

SEYFARTH SHAW LLP
Eric Hill (State Bar No. 173247)
ehill@seyfarth.com
560 Mission Street, 31st Floor
San Francisco, California 94105
Telephone: (415) 397-2823
Facsimile: (415) 397-8549

Attorneys for Defendant
US FOODS, INC.

ACKERMANN & TILAJEF, P.C.
Craig J. Ackermann (State Bar No. 229832)
cja@ackermanntilajef.com
Avi Kreitenberg (State Bar No. 266571)
ak@ackermanntilajef.com
1180 South Beverly Drive, Suite 610
Los Angeles, California 90035
Telephone: (310) 277-0614
Facsimile: (310) 277-0635

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

JUAN FRANCO, individually and on behalf of)
all others similarly-situated,)

Plaintiff,)

v.)

US FOODS, INC. DBA U.S. FOOD)
FOODSERVICE, INC., a Delaware)
Corporation, and DOES 1 to 100, inclusive,)

Defendant.)

Case No. RIC2004073

**STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE**

Complaint Filed: October 13, 2020

1 This Stipulation of Settlement is made and entered into by the following parties:
2 Defendant US Foods, Inc. dba U.S. Foodservice, Inc. ("USF" or "Defendant"), Plaintiff Juan
3 Franco, individually and on behalf of the Class (as defined below), and their respective counsel
4 of record. This Stipulation of Settlement is subject to the terms below and the approval of the
5 Court pursuant to California Code of Civil Procedure §382.

6 **A. DEFINITIONS**

7 As used in this Stipulation of Settlement ("Stipulation"), the following terms shall have
8 the meanings specified below. To the extent terms or phrases used in this Stipulation are not
9 specifically defined below, but are defined elsewhere in the Stipulation, they are incorporated by
10 reference into this definition section.

11 "Action" shall mean the Riverside Superior Court Case No. RIC2004073.

12 "Administrative Expenses" shall include Class Counsels' attorneys' fees and litigation
13 costs; any Enhancement Award granted to the Named Plaintiff and payment of all costs and
14 expenses to or associated with the Settlement Administrator.

15 "Agreement," "Stipulation," "Stipulation of Settlement," "Settlement", or "Settlement
16 Agreement," shall mean this Stipulation of Settlement of Class Action, including any attached
17 Exhibits.

18 "Class Counsel" shall mean, collectively, Ackermann & Tilajef, P.C., 1180 South
19 Beverly Drive, Suite 610, Los Angeles, California 90035.

20 "Class Counsel Attorneys' Fees" is the amount to be paid to Class Counsel for fees and
21 costs, pursuant to the terms of this Stipulation and subject to approval by the Court.

22 "Class Members" or "Class" shall mean Plaintiff and all other individuals who are or
23 have been employed as truck drivers ("Drivers"), or in any similar capacity, by Defendant US
24 Foods, Inc. in California at any time between January 2, 2018 and the date of preliminary
25 approval of the settlement or June 14, 2021, whichever is earlier. US Foods, Inc. has represented
26 that the Settlement Class consists of approximately 852 current and former Drivers. The Class
27 Member list will be provided to the Settlement Administrator only, and will not be provided to
28 Class Counsel.

1 “Class Notice” shall mean the Class Notice, as set forth in Exhibit 1 to this Stipulation, or
2 as otherwise approved by the Court, which is to be mailed to Class Members.

3 “Class Participant(s)” shall mean any and all Class Members who fail to submit a timely
4 request to exclude themselves or opt-out of the Settlement to the Settlement Administrator.

5 “Class Period” shall mean January 2, 2018 through the date of preliminary approval of
6 the settlement or June 14, 2021, whichever is earlier.

7 “Class Representative” shall mean Juan Franco.

8 “Class Settlement” or “Settlement” shall mean the settlement embodied in this
9 Stipulation, which is subject to Court approval.

10 “Complaint” shall mean the Complaint filed by Juan Franco on October 13, 2020 in
11 Riverside County Superior Court, RIC2004073.

12 “Court” shall mean the Superior Court of California, for the County of Riverside, Judge
13 Chad Firetag presiding.

14 “Defendant” shall mean US Foods, Inc.

15 “Enhancement Award” shall mean any additional monetary payment provided to the
16 Class Representative for his efforts on behalf of the Class in this Action.

17 “Effective Date of Final Approval” shall mean the Final Approval Date if no objections
18 are filed to the settlement. If objections are filed and overruled, and no appeal is taken of the
19 final approval order, then the Effective Date of Final Approval shall be sixty-five (65) days after
20 the Final Approval Date. If an appeal is taken from the Court’s overruling of objections to the
21 settlement, then the Effective Date of Final Approval shall be twenty (20) days after the appeal is
22 withdrawn or after an appellate decision affirming the final approval decision becomes final.

23 “Exclusion Form” shall mean the Request For Exclusion Form, as set forth in Exhibit 2 to
24 this Stipulation, or as otherwise approved by the Court, which is to be mailed to Class Members.

25 “Final Approval Date” shall mean the date upon which Defendant receives notice that the
26 Court has entered an Order approving the Class Settlement.

27 “Final Approval Hearing” shall mean the final hearing held to ascertain the fairness,
28 reasonableness, and adequacy of the Class Settlement, at which time the Court will likely enter

1 its Order approving the Class Settlement.

2 “Gross Settlement Amount” or “Settlement Fund” means Three Hundred Fifty Thousand
3 Dollars (\$350,000), which is the maximum amount USF is required to pay, including but not
4 limited to the Individual Settlement Amounts to Settlement Class Members, payment of the
5 \$15,000 to the LWDA for its portion of the PAGA penalties, and payment of Administrative
6 Expenses, including but not limited to all attorneys’ fees, costs, the Enhancement Award for the
7 Class Representative, and the costs of Settlement Administration.

