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**SUPERIOR COURT OF THE STATE OF CALIFORNIA****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

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

Complaint Filed: December 8, 2020

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

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

This Joint Stipulation of Class Action Settlement and Release, including all associated

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

16 Defendant adamantly denies all of the claims as to liability, damages, and restitution as  
17 well as the class allegations asserted in the Litigation. Defendant has agreed to resolve this  
18 Litigation via this Stipulation, but to the extent this Stipulation is deemed void or does not take  
19 effect, Defendant does not waive, but rather expressly reserves, all rights to challenge all such  
20 claims and allegations in the Litigation upon all procedural and factual grounds, including without  
21 limitation the ability to challenge class treatment or PAGA manageability on any grounds or to  
22 assert any and all defenses or privileges. Plaintiff and his counsel agree that Defendant retains and  
23 reserves these rights. In particular, Plaintiff and his counsel waive and agree not to argue or to  
24 present any argument that Defendant would be estopped from contesting class certification and  
25 PAGA manageability because it has entered into this Stipulation. In addition, the settling parties  
26 recognize and agree that under California law, which is applicable here, courts impose a lesser  
27 burden for certification for settlement classes than they do for contested classes.

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

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

### **III. Procedural Posture.**

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

1. FAILURE TO COMPENSATE ALL HOURS WORKED IN VIOLATION OF INDUSTRIAL WELFARE COMMISSION ORDER NO. 4 AND CAL. LABOR CODE §§ 200, 226, 500, 510, 1194, 1197, AND 1198;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE §§ 1182.12, 1194, 1194.2, 1197;
3. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CAL. LABOR CODE § 1194, *ET SEQ.*;
4. FAILURE TO PROVIDE PROPER WAGE STATEMENT IN VIOLATION OF CAL. LABOR CODE § 226;
5. VIOLATION OF LABOR CODE §§ 2698, *ET SEQ.* (“PAGA”); AND
6. VIOLATIONS OF CAL. B&P CODE §§ 17200, *ET SEQ.*;

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

All individuals who have been, or currently are, employed by Defendant as “non-exempt employees” during the Class Period. Excluded from the Class are employees who work only administrative and managerial functions as exempt employees.”

In accordance with the complex civil division procedure in Los Angeles Superior Court, the Court imposed a stay on all discovery and motion practice prior to the initial Case

1 Management Conference. On January 8, 2021, Defendant timely removed this matter to Federal  
2 Court. Subsequently, the Parties agreed to attempt a resolution of this matter through private  
3 mediation. In preparation thereof, the parties exchanged formal discovery through initial  
4 disclosures. The Parties also agreed to exchange robust informal discovery, including pertinent  
5 policies and procedures of Defendant, sample class member/allegedly aggrieved employees time  
6 and payroll records, class statistics, and other class data. The Parties conducted their own  
7 evaluation of potential recoveries based on the claims alleged in the Litigation and from the  
8 exchange of information, with Plaintiff engaging an expert to conduct a damages analysis.

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

19 **IV. Defendant's Denial of Wrongdoing and Benefits of Settlement**

20 Whether or not the settlement is finally approved, by entering into this Stipulation,  
21 Defendant does not admit, and specifically denies, all claims in this Action and further denies class  
22 or PAGA representative treatment is appropriate for any purpose other than this Settlement.  
23 Defendant contends it complied with all applicable state, federal, and local laws. It is Defendant's  
24 position that, if litigation continued, class certification would be inappropriate and that the named  
25 Plaintiff is not an adequate class or PAGA representative, his claims are not typical of the Class  
26 Members, and individual issues predominate over common ones. However, Defendant has  
27 concluded that further litigation would be protracted and expensive. Thus, Defendant has  
28 determined it is desirable that this Litigation be fully and finally settled—solely for the purposes of

1 compromising highly disputed claims.

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

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

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

18 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the  
19 Plaintiff, in his individual capacity, as a class representative, and as a private attorney general, on  
20 the one hand, and Defendant on the other hand. Subject to the Court's approval, with the  
21 assistance of their respective counsel of record, that, as among the Settling Parties, including all  
22 members of the Settlement Class the Litigation and the Released Claims shall be finally and fully  
23 compromised, settled, and released, subject to the terms and conditions of the Stipulation and the  
24 Judgment and as approved by the Court.

25 **A. Definitions**

26 As used in all parts of this Stipulation (including the exhibits which are incorporated as part  
27 of the Stipulation), the following terms have the meanings specified below. To the extent that any  
28 terms or phrases used in this Stipulation are not specifically defined in this section but are defined

1 elsewhere in this Stipulation, they are incorporated herein by reference.

2 1.1 "NCOA Check" means a search based on a National Change of Address Database  
3 performed by the Settlement Administrator for Class Members' most current  
4 address based on the Class Member information provided by Defendant.

5 1.2 "Settlement Administrator" means the third-party claims administration firm  
6 mutually selected by the parties, Simpluris, Inc.

7 1.3 "Settlement Administrator Costs" means all fees, costs, and expenses as approved  
8 by the Court relating to the administration of the Settlement in this Litigation,  
9 including without limitation, printing and mailing the Notice of Proposed Class  
10 Action Settlement, receiving and processing Opt-Outs, translating the Notice of  
11 Proposed Class Action Settlement into Spanish, calculating and determining  
12 payments and percentages, tax reporting, distributing the Individual Class  
13 Settlement Payments and Individual PAGA Settlement Payments, regularly  
14 updating counsel on the status of administration, and the accounting and  
15 maintenance of the Settlement Fund Account. The Settlement Administrator's Fees  
16 will be paid from the Gross Settlement Amount, including, if necessary, any such  
17 costs in excess of the amount represented by the Settlement Administrator as being  
18 the maximum costs necessary to administer the Settlement. The Settlement  
19 Administrator's Fees are currently estimated to be Ten Thousand Seven Hundred  
20 Fifty Dollars Dollars (\$10,750). Any Settlement Administrator's Fees that exceed  
21 the amount approved by the Court shall be subtracted from the Gross Settlement  
22 Amount.

23 1.4 "Aggrieved Employees," "Class" or "Class Members" including the following  
24 individuals:

- 25 a. All current and former California non-exempt, non-driver employees based  
26 out of the Corona facility who completed at least one wellness check in  
27 California at any time between April 15, 2020 through July 12, 2020;  
28 b. All current and former California non-exempt, driver employees based out

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

21 1.5 “Class Counsel” and “Plaintiff’s Counsel” means:

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1.6 “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 \$15,000 ; (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 .

