Foodliner disputes Plaintiff’s claims. Foodliner expressly and specifically denies violating any laws.
- For settlement purposes only, the Court has conditionally certified the Litigation to be a class action on behalf of all truck drivers employed by Foodliner in California from May 26, 2019, to August 15, 2020 (the “**Class Period**”).
- Your legal rights may be affected by this Settlement whether you act or do not act. Your options are explained in this notice. Thus, please read this notice carefully and in its entirety.

To request to be excluded from, or object to, this Settlement, you must act before **[60 days from date of notice]**.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT**

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>(1) DO NOTHING</b> | <b>(1) Receive part of the Settlement.</b><br><i>If you do not do anything upon receipt of this notice, you will receive a sum of money based on your dates of employment with Foodliner; you will give up your right to sue for alleged violations and related claims released by the Settlement; you will have no right to appeal; and you will forfeit your right to bring or participate in a similar action against Foodliner.</i> |
| <b>(2) OPT-OUT</b>    | <b>(2) Opt-out or exclude yourself from the Settlement. Get no benefits from it.</b><br><i>If you make a valid and timely written request to be excluded from the Settlement, you will not receive any money, and you will not give up any rights you may have.</i>                                                                                                                                                                     |
| <b>(3) OBJECT</b>     | <b>(3) Write to the Court about why you object to the Settlement.</b><br><i>If you object to the Settlement, you can write to the Court about why you don’t agree with the Settlement. The Court may or may not agree with your objection. If the Court approves the Settlement, you will still be bound by its terms.</i>                                                                                                              |

**THIS LEGAL NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.**

**NO MATTER WHICH OPTION YOU CHOOSE, FOODLINER WILL NOT RETALIATE AGAINST YOU.**

**WHAT THIS NOTICE CONTAINS**

**I. BACKGROUND OF THE CASE**

Page 2

Call **[Administrator’s 800 number]** for more information.

|                                                |        |
|------------------------------------------------|--------|
| II. SUMMARY OF THE PROPOSED SETTLEMENT         | Page 3 |
| A. What Are the Terms of the Settlement?       | Page 3 |
| B. Who is Included in the Settlement?          | Page 3 |
| C. How are Settlement Payments Calculated?     | Page 3 |
| D. Your Settlement Calculation                 | Page 4 |
| E. Release                                     | Page 4 |
| III. LEGAL RIGHTS AND OPTIONS OF CLASS MEMBERS | Page 4 |
| A. Receive a Settlement Payment                | Page 4 |
| B. Exclude Yourself from the Settlement        | Page 4 |
| C. Object to the Settlement                    | Page 5 |
| IV. FINAL SETTLEMENT APPROVAL HEARING          | Page 5 |
| V. ADDITIONAL INFORMATION                      | Page 5 |

You are receiving this notice because the Superior Court of the State of California for the County of Alameda has granted preliminary approval to a class action settlement for settlement purposes only, and Foodliner's records indicate that you may be a member of the settlement Class. As such, you may be eligible for compensation from this Settlement.

As a Class Member, your interests are being represented at no expense to you by Hunter Pyle and John J. Darin of Hunter Pyle Law ("**Class Counsel**"). You may also hire your own lawyer at your own expense.

## I. BACKGROUND OF THE CASE

On May 26, 2020, Plaintiff Raymond Paiz filed a complaint in Alameda County Superior Court on behalf of all current and former truck drivers employed by Foodliner in the State of California (referred to as "**Class Members**"). The complaint made claims for: (1) failure to pay minimum wages, (2) failure to provide adequate wage statements, (3) waiting time penalties, and (4) unfair competition and unfair business practices. On December 8, 2020, Plaintiff filed a First Amended Complaint, which added claims for civil penalties pursuant the PAGA.

The Parties thoroughly investigated the case. Plaintiff and Foodliner were then able to agree on a Settlement of the case.

**Class Counsel believe the Settlement is fair, reasonable, and in the best interests of the Class.** Foodliner expressly and specifically denies any liability or wrongdoing of any kind associated with the claims alleged in the Litigation. Foodliner settled the Litigation in order to avoid costly, disruptive, and time-consuming litigation.

On **[date of preliminary approval order]**, the Court gave preliminary approval to the Settlement and conditionally certified the settlement Class for settlement purposes only. The Court was not asked to make and did not make any ruling as to whether any violations by Foodliner had occurred.

## II. SUMMARY OF THE PROPOSED SETTLEMENT

### A. **What Are the Terms of the Settlement?**

Foodliner has agreed to pay \$275,000.00 to settle the Litigation ("**Gross Settlement Amount**"). The Gross Settlement Amount includes attorneys' fees and costs, costs of settlement administration, the Labor and Workforce Development Agency's ("**LWDA's**") portion of PAGA penalties, and the Class Representative Service Payments. Foodliner will pay the employer's share of any payroll taxes separately from the Gross Settlement Amount.