8 “Hearing on Preliminary Approval” shall mean the hearing held on the motion for
9 preliminary approval of the Class Settlement.

10 “Individual Settlement Amount” shall mean the amount to be, and which is, distributed to
11 any and each Class Participant.

12 “Information Sheet” shall mean the Class Member Information Sheet, as set forth in
13 Exhibit 3 to this Stipulation, or as otherwise approved by the Court, which is to be mailed to
14 Class Members.

15 “Named Plaintiff” shall mean Juan Franco.

16 “Net Settlement Amount” means the Gross Settlement Amount less: (a) \$15,000.00 that
17 will be paid to the California Labor and Workforce Development Agency constituting the
18 LWDA’s portion for the PAGA penalties, (b) Administrative Expenses, including Class Counsel
19 Attorneys’ Fees and Costs and the costs of settlement administration, and (c) the Class
20 Representative’s Enhancement Award; and shall be the maximum amount to be distributed to
21 Class Participants. Payments of any appropriate and lawfully-required employer payroll taxes
22 shall also be drawn from the Gross Settlement Amount. Settlement Class Members shall be
23 responsible for all employee-side payroll taxes.

24 “Notice Packet” shall mean the Class Notice, Exclusion Form, Class Member
25 Information Sheet, and Objection Form which are to be mailed to Class Members

26 “Objection Form” shall mean the Objection Form, as set forth in Exhibit 4 to this
27 Stipulation, or as otherwise approved by the Court, which is to be mailed to Class Members

28 “Opt-Out(s)” shall mean any and all persons who timely and validly request exclusion

1 from the Class in accordance with the terms of the Class Notice.

2 “Opt-Out Request” shall mean a timely and valid request for exclusion from the Class in
3 accordance with the terms of the Class Notice.

4 “Parties” shall mean US Foods, Inc. and the Class Representative Juan Franco.

5 “Preliminary Approval Date” means the date upon which the Court enters an Order
6 preliminarily approving this Stipulation, pending notice, an opportunity to submit objections, and
7 a fairness hearing thereon.

8 “Rescission(s)” shall mean any and all persons who timely and validly rescind an Opt-Out
9 in accordance with the terms of the Class Notice.

10 “Rescission of Opt-Out Request” shall mean a timely and valid request to rescind an Opt-
11 Out Request in accordance with the terms of the Class Notice.

12 “Released Claims” shall mean that each member of the Settlement Class, excluding those
13 who submit a timely and valid request for exclusion from the Settlement, releases the Released
14 Parties, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs,
15 expenses, attorneys’ fees, damages, action or causes of action contingent or accrued for, or which
16 relate to the allegations and claims asserted or which could have been asserted based on the facts
17 and legal theories in the Complaint, including without limitation to, any and all claims for
18 alleged unreimbursed business expenses under the California Labor Code or Business &
19 Professions Code (including Section 17200); claims for restitution and other equitable relief,
20 liquidated damages, punitive damages, penalties of any nature whatsoever (including penalties
21 pursuant to the Labor Code Private Attorneys General Act, also known as PAGA), and any other
22 benefit claimed on account of the allegations asserted or that could have been asserted based on
23 the facts and legal theories in the Complaint. This release shall apply to all claims arising at any
24 point between January 2, 2018 and the date of preliminary approval of the class settlement or
25 June 14, 2021, whichever is earlier.

26 “Released Parties” shall mean Defendant US Foods, Inc. and any parent, subsidiary,
27 affiliate, predecessor or successor, and all agents, employees, officers, directors and attorneys
28 thereof.

1 “Response Deadline” shall mean the date that is forty-five (45) days after the date that the
2 Notice Packet is sent to the Class Members.

3 “Settlement Administrator” shall mean Simpluris, Inc. or any other administrator
4 mutually agreed by the parties that is approved by the Court.

5 “Settlement Class” shall mean any and all Class Members who fail to opt-out of the
6 Settlement on a timely basis.

7 “Settlement Fund” shall mean the Gross Settlement Amount.

8 “Settlement Fund Account” shall mean the bank account established pursuant to the
9 terms of this Stipulation from which all monies payable under the terms of this Stipulation shall
10 be paid, as set forth in this Agreement.

11 “Weeks Worked” means the number of weeks that a Class Member worked for USF as a
12 Driver in California during the Class Period as reflected in Defendant’s employment records. If
13 a Class Member was employed as a Driver for any part of a week, then that entire week shall be
14 treated as one Week Worked. Weeks Worked shall be calculated based on each Class Member’s
15 dates of employment as a Driver as contained in Defendant’s employment records.

16 **B. BACKGROUND**

17 Following the submission of a PAGA letter to the LWDA and to Defendant, Plaintiff filed
18 the Complaint on October 13, 2020 in Riverside County Superior Court, assigned Case No.
19 RIC2004073. The Complaint alleged, *inter alia*, that Plaintiff and other current and former
20 California truck Drivers of USF were required to use their personal cell phones for work-related
21 purposes and were not reimbursed for all of their business expenses (including a reasonable
22 portion of their monthly cell phone bills). In the Complaint, Plaintiff sought from Defendant
23 recovery of unreimbursed business expenses pursuant to Labor Code Section 2802 and Sections
24 17200-17204 of California’s Business and Professions Code, penalties pursuant to Labor Code
25 Sections 2698-2699.6 et seq. (“PAGA”), and interest, attorneys’ fees and costs. The putative
26 Class is comprised of approximately 852 individuals. The parties agreed to an exchange of
27 informal discovery and to mediate their dispute with the Honorable Richard A. Kramer (Ret.), an
28 experienced wage and hour class action mediator by Zoom.

