

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan, Esq. (SBN 287811)

david@tomorrowlaw.com

Diego Aviles (SBN 315533)

diego@tomorrowlaw.com

Sara Ehsani-Nia (SBN 326501)

sara@tomorrowlaw.com

8484 Wilshire Boulevard, Suite 500

Beverly Hills, California 90211

Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiff, MICHAEL ROBERT TAPIA, on
behalf of himself and all others similarly situated,

**MCCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP**

Laura A. Wolfe (SBN 266751)

Laura.wolfe@mccormickbarstow.com

7647 North Fresno Street

Fresno, California 93720

Tel: (559) 433-1300; Fax: (559) 433-2300

Attorneys for Defendant
MERCER FOODS, INC.

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

MICHAEL ROBERT TAPIA, on behalf of
himself and all others similarly situated,

Plaintiffs,

v.

MERCER FOODS, LLC., a California limited
liability company; PRIDESTAFF, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: CV-20-003495

*[Assigned for all purposes to the Hon.
Sonny S. Sandhu in Dept. 24]*

CLASS ACTION

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

Action Filed: August 14, 2020

Trial Date: None Set

1 This Joint Stipulation re: Class Action and Representative Action Settlement
2 ("Settlement" or "Agreement" or "Settlement Agreement") is made by and between plaintiff
3 MICHAEL ROBERT TAPIA ("Plaintiff") individually and on behalf of the Settlement Class, on
4 the one hand; and defendant MERCER FOODS, LLC ("Defendant"), on the other hand; in the
5 lawsuit entitled *Michael Robert Tapia v. Mercer Foods, LLC et al.* filed in Stanislaus County
6 Superior Court, Case No. CV-21-000020 (the "Action"). Plaintiff and Defendant shall be, at
7 times, collectively referred to as the "Parties". This Agreement is intended by the Parties to fully,
8 finally, and forever resolve, discharge and settle the claims as set forth herein, based upon and
9 subject to the terms and conditions of this Agreement.

10 **1. DEFINITIONS**

11 A. "Action" means *Michael Robert Tapia v. Mercer Foods, LLC et al.* filed in
12 Stanislaus County Superior Court, Case No. CV-21-000020.

13 B. "Aggrieved Employees" means Class Members working at Defendant's facilities
14 in California during the PAGA Period as non-exempt, hourly-paid employees.

15 C. "Class Counsel" means David D. Bibiyan and Diego Aviles of Bibiyan Law
16 Group, P.C. The term "Class Counsel" shall be used synonymously with the term "Plaintiff's
17 Counsel."

18 D. "Class Period" means the period from April 5, 2019 through the earliest of (1)
19 January 1, 2022; or (2) the date on which the total number of Workweeks worked by the Class
20 Members since April 5, 2019 reaches 55,000, whichever occurs first.

21 E. "Court" means the Superior Court of the State of California for the County of
22 Stanislaus.

23 F. "Final Approval Date" means the later of: (1) the date the Court signs an Order
24 granting final approval of this Settlement ("Final Approval") and Judgment; (2) if there is an
25 objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals
26 have been filed, the date on which they have been resolved or exhausted.

27 G. "Defendant" means Mercer Foods, LLC.

28 ///

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

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

7 **J. “Gross Settlement Amount”** means a non-reversionary fund in the sum of One
8 Million Dollars and Zero Cents (\$1,000,000.00), which shall be paid by Defendant, from which
9 all payments for the Individual Settlement Payments to Participating Class Members and the
10 Court-approved amounts for attorneys’ fees and reimbursement of litigation costs and expenses
11 to Class Counsel, Settlement Administration Costs, the Service Award, the PAGA Payment, and
12 the LWDA Payment shall be paid. It expressly excludes Employer Taxes, which shall be paid
13 by Defendant separate and apart from the Gross Settlement Amount.

14 **K. “Individual PAGA Payment”** means a payment made to an Aggrieved
15 Employee of his or her share of the PAGA Payment, which may be in addition to his or her
16 Individual Settlement Share.

17 **L. “Individual Settlement Payment”** means a payment to a Participating Class
18 Member of his or her net share of the Net Settlement Amount.

19 **M. “Individual Settlement Share”** means the gross amount of the Net Settlement
20 Amount that a Settlement Class Member is eligible to receive based on the number of Workweeks
21 that he or she worked as a Settlement Class Member during the Class Period if he or she does not
22 submit a timely and valid Request for Exclusion.

23 **N. “LWDA Payment”** means the payment to the State of California Labor and
24 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
25 amount allocated toward penalties under the PAGA all of which is to be paid from the Gross
26 Settlement Amount. The Parties have agreed that Fifty Thousand Dollars and Zero Cents
27 (\$50,000.00) shall be allocated toward PAGA penalties, of which Thirty-Seven Thousand, Five
28 Hundred Dollars and Zero Cents (\$37,500.00) will be paid to the LWDA (*i.e.*, the LWDA

1 Payment) and Twelve Thousand, Five Hundred Dollars and Zero Cents (\$12,500.00) will be paid
2 to Aggrieved Employees on a *pro rata* basis based on the Workweeks worked in the PAGA
3 Period.