The "**Net Settlement Fund**" is the remainder of the Gross Settlement Amount after the deductions have been made for the following items: (1) up to \$91,666.67 (33.33% of the Gross Settlement Amount) for Class Counsel's attorneys' fees; (2) Class Counsel's actual litigation costs; (3) the costs of settlement administration; (4) a payment of \$13,725.00 to the LWDA for its portion of PAGA penalties, and (5) up to \$10,000.00 to Plaintiff Raymond Paiz for serving as Class Representative.

### B. **Who is Included in the Settlement?**

Included in the Settlement are all current and/or former non-exempt truck drivers employed by Foodliner in the State of California between May 26, 2019 and August 15, 2020, who do not opt out.

### C. How Are Settlement Payments Calculated?

There are approximately 88 Class Members. Any Class Member who does not submit a written request to be excluded from the Settlement will have his or her “Settlement Payment” calculated as follows:

a. **All Participating Class Members:** The Net Settlement Fund shall be divided among all Class Members who do not opt out. Each such Class Member shall receive a proportionate share that is equal to (i) the number of workweeks he or she worked during the time period from May 26, 2019 through August 15, 2020, divided by (ii) the total number of workweeks worked by all such Class Members during the time period from May 26, 2019 through August 15, 2020. However, in the event that a Class Member’s proportionate share is less than \$100, that Class Member shall receive \$100.

b. **PAGA Subclass:** From the \$18,300.00 allocated to PAGA penalties, one-quarter (25%) or \$4,575.00 shall be distributed to the PAGA Subclass, which shall consist of all Class Members who were employed at any time during the time period December 8, 2019 through August 15, 2020 (“PAGA Period”). Each Class Member who does not opt out and who is a member of the PAGA Subclass will receive a proportionate share of money allocated to that subclass that is equal to (i) the number of workweeks he or she worked during the time period from December 8, 2019 through August 15, 2020, divided by (ii) the total number of workweeks worked by all such Class Members who are members of the PAGA Subclass during the time period from December 8, 2019 through August 15, 2020. Any tax liability that attaches to the treatment of the PAGA payments shall be solely the responsibility of the individual Class Members.

c. **Tax Treatment of Settlement Payments:** 100 percent (100%) of each Settlement Payment will be allocated to penalties, for which you will receive a 1099 form.

### D. Your Settlement Calculation.

Your Settlement Payment is estimated to be \$/amount/, based on the following dates of employment as reflected in Foodliner’s records:

**/insert start date(s) and end date(s) of employment/**

If you wish to dispute the number of workweeks, you must bring the dispute to the attention of the Settlement Administrator at [ADDRESS] in writing by [60 days from the date of notice]. In your written notice of dispute, please provide what you believe to be the correct information along with supporting documentation, if available, to show the changes you are seeking.

**Your check will be void if you do not cash or deposit your check within 180 days following the issuance of the check. Whether or not you cash or deposit your check, you will be bound by the Settlement and will be deemed to have waived irrevocably any right or claim to your Settlement share and/or to appeal the approval of the Settlement.** After the expiration of 180 days, the sum of any uncashed/undeposited checks shall be donated to the Legal Aid at Work, which the Parties have selected, and the Court has approved, as a *cy pres* beneficiary.

### E. Release of Claims Against Foodliner.

Upon the Final Approval of the Settlement by the Court, the Plaintiff and all members of the Settlement Class who do not submit timely requests for exclusion (described below) will be deemed to have fully released and discharged Foodliner from all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, known or unknown, suspected or unsuspected, that each participating class member had, now has, or may hereafter claim to have against Foodliner and its agents, officers, employees, directors, owners, subsidiaries, DBA’s, affiliates and parent companies (“Released Parties”), based on inaccurate wage statements as alleged in Plaintiff’s operative Complaint, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law (“the Released Claims”). The Released Claims specifically include, but are not limited to (1) Inaccurate Wage Statements (Labor Code § 226); and (2) Civil Penalties under California’s Private Attorneys General Act (“PAGA”) (Labor Code § 2698 et seq.) in connection with a claim of inaccurate wage statements. The enumeration of these specific statutes shall neither enlarge or narrow the scope of res judicata based on the claims that were asserted in the Action or could have been asserted in the Action based on the facts and circumstances alleged in the Complaint(s).

Plaintiff will request that the Court dismiss without prejudice the claims against Foodliner for Unpaid Detention Pay, and any related claims asserted in the operative Complaint. As such, those claims are specifically excluded from the scope of the Released Claims.