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

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

1.9 “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.

1.10 “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.

- 1.11 "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.
- 1.12 "Individual PAGA Settlement Payment" shall mean the pro rata portion of the PAGA Aggrieved Employee Amount distributable to each Aggrieved Employee.
- 1.13 "Felipe Osorio" means Felipe Osorio, the named plaintiff in the Litigation and Class Representative.
- 1.14 "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).
- 1.15 "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.
- 1.16 "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).
- 1.17 "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.

1.18 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.

1.19 “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).

1.20 “Notice Mailing Deadline” means the deadline for the Settlement Administrator to mail the Class Notices to Class Members, which is ten (10) business days after the Settlement Administrator’s receipt of the Class List.

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

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

1.23 “Opt Out Deadline” means the deadline for a Class Member to Opt Out of the non-

PAGA portion of the settlement, which date shall be indicated on the Class Notices mailed by the Settlement Administrator and which shall be postmarked no later than forty five (45) calendar days after the Notice Mailing Deadline (or fifteen (15) days after the Settlement Administrator re-mails the Class Notice to the Class Member, whichever is later).

1.24 “Order of Final Approval and Entry of Judgment”, “Final Approval” or “Order Granting Final Approval of Settlement and Entry of Judgment” shall mean the date upon which the Court enters its Final Approval Order and Judgment rendered pursuant to this Stipulation, after having determined that the settlement is fair, adequate, and reasonable to the Class following notice to the Class and a hearing on the fairness of the settlement.

1.25 “PAGA Aggrieved Employee Amount” means the 25% (which is \$25,000) of the PAGA Settlement Amount that will be paid to Aggrieved Employees on a pro rata basis based on the Aggrieved Employees’ Workweeks during the PAGA Period.

1.26 “PAGA Settlement Amount” means, subject to court approval, the one hundred 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.

1.27 “Person” means a natural person.

1.28 “Plaintiff” shall mean Felipe Osorio, the named plaintiff in this Litigation.

1.29 “Preliminary Approval Date” shall mean the date on which the Court grants preliminary approval of the settlement.

1.30 “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

1 Preliminary Approval Order shall constitute an order certifying a provisional class  
2 for settlement purposes only pursuant to California Rule of Court 3.769(d) and an  
3 order setting a final approval/fairness hearing pursuant to California Rule of Court  
4 3.769(e).

5 1.31 "Reasonable Address Verification" shall mean the utilization of the National  
6 Change of Address Database maintained by the United States Postal Service to  
7 review the accuracy of and, if possible, update a Last Known Address Provided by  
8 Defendant to the Settlement Administrator.

9 1.32 "Class Released Claims" shall mean all claims, demands, rights, liabilities,  
10 penalties, fees, and causes of action that were or could have been asserted by reason  
11 of or in connection with any matter or fact set forth or referred to in the complaint  
12 (whether in tort, contract, statute or otherwise) during the time periods listed in  
13 Section 1.4, including but not limited to any claims based on the following  
14 allegations under any theory: failure to pay minimum, regular, or hourly wages,  
15 and/or alleged off-the-clock work; failure to pay overtime wages or accurate  
16 overtime wages; failure to pay timely wages during employment or upon  
17 separation; failure to provide accurate and/or complete wage statements; failure to  
18 maintain records; or violation of Cal. Bus. & Prof. Code section 17200 *et seq.* by  
19 engaging in the foregoing conduct. The Released Claims include any alleged  
20 violation of Labor Code sections 200, 201-204, 210, 218.5, 226, 500, 510, 558,  
21 1174, 1182.2, 1182.12, 1194, 1194.2, 1197, or 1198. The Final Judgment shall  
22 cover and bar each and every Settlement Class Member from asserting any of the  
23 Released Claims in the future against Defendant and its past or present officers,  
24 directors, shareholder, employees, agents, principals, heirs, representatives,  
25 accountants, auditors, attorneys, consultants, insurers, and their respective  
26 successors and predecessors in interest, assigns, subsidiaries, affiliates, and parents  
27 (the "Released Parties"). The Class Released Claims also include any claims that  
28 were or could have been asserted in the Action for unpaid wages, civil or statutory

penalties, interest, attorneys' fees, costs, injunctive relief, restitution, and equitable relief under California or federal statute, ordinance, regulation, common law, or other source of law, including but not limited to the California Labor Code, California Business and Professions Code, and California Civil Code, California Industrial Welfare Commission Wage Orders, and the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 216 *et seq.* All Class Members shall be bound by this release unless they formally request exclusion from this Settlement by submitting a valid and timely Request for Exclusion or comparable documentation. However, Class Members that do not negotiate their Individual Settlement Payment checks do not release any claims under the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 216 *et seq.*

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

1.33 "PAGA Period" means the same periods defined in section 1.4 above.

1.34 "PAGA Settlement Employees" shall mean any and all persons defined in Definition above.

1.35 "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.*

1.36 “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.

1.37 “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.

1.38 “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).

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

1.40 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.

1.41 “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.

1.42 “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.

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

1.44 “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.

1.45 “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**

### **1.46 *Gross Settlement Amount and Minimum Settlement Payments***

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

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

1 of this Stipulation.

2 1.47 *Allocation of Settlement Proceeds*

3 The Settlement Administrator will administer the settlement by distributing the Class  
4 Notice; performing an NCOA check; receiving, reviewing and tracking any Opt Out requests;  
5 adjudicating Class Members' and Aggrieved Employees' disputes over the Workweeks worked by  
6 Class Members and/or Aggrieved Employees; providing Class Counsel and counsel for Defendant  
7 with updates on the status (including Class Member names and percentages) of Opt Outs; handling  
8 inquiries about the calculation of the Individual Class Settlement Payments and Individual PAGA  
9 Settlement Payments; distributing Individual Class Settlement Payments, Individual PAGA  
10 Payments, and payments to other parties under the terms of the Stipulation; providing due  
11 diligence declarations for submission to the Court, as needed; and providing Defendant with the  
12 appropriate tax reporting documentation. The actions of the Settlement Administrator shall be  
13 governed by the terms of this Stipulation. The Settling Parties, through their counsel, may provide  
14 written information needed by the Settlement Administrator pursuant to the Stipulation.

