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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

FELIPE OSORIO, individually and on behalf
of all individuals similarly situated,

Plaintiff,

vs.

US FOODS, INC. WHICH WILL DO
BUSINESS IN CALIFORNIA AS U.S.
FOODSERVICE, INC., a Delaware
corporation; and DOES 1 through 25,
inclusive,

Defendants.

CASE NO. 20STCV46858

Judge: Honorable Yvette M. Palazuelos

**THIRD AMENDED JOINT
STIPULATION OF CLASS AND PAGA
REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE**

Complaint Filed: December 8, 2020

1 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff FELIPE OSORIO
2 (“Plaintiff”), in his individual capacity, as class representative and as a private attorney general, on
3 the one hand, and US FOODS, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS U.S.
4 FOODSERVICE, INC., a California corporation (“Defendant”), on the other hand, as set forth
5 below:

6 **I. The Conditional Nature of This Stipulation.**

7 This Third Amended Joint Stipulation of Class Action Settlement and Release, including all
8 associated exhibits or attachments (herein “Stipulation”), is made for the sole purpose of resolving
9 all causes of action that were alleged or could have been alleged by reason of or in connection with
10 any matter or fact set forth or referred to in the Complaint in the case *Felipe Osorio v. US FOODS,*
11 *INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS U.S. FOODSERVICE, INC., et al*, Case
12 No. 20STCV46858 (the “Litigation”) on a class wide and PAGA representative basis. This
13 Stipulation and the settlement it evidences is made in compromise of disputed claims. Because the
14 Litigation was styled as a class action, this settlement must receive preliminary and final approval
15 from the Court. Accordingly, Defendant and Plaintiff enter into this Stipulation and associated
16 settlement on a conditional basis. In the event that the Court does not execute and file the Order
17 Granting Final Approval of Settlement, or in the event that the Court does not enter the Judgment
18 (as defined below), or in the event that the associated Judgment does not become a Final Judgment
19 (as defined below) for any reason, this Stipulation shall be deemed null and void, it shall be of no
20 force or effect whatsoever, it shall not be referred to or used for any purpose whatsoever, and the
21 negotiation, terms, and entry of it shall remain subject to the provisions of California *Evidence Code*
22 sections 1119 and 1152.

23 Defendant adamantly denies all of the claims as to liability, damages, and restitution as well
24 as the class allegations asserted in the Litigation. Defendant has agreed to resolve this Litigation
25 via this Stipulation, but to the extent this Stipulation is deemed void or does not take effect,
26 Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and
27 allegations in the Litigation upon all procedural and factual grounds, including without limitation
28 the ability to challenge class treatment or PAGA manageability on any grounds or to assert any and

1 all defenses or privileges. Plaintiff and his counsel agree that Defendant retains and reserves these
2 rights. In particular, Plaintiff and his counsel waive and agree not to argue or to present any
3 argument that Defendant would be estopped from contesting class certification and PAGA
4 manageability because it has entered into this Stipulation. In addition, the settling parties recognize
5 and agree that under California law, which is applicable here, courts impose a lesser burden for
6 certification for settlement classes than they do for contested classes.

7 **II. The Parties to this Stipulation.**

8 This Stipulation (with the associated exhibits) is made and entered into by and among the
9 following parties (collectively, the “Parties” or “Settling Parties”): (i) Plaintiff (on behalf of himself,
10 each of the members the Class, and Aggrieved Employees), with the assistance and approval of his
11 counsel (the “Class Counsel”); and (ii) Defendant with the assistance of their counsel of record in
12 the Litigation. The Stipulation is intended by the Settling Parties to result in a Judgment and to
13 fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below) upon
14 and subject to the terms and conditions hereof.

15 **III. Procedural Posture.**

16 On December 8, 2020, Plaintiff, an employee of Defendant, filed a class and PAGA
17 representative action Complaint against Defendant in Los Angeles County Superior Court. In the
18 Complaint, Plaintiff alleged causes of action for:

- 19 1. FAILURE TO COMPENSATE ALL HOURS WORKED IN VIOLATION OF
20 INDUSTRIAL WELFARE COMMISSION ORDER NO. 4 AND CAL. LABOR
21 CODE §§ 200, 226, 500, 510, 1194, 1197, AND 1198;
- 22 2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE §§
23 1182.12, 1194, 1194.2, 1197;
- 24 3. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CAL.
25 LABOR CODE § 1194, *ET SEQ.*;
- 26 4. FAILURE TO PROVIDE PROPER WAGE STATEMENT IN VIOLATION OF CAL.
27 LABOR CODE § 226;
- 28 5. VIOLATION OF LABOR CODE §§ 2698, *ET SEQ.* (“PAGA”); AND

1 6. VIOLATIONS OF CAL. B&P CODE §§ 17200, *ET SEQ.*;

2 As defined by the operative Complaint, the class consists of:

3 All individuals who were employed by Defendant as “non-exempt employees” at any time
4 during the Class Period. Excluded from the Class are employees who work only administrative and
5 managerial functions as exempt employees.”

6 In accordance with the complex civil division procedure in Los Angeles Superior Court, the
7 Court imposed a stay on all discovery and motion practice prior to the initial Case Management
8 Conference. On January 8, 2021, Defendant timely removed this matter to Federal Court.
9 Subsequently, the Parties agreed to attempt a resolution of this matter through private mediation. In
10 preparation thereof, the parties exchanged formal discovery through initial disclosures. The Parties
11 also agreed to exchange robust informal discovery, including pertinent policies and procedures of
12 Defendant, sample class member/allegedly aggrieved employees time and payroll records, class
13 statistics, and other class data. The Parties conducted their own evaluation of potential recoveries
14 based on the claims alleged in the Litigation and from the exchange of information, with Plaintiff
15 engaging an expert to conduct a damages analysis.

16 On August 27, 2021, the parties participated in a full-day mediation before employment
17 mediator Eve Wagner, Esq. At mediation, the parties engaged in an intensive discussion regarding
18 their evaluations of the merits, procedural challenges, and estimated exposure at issue in the
19 Litigation, and the risks, cost, and delays of further litigation. The information exchanged between
20 the parties allowed them to assess the merits of the claims and defenses, and to reach a compromise
21 of the issues. After arm’s length negotiation and with the aid of the mediator, the parties reached
22 an agreement in principle to resolve the matter and, thereafter, over the next several weeks,
23 vigorously negotiated a memorandum of understanding reflecting such agreement. Following this,
24 the parties then negotiated and agreed to enter into this Joint Stipulation of Class Action Settlement
25 and Release.

26 **IV. Defendant’s Denial of Wrongdoing and Benefits of Settlement**

27 Whether or not the settlement is finally approved, by entering into this Stipulation,
28 Defendant does not admit, and specifically denies, all claims in this Action and further denies class

1 or PAGA representative treatment is appropriate for any purpose other than this Settlement.
2 Defendant contends it complied with all applicable state, federal, and local laws. It is Defendant's
3 position that, if litigation continued, class certification would be inappropriate and that the named
4 Plaintiff is not an adequate class or PAGA representative, his claims are not typical of the Class
5 Members, and individual issues predominate over common ones. However, Defendant has
6 concluded that further litigation would be protracted and expensive. Thus, Defendant has
7 determined it is desirable that this Litigation be fully and finally settled—solely for the purposes of
8 compromising highly disputed claims.

9 **V. Plaintiff's Claims and Benefits of Settlement.**

10 Plaintiff believes that the claims asserted in the Litigation have merit. Plaintiff and Class
11 Counsel recognize and acknowledge, however, the expense and length of the type of continued
12 proceedings necessary to prosecute the Litigation against Defendant through trial and through
13 appeals. Plaintiff and Class Counsel have also taken into account the uncertain outcome and the
14 risk of any litigation, especially in putative class and PAGA representative actions such as this
15 Litigation, as well as the difficulties and delays inherent in such litigation. Plaintiff and Class
16 Counsel are also mindful of the unsettled and evolving nature of the law that supports the defenses
17 to the claims asserted in the Litigation. In light of these considerations, Class Counsel is of the
18 opinion that the consideration and terms of the Settlement as set forth below are fair, reasonable,
19 and adequate in light of all known facts and circumstances, and are in the best interests of the Class
20 and Aggrieved Employees as a whole. Class Counsel is also of the opinion that the total
21 consideration and payment set forth in this Stipulation of Settlement is adequate in light of the
22 uncertainties surrounding the risk of further litigation, and the possible defenses and offset claims
23 that Defendant has asserted and could assert.

24 **VI. Terms of Stipulation and Agreement of Settlement.**

25 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the
26 Plaintiff, in his individual capacity, as a class representative, and as a private attorney general, on
27 the one hand, and Defendant on the other hand. Subject to the Court's approval, with the assistance
28 of their respective counsel of record, that, as among the Settling Parties, including all members of

1 the Settlement Class the Litigation and the Released Claims shall be finally and fully compromised,
2 settled, and released, subject to the terms and conditions of the Stipulation and the Judgment and as
3 approved by the Court.