These claims are referred to in this Notice as the “**Released Claims.**” For more information regarding the scope of the release, please read the Settlement Agreement available at [Administrator website].

### III. LEGAL RIGHTS AND OPTIONS OF CLASS MEMBERS

#### A. **Option 1: Do Nothing and Receive a Settlement Payment.**

You do not need to do anything in order to receive a Settlement Payment. If you do nothing, you will automatically be included in the Settlement and will receive a Settlement Payment so long as the Settlement is approved and becomes Final. As set forth above, your Settlement Payment will be based upon whether or not you worked during the Class Period and, if so, the amount of workweeks you worked during the Class Period.

*Please keep your address current!* To assist the Court and the parties in maintaining accurate lists of Class Members, please mail notice of any change in your address to the Settlement Administrator [ADDRESS], or call [Administrator 800 number]. *Please say that you are a part of the Foodliner Settlement Class.*

#### B. **Option 2: Exclude Yourself from the Settlement.**

**IMPORTANT: You will be bound by the terms of the Settlement unless you submit a timely and signed written request to be excluded from the Settlement.** To exclude yourself from the Settlement, you must mail your request for exclusion, postmarked no later than [60 days after notice date], to:

[SETTLEMENT ADMINISTRATOR]  
[ADDRESS]

Your request for exclusion should contain your full name; all other names used during employment with Foodliner; date of birth; the last four digits of your social security number or employee identification number; and your telephone number. Your request for exclusion must be returned by mail to the Settlement Administrator at the address above, must be postmarked on or before [60 days after notice date].

#### C. **Option 3: Object to the Settlement.**

Any Settlement Class member who has not submitted a request for exclusion may object to the terms of the Settlement. You may object to the proposed settlement in writing. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing should: clearly identify the case name and number (*Paiz v. Foodliner, Inc.*, Case No. RG20062272); and must be mailed to the Settlement Administrator postmarked on or before [60 days after notice date]. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense, provided you notify the Court of your intent to do so.

**YOU MAY OBJECT TO THE SETTLEMENT AND STILL RECEIVE YOUR SHARE OF THE NET SETTLEMENT AMOUNT. IF THE COURT APPROVES THE SETTLEMENT DESPITE YOUR OBJECTIONS, YOU WILL RECEIVE YOUR SHARE OF SETTLEMENT PROCEEDS.**

**NO MATTER WHICH OPTION YOU CHOOSE, FOODLINER WILL NOT RETALIATE AGAINST YOU.**

### IV. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing on [FINAL APPROVAL HEARING], at [TIME], in Department 23 – 1223 Oak Street, Oakland, CA 94612, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The hearing may be continued or rescheduled without further notice to Class Members. You can check whether the Final Approval Hearing has been continued or rescheduled by visiting [Administrator website].

You may attend the Final Approval Hearing but are not required to do so. Written objections will be considered at the Final Approval Hearing whether or not the person objecting appears at the hearing. If you object and wish to appear at the Final Approval Hearing, you may appear personally or through counsel hired at your own expense, as long as you provide the Court with timely notice of your intent to appear.

At no expense to you, Class Counsel will represent your interests as a Class Member. Or, you may hire your own lawyer

**Foodliner Class Action Settlement Notice**

Page 4 of 5

Questions? Call [Administrator's 800 number]

at your own expense.

#### V. ADDITIONAL INFORMATION

This Notice is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you may read the detailed Settlement Agreement, which is available at [Administrator website]. You may also access Plaintiff's Motion for Preliminary Approval, Plaintiff's Motion for Final Approval and Attorneys' Fees (when available), and other important documents related to this case, at the above website. If you have any questions regarding this Notice, the Settlement, or the Litigation, you may contact Class Counsel:

**HUNTER PYLE  
JOHN J. DARIN  
HUNTER PYLE LAW**  
428 Thirteenth Street, 11<sup>th</sup> Floor, Oakland, CA 94612  
(510) 444-4400  
hunter@hunterpylelaw.com;  
jdarin@hunterpylelaw.com

The pleadings and other records in this Litigation, including the Settlement Agreement, also may be examined online by accessing the Court's Register of Actions in this case through the Court's Domain Web system at <https://alameda.courts.ca.gov/Pages.aspx/DomainWeb>, or by visiting the office of the Clerk of the Superior Court of the State of California for the County of Alameda, Rene C. Davidson Courthouse, 1225 Fallon Street, Oakland, CA 94612, between 8:30 a.m. and 2:30 p.m., Monday through Friday, excluding Court holidays.

**DO NOT TELEPHONE THE COURT OR DEFENSE COUNSEL**

# **EXHIBIT 2**

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12/08/2020 11:30 AM

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10 Attorneys for Plaintiff and the Putative Class

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF ALAMEDA**

13 RAYMOND PAIZ, on behalf of himself and all  
14 others similarly situated;

15 Plaintiff,

16 v.