1 **C. PRE-TRIAL PROCEEDINGS AND NEGOTIATIONS**

2 **1. Informal Discovery, Investigation and Research**

3 Class Counsel conducted informal discovery and investigation during the prosecution of
4 the Action. This informal discovery and investigation included, among other things, (a)
5 inspection and analysis of documents and information that Defendant produced; (b) analysis of
6 the legal positions taken by Defendant; (c) analysis of potential class-wide damages; and (d)
7 research of the applicable law with respect to the claims asserted in the Complaint and the
8 potential defenses thereto. The Parties have engaged in sufficient informal discovery and
9 investigation to assess the relative merits of the claims of the Class Representative and of
10 Defendant's defenses to them.

11 On March 16, 2021, the Parties participated in mediation before the Honorable Richard
12 A. Kramer (Ret.). Negotiations continued throughout the day, and the Parties fully executed a
13 Memorandum of Understanding on the morning of March 17, 2021. The Parties now enter into a
14 more detailed, formalized settlement agreement to submit to the Court for approval.

15 **2. Allegations of the Class Representative and Benefits of Settlement**

16 The discussions between counsel, and the informal discovery conducted in this matter,
17 have been adequate to give the Class Representative and Class Counsel a sound understanding of
18 the merits of their position and to evaluate the worth of the claims of the Class. This Settlement
19 was reached after arm's-length bargaining by the Parties during a private mediation, and after
20 Class Counsel thoroughly reviewed all available evidence. The informal discovery conducted in
21 this Action, and the information exchanged through the Parties' negotiations, are sufficient to
22 assess reliably the merits of the respective Parties' positions and to compromise the issues on a
23 fair and equitable basis.

24 The Class Representative and Class Counsel believe that the causes of action, allegations,
25 and contentions asserted in the Action have merit. However, the Class Representative and Class
26 Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings
27 necessary to prosecute the Action against Defendant through class certification, trial and through
28 appeals. Class Counsel has taken into account the uncertain outcome and the risk of any

1 litigation, the risk of continued litigation in complex actions such as this, as well as the
2 difficulties and delays inherent in such litigation, and the potential risks of not obtaining
3 certification of the Action as a Class Action. Class Counsel is also mindful of Defendant's
4 numerous factual and legal defenses to the claims alleged in the Action. Class Counsel believes
5 that the Settlement set forth in this Stipulation confers substantial benefits upon the Class
6 Participants and each of the members of the Class, and that an independent review of this
7 Stipulation of Settlement by the Court in the approval process will confirm this conclusion.
8 Based on their own independent investigation and evaluation, Class Counsel has determined that
9 the Settlement set forth in the Stipulation is in the best interests of the Class Representative and
10 the members of the Settlement Class.

11 **3. Defendant's Denials of Wrongdoing and Liability**

12 Defendant has denied and continues to deny generally the claims and contentions alleged
13 in the Action. Defendant has expressly denied and continues to deny all charges of wrongdoing
14 or liability against it arising out of any of the conduct, statements, acts or omissions alleged, or
15 that could have been alleged, in the Action. Defendant also denies that, for any purpose other
16 than settling the Lawsuit, this Action is appropriate for class treatment. Defendant contends,
17 among other things, that it has complied at all times with the California Labor Code, the
18 Business & Professions Code, and all applicable California laws. Nonetheless, Defendant has
19 concluded that the further conduct of the Action would be protracted and expensive, and that it is
20 desirable that the Action be fully and finally settled in the manner and upon the terms and
21 conditions set forth in this Stipulation in order to limit further expense, inconvenience and
22 distraction, to dispose of burdensome and protracted litigation, and to permit the operation of
23 Defendant's business without further expensive litigation and the distraction and diversion of its
24 personnel with respect to matters in issue in the Action. Defendant has also taken into account
25 the uncertainty and risks inherent in any litigation, especially in complex cases such as the
26 Action. Defendant has, therefore, determined that it is desirable and beneficial to it that the
27 Action be settled in the manner and upon the terms and conditions set forth in this Stipulation.

28 ///

1 **4. Qualified Stipulation to Class Certification**

2 The Parties stipulate to class certification for purposes of settlement only. Defendant
3 maintains that the facts of this case do not justify class certification under the governing legal
4 standards. However, a “Class” has been established for purposes of administration and
5 resolution of this matter only. It is not, and it should not be construed as, any admission of fact
6 or law in this matter or any other matter that class certification is appropriate. If the Court does
7 not grant either preliminary or final approval of this settlement, Defendant reserves the right to
8 challenge class certification in the underlying litigation.
9

10 **D. PROCEDURAL ISSUES**

11 **1. Preliminary Approval**

12 Class Counsel will submit this Stipulation to the Court for preliminary approval. Each
13 party shall cooperate to file this Settlement with the Court along with the motion for preliminary
14 approval on or before April 28, 2021. Prior to filing the motion, Class Counsel shall provide a
15 draft of the motion to Defense Counsel for review and input.
16

17 **2. Stay on New Actions**

18 The Parties request that the Court, in its preliminary approval of this Settlement, enjoin
19 Class Members from initiating or prosecuting any proceeding on any claim to be released
20 pursuant to this Settlement, unless and until the Class Member opts out of the class.
21

22 **3. The Settlement Administrator**

23 The Settlement Administrator will mail the Notice Packet to Class Members, receive and
24 process any requests for exclusion (i.e., the opt-outs), administer the Settlement Fund, calculate
25 claims against the Settlement Fund, handle inquiries from Class Members concerning the Class
26 Notice and determination of Individual Settlement Amounts, or any other issue, resolve any
27 differences between Defendant’s payroll records and information provided by a Class
28

Participant, and distribute payments to Class Participants.