15 1.47.1. Defendant, through the Settlement Administrator, shall pay no later than  
16 fifteen (15) calendar days after the receipt of the funds by the Settlement Administrator from  
17 Defendant: (1) the amount of attorneys' fees and litigation costs and expenses approved by the  
18 Court as set forth in subsection (a) below; (2) the Plaintiff's Service Award approved by the  
19 Court as set forth in subsection (b) below; (3) the LWDA Payment approved by the Court; (4) the  
20 Settlement Administration Fees approved by the Court as set forth in subsection (c) below; (5)  
21 payments to Settlement Class Members of their Individual Class Settlement Payments, according  
22 to the terms, conditions and procedures set forth in Paragraph 1.55.1 and as set forth in subsection  
23 (d) below; and (6) Individual PAGA Settlement Payments to Aggrieved Employees, according to  
24 the terms, conditions and procedures set forth in Paragraph 1.55.1 and as set forth in subsection  
25 (e) below.

26 1.47.2. The Gross Settlement Amount is inclusive of and will be allocated as  
27 follows, subject to Court Approval:

28 (a) Attorneys' Fees and Litigation Costs: Class Counsel shall submit their

1 Application for Award of Attorneys' Fees and Costs to the Court before the  
2 Settlement Hearing. Class Counsel will seek attorneys' fees not to exceed  
3 \$665,000.00 (1/3 of the Gross Settlement Amount) and reasonable litigation costs  
4 and expenses not to exceed \$25,000 from the Gross Settlement Amount, subject  
5 to court approval. Class Counsel shall serve Defendant with copies of all  
6 documents in support of their Application for Award of Attorneys' Fees and  
7 Costs. Defendant agrees not to oppose the Application for Award of Attorneys'  
8 Fees and Costs. Class Counsel and the Plaintiff agree to provide original signed  
9 W-9 forms to defense counsel. The Settlement Administrator will report the  
10 attorneys' fees on a Form 1099, which it will provide to Class Counsel and to the  
11 pertinent taxing authorities.

12 (b) Plaintiff's Service Award: Subject to Court approval, Plaintiff shall receive a  
13 service payment of \$20,000 in recognition of his contributions to the Litigation  
14 and his service to the Settlement Class, in addition to his Individual Class  
15 Settlement Payment and Individual PAGA Settlement Payment ("Plaintiff's  
16 Service Award"). Defendant agrees not to oppose the request for, or the amount  
17 of, Plaintiff's Service Award. Since it is the intent of the Settling Parties that the  
18 service award to the Class Representative is for his services on behalf of the  
19 Class, and in exchange for the general release set forth in Paragraph 1.56.3 and  
20 not wages, the Settlement Administrator will not withhold any taxes from the  
21 service awards. The Settlement Administrator will report the Service Award on  
22 a Form 1099, which it will provide to the Class Representative and to the  
23 pertinent taxing authorities. Plaintiff agrees to provide an original signed W-9  
24 form to defense counsel prior to issuance of the Class Representative Service  
25 Award. Plaintiff will be solely and legally responsible to pay any and all  
26 applicable taxes on the Service Award.

27 (c) Settlement Administration Costs: The Settlement Administrator shall be paid an  
28 amount which is expected to not exceed \$10,750 for all fees and costs relating to

1 the administration of this settlement, including but not limited to all the duties set  
2 forth in Paragraph 1.3, all tax document preparation, custodial fees and  
3 accounting fees, all costs and fees associated with preparing, issuing, and mailing  
4 any and all Class Notices, all costs and fees associated with computing,  
5 reviewing, and paying distributions from the Gross Settlement Amount, all costs  
6 and fees associated with preparing any tax returns and any other filings required  
7 by any governmental taxing authority or agency, all costs and fees associated  
8 with preparing any other notices, reports, or filings to be prepared in the course  
9 of administering disbursements from the Gross Settlement Amount, and any  
10 other costs and fees incurred and/or charged by the Settlement Administrator in  
11 connection with the execution of its duties under this Stipulation.

12 (d) The Net Settlement Amount, which shall be distributed to Class Members and  
13 allocated as follows: 50% to wages and 50% to interest and penalties. The wage  
14 portion of all settlement payments shall be subject to Employment and Payroll  
15 Taxes and shall be reported on IRS Form W-4. The non-wage portion will not  
16 be subject to any Employment and Payroll Taxes and shall be reported on IRS  
17 Form 1099; and

18 (e) The PAGA Aggrieved Employee Amount shall be distributed pro rata to  
19 Aggrieved Employees as their Individual PAGA Settlement Payments as set forth  
20 in this Stipulation.

21 1.47.3. The Settlement Administrator shall compute the Individual Class Settlement  
22 Payment for the Settlement Class Members and Individual PAGA Settlement Payment for the  
23 Aggrieved Employees as follows:

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

26 (b) The Settling Parties agree that the above-described formula and distribution  
27 methods are reasonable and fair in light of the Settling Parties' investigation of  
28 the claims of the Class and Aggrieved Employees, and the relative degree of

1                   uncertainty, risk of outcome of further litigation, and difficulties and delays  
2                   inherent in such litigation of these claims.

3                   1.47.4. The Settlement Administrator will be responsible for issuing to Plaintiff,  
4 Settlement Class Members, Aggrieved Employees, and Class Counsel any W-2, 1099, or other tax  
5 forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement  
6 Administrator will be responsible for reporting each payment made on the Gross Settlement  
7 Amount to the appropriate government authorities including the Internal Revenue Service as  
8 required by law.

9                   1.47.5. Defendant and Defendant's counsel make no representations or warranties  
10 as to the tax treatment, consequences, or legal effect of the payments called for hereunder, and  
11 Plaintiff and Class Members are not relying on any statement, representation, or calculation by  
12 Defendant, Defendant's Counsel, or the Settlement Administrator in this regard. Nothing  
13 contained in this Settlement is intended to constitute advice regarding taxes or taxability, nor  
14 shall anything in this Settlement be relied on as such. Plaintiff, Participating Class Members, and  
15 Aggrieved Employees understand and agree that, except for the payment of the employer's share  
16 of the payroll taxes, Plaintiff, Participating Class Members, and Aggrieved Employees will be  
17 solely responsible for correctly characterizing any compensation received under the Settlement  
18 on his/her personal income tax returns and paying any and all taxes due for any and all amounts  
19 paid to them under the Settlement. No Gross Settlement Amount funds will revert to Defendant.