4 **O. "Net Settlement Amount"** means the portion of the Gross Settlement Amount
5 that is available for distribution to the Participating Class Members after deductions for the Court-
6 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
7 of attorneys' fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA
8 Payment, and the PAGA Payment.

9 **P. "Operative Complaint" or "Complaint"** means the First Amended Complaint
10 to be filed in the Action that adds individual and class allegations to the Action for the duration
11 of the Class Period.

12 **Q. "PAGA Payment"** is the \$12,500 payment payable to Aggrieved Employees,
13 which would be in addition to their Individual Settlement Share so long as they do not opt out of
14 the Settlement.

15 **R. "PAGA Period"** means the period from August 10, 2019 through the end of the
16 Class Period.

17 **S. "Participating Class Members"** means all Settlement Class Members who do
18 not submit a timely and valid Request for Exclusion.

19 **T. "Participating Individual Settlement Share"** means the gross amount of the Net
20 Settlement Amount that a Participating Class Member is eligible to receive based on the number
21 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
22 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
23 may be entitled if he or she is also an Aggrieved Employee.

24 **U. "Plaintiff", "Named Plaintiff" or "Class Representative"** shall refer to
25 Plaintiff Michael Robert Tapia.

26 **V. "Preliminary Approval Date"** means the date on which the Court enters an
27 Order granting preliminary approval of the Settlement.

28 ///

1 **W. “Released Parties”** shall mean Defendant and each of its past, present, and future
2 respective subsidiaries, dba’s, affiliates, parents, insurers and reinsurers, and company-sponsored
3 employee benefit plans of any nature and their successors and predecessors in interest, including
4 all of their officers, directors, shareholders, employees, agents, principals, heirs, representatives,
5 accountants, auditors, consultants, attorneys, administrators, fiduciaries, trustees, and agents.
6 The “Released Parties” shall also include any third-party staffing agency that employed a Class
7 Member in connection with such Class Member’s provision of services to Defendant.

8 **X. “Response Deadline”** means the deadline for Settlement Class Members to mail
9 any Requests for Exclusion, objections, or Workweek Disputes to the Settlement Administrator,
10 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
11 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In
12 such an instance, the Class Member shall have fifteen (15) days from the re-mailing, or forty-
13 five (45) days from the date of the initial mailing, whichever is later, in which to postmark a
14 Request for Exclusion, Workweek Dispute or Objection. The date of the postmark shall be the
15 exclusive means for determining whether a Request for Exclusion, objection, or Workweek
16 Dispute was submitted by the Response Deadline.

17 **Y. “Request for Exclusion”** means a written request to be excluded from the
18 Settlement Class pursuant to Section 9.C below.

19 **Z. “Service Award”** means monetary amounts to be paid to Plaintiff of Seven
20 Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00), which subject to Court approval,
21 will be paid out of the Gross Settlement Amount.

22 **AA. “Settlement Administration Costs”** means all costs incurred by the Settlement
23 Administrator in administration of the Settlement, including, but not limited to, translating the
24 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
25 and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments, and
26 Individual PAGA Payments, as well as associated taxes and withholdings, providing
27 declarations, generating Individual Settlement Payment checks and related tax reporting forms,
28 doing administrative work related to unclaimed checks, transmitting payment to Class Counsel

1 for the Court-approved amounts for attorneys' fees and reimbursement of litigation costs and
2 expenses, to Plaintiff for his Service Award, and to the LWDA for the LWDA Payment,
3 providing weekly reports of opt-outs, objections and related information, and any other actions
4 of the Settlement Administrator as set forth in this Agreement, all pursuant to the terms of this
5 Agreement. The Settlement Administration Costs are to be paid solely from the Gross Settlement
6 Amount and Defendant will not be responsible for paying any additional funds in order to pay
7 these additional costs.

8 **BB. "Settlement Administrator"** means the Third-Party Administrator chosen by
9 Plaintiff that will be responsible for the administration of the Settlement including, without
10 limitation, translating the Class Notice in Spanish, the distribution of the Individual Settlement
11 Payments to be made by Defendant from the Gross Settlement Amount and related matters under
12 this Agreement.

13 **CC. "Settlement Class" or "Settlement Class Members"** means all current and
14 former non-exempt, hourly paid employees who worked at Defendant's facilities in California,
15 whether directly or through a staffing agency, at any time during the Class Period.

16 **DD. "Workweeks"** means the number of workweeks that a Settlement Class Member
17 worked at Defendant's facilities in California in a non-exempt, hourly position during the Class
18 Period, based on hire dates, re-hire dates, and termination dates. If a Settlement Class Member
19 disputes his/her Individual Settlement Share, it shall be termed a "Workweek Dispute."