On a weekly basis, the Settlement Administrator will provide reports to Class and Defense Counsel updating them as to the number of timely requests to opt-out, as well as any disputes or objections submitted by Class Participants. The Settlement Administrator will serve on Class and Defense Counsel via e-mail, date-stamped copies of the original requests to opt-out, objection statements, requests to rescind opt-outs, and withdrawal of objection statements no later than five (5) days after their receipt. The Settlement Administrator will provide Class Counsel with a declaration of due diligence and proof of mailing of the Notice Packet, which Class Counsel will file with the Court no later than ten (10) business days prior to the Court's Final Approval Hearing. The declaration shall also include a final compilation and reporting of (a) the number of Class Participants challenging the number of Weeks Worked; (b) the final pro rata portion of each Class Participant; (c) the final number of individuals who submitted timely requests to opt-out; and (d) whether any objections to the Settlement were submitted by Class Participants.

Following the Final Approval Date, the Settlement Administrator shall be entitled to receive up to \$12,000 from the Gross Settlement Amount for the costs of preparation of the Notice Packet and other matters necessary for the administration, approval and implementation of the settlement. These administration fees shall be paid from the Gross Settlement Amount as part of the Administrative Expenses.

4. Notice to Class Members

Notice shall be provided to Class Members in the following manner:

Within fourteen (14) days after receiving notice that the Court has entered its Order of Preliminary Approval, Defendant shall provide the Settlement Administrator with an updated list containing names, dates of employment as a Driver employed in California, social security numbers, and last-known addresses for each member of the Class. Within ten (10) days of receipt of the class data from Defendant, the Settlement Administrator shall send each Class Member the Notice Packet via first-class United States mail. The Notice Packet consisting of the Class Notice, Exclusion Form, Information Sheet, and Objection Form shall be in the forms

1 attached hereto as Exhibits 1-4, or as otherwise approved by the Court. Class Members will have
2 45 days from the date of the mailing in which to postmark written objections or a written request
3 to opt-out.

4 Any returned envelopes from this mailing containing the Notice Packet with forwarding
5 addresses will be used by the Settlement Administrator to locate Class Members. In the event
6 that, prior to the Response Deadline, any Notice Packet mailed to a Class Member is returned as
7 having been undelivered by the U.S. Postal Service, the Settlement Administrator shall seek an
8 address correction for such Class Member(s), and a second Notice Packet will be sent to any new
9 or different address obtained within 10 days of receiving notice that the original Notice Packet
10 that was sent out was undeliverable. Nothing in this Paragraph shall be deemed to extend or
11 modify the Response Deadline.

12 It will be conclusively presumed that if an envelope containing the Notice Packet has not
13 been returned within thirty (30) days of the mailing that the Class Member received the Class
14 Notice. At least ten (10) days prior to the Final Approval Hearing, the Settlement Administrator
15 shall provide Defense Counsel and Class Counsel with a declaration of Due Diligence and Proof
16 of Mailing with regard to the mailing of the Notice Packet and its attempts to locate Class
17 Members. The declaration shall specify, inter alia, the number of Class Members to whom
18 Notice Packets were sent and the number of Class Members to whom Notice Packets were not
19 delivered. The Parties' Counsel shall file this declaration with the Court.

20 In accordance with applicable law, USF agrees that there will be no retaliation against
21 any Class Member for either being a Class Participant or submitting a request to opt-out.

22 **5. Class Members Payments**

23 Each Class Member who fails to opt-out will be entitled, provisionally, to a share of the
24 Net Fund Value. Only Class Participants may receive a monetary distribution from the
25 Settlement Amount, which shall be a fixed proportional amount of the Net Settlement Amount
26 calculated as a percentage of each Class Member's Weeks Worked as a Driver in California.

27 **6. Requests to Opt-Out and Rescission of Requests to Opt-Out**

28 The Notice Packet shall advise Class Members of their right to exclude themselves from

the Settlement by submitting the Exclusion Form to the Settlement Administrator. Class Members who submit an Exclusion Form shall be permitted to rescind their Opt-Out requests by submitting a subsequent written request to rescind their opt-out to Settlement Administrator. This request to rescind must be postmarked no later than twenty (20) business days after the Class Member's Exclusion Form is postmarked.

7. Resolution of Disputes Concerning Challenges to Weeks Worked

Class Members shall be advised of their right to challenge their Weeks Worked as a Driver in California during the Class Period. In the event there is any dispute between a Class Member and/or Class Counsel, on the one hand, and Defendant and/or Defense Counsel on the other with regard to the number of Weeks Worked claimed by a Class Participant, then the Settlement Administrator shall make a final and binding determination with regard to such dispute after first giving not less than seven (7) days written notice to both Class Counsel and Defense Counsel, and an opportunity, within those seven (7) days, for each to submit additional relevant information. Class Counsel shall be given contact information for any Class Participant who submits an objection and/or challenge to Weeks Worked. USF's records shall be presumed to be accurate and shall control in the absence of any contrary documentary evidence supplied by a Class Member. The Settlement Administrator shall give written notice to the Parties' counsel of its determination within three business days of the expiration of the seven-day notice period.

E. SETTLEMENT TERMS

1. The Settlement Class

For the purposes of this Stipulation, the Settlement Class consists of Plaintiff and all other individuals who are or have been employed as truck drivers ("Drivers"), or in any other similar capacity, by Defendant US Foods, Inc. ("Defendant" or "USF") in California at any time between January 2, 2018 and the date of preliminary approval of the settlement or June 14, 2021, whichever is earlier, who have not properly and timely opted out of the Action.