20                   1.47.6. Other than the withholding of employee's and employer's share of taxes  
21 with respect to the wage portion of settlement payments, Plaintiff and the Class are solely  
22 responsible for the reporting and payment of the employee's share of any federal, state, and/or  
23 local income or other tax or any other withholdings due with respect to any other funds received as  
24 a part of this settlement, if any. Plaintiff agrees to defend, indemnify and hold Defendant harmless  
25 for and against any damage or tax penalty Defendant incurs as a result of the failure by the Class  
26 Representative to pay all taxes due by his receipt of payments pursuant to this Stipulation. Class  
27 Counsel agrees to defend, indemnify and hold Defendant harmless for and against any damage or  
28 tax penalty Defendant incurs as a result of the failure by Class Counsel to pay all taxes due as a

1 result of Class Counsel's receipt of payments pursuant to this Stipulation.

2 1.47.7. The Settlement amounts paid to the Class Representative and the Settlement  
3 Class shall be deemed not to have any effect on the eligibility for, or calculation of, any employee  
4 benefits (e.g., bonus, vacations, holiday pay, 401(k) or matching benefits, retirement plans, etc.), if  
5 any.

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

7 1.48 *Preliminary Approval.*

8 1.48.1. Plaintiff, through his counsel of record, shall file this Stipulation with the  
9 Court with a Motion for Preliminary Approval of Class and PAGA Action Settlement. Plaintiff  
10 and Class Counsel will be responsible for drafting the Motion for Preliminary Approval and will  
11 provide a draft to Defendant's counsel for their review at least two (2) business days before the  
12 filing deadline. The Parties will work in good faith to consider and implement any proposed  
13 revisions to Plaintiff's Motion for Preliminary Approval. In accordance with Labor Code section  
14 2699(1)(2), Class Counsel shall submit a copy of this proposed settlement to the LWDA on the  
15 same date on which Plaintiff files the Motion for Preliminary Approval.

16 1.49 *Confidentiality.* Plaintiff and Class Counsel agree not to issue a press release or  
17 otherwise notify the media about the terms of the Settlement or advertise or market any of the  
18 terms of the Settlement through written, recorded or electronic communications. Plaintiff and  
19 Class Counsel further agree that, if contacted regarding this case, they will state only that the  
20 lawsuit exists and has been resolved. This provision is not intended to, and does not, limit Class  
21 Counsel from responding to questions from and providing advice to Class Members regarding the  
22 settlement after preliminary approval is granted.

23 1.50 *Notice to Class Members.*

24 1.50.1. If the Court grants Preliminary Approval, notice will be provided to Class  
25 Members as follows:

26 1.50.2. Within twenty-one (21) calendar days after Preliminary Approval,  
27 Defendant shall prepare a list ("Class List"), in an electronically usable format, for the Settlement  
28 Administrator containing for each Class Member, to the extent Defendant has such information,

1 the following: the first, last, and middle name; Last Known Address; social security numbers;  
2 total class member and PAGA Workweeks during the Class Period and PAGA Period. The Class  
3 List, and any other data provided by Defendant to the Settlement Administrator shall be treated as  
4 confidential and not subject to disclosure by the Settlement Administrator, except as necessary to  
5 address disputed Workweeks, to respond to a specific inquiry from a Class Member to any third  
6 party as required by the Court, and/or as otherwise necessary for the Settlement Administrator to  
7 perform their obligations described in this Stipulation. Further, the Settlement Administrator shall  
8 use commercially reasonable efforts to secure the data provided by Defendant at all times so as to  
9 avoid inadvertent or unauthorized disclosure or use of such data other than as permitted by this  
10 Stipulation and shall destroy the data (and all copies of it) in a complete and secure manner when  
11 such data is no longer required for purposes of this Stipulation. At no time during the settlement  
12 process will any Class Member's name, address, or social security number be filed with the  
13 Court, except to the extent required in relation to any objections that are filed by Class Members  
14 or to inform the Court of those individuals who are members of the Non-Settlement Class and  
15 thus not bound by the Class portion of the settlement. The Settlement Administrator shall ensure  
16 that the notices and any other communications to Class Members and Aggrieved Employees shall  
17 not include the Class Members' and Aggrieved Employees' social security number, except for the  
18 last four digits.

19 1.50.3. Within ten (10) business days after the Settlement Administrator's receipt  
20 of the Class List, the Settlement Administrator will undertake the mailing of the Class Notice to  
21 all Class Members via first class mail through the United States Postal Service, postage pre-paid.  
22 The envelope containing the Class Notice shall bear the following phrase in bold type, ¼ inch  
23 below the return address or ¼ inch above the addressee's address: **RETURN SERVICE**  
24 **REQUESTED.** The envelope shall also bear the following phrase in the bottom left hand corner:  
25 **IMPORTANT – US FOODS, INC. CLASS ACTION SETTLEMENT INFORMATION.**  
26 **PLEASE OPEN IMMEDIATELY.** The mailing enclosing the Class Notice will not contain any  
27 other materials. The Class Notice and its envelope or covering shall be marked to denote the  
28 return address of the Settlement Administrator.

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

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

1.50.6. If a Class Member is known to be deceased, the Class Notice for that deceased Class Member shall be mailed to the Last Known Address (or Updated Address, if applicable) of the legal representative of the deceased Class Member's estate, to the extent known.