17 FOODLINER, INC., and DOES 1 through 10,  
18 inclusive,

19 Defendants.

Case No. RG20062272

**CLASS ACTION**

**FIRST AMENDED COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF**

1. FAILURE TO PAY MINIMUM WAGES  
(Labor Code §§ 1182.11-1182.13, 1194,  
1194.2, 1197 & 1198, Wage Order No. 9);
2. FAILURE TO PROVIDE ADEQUATE  
WAGE STATEMENTS (Labor Code § 226,  
IWC Wage Order No. 9);
3. WAITING TIME PENALTIES  
(Labor Code §§ 201, 202 & 203); and
4. UNLAWFUL BUSINESS PRACTICES  
(Business & Professions Code §§ 17200, *et  
seq.*); and
5. VIOLATIONS OF THE LABOR CODE  
PRIVATE ATTORNEYS GENERAL ACT  
OF 2004 (Labor Code § 2698, *et seq.*)

**DEMAND FOR JURY TRIAL**

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## I. INTRODUCTION

1. This is a class action under Code of Civil Procedure section 382, brought by plaintiff RAYMOND PAIZ (“Plaintiff”).

2. Plaintiff seeks to represent a class comprised of current and former truck drivers employed by defendant FOODLINER, INC. (“FOODLINER”) in the State of California (“Class Members”).

3. FOODLINER is in the business of transporting various liquid and dry cargo from one location to another. FOODLINER has employed Plaintiff and Class Members as truck drivers and paid Plaintiff and Class Members on an hourly basis. However, FOODLINER has failed to pay Plaintiff and Class Members for all hours worked, including but not limited to, for detention time.

4. FOODLINER has also failed to timely pay all wages due to Plaintiff and Class Members at the time of their termination.

5. FOODLINER has also failed to provide the following information on Plaintiff and Class Members’ wage statements: (1) all applicable hourly rates in effect during the pay period; and (2) the corresponding number of hours worked at each hourly rate.

6. By failing to properly compensate Plaintiff and Class Members, FOODLINER has sought to avoid various duties and obligations owed to employees under California’s Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 9, including but not limited to: the duties to pay at least minimum wages to truck drivers and to document their actual hours worked (Labor Code §§ 226, 510, 1174, 1182.11-11.82.13, 1194, 1194.2, 1197, 1198; IWC Wage Order No. 9-2001 (8 Cal. Code Regs. § 11090) (“Wage Order No. 9”), §§ 3, 4, 7); and other related legal obligations.

7. Plaintiff brings claims on behalf of Class Members for unpaid wages, inadequate wage statements, statutory penalties, interest, and attorneys’ fees and costs, under Labor Code sections 203, 218.5, and 1194, among others, and Code of Civil Procedure section 1021.5. Plaintiff, on behalf of himself and the Class Members, also seeks equitable and injunctive relief for

1 these violations pursuant to Business and Professions Code sections 17200-17208 (also referred to  
2 herein as the “UCL”).

3 8. Plaintiff also brings a representative cause of action seeking penalties under the  
4 Private Attorneys General Act, Labor Code sections 2698 *et seq.* (“PAGA”).

## 5 **II. JURISDICTION**

6 9. Venue is proper in this judicial district, pursuant to Code of Civil Procedure section  
7 395(a). FOODLINER regularly transacts business in Oakland, Berkeley, San Lorenzo, and  
8 Newark, California. The unlawful acts alleged herein have occurred in and have a direct effect on  
9 Plaintiff and those similarly situated within the State of California and Alameda County.

10 10. This Court has jurisdiction over this class action pursuant to Article 6, section 10 of  
11 the California Constitution and California Code of Civil Procedure section 410.10.

## 12 **III. PARTIES**

### 13 **A. PLAINTIFF**

14 11. Plaintiff RAYMOND PAIZ worked for FOODLINER as a truck driver from July  
15 2016 until April 1, 2020. FOODLINER did not compensate him for standby time and waiting  
16 times. Furthermore, FOODLINER has failed to provide the following information on his wage  
17 statements: (1) all applicable hourly rates in effect during the pay period; and (2) the corresponding  
18 number of hours worked at each hourly rate. FOODLINER also failed to pay him all wages due at  
19 the time of his termination.

### 20 **B. DEFENDANTS**

21 12. FOODLINER is a Wisconsin corporation. FOODLINER conducts business in the  
22 State of California and Alameda County.

23 13. The true names and capacities, whether individual, corporate, associate, or otherwise, of  
24 FOODLINER sued herein as DOES 1 through 10, inclusive, are currently unknown to Plaintiff,  
25 who therefore sues FOODLINER by such fictitious names under Code of Civil Procedure section  
26 474. Plaintiff is informed and believes, and based thereon alleges, that each of the defendants  
27 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to  
28

1 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and  
2 capacities of the defendants designated hereinafter as DOES when such identities become known.