2. Gross and Net Settlement Amounts and Distribution

The claims of all Settlement Class Members are settled for a Gross Settlement Amount of not more than Three Hundred Fifty Thousand Dollars (\$350,000), which payment shall settle all

pending issues between the Parties, including but not limited to, Individual Settlement Amounts to Class Participants, payment of the \$15,000 amount associated with PAGA penalties to the LWDA, and the Administrative Expenses, including but not limited to all attorneys' fees and litigation costs, settlement administration costs, and the enhancement award for the Class Representative. Payments of any appropriate and lawfully-required employer payroll taxes shall also be drawn from the Gross Settlement Amount. This is a full-distribution, non-reversionary settlement. Individual Settlement Amounts will be paid from the Net Settlement Amount to all Class Participants. If the total sum of Individual Settlement Amounts is less than the Net Settlement Amount, each Individual Settlement Amount will be proportionally increased, until the total of the Individual Settlement Amounts equals 100% of the Net Settlement Amount. Any and all unused portion of the Net Settlement Amount that remains after all payments have been made under the terms of this Agreement (for example, through uncashed checks), shall be paid to a cy pres beneficiary agreed upon by the Parties and approved by the Court, St. Christopher Truckers Relief.

3. Escalator Clause

The Gross Settlement Amount was negotiated based on Defendant's representation that there were approximately 94,048.29 Weeks Worked by Class Members from January 2, 2018 and February 15, 2021. If the actual number of Weeks Worked by Class Members during the Class Period exceeds 130,000, then the Gross Settlement Amount shall be increased proportionally for each Week Worked over 130,000.

4. Funding of Settlement

Within ten (10) business days of the Final Approval Date, Defendant will deposit money into the Settlement Fund Account, through the Settlement Administrator, in an amount equal to the Gross Settlement Amount. Any interest accrued on this deposit shall be distributed to Class Members on a pro-rata basis except that if final approval is reversed on appeal, Defendant is entitled to prompt return of the principal and all interest accrued.

5. Calculation of the Individual Settlement Amounts

Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net

1 Settlement Amount as follows:

2 **(a) Individual Settlement Amounts:** Class Participants shall receive a certain dollar
3 amount per Week Worked as a Driver in California during the Class Period. The amount to be
4 paid to each Class Participant will be calculated by: (1) dividing the amount of the Net
5 Settlement Amount by the total number of all Class Members' weeks worked as Drivers in
6 California during the Class Period to arrive at a weekly amount for each week worked (the "Per
7 Week Amount"), and (2) each Class Participant shall receive the product of their Weeks Worked
8 as a Driver in California multiplied by the Per Week Amount. The product of the Per Week
9 Amount multiplied by each Class Participant's Weeks Worked as a Driver in California will
10 constitute the "Individual Settlement Amount" for each Class Participant. When Class Members
11 are informed of their estimated amounts of their Individual Settlement Amounts, it will be based
12 on an assumption of 100% participation by all Class Members. To the extent that the total of
13 these Individual Settlement Amounts is less than 100% of the Net Settlement Amount (due, for
14 instance to less than 100% participation as a result of some opt-outs), then each Individual
15 Settlement Amount will be proportionally increased, until the total of the Individual Settlement
16 Amounts equals 100% of the Net Settlement Amount.

17 **(b) Tax Treatment of Settlement Payments:** The Individual Settlement Amounts shall
18 be allocated for tax purposes as follows: (1) 20% of each payment shall be deemed taxable
19 payments of business expense reimbursements, as to which legally required state and federal
20 payroll deductions shall be taken and a W-2 Form issued by the Settlement Administrator; (2)
21 40% of each payment shall be treated as penalties, as to which a Form 1099 shall be issued by
22 the Settlement Administrator; and (3) 40% of each payment shall be treated as interest, as to
23 which a Form 1099 shall be issued by the Settlement Administrator. Payments of any
24 appropriate and lawfully-required employer payroll taxes shall also be drawn from the Gross
25 Settlement Amount. Settlement Class Members shall be responsible for all employee-side
26 payroll taxes. In the event of an audit of Defendant by any state or federal government agency,
27 or if any tax authority should dispute the characterization of this compensation, Defendant
28 reserves all rights to indemnification permitted by law.

1 **6. Enhancement Award for the Named Plaintiff**

2 Named Plaintiff may, at the discretion of the Court, receive an Enhancement Award,
3 subject to Court approval, in the amount of Seven Thousand Five Hundred Dollars (\$7,500) for
4 his efforts on behalf of the Class in this Action. This payment shall be made by the Settlement
5 Administrator from the Gross Settlement Amount. Payment of the Enhancement Award will be
6 made no later than fifteen (15) business days after the Effective Date of Final Approval.
7 Defendant shall not oppose any request by the Named Plaintiff for an Enhancement Award.
8 These payments shall be reported on a Form 1099 that shall be issued by the Settlement
9 Administrator.

10 For and in consideration of the promises and payments set forth herein, including but not
11 limited to the Enhancement Award described herein, the sufficiency of which is acknowledged,
12 Named Plaintiff agrees to release, discharge, and acquit the Released Parties from any and all
13 claims, demands, rights, liabilities, and causes of action of any nature whatsoever, known or
14 unknown, whether in tort, contract, statute, rule, ordinance, order, regulation, or otherwise,
15 including state and federal laws, whether brought directly, representatively, derivatively, or in
16 any capacity, for any and all remedies, including economic damages, non-economic damages,
17 restitution, penalties, punitive damages, wages, premium payments, liquidated damages,
18 attorneys' fees, or any other type of recovery thereon, arising out of any act, omission,
19 transaction, or event that occurred or is alleged to have occurred up to the Preliminary Approval
20 Date or June 14, 2021, whichever is earlier. This general release includes but is not limited to all
21 claims arising from or related to Named Plaintiff's employment or conclusion of employment
22 with Defendant or any Released Party, such that Named Plaintiff shall be forever barred from
23 pursuing or becoming a party to, or involved or named in, any action, whether brought directly,
24 representatively, derivatively, or in any capacity, for any of such claims generally released based
25 on any act, omission, transaction, or event that occurred or is alleged to have occurred up to the
26 date of the Preliminary Approval Date or June 14, 2021, whichever is earlier, including but not
27 limited to any claims for wrongful termination or payment of wages.