20 **2. BACKGROUND**

21 **A.** On August 10, 2020, Plaintiff filed with the LWDA and served on Defendant a
22 notice under Labor Code section 2699.3 (the "PAGA Notice") stating he intended to serve as a
23 proxy of the LWDA to recover civil penalties for aggrieved employees. The PAGA Notice
24 includes violations of law originally pled in the Action referenced below, plus a request for
25 penalties for failure to comply with various Labor Code sections.

26 **B.** Plaintiff filed a putative wage-and-hour class action and representative action
27 complaint against Defendant on August 14, 2020 (the "Class Action"). Plaintiff alleges that
28 during the Class Period, with respect to Plaintiff and the Settlement Class Members, Defendant,

1 *inter alia*, failed to pay the Settlement Class Members' overtime wages and minimum wages for
2 all hours worked and/or recorded; failed to provide compliant meal and rest periods and
3 associated premium payments; failed to issue compliant and accurate itemized wage statements;
4 failed to timely pay all wages due and owing at the time of termination or resignation; failed to
5 reimburse employees for business expenses; and engaged in unfair competition based on the
6 alleged Labor Code violations.

7 C. Plaintiff subsequently filed an action on January 4, 2021, asserting a single cause
8 of action for civil penalties under PAGA against Defendant based on the factual allegations set
9 forth in the PAGA Notice (the "PAGA Action" or the "Action").

10 D. Thereafter, the Parties agreed to dismiss Plaintiff's class and individual claims in
11 the Class Action without prejudice, exchange informal discovery and attend an early mediation,
12 in which Plaintiff was provided with, among other things: (1) hire dates, termination dates (as
13 applicable), and rates of pay for all Aggrieved Employees; (2) Employee Handbooks containing
14 Defendant's policies along with other relevant stand-alone policies in effect during the PAGA
15 Period; (3) time and payroll records for all Aggrieved Employees; (4) Meal Period Waiver
16 exemplars; and (5) Plaintiff's personnel file and all other documents related to Plaintiff in
17 Defendant's possession.

18 E. On November 2, 2021, the Parties participated in a full-day mediation before Mr.
19 Mark S. Rudy, a well-regarded mediator experienced in mediating complex labor and
20 employment matters. With the aid of Mr. Rudy's evaluation, the Parties reached the Settlement
21 to resolve the Action.

22 F. Class Counsel has conducted significant investigation of the law and facts relating
23 to the claims asserted in the PAGA Action and the PAGA Notice and has concluded that that the
24 Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement
25 Class, taking into account the sharply contested issues involved, the expense and time necessary
26 to litigate the Action through trial and any appeals, the risks and costs of further litigation of the
27 Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information
28

1 learned through informal discovery regarding Plaintiff's allegations, and the substantial benefits
2 to be received by the Settlement Class Members.

3 **G.** Defendant has concluded that, because of the substantial expense of defending
4 against the Action, the length of time necessary to resolve the issues presented herein, the
5 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
6 interest to accept the terms of this Agreement. Defendant denies each of the allegations and
7 claims asserted against it in the PAGA Action and the PAGA Notice. However, Defendant
8 nevertheless desires to settle the PAGA Action for the purpose of avoiding the burden, expense
9 and uncertainty of continuing litigation and for the purpose of putting to rest the controversies
10 engendered by the PAGA Action.

11 **H.** This Agreement is intended to and does effectuate the full, final, and complete
12 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all
13 PAGA Released Claims of Plaintiff and, to the extent permitted by law, of the State of California
14 and Aggrieved Employees.

15 **3. JURISDICTION**

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

21 **4. STIPULATION OF CLASS CERTIFICATION**

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

24 **5. MOTION FOR PRELIMINARY APPROVAL**

25 Plaintiff will move for an order granting preliminary approval of the Settlement,
26 approving and directing the mailing of the proposed Notice of Class Action Settlement ("Class
27 Notice") attached hereto as **Exhibit "A"**, conditionally certifying the Settlement Class for
28 settlement purposes only, and approving the deadlines proposed by the Parties for the submission

1 of Requests for Exclusion, Workweek Disputes, and objections, the papers in support of Final
2 Approval of the Settlement, and any responses to Objections or opposition papers to the Motion
3 for Final Approval.

4 **6. STATEMENT OF NO ADMISSION**

5 Defendant denies any wrongdoing of any sort and further denies any liability to Plaintiff
6 and the Settlement Class with respect to any claims or allegations asserted in the PAGA Action
7 and the PAGA Notice. This Agreement shall not be deemed an admission by Defendant of any
8 claims or allegations asserted in the PAGA Action or the PAGA Notice. Except as set forth
9 elsewhere herein, in the event that this Agreement is not approved by the Court, or any appellate
10 court, is terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have
11 waived, limited or affected in any way any claims, rights or remedies, or defenses in the Action
12 or the PAGA Notice, Defendant will not be deemed to have waived, limited, or affected in any
13 way any of its objections or defenses in the Action and the PAGA Notice, and the Parties shall
14 be restored to their respective positions in the PAGA Action prior to their entry into this
15 Settlement (including dismissal of the First Amended Complaint).