3 14. Plaintiff and Class Members are informed and believe that each of the defendants is  
4 liable to Plaintiff and the Class Members as an “employer,” as that term is defined in section 2(G)  
5 of Wage Order No. 9. As employers of Plaintiff and the Class Members throughout the relevant  
6 time period hereto, defendants, and each of them, are either solely or jointly and severally liable for  
7 the economic damages, including statutory penalties, owed to Plaintiff and Class Members under  
8 common law and by statute.

#### 9 IV. STATEMENT OF FACTS

10 15. FOODLINER operates at least two transportation facilities located in California.

11 16. Plaintiff is informed and believes, and thereon alleges, that throughout the relevant  
12 time period of this action, at least sixty (60) Class Members have been employed by FOODLINER.

13 17. At all times relevant hereto, the California Labor Code and Wage Order No. 9 have  
14 applied to Plaintiff and to all Class Members.

15 18. Plaintiff is informed and believes, and thereon alleges, that through common  
16 practices, policies and/or schemes, FOODLINER failed to pay wages owed to Plaintiff and Class  
17 Members in order to systematically deprive them of the benefits and protections applicable to  
18 employees under California law.

19 19. Class Members’ primary job duty is to haul liquid and dry materials from one  
20 location to another in trucks owned and operated by FOODLINER. FOODLINER supplies truck  
21 drivers with the products, equipment and physical locations to perform their job.

22 20. The job duties of truck drivers do not require special skills.

23 21. FOODLINER controls all work details, including truck drivers’ schedules and work  
24 locations, the specific work duties to be performed, and the manner in which the work duties are  
25 performed.

26 22. Truck drivers are paid based on each trip driven.

23. Based on the foregoing and other relevant factors, Plaintiff and other Class Members are and were employees of FOODLINER.

24. Plaintiff and other Class Members are and were not paid for all hours worked, in particular, for standby and waiting times.

25. The wage statements provided by FOODLINER to Plaintiff and Class Members fail to accurately state the actual number of hours worked and the applicable pay rate(s).

## **V. CLASS ACTION ALLEGATIONS**

26. Except as to the Fifth Cause of Action brought under PAGA, Plaintiff brings this lawsuit as a class action pursuant to Code of Civil Procedure section 382 on behalf of himself and all similarly situated employees. The class that Plaintiff seeks to represent ("Class") is defined as:

All individuals whom FOODLINER employed as truck drivers in California at any time during the Class Period.

27. The claims herein have been brought and may properly be maintained as a class action under Code of Civil Procedure section 382 because there is a well-defined community of interest among Class Members with respect to the claims asserted herein and the Class is easily ascertainable:

a. Ascertainability and Numerosity: The potential members of the Class as defined herein are so numerous that joinder would be impracticable. Plaintiff is informed and believes, and thereon alleges that FOODLINER has employed at least sixty (60) Class Members in California during the Class Period. The names and addresses of the Class Members are available from FOODLINER. Notice can be provided to the Class Members via first class mail using techniques and a form of notice similar to those customarily used in class action lawsuits of this nature.

b. Commonality: There are questions of law and fact common to Plaintiff and Class Members that predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, without limitation:

1 i. Whether FOODLINER has violated Labor Code sections 1182.11-1182.13, 1194,  
2 1194.2, 1197 and 1198, and IWC Wage Order No. 9, by failing to pay at least the minimum wage  
3 for all work performed;

4 ii. Whether FOODLINER has knowingly and intentionally failed to provide truck  
5 drivers with an itemized statement showing all applicable hourly rates in effect during the pay  
6 period and the corresponding number of hours worked at each hourly rate, as required by Labor  
7 Code section 226, IWC Wage Order No. 9, section 7, and the UCL;

8 iii. Whether FOODLINER has violated Labor Code sections 201-203 by failing, upon  
9 termination, to timely pay Class and Subclass Members wages that were due;

10 iv. What relief is necessary to remedy FOODLINER's unfair and unlawful conduct as  
11 herein alleged; and

12 v. Other questions of law and fact.

13 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Plaintiff and all  
14 members of the Class have sustained injuries-in-fact due to their damages arising out of and caused  
15 by FOODLINER's common course of conduct in violation of law, as alleged herein.

16 d. Adequacy of Representation: Plaintiff is a member of the Class that he seeks to  
17 represent, and will fairly and adequately represent and protect the interests of the Class Members.  
18 Counsel representing Plaintiff is competent and experienced in litigating wage and hour class  
19 actions.