28 For the purpose of implementing a full and complete release, Named Plaintiff expressly

acknowledges that the release he gives in this Agreement is intended to include in its effect, without limitation, claims that he did not know or suspect to exist in his favor at the time of the Effective Date of the Stipulation, regardless of whether the knowledge of such claims, or the facts upon which they might be based, would materially have affected the settlement of this matter, and that the consideration given under this Stipulation was also for the release of those claims and contemplates the extinguishment of unknown claims. Named Plaintiff acknowledges that he has had the opportunity to review and have reviewed California Civil Code Section 1542, which provides:

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

Being fully informed of this provision of the Civil Code and understanding its terms, as consideration for his agreement in this Stipulation, Named Plaintiff agrees to waive any rights under that section, and acknowledges that this Stipulation and the release contained herein extends to all claims that he has or might have against the Released Parties, including those which are presently unknown to him.

This general release does not waive Named Plaintiff's right to seek or receive any employee retirement benefits to which he might be or is entitled, as discussed in Section E.12. Said general release shall be effective upon the date that Defendant deposits Named Plaintiff's Individual Settlement Amount and the Enhancement Award with the Settlement Administrator.

Any Enhancement Award approved by the Court for Named Plaintiff shall be paid from the Gross Settlement Amount, and shall be in addition to any distribution to which he may otherwise be entitled as a Class Participant. Such Enhancement Award shall not be considered wages, and Named Plaintiff shall be issued a Form 1099 reflecting such payment. Named Plaintiff will be responsible for correctly characterizing this additional compensation for tax

1 purposes and for payment of any taxes owing on said amount. In the event of an audit of
2 Defendant by any state or federal government agency, or if any tax authority should dispute the
3 characterization of this compensation, Defendant reserves all rights to indemnification permitted
4 by law.
5

6 **7. Distribution of Residuals and Uncashed Checks**

7 If a Class Member submits a timely opt-out of the Settlement, the Individual Settlement
8 Amount offered to that Class Member shall revert to the other Class Participants. If a Class
9 Participant does not cash an Individual Settlement Amount check within 180 days of the
10 postmark date of its mailing to the Class Participant from the Settlement Administrator, the
11 check will become void and the Individual Settlement Amount associated with that un-cashed
12 check shall be paid to the Parties' agreed-upon *cy pres* beneficiary to be approved by the Court,
13 St. Christopher Truckers Relief Fund.

14 **8. Time for Payment of Individual Settlement Amounts**

15 The Settlement Administrator shall make every effort to mail, by first-class US Mail to
16 the last-known address, the Individual Settlement Amount to each Class Participant no later than
17 fifteen (15) business days following the Effective Date of Final Approval.

18 Under no circumstances shall the Settlement Administrator distribute checks to Class
19 Participants until all timely claims have been considered, calculated, and accounted for, and the
20 obligations set forth in Section E have been satisfied. In the event that any Class Participant is
21 deceased, the Settlement Administrator shall make payment to the estate of that Class Member
22 and delivered to the executor or administrator of that estate, unless the Settlement Administrator
23 has received an affidavit or declaration pursuant to section 13101 of the California Probate Code,
24 in which case payment shall be made to the affiant(s) or declarant(s).

25 Within ten (10) business days of mailing the Individual Settlement Amounts to Class
26 Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel
27 a declaration of payment.

28 ///

1 **9. Class Counsel Attorneys' Fees and Litigation Costs**

2 Class Counsel may submit an application for an award of attorneys' fees in the total
3 amount of (\$116,665.00), or thirty three and 33/100 (33.33%) of the Settlement Amount, to be
4 heard by the Court at the Final Approval Hearing. Class Counsel may also submit an application
5 for an award of litigation costs of up to an additional Ten Thousand Dollars (\$10,000). Under no
6 circumstances will the attorneys' fees and litigation costs to Class Counsel exceed \$126,665.00.
7 Defendant and its attorneys agree not to object to any such fee and cost application in those
8 amounts. Class Counsel asserts a statutory fee claim pursuant to the California Labor Code and
9 Private Attorney Generals Act. As a condition of this Settlement, Class Counsel has agreed to
10 pursue their fees only in the manner reflected in this Paragraph. Any fees and costs awarded by
11 the Court shall be paid from the Gross Settlement Amount, and shall not constitute payment to
12 any Class Member(s). Class Counsel certifies that no liens for attorneys' fees or any further
13 claims for attorneys' fees exist, and agrees to indemnify Defendant against any claim for
14 attorneys' fees beyond the amount provided for in this Stipulation.

15 The attorneys' fees and costs approved by the Court shall encompass: (a) all work
16 performed and costs incurred by any attorney purporting to represent the Class through the date
17 of this Stipulation; (b) all work to be performed and costs to be incurred in connection with
18 approval by the Court of the Class Settlement; and (c) all work and costs, if any, incurred in
19 connection with administering the Settlement through dismissal of the Action with prejudice.

20 To the extent that the Court approves less than the amount of attorneys' fees or costs that
21 Class Counsel requests, the difference between the requested and awarded amounts will be added
22 to the Net Settlement Amount for distribution to Class Participants.

23 The Settlement Administrator shall pay Class Counsel attorneys' fees and costs, as
24 awarded by the Court, within fifteen (15) business days of the Effective Date of Final Approval.

25 Defendant shall bear its own fees and costs of every kind in connection with the Action
26 and the negotiation of the settlement of the Action.