1.50.7. Unless the Settlement Administrator receives a Class Notice returned from the United States Postal Service for reasons discussed below in this paragraph, that Class Notice shall be deemed mailed and received by the Class Member to whom it was sent five (5) calendar days after mailing. In the event that subsequent to the first mailing of a Class Notice and prior to the Opt Out Deadline, that Class Notice is returned to the Settlement Administrator by the United States Postal Service as undeliverable, the Settlement Administrator shall undertake an Experian Skip Tracing with respect to the Class Member to attempt to ascertain the current address of the particular Class Member in question and, if such an address is ascertained, the Settlement Administrator will re-send the Class Notice to the newly-found address within three (3) business days of receipt of the returned Class Notice. In either event, the Class Notice shall be deemed received once it is mailed for the second time. In the event that subsequent to the first mailing of a Class Notice and on or after the Opt Out Deadline, a Class Notice is returned to the Settlement Administrator by the United States Postal Service as undeliverable, the Settlement Administrator shall be required to take no further action with that Class Notice and it shall be deemed to have been delivered. In the event that subsequent to the first mailing of a Class Notice and prior to the Opt Out Deadline that Notice is returned to the Settlement Administrator by the United States Postal Service with a forwarding address for the recipient, the Settlement Administrator shall re-

1 mail the notice to that address within three (3) business days of receipt of the returned Class Notice,  
2 the Class Notice will be deemed mailed and received at that point, and the forwarding address shall  
3 be deemed the Updated Address for that Class Member. In any event, if the Settlement  
4 Administrator does not receive notice from the United States Postal Service that a particular Class  
5 Notice to a Class Member is undeliverable, or should be sent to a forwarding address, at least ten  
6 (10) calendar days prior to the deadline for the Settlement Administrator to provide the Declaration  
7 of Compliance, the notice procedures in this paragraph will be deemed to have been complied with  
8 as to that Class Member and no further action need be taken by the Settlement Administrator with  
9 regard to providing the Class Notice to that Class Member. In the event the Settlement  
10 Administrator must re-mail any Class Notice pursuant to the provisions of this Paragraph due to  
11 being returned, the Opt Out and Objection Deadlines shall be the later of fifteen (15) calendar days  
12 from the date of the re-mailing of the Class Notice, or forty-five (45) days from the date of the  
13 initial mailing. The Settlement Administrator shall include a cover letter with any re-mailing  
14 informing the Class Member of the re-mailing of the Class Notice and, in the event of an extended  
15 response deadline, that he or she has fifteen (15) calendar days from the date of the re-mailing  
16 (which shall be the date the re-mailing of the Class Notice is postmarked) to postmark any response  
17 allowed by the Stipulation and Class Notice, even if postmarked after the original Opt Out and  
18 Objection Deadlines. Compliance with the procedures described in this paragraph shall constitute  
19 due and sufficient notice to Class Members of this proposed settlement and of the Settlement  
20 Hearing, and shall satisfy the requirements of due process. Nothing else shall be required of or  
21 done by the Settling Parties, Class Counsel, counsel for Defendant, or the Settlement Administrator  
22 to provide notice of the proposed settlement and the Settlement Hearing.

23 1.50.8. All Settlement Class Members will be bound by all terms of the Joint  
24 Stipulation (including the Class Released Claims) and the Court's Preliminary Approval and Final  
25 Approval orders and final Judgment, unless the Class Member submits a timely and valid Opt Out.  
26 However, any Class Member who submits an Opt Out will still remain bound by the PAGA portion  
27 of the Settlement Agreement, including the PAGA Released Claims, to the extent the Class  
28 Member also is an Aggrieved Employee. When the Final Approval Order and judgment become

1 final, Aggrieved Employees will be deemed to have released the PAGA Released Claims.

2 1.50.9. No later than fourteen (14) calendar days after the Opt Out Deadline, the  
3 Settlement Administrator shall provide Class Counsel and counsel for Defendant with a declaration  
4 attesting to completion of the notice process, including any attempts to obtain Updated Addresses  
5 for, and the re-sending of, any returned Class Notices, including the steps set forth in Paragraph  
6 1.47 ("Declaration of Compliance"), which shall be filed with the Court by Class Counsel.

7 1.51 *Responses to the Notice of Proposed Class Action Settlement.*

8 1.51.1. Participation at Class Members' Own Expense: Pursuant to California Rule  
9 of Court 3.766(d)(5), Class Members have the option to enter an appearance in the Litigation at  
10 their own expense by obtaining their own attorney(s). Class Members who choose this option will  
11 be responsible for any attorneys' fees or costs incurred as a result of this election. The Class Notice  
12 will advise Class Members of this option.

13 1.51.2. Objections to Settlement: Class Members who do not opt-out may also  
14 object to the settlement by filing written objections with the Court and serving a copy on the  
15 Settling Parties by submitting the copy to the Settlement Administrator no later than the Objection  
16 Deadline. The written objection must be signed and dated, and additionally state the Class  
17 Member's name, dates of employment as an employee of Defendant, the case name and number  
18 (*Felipe Osorio v. US FOODS, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS U.S.*  
19 *FOODSERVICE, INC., et al*, Case No. 20STCV46858), and the basis for the objection. A Class  
20 Member who objects to the settlement will still be considered a Member of the Settlement Class.  
21 If any objecting Class Member wishes to speak at the Settlement Hearing, that Class Member's  
22 written objection should include a request to speak at the Settlement Hearing. The Settling Parties  
23 will request that the Court determine whether Class Members who submit timely objections will  
24 be permitted to speak. The Class Notice will advise Class Members of this option. The Settlement  
25 Administrator shall provide a copy of any objections that it receives to Class Counsel and counsel  
26 for Defendant. Any Class Member who fails to timely file and serve such a written statement of  
27 his or her intention to object shall be precluded from making any objection to this settlement, unless  
28 otherwise ordered by the Court.

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

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

1.51.5. In the event that any Class Member timely submits an Opt Out request, but it is deficient, as soon as possible but not later than five (5) business days of the Settlement Administrator's receipt of such Opt Out request, the Settlement Administrator shall send by first

1 class, postage pre-paid, via USPS mail a notice to such Class Member informing him or her of the  
2 deficiency and that he or she has ten (10) calendar days from the date of the notice (which shall be  
3 the date the notice is mailed) to cure the deficiency and postmark and mail the Opt Out request,  
4 even if postmarked after the Opt Out Deadline. The Settlement Administrator shall also copy  
5 counsel for Defendant with any such notices of deficiency.

6 1.51.6. The Settling Parties agree that the Opt Out and Objection Deadlines shall  
7 not be extended, and no untimely submissions will be honored, under any circumstances, unless  
8 mutually agreed to by the Settling Parties. Notwithstanding the forgoing, the Court may order that  
9 a Class Member will be allowed to extend the Opt Out and Objection Deadlines for himself or  
10 herself upon a showing of legal incapacity or incarceration during the notice period.