4 **A. Definitions**

5 As used in all parts of this Stipulation (including the exhibits which are incorporated as part
6 of the Stipulation), the following terms have the meanings specified below. To the extent that any
7 terms or phrases used in this Stipulation are not specifically defined in this section but are defined
8 elsewhere in this Stipulation, they are incorporated herein by reference.

9 1.1 “NCOA Check” means a search based on a National Change of Address Database
10 performed by the Settlement Administrator for Class Members’ most current address
11 based on the Class Member information provided by Defendant.

12 1.2 “Settlement Administrator” means the third-party claims administration firm
13 mutually selected by the parties, Simpluris, Inc.

14 1.3 “Settlement Administrator Costs” means all fees, costs, and expenses as approved by
15 the Court relating to the administration of the Settlement in this Litigation, including
16 without limitation, printing and mailing the Notice of Proposed Class Action
17 Settlement, receiving and processing Opt-Outs, translating the Notice of Proposed
18 Class Action Settlement into Spanish, calculating and determining payments and
19 percentages, tax reporting, distributing the Individual Class Settlement Payments and
20 Individual PAGA Settlement Payments, regularly updating counsel on the status of
21 administration, and the accounting and maintenance of the Settlement Fund Account.
22 The Settlement Administrator’s Fees will be paid from the Gross Settlement Amount,
23 including, if necessary, any such costs in excess of the amount represented by the
24 Settlement Administrator as being the maximum costs necessary to administer the
25 Settlement. The Settlement Administrator’s Fees are currently estimated to be Ten
26 Thousand Seven Hundred Fifty Dollars (\$10,750). Any Settlement Administrator’s
27 Fees that exceed the amount approved by the Court shall be subtracted from the
28 Gross Settlement Amount.

1.4 “Class” or “Class Members”¹ means:

- a. All current and former California non-exempt, non-driver employees based out of the Corona facility who completed at least one wellness check in California at any time between April 15, 2020 through July 12, 2020;
- b. All current and former California non-exempt, driver employees based out of the Corona facility who completed at least one wellness check in California at any time between April 15, 2020 through June 28, 2021;
- c. All current and former California non-exempt, non-driver employees based out of the Fontana facility who completed at least one wellness check in California at any time between April 15, 2020 through June 28, 2021;
- d. All current and former California non-exempt, non-driver employees based out of La Mirada who completed at least one wellness check in California at any time between April 21, 2020 and January 29, 2021;
- e. All current and former California non-exempt, non-driver employees based out of Livermore who completed at least one wellness check in California at any time between April 15, 2020 and June 25, 2020;
- f. All current and former California non-exempt, non-driver employees based out of Hawthorne who completed at least one wellness check in California at any time between April 15, 2020 and June 25, 2020;
- g. All current and former California non-exempt, non-driver employees based out of Tracy who completed at least one wellness check in California at any time between April 15, 2020 and June 26, 2020; and

¹ The Parties understand and agree that the Class definition does not involve subclasses but rather merely covers the respective time periods during which Defendant’s California locations conducted COVID-19 related temperature checks, which are the subject of the Parties’ dispute. The Parties further note that, because the PAGA claim seeks penalties for the same underlying alleged Labor Code violations in the class action claims, and because of the limited time periods at issue in this Action, the Class Members and Aggrieved Employees include the same population of current and former employees.

1 h. All current and former California non-exempt, non-driver employees based
2 out of Vista who completed at least one wellness check in California at any
3 time between April 15, 2020 and June 27, 2020.

4 1.5 “Aggrieved Employees” means:

- 5 a. All current and former California non-exempt, non-driver employees based
6 out of the Corona facility who completed at least one wellness check in
7 California at any time between April 15, 2020 through July 12, 2020;
- 8 b. All current and former California non-exempt, driver employees based out of
9 the Corona facility who completed at least one wellness check in California
10 at any time between April 15, 2020 through June 28, 2021;
- 11 c. All current and former California non-exempt, non-driver employees based
12 out of the Fontana facility who completed at least one wellness check in
13 California at any time between April 15, 2020 through June 28, 2021;
- 14 d. All current and former California non-exempt, non-driver employees based
15 out of La Mirada who completed at least one wellness check in California at
16 any time between April 21, 2020 and January 29, 2021;
- 17 e. All current and former California non-exempt, non-driver employees based
18 out of Livermore who completed at least one wellness check in California at
19 any time between April 15, 2020 and June 25, 2020;
- 20 f. All current and former California non-exempt, non-driver employees based
21 out of Hawthorne who completed at least one wellness check in California at
22 any time between April 15, 2020 and June 25, 2020;
- 23 g. All current and former California non-exempt, non-driver employees based
24 out of Tracy who completed at least one wellness check in California at any
25 time between April 15, 2020 and June 26, 2020; and
- 26 h. All current and former California non-exempt, non-driver employees based
27 out of Vista who completed at least one wellness check in California at any
28 time between April 15, 2020 and June 27, 2020.

1.6 “Class Counsel” and “Plaintiff’s Counsel” means:

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1.7 “Net Settlement Amount” means the portion of the Gross Settlement Amount remaining after the following deductions and subject to Court approval: (1) attorneys’ fees to Class Counsel not to exceed 35% of the Gross Settlement amount (\$665,000.00); (2) reasonable costs and Litigation expenses, which is to be no more than \$20,000 ; (3) the Plaintiff’s Service Award to the named Plaintiff as class representative, in an amount not exceeding \$20,000; (4) Settlement Administration Costs; (5) LWDA Payment, and (6) the PAGA Aggrieved Employee Amount .

1.8 “Class Period” means the time limits in section 1.4 above.

1.9 “Court” means the Superior Court of the State of California, for the County of Los Angeles.

1.10 “Effective Date” means the date by which the Court’s order granting Final Approval of this Joint Stipulation and Judgment becomes final. Judgment becomes final upon the following events: (a) upon the Court issuing an order granting Final Approval of this Joint Stipulation and entering Judgment thereon; and (b) the later of the following events: (1) the day after the last day by which a notice of appeal of Judgment may be timely filed with the California Court of Appeal, and no such appeal being filed; (2) if an appeal is filed and is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the last date for filing a request for further review of the Court of Appeal’s decision passes and no further review is

requested; (3) if an appeal is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and further review of the Court of Appeal's decision is requested, the day after the request for review is denied with prejudice and/or no further review of the order can be requested; or (4) if review is accepted, the day the Supreme Court of the State of California affirms the Settlement.

1.11 "Gross Settlement Amount" means up to One Million Nine Hundred Thousand (\$1,900,000) that Defendant will pay, subject to court approval, in the aggregate to resolve this Litigation, on a non-revisionary basis. The Gross Settlement Amount is all-inclusive and consists of, as approved by the Court, the following: (1) attorneys' fees to Class Counsel; (2) Class Counsel's reasonable litigation costs and expenses; (3) Plaintiff's Service Award; (4) Settlement Administration Costs; (5) the LWDA Payment; (6) the PAGA Aggrieved Employee Payment; and (7) the Net Settlement Amount, which will be distributed to Settlement Class Members and which includes the employee's share of taxes, contributions, and withholdings with respect to the wage-portion of the settlement payments ("Employment and Payroll Taxes"). The entire settlement is non-reversionary. The Gross Settlement Amount excludes the employer's portion of payroll taxes, which will be paid separately by Defendant.

1.12 "Individual Class Settlement Payment" shall mean the portion of the Net Settlement Amount distributable to each participating Settlement Class Member, inclusive of pre- and post-judgment interest and penalties, and subject to Employment and Payroll Taxes.

1.13 "Individual PAGA Settlement Payment" shall mean the pro rata portion of the PAGA Aggrieved Employee Amount distributable to each Aggrieved Employee. The Settlement Administrator will report the Individual PAGA Settlement Payment, which is allocated to settlement of claims for civil penalties pursuant to PAGA, on a Form 1099, which it will provide to the Aggrieved Employees and to the pertinent taxing authorities.

1.14 "Felipe Osorio" means the named plaintiff in the Litigation and Class Representative.

1.15 “Judgment” or “Final Judgment” means the judgment to be rendered by the Court pursuant to this Stipulation. This Judgment shall be a judgment for purposes of California Rule of Court 3.771(a).

1.16 “Labor and Workforce Development Agency” or “LWDA” means the California agency that pursuant to California *Labor Code* section 2698, *et seq.* shall receive an amount equal to seventy-five percent (75%) of the PAGA Settlement Amount.

1.17 “LWDA Payment” means the amount that the Parties have agreed to pay to the LWDA in connection with PAGA, which, pursuant to PAGA, is seventy-five percent (75%), or Seventy-Five Thousand Dollars (\$75,000) of the total the PAGA Settlement Amount (\$100,000).

1.18 “Last Known Address” means the most recently recorded mailing address for a Class Member, such information is contained in employment, payroll, or personnel records maintained by Defendant.