27 **10. Extension of Time to Pay and/or Process Claims**

28 Should the Settlement Administrator need more time than is provided under this

1 Stipulation to complete any of its obligations, the Settlement Administrator may request, in
2 writing, such additional time (including an explanation of the need for additional time) from
3 Defense Counsel and Class Counsel. If Defense Counsel and/or Class Counsel do not agree, in
4 writing, to the Settlement Administrator's request for additional time, the Settlement
5 Administrator may seek such additional time from the Court.

6 **11. No Effect on Employee Benefit Plans**

7 Neither the Class Settlement nor any amounts paid under the Class Settlement will
8 modify any previously credited hours or days of service under any employee benefit plan, policy
9 or bonus program sponsored by Defendant. Such amounts will not form the basis for additional
10 contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored
11 benefit plans, policies or bonus programs. The payments made under the terms of this
12 Stipulation shall not be applied retroactively, currently, or on a going forward basis, as salary,
13 earnings, wages, or any other form of compensation for the purposes of any of Defendant's
14 benefit plan, policy or bonus program. Defendant retains the right to modify the language of its
15 benefits plans, policies and bonus programs to effect this intent, and to make clear that any
16 amounts paid pursuant to this Stipulation are not for "days worked," "days paid," "days of
17 service," or any similar measuring term as defined by applicable plans, policies and bonus
18 programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that
19 additional contributions or benefits are not required by this Stipulation.

20 **12. Non-retaliation**

21 In accordance with applicable law, USF agrees that there will be no retaliation against
22 Named Plaintiff.

23 **F. NULLIFICATION OF THE SETTLEMENT AGREEMENT**

24 **1. Non-approval of the Stipulation of Settlement**

25 If: (a) the Court should for any reason fail to approve this Stipulation of Settlement in the
26 form agreed to by the Parties; or (b) the Court should for any reason fail to enter a judgment and
27 dismissal with prejudice of the Action; or (c) the judgment and dismissal is reversed, modified or
28 declared or rendered void; then this Settlement shall be considered null and void, and neither this

Settlement, nor any of the related negotiations or proceedings, shall be of any force or effect, and all parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court.

2. Invalidation

Invalidation of any material portion of this Settlement, such as a significant restriction by the Court on the definition of the Released Claims or a significant reduction of the Gross Settlement Amount, shall invalidate this Settlement in its entirety, unless the Parties shall subsequently agree in writing that the remaining provisions of the Settlement are to remain in full force and effect.

3. Stay Upon Appeal

In the event of a timely appeal from the judgment and dismissal, the judgment shall be stayed, and none of the Settlement Fund shall be distributed to Class Members or Class Counsel, and the actions required by this Stipulation shall not take place until all appeal rights have been exhausted by operation of law.

4. Defendant's Right to Withdraw Based on Opt-Outs

If, within 30 days after the expiration of the opt-out period and prior to the Final Approval Hearing, more than 10% of the Class Members who otherwise would be Class Participants have submitted valid and timely requests to Opt-Out to the Settlement Administrator, Defendant shall have the sole and absolute discretion to terminate the Settlement.

All signatories and their counsel must not encourage opt outs. Counsel for the Class Members and Defendant specifically agree not to solicit opt-outs, directly or indirectly, through any means, including through agents, such as retained consultants.

In the event Defendant elects to terminate this Stipulation of Settlement, Defendant shall, at its own expense, provide such Notice of Termination in writing by first-class United States mail to Class Counsel and each Class Participant no later than ten (10) calendar days before the Final Approval Hearing. Defendant shall not be responsible for paying any of the attorneys' fees or costs set forth in Section E of this Stipulation, or any other fees and/or costs incurred by Class Counsel to effectuate this Stipulation. Defendant shall be responsible for all costs of

administration by the Settlement Administrator incurred up to the date of termination. Defendant's termination of this Stipulation shall have the same effect as would non-approval pursuant to Section F(1).

G. FINAL APPROVAL HEARING AND ENTRY OF JUDGMENT

The Final Approval Hearing shall be held before the Court in late 2021 or as soon thereafter as possible, on a date and time to be specified by the Court when it enters its Preliminary Approval Order.

At the Final Approval Hearing, Class Counsel, on behalf of the Named Plaintiff and the Settlement Class, shall move the Court for entry of the Final Order, and approving the Settlement as being fair, reasonable and adequate to the Class Participants within the meaning of sections 877 and 877.6 of the California Code of Civil Procedure. At the Final Approval Hearing, the Court will, among other things, be asked for the entry of an Order permanently enjoining all Class Participants from pursuing and/or seeking to reopen claims for unreimbursed business expenses and related penalties, as are included within the Released Claims. Plaintiff's motion for attorneys' fees and costs shall also be heard at the Final Approval Hearing. Class Counsel and Defense Counsel shall submit to the Court such pleading and/or evidence as may be required for the Court's determination.

H. RELEASES AND WAIVERS

1. Release of Claims by Settlement Class.

(a) Scope of Release: Upon the Court's Final Approval of the Stipulation of Settlement, the Settlement Class shall release the Released Parties, and each of them, of and from any and all of the Released Claims.

I. DUTIES OF THE PARTIES

1. Mutual Full Cooperation

The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Stipulation of Settlement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Settlement. The Parties shall use their best efforts, including

all efforts contemplated by this Stipulation of Settlement and any other efforts that may become necessary by Court Order, or otherwise, to effectuate this Stipulation and the terms set forth herein. As soon as practicable after execution of this Stipulation, Class Counsel with the cooperation of Defendant and its Counsel, shall take all necessary and reasonable steps to secure the Court's Preliminary and Final Approval of this Stipulation.

2. Duty to Support and Defend the Settlement

The Parties agree to abide by all of the terms of the Settlement in good faith and to support the Settlement fully, and to use their best efforts to defend this Class Settlement from any legal challenge, whether by appeal or collateral attack.