11 1.52 *Post Settlement Administration Period Events and Settlement Fairness Hearing.*

12 1.52.1. Within thirty (30) calendar days after the Opt Out Deadline, the Settlement  
13 Administrator shall calculate the final Individual Class Settlement Payment and/or Individual  
14 PAGA Settlement Payment to be paid to each Settlement Class Member and/or Aggrieved  
15 Employee, respectively, and prepare a final statement of such for each Class Member and  
16 Aggrieved Employee.

17 1.52.2. On the date set forth in the Preliminary Approval Order and Class Notice, a  
18 Settlement Hearing shall be held before the Court in order to: (1) review this Stipulation and  
19 whether the Court should give it final approval; (2) consider any objections made timely (i.e., by  
20 the Objection Deadline); (3) consider Class Counsel's application for an award of attorneys' fees,  
21 reimbursements for costs and expenses, and Plaintiff's service award. At the Settlement Hearing,  
22 Plaintiff shall request the Court to give final approval to this Stipulation and shall submit to the  
23 Court a proposed Final Approval Order and Judgment to be entered in the Litigation. The Settling  
24 Parties shall take all reasonable efforts to secure entry of the Final Approval Order and Judgment.

25 1.53 *Nullification of the Stipulation.* If (a) the Court should for any reason fail to  
26 approve this Joint Stipulation in the form agreed to by the Parties, or (b) the Court should for any  
27 reason fail to enter a judgment in the Action, or (c) the judgment is reversed, modified, or declared  
28 or rendered void, this Joint Stipulation will be null and void. Invalidation of any material portion

1 of this Joint Stipulation will invalidate this Joint Stipulation in its entirety, unless the Parties  
2 subsequently agree in writing that the remaining provisions of the Joint Stipulation are to remain  
3 in full force and effect. "Material" terms include, but are not limited to, the Gross Settlement  
4 Amount, the Class Released Claims, the PAGA Released Claims, and the Released Parties.

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

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

16 If the Joint Stipulation is terminated, nullified, or rescinded, then: (i) neither this Joint  
17 Stipulation, nor any of the related negotiations or proceedings, will be of any force or effect, and  
18 no Party shall be bound by any of its terms; (ii) the Settlement Agreement and all negotiations,  
19 statements, and proceedings relating thereto shall be without prejudice to the rights of any of the  
20 Parties, all of whom shall be restored to their respective positions in the Action prior to the  
21 execution of the Settlement Agreement; (iii) Defendant shall have no obligation to make any  
22 payments to any Party, Class Member, Aggrieved Employee, or attorney; (iv) the terminating  
23 Party shall pay the Settlement Administrator for services rendered up to the date the Settlement  
24 Administrator is notified that the settlement has been terminated; (v) the Preliminary Approval  
25 Order, Final Approval Order and Judgment, including any order certifying the Class, shall be  
26 vacated; (vi) neither this Settlement Agreement, nor any ancillary documents, actions, statements  
27 or filings in furtherance of the settlement (including all matters associated with the mediation)  
28 shall be admissible or offered into evidence in the Action or any other action for any purpose

1 whatsoever; and (vii) any documents generated to bring the settlement into effect, will be null and  
2 void, and any order or judgment entered by the Court in furtherance of this Settlement Agreement  
3 will likewise be treated as void from the beginning.

4 1.54 *Distribution of Settlement Proceeds*: The Settlement Administrator will keep  
5 Defendant's counsel and Class Counsel apprised of all distributions of the Gross Settlement  
6 Amount. No person will have any claim against Defendant, Defendant's counsel, Plaintiff, Class  
7 Counsel, or the Settlement Administrator based on distributions and payments made under this Joint  
8 Stipulation. Distribution of the Gross Settlement Amount will be as follows:

9 1.55 Within fifteen (15) business days after the Settlement Administrator's receipt of the  
10 Gross Settlement Amount, the Settlement Administrator will pay the Attorneys' Fees and Costs  
11 awarded to Class Counsel, the Plaintiff's Service Award, the LWDA Payment to the LWDA, and  
12 the Settlement Administration Costs, based on how the Court rules at the Final Approval Hearing.  
13 It also will pay the Individual Class Settlement Payments and Individual PAGA Settlement  
14 Payments as set forth below.

15 1.55.1. Individual Class Settlement Payments to Settlement Class Members: The  
16 Settlement Administrator will calculate the Individual Class Settlement Payments to Settlement  
17 Class Members. The Individual Class Settlement Payments to Settlement Class Members will be  
18 made pro rata based on the number of Workweeks that each Settlement Class Member worked  
19 during the Class Period. Individual Class Settlement Payments will be calculated as follows:  
20 
$$[(\text{Settlement Class Member's Workweeks}) \div (\text{total of all Settlement Class Members'}$$
  
21 
$$\text{Workweeks})] \times [\text{Net Settlement Amount}].$$

22 The Settlement Administrator will calculate the Individual PAGA Settlement Payments to  
23 Aggrieved Employees. The Individual PAGA Settlement Payments to Aggrieved Employees will  
24 be made pro rata based on the number of Workweeks that each Aggrieved Employee worked during  
25 the PAGA Period. Individual PAGA Settlement Payments will be calculated as follows:  
26 
$$[(\text{Aggrieved Employee's Workweeks}) \div (\text{total of all Aggrieved Employees' Workweeks})] \times [\text{PAGA}$$
  
27 
$$\text{Aggrieved Employee Amount}].$$

28 To the extent a Settlement Class Member is also an Aggrieved Employee, he/she shall

1 receive his/her Individual Class Settlement Payment and Individual PAGA Settlement Payment in  
2 the same check. Any Class Member who submits an Opt-Out will remain bound by the PAGA  
3 portion of the Settlement Agreement, including the PAGA Released Claims, to the extent the Class  
4 Member also is an Aggrieved Employee and will still receive an Individual PAGA Settlement  
5 Payment for this portion.

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

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

12 The cashing, deposit, or negotiation of this settlement check shall be deemed to be  
13 your consent in writing to become a party to this action for the purposes of  
14 effectuating the settlement and release of claims arising under the Fair Labor  
15 Standards Act ("FLSA") as described in the Settlement Agreement in *Felipe Osorio*  
16 *v. US FOODS, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS U.S.*  
17 *FOODSERVICE, INC., et al*, Los Angeles County Superior Court, Case No.  
18 20STCV46858.