1.19 The “Non-Settlement Class” or “Non-Settlement Class Member(s)” or “Member of the Non-Settlement Class” consists of or means the group of all Class Members who properly and timely elect to Opt Out (as defined below) of the settlement by requesting exclusion from the class action settlement pursuant to Paragraph 1.51.3 of the Stipulation. Class Members who are Aggrieved Employees will not be permitted to Opt Out from the release of the PAGA claim portion of the Settlement. Individual PAGA Settlement Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Aggrieved Employees, including to those Non-Settlement Class Members.

1.20 “Notice of Proposed Class Action Settlement” or “Class Notice(s)” means a notice titled “Notice of Proposed Class Action Settlement” to be approved by the Court. The “Notice of Proposed Class Action Settlement” shall constitute the class notice pursuant to California Rule of Court 3.769(f) and, once approved by the Court, shall be deemed compliant with California Rule of Court 3.766(d).

1.21 “Notice Mailing Deadline” means the deadline for the Settlement Administrator to

1 mail the Class Notices to Class Members, which is ten (10) business days after the
2 Settlement Administrator's receipt of the Class List.

3 1.22 "Objection Deadline" means the deadline for a Class Member to object to the
4 settlement, which date shall be indicated on the Class Notices mailed by the
5 Settlement Administrator and which shall be postmarked no later than forty-five (45)
6 calendar days after the Notice Mailing Deadline.

7 1.23 "Opt Out" or "Opt Outs" means a completed request in writing to be excluded or opt-
8 out signed by a Class Member indicating he or she wishes to be excluded from the
9 Settlement Class and in the manner specified in the Class Notice, no later than the
10 Opt Out Deadline (or fifteen (15) days after the Settlement Administrator re-mails
11 the Class Notice to the Class Member, whichever is later).

12 1.24 "Opt Out Deadline" means the deadline for a Class Member to Opt Out of the non-
13 PAGA portion of the settlement, which date shall be indicated on the Class Notices
14 mailed by the Settlement Administrator and which shall be postmarked no later than
15 forty five (45) calendar days after the Notice Mailing Deadline (or fifteen (15) days
16 after the Settlement Administrator re-mails the Class Notice to the Class Member,
17 whichever is later).

18 1.25 "Order of Final Approval and Entry of Judgment", "Final Approval" or "Order
19 Granting Final Approval of Settlement and Entry of Judgment" shall mean the date
20 upon which the Court enters its Final Approval Order and Judgment rendered
21 pursuant to this Stipulation, after having determined that the settlement is fair,
22 adequate, and reasonable to the Class following notice to the Class and a hearing on
23 the fairness of the settlement.

24 1.26 "PAGA Aggrieved Employee Amount" means the 25% (which is \$25,000) of the
25 PAGA Settlement Amount that will be paid to Aggrieved Employees on a pro rata
26 basis based on the Aggrieved Employees' Workweeks during the PAGA Period.

27 1.27 "PAGA Settlement Amount" means, subject to court approval, the one hundred
28 thousand dollars (" \$100,000) of the Gross Settlement Amount that the Parties agreed

will be allocated to resolving Aggrieved Employees' claims arising under California *Labor Code* section 2698, *et seq.*, the *Labor Code* Private Attorneys General Act of 2004 ("PAGA"). The PAGA Settlement Amount allocation is pursuant to *Labor Code* section 2699 *et seq.*: seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the Aggrieved Employees.

1.28 "Person" means a natural person.

1.29 "Plaintiff" shall mean Felipe Osorio, the named plaintiff in this Litigation.

1.30 "Preliminary Approval Date" shall mean the date on which the Court grants preliminary approval of the settlement.

1.31 "Preliminary Approval Order" or "Order Granting Preliminary Approval of the Settlement and Setting a Settlement Fairness Hearing" shall mean an order to be executed and filed by the Court preliminarily approving this Joint Stipulation. This Preliminary Approval Order shall constitute an order certifying a provisional class for settlement purposes only pursuant to California Rule of Court 3.769(d) and an order setting a final approval/fairness hearing pursuant to California Rule of Court 3.769(e).

1.32 "Reasonable Address Verification" shall mean the utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a Last Known Address Provided by Defendant to the Settlement Administrator.

1.33 "Class Released Claims" shall mean all claims, demands, rights, liabilities, penalties, fees, and causes of action that were or could have been asserted by reason of or in connection with any matter or fact set forth or referred to in the complaint (whether in tort, contract, statute or otherwise) during the time periods listed in Section 1.4, including but not limited to any claims based on the following allegations under any theory: failure to pay minimum, regular, or hourly wages, and/or alleged off-the-clock work; failure to pay overtime wages or accurate overtime wages; failure to pay timely wages during employment or upon separation; failure to provide accurate

1 and/or complete wage statements; failure to maintain records; or violation of Cal.
2 Bus. & Prof. Code section 17200 *et seq.* by engaging in the foregoing conduct. The
3 Released Claims include any alleged violation of Labor Code sections 200, 201-204,
4 210, 218.5, 226, 500, 510, 558, 1174, 1182.2, 1182.12, 1194, 1194.2, 1197, or 1198.
5 The Final Judgment shall cover and bar each and every Settlement Class Member
6 from asserting any of the Released Claims in the future against Defendant and its
7 past or present officers, directors, shareholder, employees, agents, principals, heirs,
8 representatives, accountants, auditors, attorneys, consultants, insurers, and their
9 respective successors and predecessors in interest, assigns, subsidiaries, affiliates,
10 and parents (the “Released Parties”). The Class Released Claims also include any
11 claims that were or could have been asserted in the Action for unpaid wages, civil or
12 statutory penalties, interest, attorneys’ fees, costs, injunctive relief, restitution, and
13 equitable relief under California or federal statute, ordinance, regulation, common
14 law, or other source of law, including but not limited to the California Labor Code,
15 California Business and Professions Code, and California Civil Code, California
16 Industrial Welfare Commission Wage Orders, and the Fair Labor Standards Act
17 (“FLSA”), 29 U.S.C. §§ 216 *et seq.* All Class Members shall be bound by this release
18 unless they formally request exclusion from this Settlement by submitting a valid
19 and timely Request for Exclusion or comparable documentation. However, Class
20 Members that do not negotiate their Individual Settlement Payment checks do not
21 release any claims under the federal Fair Labor Standards Act (“FLSA”), 29 U.S.C.
22 §§ 216 *et seq.*

23 “Class Released Claims” shall not include claims alleged in LASC Case Number
24 21STCV32573, entitled *IVAN MAGANA et al v. US FOODS, INC., et al.*, for alleged
25 meal period violations under Labor Code sections 226.7, 512, or 558; violations of
26 the Cal. Bus. & Prof. Code section 17200 *et seq.* predicated on meal period violations
27 under Labor Code sections 226.7, 512, or 558; nor PAGA penalties for alleged meal
28 period violations under Labor Code sections 226.7, 512, or 558.

1.34 “PAGA Period” means the same periods defined in section 1.5 above.

1.35 “PAGA Settlement Employees” shall mean any and all persons defined in section 1.5 above.

1.36 “PAGA Released Claims” means all claims, demands, rights, liabilities, penalties, fees, and causes of action under PAGA during the PAGA Period, including under Labor Code sections 558 and/or 2698 et seq., predicated on any Labor Code violations alleged in the operative Complaint (which include Labor Code sections 200, 201-204, 210, 218.5, 226, 500, 510, 558, 1174, 1182.2, 1182.12, 1194, 1194.2, 1197, and 1198) or that could have been alleged in the operative Complaint based on the facts, policies, practices, occurrences, or acts alleged in the operative Complaint, or that are based on any alleged failure to pay minimum, regular, or hourly wages, and/or alleged off-the-clock work; failure to pay overtime wages or accurate overtime wages; failure to pay timely wages during employment; failure to provide accurate and/or complete wage statements; failure to maintain records. PAGA Released Claims shall not include PAGA claims predicated on meal period violations under Labor Code sections 226.7, 512, or 558. alleged in LASC Case Number 21STCV32573, entitled *IVAN MAGANA et al v. US FOODS, INC., et al.*

1.37 “Settlement Class” or “Settlement Class Members” or “Members of the Settlement Class” means any, or collectively all Class Members who do not submit timely or valid Opt Outs and, thus, become bound by the Judgment.

1.38 “Settlement Fund Account” means a qualified settlement fund within the meaning of Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 et seq., that is established by the Settlement Administrator for the benefit of Settlement Class Members and Aggrieved Employees, from which all monies payable under this Stipulation shall be paid, as set forth herein.

1.39 “Final Approval Hearing” means a final hearing set by the Court to take place for the purpose of: (i) determining the fairness, adequacy, and reasonableness of the Stipulation and associated settlement pursuant to class action procedures and

requirements; (ii) determining the good faith of the Stipulation and associated settlement; and (iii) entering Judgment. This Settlement Hearing is intended to be the settlement hearing or final approval hearing required under California Rule of Court 3.769(a).

1.40 “Parties” or “Settling Parties” means Defendant, and the Class Representative on behalf of himself and all Settlement Class Members.

1.41 Defendant means the Defendant US FOODS, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS U.S. FOODSERVICE, INC., in the Litigation and employer of the present and former employees who comprise the alleged Class.