3. Duties Prior to Court Approval

Class Counsel shall promptly submit this Stipulation to the Court for preliminary approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Stipulation, Class Counsel shall apply to the Court for the entry of a preliminary order, scheduling a hearing on the question of whether the proposed Class Settlement should be approved as fair, reasonable, and adequate as to the Class Members, approving as to form and content the proposed Notice Packets attached hereto as Exhibits 1-4, and directing the mailing of the Notice Packet to Class Members.

J. MISCELLANEOUS PROVISIONS

1. Compliance with All Terms of the Stipulation

Pending Court approval and other than as provided in Section E, if any of the material conditions set forth in this Stipulation are not met and satisfied, this Stipulation shall, at the option of either the Class Representative or Defendant, be ineffective, void, and of no further force and effect, and shall not be used or be admissible in any subsequent proceeding, either in this Court or in any other court or forum. A material condition means a significant change by the Court of either party's consideration offered for the Settlement, such as a significant restriction on the definition of Released Claims or a significant reduction in the Gross Settlement Amount.

2. Different Facts

The Parties acknowledge that, except for matters expressly represented herein, the facts

1 in relation to the dispute and all claims released by the Stipulation may turn out to be other than
2 or different from the facts now known by each party and/or its counsel, or believed by such party
3 or counsel to be true, and each party therefore expressly assumes the risk of the existence of
4 different or presently unknown facts, and agrees that this Stipulation shall be in all respects
5 effective and binding despite such difference.

6 **3. No Prior Assignments**

7 The Parties represent, covenant, and warrant that they have not directly or indirectly
8 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
9 entity any portion of any liability, claim, demand, action, cause of action, or right herein released
10 and discharged except as set forth herein.

11 **4. Non-Admission**

12 This Agreement is entered into in compromise of disputed claims. Nothing in this
13 Agreement shall be construed to be or deemed an admission by Defendant of any liability,
14 culpability, negligence, or wrongdoing toward the Class Representative, the Class Members, or
15 any other person, and Defendant specifically disclaims any liability, culpability, negligence, or
16 wrongdoing toward the Class Representative, the Class Members, or any other person. No part
17 of this Agreement shall constitute an admission on behalf of Defendant of any form of liability or
18 the accuracy of any fact or allegation against it. Defendant specifically denies any liability.
19 Each of the Parties has entered into this Stipulation with the intention to avoid further disputes
20 and litigation.

21 **5. Non-Retaliation**

22 Defendant agrees that it will not retaliate against Named Plaintiff or any Class Member
23 for becoming a Class Representative or Class Participant.

24 **6. Construction**

25 The Parties agree that the terms and conditions of this Stipulation are the result of
26 lengthy, intensive, arms-length negotiations between the Parties, and that this Stipulation is not
27 to be construed in favor of or against any party by reason of the extent to which any party or its
28 counsel participated in the drafting of this Stipulation.

1 **7. Choice of Law**

2 This Stipulation is intended to and shall be governed by the laws of the State of
3 California, without regard to conflicts of law principles.

4 **8. Captions and Interpretations**

5 Paragraph titles or captions are inserted as a matter of convenience and for reference
6 only, and in no way define, limit, extend, or describe the scope of this Stipulation or any of its
7 provisions.

8 **9. Modification**

9 This Stipulation may not be changed, altered, or modified, except in writing signed by the
10 Parties and approved by the Court. This Stipulation may not be discharged except by
11 performance in accordance with its terms or by a writing signed by the Parties.

12 **10. Integration Clause**

13 This Stipulation of Settlement contains the entire agreement between the Parties relating
14 to the settlement of the Action, and all prior or contemporaneous agreements, understandings,
15 representations, and statements, whether oral or written, and whether by a party or such party's
16 legal counsel, are merged herein, upon execution of this agreement by all parties.

17 **11. Successors and Assigns**

18 This Stipulation shall be binding upon and inure to the benefit of the Parties and their
19 respective heirs, trustees, executors, administrators, successors, and assigns.

20 **12. Advice of Counsel**

21 The parties to this Stipulation are represented by competent counsel, and they have had
22 an opportunity to consult with counsel. The parties to this Stipulation agree that it reflects their
23 good faith compromise of the claims raised in this Action, based upon their assessment of the
24 mutual risks and costs of further litigation and the assessments of their respective counsel.

25 **13. Class Counsel Signatories**

26 Because the Members of the Class are so numerous, the Parties agree that it is impossible
27 or impractical to have each Class Member sign this Stipulation. It is agreed that, for purposes of
28 seeking approval of the Class Settlement, this Stipulation may be executed on behalf of the Class

by Class Counsel and the Class Representative.

14. Corporate Signatories

Any person executing this Stipulation or any related document on behalf of a corporate signatory warrants and promises, for the benefit of all Parties, that such person has been duly authorized to execute this Stipulation or any related document.

15. Execution in Counterparts

This Stipulation shall become effective upon its execution by all of the undersigned. The Parties may execute this Stipulation in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

DATED: 4/21/2021

US FOODS, INC.

DocuSigned by:
By: Julie Baker
79B5DC9A7F1B47F...

Its: Assistant General Counsel Employment

DATED: 4/20/2021 | 2:52 PM PDT

DocuSigned by:
By: Juan Franco
764F4511131443A...
Juan Franco, Class Representative

DATED: 4/16/2021 | 4:58 PM PDT

ACKERMANN & TILAJEF, PC

DocuSigned by:
By: Craig J. Ackermann
6F27E0DD5A48...
Craig J. Ackermann
Attorney for Plaintiff

DATED: 4/21/2021

SEYFARTH SHAW LLP

By: Eric Hill
Eric Hill
Attorneys for Defendant
US Foods, Inc.