19 1.55.2. Uncashed Settlement Checks: Any checks issued to Settlement Class  
20 Members and/or Aggrieved Employees shall be negotiable for at least one-hundred and eighty  
21 (180) calendar days from the date the checks are mailed. Within sixty (60) calendar days after the  
22 last day for Settlement Class Members to negotiate their respective settlement payments, any  
23 amounts allocated to Settlement Class Members that were not negotiated shall be paid pursuant to  
24 the cy pres doctrine to Bet Tzedek, located at 3250 Wilshire Boulevard, #1300, Los Angeles, CA  
25 90010. Settlement Class Members and Aggrieved Employees whose Individual Class Settlement  
26 Payment and/or Individual PAGA Settlement Payments checks are cancelled or remain uncashed  
27 shall, nevertheless, be bound by this Settlement. The Parties agree that this disposition results in  
28 no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement

1 Amount and PAGA Aggrieved Employee Amount will be paid out to Settlement Class Members  
2 and Aggrieved Employees, whether or not they all cash their settlement checks. Defendant will  
3 not be required to pay any interest on said amounts.

4 1.56 *Releases.*

5 1.56.1. Release of Claims by the Class: Upon the Effective Date, Plaintiff and each  
6 of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall  
7 have, fully, finally, and forever released, relinquished, and discharged the Released Parties of all  
8 Class Released Claims during the Class Period. As to any Settlement Class Member who cashes  
9 the check representing their Individual Class Settlement Payment, the signing and negotiation of  
10 that check shall serve as the Settlement Class Member's consent to join the action for purposes of  
11 releasing claims arising under the FLSA that are related to the claims stated in the Action, implicitly  
12 or explicitly.

13 1.56.2. All Aggrieved Employees and the State of California, whether electing to  
14 Opt Out from the Settlement or not, will be deemed to have fully released and discharged the  
15 Released Parties of the PAGA Released Claims when the Final Approval Order and judgment  
16 become final. Plaintiff shall serve a notice of settlement on the California Labor and Workforce  
17 Development Agency at the same time Plaintiff files the motion for preliminary approval (Cal.  
18 Labor Code § 2699(1)(2)). Plaintiff shall serve any Judgment within 10 days after entry of same  
19 on the California Labor and Workforce Development Agency (Cal. Labor Code § 2699(1)(3)).

20 1.56.3. General Release of Claims by Plaintiff: In addition to the Class Released  
21 Claims applicable to the Settlement Class Members and the PAGA Released Claims applicable to  
22 the Aggrieved Employees, and in consideration for the Service Award, Plaintiff releases the  
23 Released Parties from all claims, demands, rights, liabilities and causes of action of every nature  
24 and description whatsoever, known or unknown, asserted or that might have been asserted,  
25 whether in tort, contract, or violation of any local, state or federal statute, rule or regulation  
26 arising out of, relating to, or in connection with any act or omission by or on the part of any of the  
27 Released Parties committed or omitted through the Effective Date. This release is intended to  
28 have the broadest possible application but excludes claims for workers' compensation benefits,

1 claims for unemployment benefits, and any current and/or future claims that are unwaivable as a  
2 matter of law. Nothing in this Agreement is intended to or shall be interpreted: (i) to restrict or  
3 otherwise interfere with Plaintiff's obligation to testify truthfully in any forum; or (ii) to restrict  
4 or otherwise interfere with Plaintiff's right and/or obligation to contact, cooperate with, provide  
5 information to, or participate in any investigation conducted by, any government agency or  
6 commission. Plaintiff's release as set forth herein includes a waiver of all rights under California  
7 Civil Code section 1542, which includes a release of all known and unknown claims against the  
8 Released Parties that have been alleged or could have been alleged arising out of the facts,  
9 circumstances, causes of action, and primary rights alleged in the Action. Civil Code section  
10 1542 provides:

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

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

20 **1.57 Miscellaneous Provisions.**

21 1.57.1. No Person shall have any claim against the Class Representative, Class  
22 Counsel, the Settlement Administrator, or any of the Released Parties based on the payments made  
23 or other actions taken substantially in accordance with this Stipulation and the settlement contained  
24 herein or further orders of the Court.

25 1.57.2. This settlement shall result in the release by Settlement Class Members of  
26 Released Claims, and with respect to the PAGA Settlement Employees, the Released Claims shall  
27 include those claims arising under PAGA. The Settling Parties and their counsel agree that  
28 Defendant's payment of \$75,000 to the LWDA for its share of the PAGA Penalties (75%) pursuant

1 to PAGA is appropriate and proper consideration in the overall context of this Stipulation.

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

17 1.57.3. Remand and Tolling. Plaintiff and Defendant agree that, for settlement  
18 purposes only, the matter was remanded to California Superior Court County of Los Angeles.  
19 This was in lieu of dismissal of the federal court lawsuit without prejudice and refile of  
20 complaint in state court for approval purposes. While Defendant believes this conditional remand  
21 afforded Plaintiff all the protections he might otherwise obtain from a tolling agreement, the  
22 parties nonetheless agree that Plaintiff's claims and the claims of Settlement Class Members  
23 during the respective time periods listed in Section 1.4 are tolled while the parties negotiate a  
24 settlement agreement and seek court approval thereof. Should settlement not receive final  
25 approval, Plaintiff must not oppose removal back to federal court.

26 1.57.4. Plaintiff and Class Counsel acknowledge and agree that (1) no provision of  
27 this Stipulation, and no written communication or disclosure between and among the Settling  
28 Parties or their attorneys and other advisors, is or was intended to be, nor shall any such

1 communications or disclosure constitute or be construed as, or relied upon as, tax advice within  
2 the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended);  
3 and (2) Plaintiff and Class Counsel have relied exclusively upon his or their own independent legal  
4 and tax counsel for advise in connection with this Stipulation and has not entered into this  
5 Stipulation based on the recommendation of any other party or any attorney or advisor to another  
6 attorney and furthermore is not entitled to rely upon any communication or disclosure from  
7 Defendant to avoid tax penalty that may be imposed.