20 e. Superiority of Class Action: A class action is superior to other available means for  
21 the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is  
22 not practicable, and questions of law and fact common to the Class predominate over any questions  
23 affecting only individual members of the Class. Each Class Member has suffered injury and is  
24 entitled to recover by reason of FOODLINER's illegal policies and/or practices as alleged herein.  
25 Class action treatment will allow those similarly situated persons to litigate their claims in the  
26 manner that is most efficient and economical for the parties and the judicial system. Further, the  
27 prosecution of separate actions against FOODLINER by individual Class Members would create a  
28

1 risk of inconsistent or varying adjudications that would establish incompatible standards of conduct  
2 for FOODLINER.

## 3 **VI. DAMAGES**

4 28. As a direct, foreseeable, and proximate result of FOODLINER's conduct, Plaintiff  
5 and similarly situated truck drivers are owed, among other things, compensation for unpaid wages  
6 plus interest, wage statement penalties under Labor Code section 226, waiting time penalties under  
7 Labor Code section 203, and other statutory penalties, in an amount that exceeds \$25,000, the  
8 precise amount of which will be proven at trial.

## 9 **VII. CAUSES OF ACTION**

### 10 **FIRST CAUSE OF ACTION**

#### 11 **FAILURE TO PAY MINIMUM WAGE FOR ALL HOURS WORKED** 12 **(Labor Code §§ 1182.11-1182.13, 1194, 1194.2, 1197 & 1198;** 13 **Wage Order No. 9, Cal. Code of Regs., tit. 8, § 11090)**

14 29. The allegations of each of the preceding paragraphs are realleged and incorporated  
15 herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the  
16 above-described Class of similarly situated truck drivers employed by FOODLINER in California.

17 30. Throughout the Class Period, Labor Code sections 1182.11-1182.13, 1194, 1197,  
18 1198, and Wage Order No. 9 were in full force and effect and required that FOODLINER's non-  
19 exempt employees receive at least the minimum wage for all hours worked.

20 31. Throughout the Class Period, as a result of the policies and practices set forth  
21 herein, FOODLINER has failed to pay Plaintiff and Class Members, and continually fails to pay  
22 them, minimum wages or agreed upon wages as required by law for all of their hours worked.

23 32. As a direct and proximate result of FOODLINER's acts and/or omissions, Plaintiff  
24 and Class Members have suffered economic damages in amounts to be determined at trial.

25 33. Labor Code section 1194(a) provides that an employee who has not been paid at  
26 least minimum wages as required by section 1197 may recover the unpaid balance of the full  
27 amount of such wages, interest thereon, attorneys' fees and the costs of suit.

1           34. Labor Code section 1194.2 provides that employees who have not been paid at least  
2 minimum wages for their hours worked are entitled to recover liquidated damages in an amount  
3 equal to the minimum wages that a defendant unlawfully failed to pay them in amounts according  
4 to proof at the time of trial.

5           35. Additionally, FOODLINER has not maintained adequate and accurate records of all  
6 wages earned or hours worked in violation of Wage Order No. 9, section 7.

7           36. Plaintiff, on behalf of himself and the Class, requests restitution of unpaid wages,  
8 liquidated damages, attorneys' fees and costs under Labor Code section 1194, and other relief as  
9 described below.

10                                   **SECOND CAUSE OF ACTION**  
11                                   **WAGE STATEMENT PENALTIES**  
12                                   **(Labor Code § 226)**

13           37. The allegations of each of the preceding paragraphs are realleged and incorporated  
14 herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the  
15 above-described Class of similarly situated truck drivers employed by FOODLINER in California.

16           38. Labor Code section 226(a) requires employers semi-monthly or at the time of each  
17 payment of wages to furnish each employee with a statement itemizing, among other things, all  
18 applicable hourly rates in effect during the pay period and the corresponding number of hours  
19 worked at each hourly rate. Labor Code section 226(e) provides that if an employer knowingly and  
20 intentionally fails to comply with subsection (a), then the employee is entitled to recover the  
21 greater of all actual damages or fifty dollars (\$50.00) for the initial violation and one hundred  
22 dollars (\$100.00) for each subsequent violation, up to a maximum of four thousand dollars  
23 (\$4,000.00).

24           39. FOODLINER knowingly and intentionally failed to furnish Plaintiff and the other  
25 Class Members with timely, adequate, itemized statements showing all applicable hourly rates in  
26 effect during the pay period and the corresponding number of hours worked at each hourly rate, as  
27 required by Labor Code section 226(a).

1           40. Plaintiff and other Class Members were damaged by this failure because, among  
2 other things, they cannot readily determine whether FOODLINER has paid them all wages due.

3           41. As a result, FOODLINER is liable to Plaintiff and the Class Members for the  
4 amounts provided by Labor Code section 226(e).