1.42 “Released Parties” means Defendant and its past or present officers, directors, shareholder, employees, agents, principals, heirs, representatives, accountants, auditors, attorneys, consultants, insurers, and their respective successors and predecessors in interest, assigns, subsidiaries, affiliates, and parents.

1.43 “Updated Address” means a mailing address that was updated by way of Reasonable Address Verification, by way of an updated mailing address provided by the United States Postal Service, a Class Member, Experian Skip Tracing, or a Locator Service.

1.44 “Complaint” means the operative Complaint filed in this Litigation on or about December 8, 2020, and all amendments thereto.

1.45 “LWDA Notice” is the letter to the LWDA and Defendant dated September 29, 2020, giving notice of his intent to pursue a representative action pursuant to the PAGA, on behalf of himself and the state of California, as well as on behalf of a proposed group of aggrieved employees.

1.46 “Workweeks” means the number of weeks a Class Member worked during the Class Period and/or the number of weeks an Aggrieved Employee worked during the PAGA Period.

B. The Settlement

1.47 Gross Settlement Amount and Minimum Settlement Payments

1.47.1. Pending Final Approval of the Settlement and the passage of the Effective

1 Date, Defendant will pay the aggregate Gross Settlement Amount on an all-inclusive, non-
2 revisionary basis. Defendant will not be required to contribute additional sums to fund the
3 Settlement or otherwise resolve this Litigation. Defendant shall deposit the total Gross Settlement
4 Amount to the Settlement Administrator for disbursement consistent with this Stipulation within
5 fifteen (15) business days of the Effective Date.

6 1.47.2. In the event that this Stipulation is canceled, rescinded, terminated voided,
7 or nullified, however that may occur, or the settlement of the Litigation by operation of law, or
8 invalidated, or ordered not to be carried out by a Court of competent jurisdiction, Defendant will
9 cease to have any obligation to pay any portion of the Gross Settlement Amount under the terms
10 of this Stipulation.

11 1.48 *Allocation of Settlement Proceeds*

12 The Settlement Administrator will administer the settlement by translating the Class Notice
13 into Spanish; distributing the Class Notice; performing an NCOA check; receiving, reviewing and
14 tracking any Opt Out requests; adjudicating Class Members' and Aggrieved Employees' disputes
15 over the Workweeks worked by Class Members and/or Aggrieved Employees; providing Class
16 Counsel and counsel for Defendant with updates on the status (including Class Member names and
17 percentages) of Opt Outs; handling inquiries about the calculation of the Individual Class Settlement
18 Payments and Individual PAGA Settlement Payments; distributing Individual Class Settlement
19 Payments, Individual PAGA Settlement Payments, and payments to other parties under the terms of
20 the Stipulation; providing due diligence declarations for submission to the Court, as needed;
21 distributing notice of the final judgment to Class Members; providing Defendant with the
22 appropriate tax reporting documentation; providing Plaintiff, Class Members, and Aggrieved
23 Employees with the appropriate tax reporting documentation. The actions of the Settlement
24 Administrator shall be governed by the terms of this Stipulation. The Settling Parties, through their
25 counsel, may provide written information needed by the Settlement Administrator pursuant to the
26 Stipulation.

27 1.48.1. Defendant, through the Settlement Administrator, shall pay no later than
28 fifteen (15) calendar days after the receipt of the funds by the Settlement Administrator from

1 Defendant: (1) the amount of attorneys' fees and litigation costs and expenses approved by the
2 Court as set forth in subsection (a) below; (2) the Plaintiff's Service Award approved by the Court
3 as set forth in subsection (b) below; (3) the LWDA Payment approved by the Court; (4) the
4 Settlement Administration Fees approved by the Court as set forth in subsection (c) below; (5)
5 payments to Settlement Class Members of their Individual Class Settlement Payments, according
6 to the terms, conditions and procedures set forth in Paragraph 1.55.1 and as set forth in subsection
7 (d) below; and (6) Individual PAGA Settlement Payments to Aggrieved Employees, according to
8 the terms, conditions and procedures set forth in Paragraph 1.55.1 and as set forth in subsection (e)
9 below.

10 1.48.2. The Gross Settlement Amount is inclusive of and will be allocated as
11 follows, subject to Court Approval:

12 (a) Attorneys' Fees and Litigation Costs: Class Counsel shall submit their
13 Application for Award of Attorneys' Fees and Costs to the Court before the
14 Settlement Hearing. Class Counsel will seek attorneys' fees not to exceed
15 \$665,000.00 (35% of the Gross Settlement Amount) and reasonable litigation
16 costs and expenses not to exceed \$20,000 from the Gross Settlement Amount,
17 subject to court approval. Class Counsel shall serve Defendant with copies of all
18 documents in support of their Application for Award of Attorneys' Fees and
19 Costs. Defendant agrees not to oppose the Application for Award of Attorneys'
20 Fees and Costs. Class Counsel and the Plaintiff agree to provide original signed
21 W-9 forms to defense counsel. The Settlement Administrator will report the
22 attorneys' fees on a Form 1099, which it will provide to Class Counsel and to the
23 pertinent taxing authorities.

24 (b) Plaintiff's Service Award: Subject to Court approval, Plaintiff shall receive a
25 service payment of \$20,000 in recognition of his contributions to the Litigation
26 and his service to the Settlement Class, in addition to his Individual Class
27 Settlement Payment and Individual PAGA Settlement Payment ("Plaintiff's
28 Service Award"). Defendant agrees not to oppose the request for, or the amount

1 of, Plaintiff's Service Award. Since it is the intent of the Settling Parties that the
2 service award to the Class Representative is for his services on behalf of the
3 Class, and in exchange for the general release set forth in Paragraph 1.56.3 and
4 not wages, the Settlement Administrator will not withhold any taxes from the
5 service awards. The Settlement Administrator will report the Service Award on
6 a Form 1099, which it will provide to the Class Representative and to the
7 pertinent taxing authorities. Plaintiff agrees to provide an original signed W-9
8 form to defense counsel prior to issuance of the Class Representative Service
9 Award. Plaintiff will be solely and legally responsible to pay any and all
10 applicable taxes on the Service Award.

11 (c) Settlement Administration Costs: The Settlement Administrator shall be paid an
12 amount which is expected to not exceed \$10,750 for all fees and costs relating to
13 the administration of this settlement, including but not limited to all the duties set
14 forth in Paragraph 1.3, all tax document preparation, custodial fees and
15 accounting fees, all costs and fees associated with preparing, issuing, and mailing
16 any and all Class Notices, all costs and fees associated with computing,
17 reviewing, and paying distributions from the Gross Settlement Amount, all costs
18 and fees associated with preparing any tax returns and any other filings required
19 by any governmental taxing authority or agency, all costs and fees associated
20 with preparing any other notices, reports, or filings to be prepared in the course
21 of administering disbursements from the Gross Settlement Amount, and any
22 other costs and fees incurred and/or charged by the Settlement Administrator in
23 connection with the execution of its duties under this Stipulation.

24 (d) The Net Settlement Amount, which shall be distributed to Class Members and
25 allocated as follows: 50% to wages and 50% to interest and penalties. The wage
26 portion of all settlement payments shall be subject to Employment and Payroll
27 Taxes and shall be reported on IRS Form W-4. The non-wage portion will not
28 be subject to any Employment and Payroll Taxes and shall be reported on IRS

1 Form 1099. The above allocation is appropriate given the substantial non-wage
2 penalties sought under the Complaint, including the Class waiting time penalty
3 and wage statement claims for statutory penalties and the PAGA claim for civil
4 penalties.

5 (e) The PAGA Aggrieved Employee Amount shall be distributed pro rata to
6 Aggrieved Employees as their Individual PAGA Settlement Payments as set forth
7 in this Stipulation. The Settlement Administrator will report the Individual
8 PAGA Settlement Payment on a Form 1099, which it will provide to the
9 Aggrieved Employees and to the pertinent taxing authorities.

10 1.48.3. The Settlement Administrator shall compute the Individual Class Settlement
11 Payment for the Settlement Class Members and Individual PAGA Settlement Payment for the
12 Aggrieved Employees as follows:

13 (a) The payment of the Individual Class Settlement Payments will be calculated by
14 using the formulas set forth in Paragraph 1.55.1.

15 (b) The Settling Parties agree that the above-described formula and distribution
16 methods are reasonable and fair in light of the Settling Parties' investigation of
17 the claims of the Class and Aggrieved Employees, and the relative degree of
18 uncertainty, risk of outcome of further litigation, and difficulties and delays
19 inherent in such litigation of these claims.

20 1.48.4. The Settlement Administrator will be responsible for issuing to Plaintiff,
21 Settlement Class Members, Aggrieved Employees, and Class Counsel any W-2, 1099, or other tax
22 forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement
23 Administrator will be responsible for reporting each payment made on the Gross Settlement
24 Amount to the appropriate government authorities including the Internal Revenue Service as
25 required by law.

26 1.48.5. Defendant's payroll taxes shall be paid separately by Defendant in an
27 amount separate from the Gross Settlement Amount.