8 1.57.5. The Settling Parties (a) acknowledge that it is their intent to consummate  
9 this agreement; (b) agree to cooperate to effectuate and implement all terms and conditions of the  
10 Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of  
11 the Stipulation; (c) agree to seek and to attempt to obtain Court approval for the Stipulation; and  
12 (d) agree to reasonably work together to seek and attempt to obtain Court approval for the  
13 Stipulation and final approval should the Court not grant approval upon the first presentation.

14 1.57.6. Unless otherwise ordered by the Court, in the event the Stipulation shall be  
15 terminated, cancelled, declared void, or fails to become effective in accordance with its terms,  
16 within ten (10) business days after written notification of such event, Defendant and Class Counsel  
17 shall notify each other of this event in writing.

18 1.57.7. The Stipulation compromises claims which were contested and the subject  
19 of a good faith dispute, and it shall not be deemed an admission by any of the Settling Parties as to  
20 the merits of any claim or defense. The Settling Parties agree that the amounts paid in settlement  
21 of the Litigation and the other terms of the settlement were negotiated at arms-length and in good  
22 faith with sufficient information by the Settling Parties and reflect a settlement that was reached  
23 voluntarily after consultation with competent legal counsel. This Stipulation and compliance with  
24 this Stipulation shall not be construed as an admission, concession, or indication by Settling Parties  
25 with respect to fault or liability whatsoever for the claims asserted in the Litigation, or as an  
26 admission by Settling Parties that the Litigation is or is not appropriate for class certification other  
27 than for purposes of class settlement as described within this Stipulation.

28 1.57.8. Escalator Clause: Defendant represents that there are 15,514 eligible pay

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

7 1.57.9. The Stipulation constitutes the entire agreement among the Settling Parties  
8 hereto and no representations, warranties, or inducements have been made to any party concerning  
9 the Stipulation or its exhibits other than the representations, warranties, and covenants contained  
10 and memorialized in such documents. Except as otherwise provided herein, each party shall bear  
11 its own costs.

12 1.57.10. Class Counsel, on behalf of the Settlement Class, to the extent  
13 authorized and ordered by the Court, shall take all appropriate action required or permitted to be  
14 taken by the Settlement Class pursuant to the Stipulation to effect its terms and shall also enter into  
15 any modifications or amendments to the Stipulation on behalf of the Settlement Class which they  
16 deem appropriate.

17 1.57.11. Each counsel or other Person executing the Stipulation or any of its  
18 exhibits on behalf of any Settling Parties hereby warrants that such Person has full and express  
19 authority to do so.

20 1.57.12. The Stipulation may be executed in one or more counterparts. All  
21 executed counterparts and each of them shall be deemed to be one and the same instrument. A  
22 complete set of executed counterparts shall be filed with the Court. A facsimile signature, emailed  
23 signature or electronic signature shall be treated as an original signature for all purposes.

24 1.57.13. The Stipulation shall be binding upon, and inure to the benefit of, the  
25 successors and assigns of the parties hereto; however, this Stipulation is not designed to and does  
26 not create any third-party beneficiaries unless otherwise specifically provided herein.

27 1.57.14. The Court shall retain jurisdiction with respect to implementation and  
28 enforcement of the terms of the Stipulation, and all parties hereto submit to the jurisdiction of the

1 Court for purposes of implementing and enforcing the settlement embodied in the Stipulation. The  
2 parties further stipulate and agree that the Court will retain jurisdiction to enforce the terms of this  
3 Agreement following the entry of the Judgment pursuant to California *Code of Civil Procedure*  
4 section 664.6.

5 1.57.15. The Stipulation and the exhibits hereto shall be considered to have  
6 been negotiated, executed, and delivered, and to have been wholly performed, in the State of  
7 California, and the rights and obligations of the parties to the Stipulation shall be construed and  
8 enforced in accordance with, and governed by, the internal, substantive laws of the State of  
9 California without regard to principles of conflicts of law.

10 1.57.16. The language of all parts of this Stipulation shall in all cases be  
11 construed as a whole, according to its fair meaning, and not strictly for or against either party. No  
12 party shall be deemed the drafter of this Stipulation. The parties acknowledge that the terms of the  
13 Stipulation are contractual and are the product of negotiations between the parties and their counsel.  
14 Each party and his/its counsel cooperated in the drafting and preparation of the Stipulation. In any  
15 construction to be made of the Stipulation, the Stipulation shall not be construed against any party  
16 and the canon of contract interpretation set forth in California *Civil Code* section 1654 shall not be  
17 applied.

18 1.57.17. Should any deadlines set forth in the Stipulation require any action  
19 to be taken on a weekend or a Court holiday, then the action may be taken on the next business  
20 day, unless otherwise specified by law or rule of Court, except that should the Opt Out Deadline  
21 or Objection Deadline (or extension(s) thereof specified in the Stipulation relating to a deficiency  
22 notice or a re-mailing) fall on a Saturday and regular U.S. Mail service is in operation that day,  
23 then no further extension pursuant to this paragraph shall apply to these specific deadlines.

24 1.57.18. The Parties agree not to disclose the details of this settlement until  
25 Plaintiff files his motion for preliminary approval of the settlement with the Court. Provided,  
26 however, that settlement details may be disclosed as reasonably necessary to consummate this  
27 settlement, and for US Foods' legitimate business, tax, or compliance reasons. Plaintiff and his  
28 counsel agree not to issue a press release or otherwise notify the media about the terms of the

1 Settlement or advertise or market any of the terms of the Settlement through written, recorded or  
2 electronic communications. Plaintiff and his counsel further agree that, if contacted regarding  
3 this case, they will state only that the lawsuit exists and has been resolved. This provision is not  
4 intended to, and does not, limit Plaintiff's counsel from responding to questions from and  
5 providing advice to Class Members regarding the settlement after preliminary approval is  
6 granted.

7 THIS STIPULATION HAS BEEN READ AND AGREED TO INDIVIDUALLY AND  
8 ON BEHALF OF THE PROPOSED CLASS:

9 DocuSigned by:

*Felipe Osorio*

3ACF33C7E61B4CA...

Dated: 12/1/2021

11 Plaintiff Felipe Osorio

12  
13  
14  
15 THIS STIPULATION HAS BEEN READ AND AGREED TO ON BEHALF OF DEFENDANTS

16  
17  
18 *[Signature]*

Dated:

12/1/22

19  
20 Defendant US FOODS, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS U.S.  
21 FOODSERVICE, INC.