5           42. Plaintiff, on behalf of himself and the proposed Class, requests wage statement  
6 penalties pursuant to Labor Code section 226 and relief as described below.

7                                   **THIRD CAUSE OF ACTION**

8                                   **WAITING TIME PENALTIES**  
9                                   **(Labor Code §§ 201, 202 & 203)**

10           43. The allegations of each of the preceding paragraphs are realleged and incorporated  
11 herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the  
12 above-described Class of similarly situated truck drivers employed by FOODLINER in California.

13           44. Labor Code section 201 requires an employer who discharges an employee to pay  
14 all compensation due and owing to said employee immediately upon discharge. Labor Code  
15 section 202 requires an employer to promptly pay compensation due and owing to said employee  
16 within seventy-two hours of that employee's termination of employment by resignation. Labor  
17 Code section 203 provides that if an employer willfully fails to pay compensation promptly upon  
18 discharge or resignation, as required under sections 201 and 202, then the employer is liable for  
19 waiting time penalties in the form of continued compensation for up to thirty workdays.

20           45. FOODLINER willfully failed and refused, and continues to willfully fail and refuse,  
21 to timely pay compensation and wages, including minimum wages, to Plaintiff and to all other  
22 Class Members who are no longer employed by FOODLINER, as required by Labor Code sections  
23 201-202. As a result, FOODLINER is liable to Plaintiff and other Class Members whose are no  
24 longer employed by FOODLINER for waiting time penalties, together with interest thereon and  
25 attorneys' fees and costs, under Labor Code section 203.

26           46. Plaintiff, on behalf of himself and the Class, requests payment of waiting time  
27 penalties and other relief as described below.

28 //

1 **FOURTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION AND UNFAIR BUSINESS PRACTICES**  
3 **(Business & Professions Code §§ 17200 *et seq.*)**

4 47. The allegations of each of the preceding paragraphs are realleged and incorporated  
5 herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the  
6 above-described Class of similarly situated truck drivers employed by FOODLINER in California.

7 48. FOODLINER's failure to pay legally required compensation under the Wage Order  
8 No. 9 and Labor Code provisions, and to furnish truck drivers with wage statements showing all  
9 applicable hourly rates in effect during the pay period and the corresponding number of hours  
10 worked at each hourly rate in accordance with Labor Code section 226, as alleged above, constitute  
11 unlawful and/or unfair activities prohibited by Business and Professions Code section 17200.  
12 Plaintiff reserves the right to identify additional unfair and unlawful practices by FOODLINER as  
13 further investigation and discovery warrants.

14 49. Moreover, Business and Professions Code section 17203 provides that the Court  
15 may restore to an aggrieved party any money or property acquired by means of unlawful and unfair  
16 business practices. Plaintiff seeks a court order requiring an audit and accounting of the payroll  
17 records to determine the amount of restitution of all unpaid wages owed to himself and Class  
18 Members, according to proof, as well as a determination of the amount of funds to be paid to  
19 current and former employees that can be identified and located pursuant to a court order and  
20 supervision.

21 50. Plaintiff and all Class Members are "persons" within the meaning of Business and  
22 Professions Code section 17204 who have suffered injury in fact as a result of FOODLINER's  
23 unfair competition, and who comply with the requirements of Code of Civil Procedure section 382,  
24 as set forth above, and therefore have standing to bring this claim for injunctive relief, restitution,  
25 and other appropriate equitable relief.

26 51. As a result of its unlawful and/or unfair acts, FOODLINER has reaped and  
27 continues to reap unfair benefits and illegal profits at the expense of Plaintiff and proposed Class  
28 Members. FOODLINER should be enjoined from this activity and made to restore to Plaintiff and

1 proposed Class Members their wrongfully withheld wages, interest thereon, and related statutory  
2 penalties, pursuant to Business and Professions Code sections 17202 and 17203.

3 52. Private enforcement of these rights is necessary, as no other agency has raised a  
4 claim to protect these workers. There is a financial burden incurred in pursuing this action that  
5 would be unjust to place upon Plaintiff, as the burden of enforcing workforce-wide rights is  
6 disproportionately greater than that of enforcing only a plaintiff's individual claims.

7 53. Additionally, Plaintiff and truck drivers are low-income workers who cannot afford  
8 to spend part of their wages on enforcing others' wage rights. Therefore, it would be against the  
9 interests of justice to force payment of attorneys' fees from Plaintiff's recovery in this action.  
10 Accordingly, attorneys' fees are appropriate and sought pursuant to the Code of Civil Procedure  
11 section 1021.5.

12 54. Plaintiff, on behalf of himself and the Class, requests restitution of unpaid wages,  
13 injunctive relief and other relief as described below.