28 1.48.6. Defendant and Defendant's counsel make no representations or warranties

1 as to the tax treatment, consequences, or legal effect of the payments called for hereunder, and
2 Plaintiff and Class Members are not relying on any statement, representation, or calculation by
3 Defendant, Defendant's Counsel, or the Settlement Administrator in this regard. Nothing contained
4 in this Settlement is intended to constitute advice regarding taxes or taxability, nor shall anything
5 in this Settlement be relied on as such. Plaintiff, Participating Class Members, and Aggrieved
6 Employees understand and agree that, except for the payment of the employer's share of the payroll
7 taxes, Plaintiff, Participating Class Members, and Aggrieved Employees will be solely responsible
8 for correctly characterizing any compensation received under the Settlement on his/her personal
9 income tax returns and paying any and all taxes due for any and all amounts paid to them under the
10 Settlement. No Gross Settlement Amount funds will revert to Defendant.

11 1.48.7. Other than the withholding of employee's share of taxes with respect to the
12 wage portion of settlement payments, Plaintiff and the Class are solely responsible for the reporting
13 and payment of the employee's share of any federal, state, and/or local income or other tax or any
14 other withholdings due with respect to any other funds received as a part of this settlement, if any.
15 Plaintiff agrees to defend, indemnify and hold Defendant harmless for and against any damage or
16 tax penalty Defendant incurs as a result of the failure by the Class Representative to pay all taxes
17 due by his receipt of payments pursuant to this Stipulation. Class Counsel agrees to defend,
18 indemnify and hold Defendant harmless for and against any damage or tax penalty Defendant incurs
19 as a result of the failure by Class Counsel to pay all taxes due as a result of Class Counsel's receipt
20 of payments pursuant to this Stipulation.

21 1.48.8. The Settlement amounts paid to the Class Representative and the Settlement
22 Class shall be deemed not to have any effect on the eligibility for, or calculation of, any employee
23 benefits (e.g., bonus, vacations, holiday pay, 401(k) or matching benefits, retirement plans, etc.), if
24 any.

25 **C. Procedure for Approval and Implementation of Settlement.**

26 1.49 *Preliminary Approval.*

27 1.49.1. Plaintiff, through his counsel of record, shall file this Stipulation with the
28 Court with a Motion for Preliminary Approval of Class and PAGA Action Settlement. Plaintiff

1 and Class Counsel will be responsible for drafting the Motion for Preliminary Approval and will
2 provide a draft to Defendant's counsel for their review at least two (2) business days before the
3 filing deadline. The Parties will work in good faith to consider and implement any proposed
4 revisions to Plaintiff's Motion for Preliminary Approval. In accordance with Labor Code section
5 2699(1)(2), Class Counsel shall submit a copy of this proposed settlement to the LWDA on the
6 same date on which Plaintiff files the Motion for Preliminary Approval.

7 1.50 *Confidentiality*. Plaintiff and Class Counsel agree not to issue a press release or
8 otherwise notify the media about the terms of the Settlement or advertise or market any of the
9 terms of the Settlement through written, recorded or electronic communications. Plaintiff and
10 Class Counsel further agree that, if contacted regarding this case, they will state only that the
11 lawsuit exists and has been resolved. This provision is not intended to, and does not, limit Class
12 Counsel from responding to questions from and providing advice to Class Members regarding the
13 settlement after preliminary approval is granted.

14 1.51 *Notice to Class Members*.

15 1.51.1. If the Court grants Preliminary Approval, notice will be provided to Class
16 Members as follows:

17 1.51.2. Within twenty-one (21) calendar days after Preliminary Approval,
18 Defendant shall prepare a list ("Class List"), in an electronically usable format, for the Settlement
19 Administrator containing for each Class Member, to the extent Defendant has such information,
20 the following: the first, last, and middle name; Last Known Address; social security numbers;
21 total class member and PAGA Workweeks during the Class Period and PAGA Period. The Class
22 List, and any other data provided by Defendant to the Settlement Administrator shall be treated as
23 confidential and not subject to disclosure by the Settlement Administrator, except as necessary to
24 address disputed Workweeks, to respond to a specific inquiry from a Class Member to any third
25 party as required by the Court, and/or as otherwise necessary for the Settlement Administrator to
26 perform their obligations described in this Stipulation. Further, the Settlement Administrator shall
27 use commercially reasonable efforts to secure the data provided by Defendant at all times so as to
28 avoid inadvertent or unauthorized disclosure or use of such data other than as permitted by this

1 Stipulation and shall destroy the data (and all copies of it) in a complete and secure manner when
2 such data is no longer required for purposes of this Stipulation. At no time during the settlement
3 process will any Class Member's name, address, or social security number be filed with the
4 Court, except to the extent required in relation to any objections that are filed by Class Members
5 or to inform the Court of those individuals who are members of the Non-Settlement Class and
6 thus not bound by the Class portion of the settlement. The Settlement Administrator shall ensure
7 that the notices and any other communications to Class Members and Aggrieved Employees shall
8 not include the Class Members' and Aggrieved Employees' social security number, except for the
9 last four digits.

10 1.51.3. Within ten (10) business days after the Settlement Administrator's receipt
11 of the Class List, the Settlement Administrator will undertake the mailing of the Class Notice to
12 all Class Members via first class mail through the United States Postal Service, postage pre-paid.
13 The envelope containing the Class Notice shall bear the following phrase in bold type, ¼ inch
14 below the return address or ¼ inch above the addressee's address: RETURN SERVICE
15 REQUESTED. The envelope shall also bear the following phrase in the bottom left hand corner:
16 IMPORTANT – US FOODS, INC. CLASS ACTION SETTLEMENT INFORMATION.
17 PLEASE OPEN IMMEDIATELY. The mailing enclosing the Class Notice will not contain any
18 other materials. The Class Notice and its envelope or covering shall be marked to denote the
19 return address of the Settlement Administrator.

20 1.51.4. For Plaintiff, the Settlement Administrator shall mail the Class Notice to
21 Plaintiff in care of Class Counsel at Class Counsel's address.

22 1.51.5. Prior to mailing the Class Notice, the Settlement Administrator shall
23 undertake a NCOA check to ascertain the accuracy of the Last Known Address of the Class
24 Member. To the extent this process yields an Updated Address, the Updated Address shall
25 replace the Last Known Address and be treated as the new Last Known Address for purposes of
26 this Stipulation, for Class Notice mailing and mailing of settlement checks.

27 1.51.6. If a Class Member is known to be deceased, the Class Notice for that
28 deceased Class Member shall be mailed to the Last Known Address (or Updated Address, if

1 applicable) of the legal representative of the deceased Class Member's estate, to the extent
2 known.

3 1.51.7. Unless the Settlement Administrator receives a Class Notice returned from
4 the United States Postal Service for reasons discussed below in this paragraph, that Class Notice
5 shall be deemed mailed and received by the Class Member to whom it was sent five (5) calendar
6 days after mailing. In the event that, subsequent to the first mailing of a Class Notice, that Class
7 Notice is returned to the Settlement Administrator by the United States Postal Service as
8 undeliverable, the Settlement Administrator shall undertake an Experian Skip Tracing with respect
9 to the Class Member to attempt to ascertain the current address of the particular Class Member in
10 question and, if such an address is ascertained, the Settlement Administrator will re-send the Class
11 Notice to the newly-found address within three (3) business days of receipt of the returned Class
12 Notice. In either event, the Class Notice shall be deemed received once it is mailed for the second
13 time. In the event that, subsequent to the first mailing of a Class Notice and prior to the Opt Out
14 Deadline, that Notice is returned to the Settlement Administrator by the United States Postal
15 Service with a forwarding address for the recipient, the Settlement Administrator shall re-mail the
16 notice to that address within three (3) business days of receipt of the returned Class Notice, the
17 Class Notice will be deemed mailed and received at that point, and the forwarding address shall be
18 deemed the Updated Address for that Class Member. In any event, if the Settlement Administrator
19 does not receive notice from the United States Postal Service that a particular Class Notice to a
20 Class Member is undeliverable, or should be sent to a forwarding address, at least ten (10) calendar
21 days prior to the deadline for the Settlement Administrator to provide the Declaration of
22 Compliance, the notice procedures in this paragraph will be deemed to have been complied with as
23 to that Class Member and no further action need be taken by the Settlement Administrator with
24 regard to providing the Class Notice to that Class Member. In the event the Settlement
25 Administrator must re-mail any Class Notice pursuant to the provisions of this Paragraph due to
26 being returned, the Opt Out and Objection Deadlines shall be the later of fifteen (15) calendar days
27 from the date of the re-mailing of the Class Notice, or forty-five (45) days from the date of the
28 initial mailing. The Settlement Administrator shall include a cover letter with any re-mailing

1 informing the Class Member of the re-mailing of the Class Notice and, in the event of an extended
2 response deadline, that he or she has fifteen (15) calendar days from the date of the re-mailing
3 (which shall be the date the re-mailing of the Class Notice is postmarked) to postmark any response
4 allowed by the Stipulation and Class Notice, even if postmarked after the original Opt Out and
5 Objection Deadlines. Compliance with the procedures described in this paragraph shall constitute
6 due and sufficient notice to Class Members of this proposed settlement and of the Settlement
7 Hearing, and shall satisfy the requirements of due process. Nothing else shall be required of or
8 done by the Settling Parties, Class Counsel, counsel for Defendant, or the Settlement Administrator
9 to provide notice of the proposed settlement and the Settlement Hearing.