16 **7. RELEASE OF CLAIMS**

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

18 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
19 of Judgment, and payment by Defendant to the Third-Party Administrator selected of the full
20 Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, Plaintiff
21 and all Participating Class Members release all claims against the Released Parties asserted in
22 the First Amended Complaint to be filed in the PAGA Action and as follows: For the duration
23 of the Class Period, the release includes: (a) all claims for failure to pay overtime wages,
24 including all claims for failure to pay overtime wages for time spent "donning and doffing," time
25 spent undergoing health screenings or other health and safety protocols, or other "off the clock"
26 work; (b) all claims for failure to pay minimum wages, , including all claims for failure to pay
27 minimum wages for time spent "donning and doffing," time spent undergoing health screenings
28 or other health and safety protocols, or other "off the clock" work; (c) all claims for failure to

1 provide compliant meal and rest periods and associated premium pay; (d) all claims for the failure
2 to timely pay wages upon termination or resignation; (f) all claims for non-compliant wage
3 statements; (g) all claims for failure to reimburse costs as required under Labor Code section
4 2802; (h) all claims for failure to pay all vacation wages and paid time off owed at the time of
5 separation; and (i) all claims asserted through California Business & Professions Code section
6 17200 *et seq.* arising out of the Labor Code violations referenced in the Complaint (the "Class
7 Released Claims"). For Aggrieved Employees, the release includes, for the duration of the
8 PAGA Period, all claims released during the Class Period, as well as all asserted PAGA claims
9 for penalties arising out of Labor Code sections 210, 226.3, 558, 1197.1 and 2699 based on the
10 factual allegations and Labor Code sections alleged to have been violated in the PAGA Notice
11 dated August 10, 2020, which include, without limitation, the alleged Labor Code violations
12 included in the Class Released Claims, as well as alleged violations of Labor Code sections 201,
13 202, 203, 204, 226, 226.7, 227.3, 246, 404, 432, 510, 511, 512, 1194, 1197, 1198, 1198.5, and 2810.5
14 (the "PAGA Released Claims").

15 **B. General Release.**

16 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
17 of Judgment, and payment by Defendant to the Third-Party Administrator selected of the full
18 Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, in
19 addition to the Released Claims, Plaintiff makes the additional following General Release:
20 Plaintiff releases the Released Parties from of all claims, demands, rights, liabilities and causes
21 of action of every nature and description whatsoever, known or unknown, asserted or that might
22 have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule,
23 law or regulation arising out of, relating to, or in connection with any act or omission of the
24 Released Parties through the date of full execution of this Agreement in connection with
25 Plaintiff's employment or the termination thereof. With respect to the General Release, Plaintiff
26 stipulates and agrees that, through the Final Approval Date, Plaintiff shall be deemed to have,
27 and by operation of the Final Judgment shall have, expressly waived and relinquished, to the
28

1 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
2 California Civil Code, or any other similar provision under federal or state law, which provides:

3 A general release does not extend to claims which the creditor or
4 releasing party does not know or suspect to exist in his or her
5 favor at the time of executing the release, which if known by him
6 or her must have materially affected his or her settlement with the
debtor or released party.

7 The Parties agree that this release excludes any claims that may not be released by way
8 of this Agreement, including, without limitation, those pertaining to claims for workers'
9 compensations, if any.

10 **8. SETTLEMENT ADMINISTRATOR**

11 Plaintiff shall have discretion to select a Third-Party Settlement Administrator to
12 administer the Settlement, which includes but is not limited to translating the Class Notice to
13 Spanish, distributing and responding to inquiries about the Class Notice and calculating all
14 amounts to be paid from the Gross Settlement Amount. Charges and expenses of the Settlement
15 Administrator will be paid from the Gross Settlement Amount. Defendant will not be responsible
16 for paying any additional funds in order to pay these costs associated with administration of the
17 Settlement.

18 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION**
19 **PROCESS**

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

21 (1) Within thirty (30) calendar days after the Preliminary Approval Date,
22 Defendant's Counsel shall provide the Settlement Administrator with information with respect
23 to each Settlement Class Member, including his or her: (1) name, last known address(es) and last
24 known telephone number(s) currently in Defendant's possession, custody, or control; (2) Social
25 Security Number(s) in Defendant's possession, custody, or control; and (3) the Workweeks
26 worked for each Settlement Class Member with time records as verification ("Class List"), which
27 shall be made available to Class Counsel upon request. Class Counsel agrees that, in the event
28 that the Settlement does not become Final, Class Counsel shall return the Class List to Defendant

1 without retaining any copies or utilizing the Class List for any purpose. The Settlement
2 Administrator shall perform an address search using the United States Postal Service National
3 Change of Address ("NCOA") database and update the addresses contained on the Class List
4 with the newly-found addresses, if any. Within seven (7) calendar days of receiving the Class
5 List from Defendant, the Settlement Administrator shall mail the Class Notice in English and
6 Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most current
7 mailing address information available. The Settlement Administrator shall maintain a list with
8 names and all addresses to which notice was given, and digital copies of all the Settlement
9 Administrator's records evidencing the giving of notice to any Settlement Class Member, for at
10 least four (4) years from the Final Approval Date.