14 **FIFTH CAUSE OF ACTION**

15 **PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**  
16 **(Labor Code §§ 2698 *et seq.*)**

17 55. The allegations of each of the preceding paragraphs are re-alleged and incorporated  
18 herein by reference. Plaintiff alleges as follows a representative cause of action on behalf of  
19 himself and all other Class Members.

20 56. Pursuant to Labor Code section 2699.3(a), on August 25, 2020, Plaintiff gave notice  
21 by electronic filing and by certified mail to Defendant and the Labor Workforce Development  
22 Agency ("LWDA") of the factual and legal basis for the labor law violations alleged in this  
23 complaint. The LWDA has not provided notice pursuant to Labor Code section 2699.3(a)(2)(A),  
24 and 65 calendar days have passed since the postmark date of Plaintiffs' LWDA notice. Therefore,  
25 Plaintiff is entitled to commence a civil action pursuant to Labor Code section 2699.

26 57. Labor Code section 2699(f) provides, in pertinent part: "For all provisions of this  
27 code except those for which a civil penalty is specifically provided, there is established a civil  
28 penalty for a violation of these provisions, as follows: . . . IF, at the time of the alleged violation,

1 the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for  
2 each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for  
3 each aggrieved employee per pay period for each subsequent violation.”

4 58. Labor Code section 2699(g)(1) provides, in pertinent part: “[A]n aggrieved  
5 employee may recover the civil penalty described in subdivision (f) in a civil action . . . filed on  
6 behalf of himself or herself and other current or former employees against whom one or more of  
7 the alleged violations was committed. Any employee who prevails in any action shall be entitled to  
8 an award of reasonable attorney’s fees and costs.”

9 59. Plaintiff is an aggrieved employee as defined by Labor Code section 2699(a).

10 60. FOODLINER violated the California Labor Code by committing the acts described  
11 in causes of action One through Four.

12 61. Plaintiff, on behalf of himself and all other Class Members, requests civil penalties  
13 against FOODLINER for violations of the Labor Code, as provided under Labor Code section  
14 2699(f), plus reasonable attorneys’ fees and costs, as provided under Labor Code section  
15 2699(g)(1), in amounts to be proved at trial.

#### 16 **VIII. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff on behalf of himself and the above-described Class of similarly  
18 situated truck drivers, requests relief as follows:

- 19 a. Certification of the above-described Class as a class action, pursuant to Code of  
20 Civil Procedure section 382;
- 21 b. Certification of the above-described Class as a representative class under Business  
22 and Professions Code section 17200;
- 23 c. Provision of Class Notice to all truck drivers who worked for FOODLINER during  
24 the Class Period;
- 25 d. A declaratory judgment that FOODLINER has knowingly and intentionally violated  
26 Business and Professions Code sections 17200-17208, by the conduct set forth  
27 above;

- 1 e. A declaratory judgment that FOODLINER's violations as described above were  
2 willful;
- 3 f. An equitable accounting to identify, locate, and restore to all current and former  
4 truck drivers the wages that are due;
- 5 g. An award to Plaintiff and the Class Members of damages in the amount of unpaid  
6 wages, including interest thereon, subject to proof at trial;
- 7 h. An award to Plaintiff and the Class Members of statutory penalties because of  
8 FOODLINER's failure to provide Plaintiff and the Class Members with itemized  
9 wage statements that comply with the requirements of Labor Code section 226;
- 10 i. An order requiring FOODLINER to pay restitution of all amounts owed to Plaintiff  
11 and similarly situated truck drivers for FOODLINER's failure to pay legally  
12 required wages, and interest thereon, in an amount according to proof, pursuant to  
13 Business & Professions Code section 17203;
- 14 j. An award of civil penalties under Labor Code section 2698, et seq.;
- 15 k. An award to Plaintiff and the Class Members of reasonable attorneys' fees and  
16 costs, pursuant to Code of Civil Procedure section 1021.5 and Labor Code sections  
17 218.5, 226(e), 1194, 2699, and 2802, and/or other applicable law; and
- 18 l. An award to Plaintiff and the Class Members of such other and further relief as this  
19 Court deems just and proper.  
20

21 DATED: December 8, 2020

HUNTER PYLE LAW

22  
23 By:  \_\_\_\_\_

Hunter Pyle  
John J. Darin

24  
25 Attorneys for Plaintiff and the Putative Class  
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff, individually and on behalf of all other similarly situated Class Members, demands  
3 a jury trial of this matter on all claims so triable.

4  
5 DATED: December 8, 2020

HUNTER PYLE LAW

6  
7 By:  \_\_\_\_\_

8 Hunter Pyle  
9 John J. Darin

10 Attorneys for Plaintiff and the Putative Class  
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