10 1.51.8. All Settlement Class Members will be bound by all terms of the Joint
11 Stipulation (including the Class Released Claims) and the Court's Preliminary Approval and Final
12 Approval orders and final Judgment, unless the Class Member submits a timely and valid Opt Out.
13 However, any Class Member who submits an Opt Out will still remain bound by the PAGA portion
14 of the Settlement Agreement, including the PAGA Released Claims, to the extent the Class
15 Member also is an Aggrieved Employee. When the Final Approval Order and judgment become
16 final, Aggrieved Employees will be deemed to have released the PAGA Released Claims.

17 1.51.9. No later than fourteen (14) calendar days after the Opt Out Deadline, the
18 Settlement Administrator shall provide Class Counsel and counsel for Defendant with a declaration
19 attesting to completion of the notice process, including any attempts to obtain Updated Addresses
20 for, and the re-sending of, any returned Class Notices, including the steps set forth in Paragraph
21 1.47 ("Declaration of Compliance"), which shall be filed with the Court by Class Counsel.

22 1.52 *Responses to the Notice of Proposed Class Action Settlement.*

23 1.52.1. Participation at Class Members' Own Expense: Pursuant to California Rule
24 of Court 3.766(d)(5), Class Members have the option to enter an appearance in the Litigation at
25 their own expense by obtaining their own attorney(s). Class Members who choose this option will
26 be responsible for any attorneys' fees or costs incurred as a result of this election. The Class Notice
27 will advise Class Members of this option.

28 1.52.2. Objections to Settlement: Class Members who do not opt-out may also

1 object to the settlement by submitting by mail a written objection to the Settlement Administrator
2 no later than the Objection Deadline. The written objection must be signed and dated, and
3 additionally state the Class Member's name, dates of employment as an employee of Defendant,
4 the case name and number (*Felipe Osorio v. US FOODS, INC. WHICH WILL DO BUSINESS IN*
5 *CALIFORNIA AS U.S. FOODSERVICE, INC., et al*, Case No. 20STCV46858), and the basis for
6 the objection. A Class Member who objects to the settlement will still be considered a Member of
7 the Settlement Class. If any objecting Class Member wishes to speak at the Settlement Hearing,
8 he or she may do so. A written objection or notice of intent to appear is not required should a Class
9 Member wish to orally object.

10 1.52.3. Opting Out of Settlement: Class Members may elect to Opt Out of the class
11 portion of the settlement and, thus, exclude themselves from the Settlement Class. Class Members
12 who wish to exercise this option must send to the Settlement Administrator a signed and completed
13 Opt Out request in writing, which clearly states that the Class Member wishes to be excluded from
14 the Settlement of *Felipe Osorio v. US FOODS, INC. WHICH WILL DO BUSINESS IN*
15 *CALIFORNIA AS U.S. FOODSERVICE, INC., et al*, Case No. 20STCV46858, and which must be
16 postmarked on or before the Opt Out Deadline. If a proper Opt Out request is not received by the
17 Settlement Administrator from a Class Member on or before the Opt Out Deadline, then that Class
18 Member will be deemed to have forever waived his or her right to Opt Out of the Settlement Class.
19 The Class Notice will advise Class Members of the option to Opt Out of the settlement and will
20 contain instructions on how to do so. Class Members who do not properly request exclusion from
21 the class action settlement by submitting valid and timely Opt Out requests shall be deemed
22 Members of the Settlement Class. Class Members who do properly request exclusion from the
23 class action settlement by submitting a valid and timely Opt Out request shall not be bound by the
24 terms of the settlement (other than as it applies to the PAGA claim with respect to the Aggrieved
25 Employees), shall not be allowed to object to this settlement, and shall not be entitled to any
26 benefits as a result of this settlement (except for Aggrieved Employees who retain a right to receive
27 a *pro rata* share of the portion of the PAGA Settlement Amount allocated to the Aggrieved
28 Employees). If the Court approves the compromise of the PAGA claim, all Aggrieved Employees

1 are bound by the Court's resolution of that claim. Class Members who are also Aggrieved
2 Employees submitting a valid and timely Opt Out request will nevertheless receive their *pro rata*
3 share of the PAGA Aggrieved Employee Amount.

4 1.52.4. Class Members who do not submit a timely and valid Opt Out of the
5 Settlement Class shall be deemed Members of the Settlement Class and shall be bound by the
6 Judgment.

7 1.52.5. In the event that any Class Member timely submits an Opt Out request, but
8 it is deficient, as soon as possible but not later than five (5) business days of the Settlement
9 Administrator's receipt of such Opt Out request, the Settlement Administrator shall send by first
10 class, postage pre-paid, via USPS mail a notice to such Class Member informing him or her of the
11 deficiency and that he or she has ten (10) calendar days from the date of the notice (which shall be
12 the date the notice is mailed) to cure the deficiency and postmark and mail the Opt Out request,
13 even if postmarked after the Opt Out Deadline. The Settlement Administrator shall also copy
14 counsel for Defendant with any such notices of deficiency.

15 1.52.6. The Settling Parties agree that the Opt Out and Objection Deadlines shall
16 not be extended, and no untimely submissions will be honored, under any circumstances, unless
17 mutually agreed to by the Settling Parties. Notwithstanding the forgoing, the Court may order that
18 a Class Member will be allowed to extend the Opt Out and Objection Deadlines for himself or
19 herself upon a showing of legal incapacity or incarceration during the notice period.

20 1.53 *Post Settlement Administration Period Events and Settlement Fairness Hearing.*

21 1.53.1. Within thirty (30) calendar days after the Opt Out Deadline, the Settlement
22 Administrator shall calculate the final Individual Class Settlement Payment and/or Individual
23 PAGA Settlement Payment to be paid to each Settlement Class Member and/or Aggrieved
24 Employee, respectively, and prepare a final statement of such for each Class Member and
25 Aggrieved Employee.

26 1.53.2. On the date set forth in the Preliminary Approval Order and Class Notice, a
27 Settlement Hearing shall be held before the Court in order to: (1) review this Stipulation and
28 whether the Court should give it final approval; (2) consider any objections made timely (i.e., by

1 the Objection Deadline); (3) consider Class Counsel's application for an award of attorneys' fees,
2 reimbursements for costs and expenses, and Plaintiff's service award. At the Settlement Hearing,
3 Plaintiff shall request the Court to give final approval to this Stipulation and shall submit to the
4 Court a proposed Final Approval Order and Judgment to be entered in the Litigation. The Settling
5 Parties shall take all reasonable efforts to secure entry of the Final Approval Order and Judgment.

6 1.54 *Nullification of the Stipulation.* If (a) the Court should for any reason fail to
7 approve this Joint Stipulation in the form agreed to by the Parties, or (b) the Court should for any
8 reason fail to enter a judgment in the Action, or (c) the judgment is reversed, modified, or declared
9 or rendered void, this Joint Stipulation will be null and void. Invalidation of any material portion
10 of this Joint Stipulation will invalidate this Joint Stipulation in its entirety, unless the Parties
11 subsequently agree in writing that the remaining provisions of the Joint Stipulation are to remain
12 in full force and effect. "Material" terms include, but are not limited to, the Gross Settlement
13 Amount, the Class Released Claims, the PAGA Released Claims, and the Released Parties.

14 The Parties agree to stipulate to class action certification for purposes of the Settlement
15 only. If, for any reason, the Settlement is not approved, the stipulation to certification will be void
16 and the Court shall, either *sua sponte* or on the motion of any party, decertify the class. The Parties
17 further agree that certification for purposes of the Settlement is not an admission that class action
18 certification is proper under the standards applied to contested certification motions, and that this
19 Joint Stipulation will not be admissible in this or any other proceeding as evidence that either (i) a
20 class action should be certified, or (ii) Defendant is liable to Plaintiff or any Class Member, other
21 than according to the Settlement's terms.

22 If the number of Class Members who submit valid Requests for Exclusion reaches 5%,
23 Defendant may rescind this Joint Stipulation. If Defendant rescinds, it must do so in writing to
24 Class Counsel.