11 (2) The Class Notice will set forth:

- 12 (a) the Settlement Class Member's estimated Individual Settlement
13 Payment and Individual PAGA Payment, and the basis for each;
- 14 (b) the information required by California Rule of Court, rule 3.766,
15 subdivision (d);
- 16 (c) the material terms of the Settlement;
- 17 (d) the proposed Settlement Administration Costs;
- 18 (e) the definition of the Settlement Class;
- 19 (f) a statement that the Court has preliminarily approved the
20 Settlement;
- 21 (g) how the Settlement Class Member can obtain additional
22 information, including contact information for Class Counsel;
- 23 (h) information regarding opt-out and objection procedures;
- 24 (i) the date and location of the Final Approval Hearing; and
- 25 (j) that the Settlement Class Member must notify the Settlement
26 Administrator no later than the Response Deadline if the
27 Settlement Class Member disputes the accuracy of the number of
28 Workweeks as set forth on his or her Class Notice ("Workweek

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

6 (3) If a Class Notice from the initial notice mailing is returned as
7 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
8 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
9 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
10 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
11 is successful in obtaining a new address, it will promptly re-mail the Class Notice to the
12 Settlement Class Member. Further, any Class Notices that are returned to the Settlement
13 Administrator with a forwarding address before the Response Deadline shall be promptly re-
14 mailed to the forwarding address affixed thereto. Class Members who are re-mailed a Class
15 Notice shall have fifteen (15) days from the re-mailing, or forty-five (45) days from the date of
16 the initial mailing, whichever is later, in which to postmark a Request for Exclusion, objection
17 or to dispute their attributed workweek count in the Class Period and/or PAGA Period.

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

24 **B. Objections.**

25 Only Participating Class Members may object or comment regarding the Settlement. In
26 order for any Settlement Class Member to object to this Settlement, or any term of it, he or she
27 should do so by mailing a written objection to the Settlement Administrator at the address or
28 phone number provided on the Class Notice no later than the Response Deadline. The Settlement

1 Administrator shall email a copy of the objection forthwith to Class Counsel and Defendant's
2 counsel and attach each objection, if any, to the declaration that Class Counsel files with the
3 Court in support of the Motion for Final Approval. The objection should set forth in writing: (1)
4 the objector's name and address; (2) the objector's Social Security Number; (3) the case name
5 and number; (4) be signed by the objector and/or any counsel for the objector; and (5) include
6 the reason(s) for the objection, along with whatever legal authority, if any, the objector asserts
7 supports the objection. If a Settlement Class Member objects to this Settlement, the Settlement
8 Class Member will remain a member of the Settlement Class and if the Court approves this
9 Agreement, the Settlement Class Member will be bound by the terms of the Settlement in the
10 same way and to the same extent as a Settlement Class Member who does not object. The date
11 of mailing of the Class Notice to the objecting Settlement Class Member shall be conclusively
12 determined according to the records of the Settlement Administrator. Settlement Class Members
13 do not need to object in writing to be heard at, or object to the Settlement, at the Final Approval
14 Hearing. All written objections shall be attached to the Settlement Administrator's Declaration
15 that is submitted in support of the Motion for Final Approval. Any responses to written
16 objections may be filed with the Court up to five (5) court days before the hearing on the Motion
17 for Final Approval.

18 **C. Requesting Exclusion.**

19 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
20 Settlement by mailing a written request to be excluded from the Settlement ("Request for
21 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
22 To be valid, a Request for Exclusion must include: (1) the Class Member's full name and address;
23 (2) Social Security Number; (3) signature; and (4) the following statement or something to its
24 effect: "Please exclude me from the Settlement Class in the *Michael Robert Tapia v. Mercer*
25 *Foods, LLC et al.* matter" or a statement of similar meaning. The Settlement Administrator shall
26 immediately provide copies of all Requests for Exclusion to Class Counsel and Defendant's
27 Counsel and shall report the Requests for Exclusions that it receives, to the Court, in its
28 declaration to be provided in advance of the Final Approval Hearing. Any Settlement Class

1 Member who requests exclusion using this procedure will not be entitled to receive any payment
2 from the Settlement and will not be bound by the Settlement Agreement or have any right to
3 object to, appeal, or comment on the Settlement. Any Settlement Class Member who does not
4 opt out of the Settlement by submitting a timely and valid Request for Exclusion will be bound
5 by all terms of the Settlement, including those pertaining to the Released Claims, as well as any
6 Judgment that may be entered by the Court if Final Approval of the Settlement is granted. A
7 Class Member cannot both opt out and object to the Settlement. In the event that a Class Member
8 tries to both opt out and object to the Settlement, the opt-out will control and the objection will
9 be void.