25 If the Joint Stipulation is terminated, nullified, or rescinded, then: (i) neither this Joint
26 Stipulation, nor any of the related negotiations or proceedings, will be of any force or effect, and
27 no Party shall be bound by any of its terms; (ii) the Settlement Agreement and all negotiations,
28 statements, and proceedings relating thereto shall be without prejudice to the rights of any of the

1 Parties, all of whom shall be restored to their respective positions in the Action prior to the
2 execution of the Settlement Agreement; (iii) Defendant shall have no obligation to make any
3 payments to any Party, Class Member, Aggrieved Employee, or attorney; (iv) the terminating
4 Party shall pay the Settlement Administrator for services rendered up to the date the Settlement
5 Administrator is notified that the settlement has been terminated; (v) the Preliminary Approval
6 Order, Final Approval Order and Judgment, including any order certifying the Class, shall be
7 vacated; (vi) neither this Settlement Agreement, nor any ancillary documents, actions, statements
8 or filings in furtherance of the settlement (including all matters associated with the mediation)
9 shall be admissible or offered into evidence in the Action or any other action for any purpose
10 whatsoever; and (vii) any documents generated to bring the settlement into effect, will be null and
11 void, and any order or judgment entered by the Court in furtherance of this Settlement Agreement
12 will likewise be treated as void from the beginning.

13 1.55 *Distribution of Settlement Proceeds*: The Settlement Administrator will keep
14 Defendant's counsel and Class Counsel apprised of all distributions of the Gross Settlement
15 Amount. No person will have any claim against Defendant, Defendant's counsel, Plaintiff, Class
16 Counsel, or the Settlement Administrator based on distributions and payments made under this Joint
17 Stipulation. Distribution of the Gross Settlement Amount will be as follows:

18 1.56 Within fifteen (15) business days after the Settlement Administrator's receipt of the
19 Gross Settlement Amount, the Settlement Administrator will pay the Attorneys' Fees and Costs
20 awarded to Class Counsel, the Plaintiff's Service Award, the LWDA Payment to the LWDA, and
21 the Settlement Administration Costs, based on how the Court rules at the Final Approval Hearing.
22 It also will pay the Individual Class Settlement Payments and Individual PAGA Settlement
23 Payments as set forth below.

24 1.56.1. Individual Class Settlement Payments to Settlement Class Members: The
25 Settlement Administrator will calculate the Individual Class Settlement Payments to Settlement
26 Class Members. The Individual Class Settlement Payments to Settlement Class Members will be
27 made pro rata based on the number of Workweeks that each Settlement Class Member worked
28 during the Class Period. Individual Class Settlement Payments will be calculated as follows:

1 [(Settlement Class Member's Workweeks) ÷ (total of all Settlement Class Members'
2 Workweeks))] x [Net Settlement Amount].

3 The Settlement Administrator will calculate the Individual PAGA Settlement Payments to
4 Aggrieved Employees. The Individual PAGA Settlement Payments to Aggrieved Employees will
5 be made pro rata based on the number of Workweeks that each Aggrieved Employee worked during
6 the PAGA Period. Individual PAGA Settlement Payments will be calculated as follows:
7 [(Aggrieved Employee's Workweeks) ÷ (total of all Aggrieved Employees' Workweeks)] x [PAGA
8 Aggrieved Employee Amount].

9 To the extent a Settlement Class Member is also an Aggrieved Employee, he/she shall
10 receive his/her Individual Class Settlement Payment and Individual PAGA Settlement Payment in
11 the same check. Any Class Member who submits an Opt-Out will remain bound by the PAGA
12 portion of the Settlement Agreement, including the PAGA Released Claims, to the extent the Class
13 Member also is an Aggrieved Employee and will still receive an Individual PAGA Settlement
14 Payment for this portion.

15 The Individual Class Settlement Payments to Settlement Class Members and the Individual
16 PAGA Settlement Payments to Aggrieved Employees will be paid within fifteen (15) business days
17 after the Settlement Administrator's receipt of the Gross Settlement Amount.

18 The payments to Settlement Class Members and Aggrieved Employees shall be transmitted
19 by U.S. Mail to the last-known addresses. The settlement payment checks to Settlement Class
20 Members shall contain language in the endorsement section which states:

21 The cashing, deposit, or negotiation of this settlement check shall be deemed to be
22 your consent in writing to become a party to this action for the purposes of
23 effectuating the settlement and release of claims arising under the Fair Labor
24 Standards Act ("FLSA") as described in the Settlement Agreement in *Felipe Osorio*
25 *v. US FOODS, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS U.S.*
26 *FOODSERVICE, INC., et al*, Los Angeles County Superior Court, Case No.
27 20STCV46858.

28 1.56.2. Uncashed Settlement Checks: Any checks issued to Settlement Class

Members and/or Aggrieved Employees shall be negotiable for at least one-hundred and eighty (180) calendar days from the date the checks are mailed. Within sixty (60) calendar days after the last day for Settlement Class Members to negotiate their respective settlement payments, any amounts allocated to Settlement Class Members that were not negotiated shall be directed to the State Controller's Office under the Unclaimed Property statutes. Settlement Class Members and Aggrieved Employees whose Individual Class Settlement Payment and/or Individual PAGA Settlement Payments checks are cancelled or remain uncashed shall, nevertheless, be bound by this Settlement. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount and PAGA Aggrieved Employee Amount will be paid out to Settlement Class Members and Aggrieved Employees, whether or not they all cash their settlement checks. Defendant will not be required to pay any interest on said amounts.

1.57 *Releases.*

1.57.1. Release of Claims by the Class: Upon Defendant fully funding the Gross Settlement Amount, Plaintiff and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Parties of all Class Released Claims during the Class Period. As to any Settlement Class Member who cashes the check representing their Individual Class Settlement Payment, the signing and negotiation of that check shall serve as the Settlement Class Member's consent to join the action for purposes of releasing claims arising under the FLSA that are related to the claims stated in the Action, implicitly or explicitly.

1.57.2. All Aggrieved Employees and the State of California, whether electing to Opt Out from the Settlement or not, will be deemed to have fully released and discharged the Released Parties of the PAGA Released Claims when the Final Approval Order and judgment become final. Plaintiff shall serve a notice of settlement on the California Labor and Workforce Development Agency at the same time Plaintiff files the motion for preliminary approval (Cal. Labor Code § 2699(1)(2)). Plaintiff shall serve any Judgment within 10 days after entry of same on the California Labor and Workforce Development Agency (Cal. Labor Code § 2699(1)(3)).

1.57.3. General Release of Claims by Plaintiff: In addition to the Class Released Claims applicable to the Settlement Class Members and the PAGA Released Claims applicable to the Aggrieved Employees, and in consideration for the Service Award, Plaintiff releases the Released Parties from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or violation of any local, state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any of the Released Parties committed or omitted through the Effective Date. This release is intended to have the broadest possible application but excludes claims for workers' compensation benefits, claims for unemployment benefits, and any current and/or future claims that are unwaivable as a matter of law. Nothing in this Agreement is intended to or shall be interpreted: (i) to restrict or otherwise interfere with Plaintiff's obligation to testify truthfully in any forum; or (ii) to restrict or otherwise interfere with Plaintiff's right and/or obligation to contact, cooperate with, provide information to, or participate in any investigation conducted by, any government agency or commission. Plaintiff's release as set forth herein includes a waiver of all rights under California Civil Code section 1542, which includes a release of all known and unknown claims against the Released Parties that have been alleged or could have been alleged arising out of the facts, circumstances, causes of action, and primary rights alleged in the Action. Civil Code section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING 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.

Upon the Effective Date and Defendant fully funding the Gross Settlement Amount, Plaintiff will be deemed to have expressly waived his rights under Civil Code section 1542, as set forth above. Plaintiff's execution of this Joint Stipulation will be deemed a consent by Plaintiff to this general release of claims and Section 1542 waiver.

1.58 *Miscellaneous Provisions.*

1.58.1. No Person shall have any claim against the Class Representative, Class Counsel, the Settlement Administrator, or any of the Released Parties based on the payments made or other actions taken substantially in accordance with this Stipulation and the settlement contained herein or further orders of the Court.

1.58.2. This settlement shall result in the release by Settlement Class Members of Released Claims, and with respect to the PAGA Settlement Employees, the Released Claims shall include those claims arising under PAGA. The Settling Parties and their counsel agree that Defendant's payment of \$75,000 to the LWDA for its share of the PAGA Penalties (75%) pursuant to PAGA is appropriate and proper consideration in the overall context of this Stipulation.

In the event that the Stipulation is not approved by the Court, after all reasonable steps to cure have been exhausted, or the settlement set forth in the Stipulation is terminated, cancelled, declared void, or fails to become effective in accordance with its terms, or if the Judgment does not become a Final Judgment, or to the extent cancellation is otherwise provided for in this Stipulation, the Settling Parties shall resume the Litigation at that time as if no Stipulation had been entered. In such event, the terms and provisions of the Stipulation shall have no further force and effect with respect to the Settling Parties and shall not be used in this Litigation or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated. Notwithstanding any other provision of this Stipulation, if the Court should fail to award attorneys' fees to Class Counsel in the full amount provided for in this Stipulation, no order of the Court or modification of any order of the Court concerning the amount of any attorneys' fees to be paid by Defendant to Class Counsel pursuant to this settlement shall constitute grounds for cancellation or termination of the Stipulation or grounds for limiting any other provision of the Judgment. It is agreed that no order of the Court, including any order concerning attorneys' fees, may alter or otherwise increase the Gross Settlement Amount.