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

11 Each Settlement Class Member may dispute the number of Workweeks attributed to him
12 or her on his or her Class Notice ("Workweek Dispute"). Any such disputes must be mailed to
13 the Settlement Administrator by the Settlement Class Member, postmarked on or before the
14 Response Deadline. The Settlement Administrator shall immediately provide copies of all
15 disputes to Class Counsel and counsel for Defendant and shall immediately attempt to resolve all
16 such disputes directly with relevant Settlement Class Member(s) with the assistance of Defendant
17 and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall adjudicate the
18 dispute.

19 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL PAGA**
20 **PAYMENTS TO PARTICIPATING CLASS MEMBERS**

21 Individual Settlement Payments will be calculated and distributed to Participating Class
22 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
23 Members' respective number of Workweeks during the Class Period. Individual PAGA
24 Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees
25 from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective
26 number of Workweeks during the PAGA Period. Specific calculations of the Individual
27 Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as
28 follows:

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

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

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

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

20 E. To determine each Aggrieved Employee's Individual PAGA Payment, the
21 Settlement Administrator will use the following formula: Aggrieved Employee's Individual
22 PAGA Payment = (Aggrieved Employee's Workweeks ÷ PAGA Workweeks) x \$12,500.00
23 (the PAGA Payment). This amount is to be paid out to Aggrieved Employees by way of check.
24 The Settlement payment for a Participating Class Member who is also an Aggrieved Employee
25 will therefore include the Participating Class Member's Individual Settlement Share and
26 Individual PAGA Payment. A Settlement Class Member who is also an Aggrieved Employee
27 who submits a valid Request for Exclusion will nevertheless be bound by the release of thee
28 PAGA Released Claims and will still receive their Individual PAGA Payment.

1 **11. DISTRIBUTION OF PAYMENTS**

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

3 Participating Class Members will receive an Individual Settlement Payment and
4 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement
5 Payment and Individual PAGA Payment checks shall remain valid and negotiable for one
6 hundred and eighty (180) calendar days after the date of their issuance. Within seven (7)
7 calendar days after expiration of the 180-day period, checks for such payments shall be
8 canceled and funds associated with such checks shall be considered unpaid, unclaimed or
9 abandoned cash residue pursuant to Code of Civil Procedure section 384 ("Unpaid
10 Residue"). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil
11 Procedure section 384, shall be transmitted to Legal Aid at Work, 180 Montgomery Street,
12 Suite 600, San Francisco, California 94104, the *cy pres* recipient, for use in Stanislaus
13 County. The Settlement Administrator shall prepare a report regarding the distribution plan
14 pursuant to Code of Civil Procedure section 384 and the report shall be presented to the Court
15 by Class Counsel along with a proposed amended judgment that is consistent with the
16 provisions of Code of Civil Procedure section 384.

17 **B. Funding of Settlement.**

18 Defendant shall, within seven (7) calendar days of Final Approval Date, make payment
19 of \$1,000,000.00 to the Settlement Administrator pursuant to Internal Revenue Code section
20 1.468B-1, for distribution in accordance with this Agreement and the Court's Orders and subject
21 to the conditions described herein. Defendant shall, within the later of the Final Approval Date
22 or seven (7) calendar days of the Settlement Administrator notifying Defendant of the amount of
23 Defendant's share of taxes owed on the wages portion of the settlement ("Employers' Taxes"),
24 make payment of said Employers' Taxes to the Settlement Administrator, for distribution in
25 accordance with this Agreement and the Court's Orders subject to the conditions described
26 herein.

27 ///

28 ///

1 Payments from the QSA shall be made for (1) the Service Award to Plaintiff as specified
2 in this Agreement and approved by the Court; (2) the Attorneys' Fees and Cost Award to be paid
3 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
4 Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA
5 Payment, as specified in this Agreement; and (5) Individual PAGA Payments from the \$12,500
6 PAGA Payment in accordance with Paragraph 10 of this Agreement. The balance remaining
7 shall constitute the Net Settlement Amount from which Individual Settlement Payments shall be
8 made to Participating Class Members, less applicable taxes and withholdings. All interest
9 accrued shall be for the benefit of the Class Members and distributed in a pro-rata basis.

10 **C. Time for Distribution.**

11 Within seven (7) calendar days after payment of the full Gross Settlement Amount by
12 Defendant, as well as Employer Taxes, or as soon thereafter as practicable, the Settlement
13 Administrator shall distribute all payments due under the Settlement, including the Individual
14 Settlement Payments to Participating Class Members and Individual PAGA Payments to
15 Aggrieved Employees, as well as the Court-approved payments for the Service Award to
16 Plaintiff, attorneys' fees and litigation costs and expenses to Class Counsel, Administration Costs
17 to the Settlement Administrator, and the LWDA Payment to the LWDA.

18 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

19 Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys'
20 fees of up to 35% of the Gross Settlement Amount, or, unless escalated pursuant to Paragraph 16
21 of this Agreement, Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00). Class
22 Counsel shall further apply for, and Defendant shall not oppose, an application or motion by
23 Class Counsel for reimbursement of actual costs associated with Class Counsel's prosecution of
24 this matter as set forth by declaration testimony in an amount up to Twenty-Five Thousand
25 Dollars and Zero Cents (\$25,000.00). Awards of attorneys' fees and costs shall be paid out of
26 the Gross Settlement Amount, for all past and future attorneys' fees and costs necessary to
27 prosecute, settle, and obtain Final Approval of the settlement in the Class and PAGA Action.
28 The "future" aspect of the amounts stated herein includes, without limitation, all time and

1 expenses expended by Class Counsel (including any appeals therein). There will be no additional
2 charge of any kind to either the Settlement Class Members or request for additional consideration
3 from Defendant for such work unless, in the event of a material breach of this Agreement by
4 Defendants, Plaintiff is required to move the Court for enforcement of this Agreement. Should
5 the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less
6 than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net
7 Settlement Amount.

8 **13. SERVICE AWARD TO PLAINTIFF**

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

15 **14. TAXATION AND ALLOCATION**

16 **A.** Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
17 be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS
18 Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties
19 agree that the employees' share of taxes and withholdings with respect to the wage-portion of the
20 Individual Settlement Share will be withheld from the Individual Settlement Share in order to
21 yield the Individual Settlement Payment. The amount of federal income tax withholding will be
22 based upon a flat withholding rate for supplemental wage payments in accordance with Treasury
23 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
24 be made pursuant to applicable state and/or local withholding codes or regulations.

25 **B.** Forms W-2 and/or Forms 1099 will be distributed by the Settlement
26 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
27 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
28 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes

1 set forth in this Section may be modified in a manner to bring Defendant into compliance with
2 any such changes.

3 C. All Employer Taxes shall be paid by Defendant separate, apart and above from
4 the Gross Settlement Amount. Defendant shall remain liable to pay the employer's share of
5 payroll taxes as described above.

6 D. Neither Counsel for Plaintiff nor Defendant intend anything contained in this
7 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
8 be relied upon as such within the meaning of United States Treasury Department Circular 230
9 (31 C.F.R. Part 10, as amended) or otherwise.

10 **15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

11 The Parties agree to allocate Fifty Thousand Dollars and Zero Cents (\$50,000) of the
12 Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent
13 (75%) of the amount allocated toward PAGA (\$37,500.00) will be paid to the LWDA (*i.e.*, the
14 LWDA Payment), and twenty-five percent (25%) (\$12,500.00) will be distributed to Aggrieved
15 Employees (*i.e.*, the PAGA Payment) on a *pro rata* basis, based upon their respective
16 Workweeks.

17 **16. COURT APPROVAL**

18 A. This Agreement is contingent upon an order by the Court granting Final Approval
19 of the Settlement, and that the LWDA does not intervene and object to the Settlement. In the
20 event it becomes impossible to secure approval of the Settlement by the Court and the LWDA,
21 the Parties shall be restored to their respective positions in the PAGA Action prior to the Parties'
22 entry into this Settlement, and the Plaintiff shall dismiss the First Amended Complaint. If this
23 Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal, it
24 shall have no force or effect and no Party shall be bound by its terms except to the extent: (a) the
25 Court reserves any authority to issue any appropriate orders when denying approval; and/or (b)
26 there are any terms and conditions in this Settlement Agreement specifically stated to survive the
27 Settlement Agreement being voided or not approved, and which control in such an event.

28 ///

1 **B.** No later than fourteen (14) days following the Parties' execution of this
2 Settlement Agreement, Plaintiff shall file a First Amended Complaint to include the following
3 claims: (a) failure to pay wages for all time worked at minimum wage in violation of Labor Code
4 sections 1194, 1194.2, and 1197 based on, among things, failure to pay minimum wage for time
5 spent "donning and doffing," time spent undergoing health screenings or other health and safety
6 protocols, and performing other "off the clock" work; (b) failure to pay overtime wages in
7 violation of Labor Code sections 510, 511, 512 and 1194 based on, among things, failure to pay
8 overtime wages for time spent "donning and doffing," time spent undergoing health screenings
9 or other health and safety protocols, and performing other "off the clock" work; (c) failure to
10 provide meal periods in violation of Labor Code sections 512 and 226.7; (d) failure to authorize
11 or permit rest periods in violation of Labor Code section 226.7; (e) failure to reimburse for
12 necessarily incurred business expenses in violation of Labor Code section 2802; (f) failure to
13 provide complete and accurate wage statements in violation of Labor Code section 226; (g)
14 failure to timely pay all earned wages and final paychecks at time of separation of employment
15 in violation of Labor Code sections 201, 202, and 203; (h) failure to properly accrue and pay all
16 vacation wages and paid time off owed at time of separation; (i) all claims under PAGA that
17 could have been premised on the claims, causes of action, or legal theories described above in
18 (a)-(i), in addition to failure to provide paid sick leave in violation of Labor Code 246 and failure
19 to provide notice required by the Wage Theft Protection Act in violation of Labor Code section
20 2810.5; and (j) all claims for unfair business practices under California Business & Professions
21 Code section 17200 *et seq.* that could have been premised on the claims, causes of action, or legal
22 theories of relief described above in (a)-(i). The Parties agree that the Amended Complaint shall
23 be filed solely for the purpose of achieving this Settlement, and should Final Approval not be
24 granted by the Court, Plaintiff agrees to dismiss the class claims contained in the Amended
25 Complaint such that the Action proceeds solely on the PAGA claims initially asserted in the
26 original Complaint.