1.58.3. Remand and Tolling. Plaintiff and Defendant agree that, for settlement purposes only, the matter was remanded to California Superior Court County of Los Angeles. This was in lieu of dismissal of the federal court lawsuit without prejudice and refiling of

1 complaint in state court for approval purposes. While Defendant believes this conditional remand
2 afforded Plaintiff all the protections he might otherwise obtain from a tolling agreement, the
3 parties nonetheless agree that Plaintiff's claims and the claims of Settlement Class Members
4 during the respective time periods listed in Section 1.4 are tolled while the parties negotiate a
5 settlement agreement and seek court approval thereof. Should settlement not receive final
6 approval, Plaintiff must not oppose removal back to federal court.

7 1.58.4. Plaintiff and Class Counsel acknowledge and agree that (1) no provision of
8 this Stipulation, and no written communication or disclosure between and among the Settling
9 Parties or their attorneys and other advisors, is or was intended to be, nor shall any such
10 communications or disclosure constitute or be construed as, or relied upon as, tax advice within
11 the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended);
12 and (2) Plaintiff and Class Counsel have relied exclusively upon his or their own independent legal
13 and tax counsel for advice in connection with this Stipulation and has not entered into this
14 Stipulation based on the recommendation of any other party or any attorney or advisor to another
15 attorney and furthermore is not entitled to rely upon any communication or disclosure from
16 Defendant to avoid tax penalty that may be imposed.

17 1.58.5. The Settling Parties (a) acknowledge that it is their intent to consummate
18 this agreement; (b) agree to cooperate to effectuate and implement all terms and conditions of the
19 Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of
20 the Stipulation; (c) agree to seek and to attempt to obtain Court approval for the Stipulation; and
21 (d) agree to reasonably work together to seek and attempt to obtain Court approval for the
22 Stipulation and final approval should the Court not grant approval upon the first presentation.

23 1.58.6. Unless otherwise ordered by the Court, in the event the Stipulation shall be
24 terminated, cancelled, declared void, or fails to become effective in accordance with its terms,
25 within ten (10) business days after written notification of such event, Defendant and Class Counsel
26 shall notify each other of this event in writing.

27 1.58.7. The Stipulation compromises claims which were contested and the subject
28 of a good faith dispute, and it shall not be deemed an admission by any of the Settling Parties as to

1 the merits of any claim or defense. The Settling Parties agree that the amounts paid in settlement
2 of the Litigation and the other terms of the settlement were negotiated at arms-length and in good
3 faith with sufficient information by the Settling Parties and reflect a settlement that was reached
4 voluntarily after consultation with competent legal counsel. This Stipulation and compliance with
5 this Stipulation shall not be construed as an admission, concession, or indication by Settling Parties
6 with respect to fault or liability whatsoever for the claims asserted in the Litigation, or as an
7 admission by Settling Parties that the Litigation is or is not appropriate for class certification other
8 than for purposes of class settlement as described within this Stipulation.

9 1.58.8. Escalator Clause: Defendant represents that there are 15,514 eligible pay
10 periods as of August 27, 2021. If the actual number of eligible pay periods increases by more than
11 10% from that figure, then US Foods shall increase the Gross Settlement Amount on a proportional
12 basis (e.g., if there is a 11% increase in the number of eligible pay periods, US Foods will increase
13 the Gross Settlement Amount by 1%, if there is a 12% increase, the Gross Settlement Amount will
14 increase by 2%, etc.). The Stipulation may be amended or modified only by a written instrument
15 signed by or on behalf of all Settling Parties or their respective successors-in-interest.

16 1.58.9. The Stipulation constitutes the entire agreement among the Settling Parties
17 hereto and no representations, warranties, or inducements have been made to any party concerning
18 the Stipulation or its exhibits other than the representations, warranties, and covenants contained
19 and memorialized in such documents. Except as otherwise provided herein, each party shall bear
20 its own costs.

21 1.58.10. Class Counsel, on behalf of the Settlement Class, to the extent
22 authorized and ordered by the Court, shall take all appropriate action required or permitted to be
23 taken by the Settlement Class pursuant to the Stipulation to effect its terms and shall also enter into
24 any modifications or amendments to the Stipulation on behalf of the Settlement Class which they
25 deem appropriate.

26 1.58.11. Each counsel or other Person executing the Stipulation or any of its
27 exhibits on behalf of any Settling Parties hereby warrants that such Person has full and express
28 authority to do so.

1 1.58.12. The Stipulation may be executed in one or more counterparts. All
2 executed counterparts and each of them shall be deemed to be one and the same instrument. A
3 complete set of executed counterparts shall be filed with the Court. A facsimile signature, emailed
4 signature or electronic signature shall be treated as an original signature for all purposes.

5 1.58.13. The Stipulation shall be binding upon, and inure to the benefit of, the
6 successors and assigns of the parties hereto; however, this Stipulation is not designed to and does
7 not create any third-party beneficiaries unless otherwise specifically provided herein.

8 1.58.14. The Court shall retain jurisdiction with respect to implementation and
9 enforcement of the terms of the Stipulation, and all parties hereto submit to the jurisdiction of the
10 Court for purposes of implementing and enforcing the settlement embodied in the Stipulation. The
11 parties further stipulate and agree that the Court will retain jurisdiction to enforce the terms of this
12 Agreement following the entry of the Judgment pursuant to California *Code of Civil Procedure*
13 section 664.6.

14 1.58.15. The Stipulation and the exhibits hereto shall be considered to have
15 been negotiated, executed, and delivered, and to have been wholly performed, in the State of
16 California, and the rights and obligations of the parties to the Stipulation shall be construed and
17 enforced in accordance with, and governed by, the internal, substantive laws of the State of
18 California without regard to principles of conflicts of law.

19 1.58.16. The language of all parts of this Stipulation shall in all cases be
20 construed as a whole, according to its fair meaning, and not strictly for or against either party. No
21 party shall be deemed the drafter of this Stipulation. The parties acknowledge that the terms of the
22 Stipulation are contractual and are the product of negotiations between the parties and their counsel.
23 Each party and his/its counsel cooperated in the drafting and preparation of the Stipulation. In any
24 construction to be made of the Stipulation, the Stipulation shall not be construed against any party
25 and the canon of contract interpretation set forth in California *Civil Code* section 1654 shall not be
26 applied.

27 1.58.17. Should any deadlines set forth in the Stipulation require any action
28 to be taken on a weekend or a Court holiday, then the action may be taken on the next business

1 day, unless otherwise specified by law or rule of Court, except that should the Opt Out Deadline
2 or Objection Deadline (or extension(s) thereof specified in the Stipulation relating to a deficiency
3 notice or a re-mailing) fall on a Saturday and regular U.S. Mail service is in operation that day,
4 then no further extension pursuant to this paragraph shall apply to these specific deadlines.

5 1.58.18. The Parties agree not to disclose the details of this settlement until
6 Plaintiff files his motion for preliminary approval of the settlement with the Court. Provided,
7 however, that settlement details may be disclosed as reasonably necessary to consummate this
8 settlement, and for US Foods' legitimate business, tax, or compliance reasons. Plaintiff and his
9 counsel agree not to issue a press release or otherwise notify the media about the terms of the
10 Settlement or advertise or market any of the terms of the Settlement through written, recorded or
11 electronic communications. Plaintiff and his counsel further agree that, if contacted regarding
12 this case, they will state only that the lawsuit exists and has been resolved. This provision is not
13 intended to, and does not, limit Plaintiff's counsel from responding to questions from and
14 providing advice to Class Members regarding the settlement after preliminary approval is
15 granted.

16
17 **THIS STIPULATION HAS BEEN READ AND AGREED TO INDIVIDUALLY**
18 **AND ON BEHALF OF THE PROPOSED CLASS:**

19 DocuSigned by:
20 *Felipe Osorio*
3ACF33C7E61B4CA...

Dated: 8/18/2022

21 Plaintiff Felipe Osorio
22
23
24

25 *(Defendant's signature on next page)*
26
27
28

1 **THIS STIPULATION HAS BEEN READ AND AGREED TO ON BEHALF OF**
2 **DEFENDANTS**

3
4 

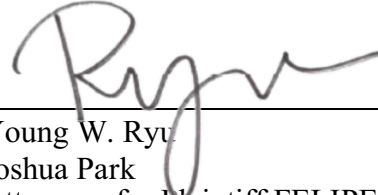
Dated: 8/17/2022

5 Andrew M. Johnstone, Associate General Counsel
6 Defendant US FOODS, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS U.S.
7 FOODSERVICE, INC.

8 **APPROVED AS TO FORM**

9 Dated: 8/22/222

LOYR, APC

10 

11 Young W. Ryu
12 Joshua Park
13 Attorneys for Plaintiff FELIPE OSORIO

14 Dated: 8/17/22

ORRICK, HERRINGTON & SUTCLIFFE, LLP

15 

16 Joseph C. Liburt
17 Katie E. Briscoe
18 Annie H. Chen
19 Luba Lerner
20 Attorneys for Defendant US FOODS, INC.