27 ///

28 ///

1 **17. INCREASE IN WORKWEEKS**

2 Defendant estimates that there are no more than 50,000 Workweeks worked during the
3 Class Period by Class Members. In the event the number of Workweeks increases by more
4 than 10%, or 5,000 Workweeks, during the Class Period, then the Class Period and the PAGA
5 Period shall end as of the date on which 55,000 weekly pay periods have been worked.

6 **18. OPT-OUTS**

7 If more than 3% of the Class Members opt out of the Settlement, Defendant may, in its
8 discretion, nullify the Settlement within seven (7) calendar days of notice from the Claims
9 Administrator of the opt out rate in excess of 3%. However, in such an instance, Defendant shall
10 be solely liable for any costs incurred by the Claims Administrator in connection with the
11 administration of the Settlement pursuant to this Agreement.

12 **19. NOTICE OF JUDGMENT**

13 In addition to any duties set out herein, the Settlement Administrator shall provide
14 notice of the Final Judgment entered in the Action by posting the same on its website for a
15 period of no less than four (4) years.

16 **20. MISCELLANEOUS PROVISIONS**

17 **A. Interpretation of the Agreement.**

18 This Agreement constitutes the entire agreement between Plaintiff and Defendant with
19 respect to its subject matter. Except as expressly provided herein, this Agreement has not been
20 executed in reliance upon any other written or oral representations or terms, and no such extrinsic
21 oral or written representations or terms shall modify, vary or contradict its terms. In entering
22 into this Agreement, the Parties agree that this Agreement is to be construed according to its
23 terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be
24 interpreted and enforced under the laws of the State of California, both in its procedural and
25 substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or
26 relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively
27 in the Superior Court of the State of California for the County of Stanislaus, and Plaintiff and
28 Defendant hereby consent to the personal jurisdiction of the Court in the Action over it solely in

1 connection therewith. The foregoing is only limited to disputes concerning this Agreement.
2 Plaintiff Michael Robert Tapia, on behalf of himself and on behalf of the Settlement Class, and
3 Defendant participated in the negotiation and drafting of this Agreement and had available to
4 them the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendant
5 may claim that any ambiguity in this Agreement should be construed against the other. The
6 Agreement may be modified only by a writing signed by counsel for the Parties and approved by
7 the Court.

8 **B. Further Cooperation.**

9 Plaintiff, Defendant, and their respective attorneys shall proceed diligently to prepare and
10 execute all documents, to seek the necessary approvals from the Court, and to do all things
11 reasonably necessary to consummate the Settlement as expeditiously as possible.

12 **C. Counterparts.**

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

16 **D. Authority.**

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

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

20 Plaintiff, Participating Class Members, Class Counsel, and Defendant are direct
21 beneficiaries of this Agreement, but there are no third-party beneficiaries.

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

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

25 **G. Severability.**

26 In the event that one or more of the provisions contained in this Agreement shall for any
27 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
28 unenforceability shall in no way effect any other provision if Defendant's Counsel and Class

1 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
2 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.
3

4 **IT IS SO AGREED:**

5 Dated: Jan 10, 2022, 2021

MR
Michael Tapia (Jan 10, 2022 14:07 PST)

MICHAEL ROBERT TAPIA
Plaintiff and Class Representative

6
7
8
9
10 Dated: Jan 10, 2022, 2021

[Signature]
MERCER FOODS, LLC

Defendant

By Becky Shokri

Its: VP of HR Mercer Foods, LLC.

11
12
13
14 **AGREED AS TO FORM:**

15 Dated: February 7, ²⁰²²~~2021~~

Vedang J. Patel
DAVID D. BIBIYAN; Vedang J. Patel
Counsel for Plaintiff Michael Robert Tapia

16
17
18 Dated: January 12, 2021

[Signature]
LAURA A. WOLFE

Counsel for Defendant Mercer Foods, LLC