

PAGA SETTLEMENT AGREEMENT

Subject to approval by the Court, Plaintiff Jose Luis Lopez Garcia ("Plaintiff") on behalf of the other alleged aggrieved employees (the "Aggrieved Employees" as described below), and as a private attorney general on behalf of the State of California on the one hand, and Defendant Smith Packing, Inc. ("Defendant") on the other hand, (collectively, the "Parties") hereby agree to the following settlement ("Settlement" or "Settlement Agreement") of the claims alleged in the lawsuit entitled Jose Luis Lopez Garcia v. Smith Packing, Inc., Monterey County Superior Court Case No. 20CV002559 (the "Action").

PERSONS COVERED BY THE SETTLEMENT

1. Aggrieved Employees: This Settlement covers all non-exempt current and former employees employed by Defendant in California at any time from September 24, 2019, through the Effective Date ("Aggrieved Employees"), including Plaintiff.
2. Settlement Period: The Settlement covers the period from September 24, 2019 (*i.e.*, one year before Plaintiff filed his initial PAGA letter with the Labor and Workforce Development Agency ("LWDA")) until final approval of this agreement by the Court and the occurrence of the Effective Date ("Settlement Period").
3. Effective Date: "Effective Date" will be the date the Court or any Party serves notice of the Court's order and judgment approving this Settlement. At no time will Defendant have any obligation to fund the Settlement, in whole or in part, until after the occurrence of this Effective Date.

SETTLEMENT CONSIDERATION

4. Maximum Settlement Amount: Subject to the terms and conditions of this Agreement Defendant will pay the gross maximum amount of One Hundred Thousand Dollars (\$100,000) ("Maximum Settlement Amount") to settle the claims in the Action and any other claims released pursuant to this Agreement. In no event shall Defendant be responsible for paying more than the Maximum Settlement Amount. The Maximum Settlement Amount includes Attorneys' Fees, Litigation Costs, Plaintiff's Individual Payment, Settlement Administrator Costs, and payment for the "Released Claims" and "Plaintiff Released Claims" as defined below (including payment to the LWDA and payments to Aggrieved Employees).

5. Attorneys' Fees: In full satisfaction of all claims Plaintiff and Aggrieved Employees may have for attorneys' fees arising out of the Action, Plaintiff's Counsel, the law firm of Fitzpatrick & Swanston ("Plaintiff's Counsel"), shall request and be paid from the Maximum Settlement Amount a maximum amount of one third of the Maximum Settlement Amount, subject to Court approval. To the extent the Court approves attorneys' fees of less than this amount, the amount of the difference shall be added to the PAGA Penalties Fund. Within twenty-one (21) days of receipt of the deposit of the final installment of the Maximum Settlement Amount by the Settlement Administrator from Defendant, the Settlement Administrator shall pay Plaintiff's counsel the amount described in this paragraph.

6. Litigation Costs: In full satisfaction of all claims Plaintiff and Aggrieved Employees may have for litigation costs arising out of the Action, Plaintiff's Counsel shall request and be paid from the Maximum Settlement Amount a maximum amount of Ten Thousand Dollars (\$10,000) in litigation costs, subject to Court approval. To the extent the Court approves litigation costs of less than \$10,000, the amount of the difference shall be added to the PAGA Penalties Fund. Within twenty-one (21) days of receipt of the deposit of the final installment of the Maximum Settlement Amount by the Settlement Administrator from Defendant, the Settlement Administrator shall pay Plaintiff's counsel the amount described in this paragraph.

7. Plaintiff's Individual Payment: In exchange for a general release, and in recognition of Plaintiff's effort and work in prosecuting the Action on behalf of Aggrieved Employees and the State of California, the Parties agree that, subject to Court approval, Plaintiff will receive a payment of Five Thousand Dollars (\$5,000) ("Plaintiff's Individual Payment"). Plaintiff's Individual Payment will be paid from the Maximum Settlement Amount. The Plaintiff's Individual Payment will be treated as 100% miscellaneous income for which a 1099 will be issued. To the extent the Court approves Plaintiff's Individual Payment for less than \$5,000, the amount of the difference shall be added to the PAGA Penalties Fund. Within twenty-one (21) days of receipt of the deposit of the final installment of the Maximum Settlement Amount by the Settlement Administrator from Defendant, the Settlement Administrator shall pay Plaintiff the amount described in this paragraph.

8. PAGA Penalties Fund: The Parties agree that Defendant, through the Settlement Administrator, will pay the LWDA and Aggrieved Employees in full satisfaction of all claims for PAGA civil penalties under the California Labor Code in an amount equal to the remainder of the Maximum Settlement Amount following deduction of any Court-approved attorneys' fees, litigation costs, Plaintiff's Individual Payment, and Settlement Administration Costs ("PAGA Penalties Fund"). Pursuant to PAGA, 75% of the PAGA Penalties Fund will be paid to the LWDA, and the remaining 25% will be paid to all Aggrieved Employees in proportion to the number of pay periods employed in non-exempt positions in California during the Settlement Period.

9. Settlement Administrator: The Parties shall work with a third-party settlement administrator (the "Settlement Administrator") for the purposes of administering this Settlement.

10. Settlement Administration Costs: Settlement Administration Costs will be paid to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, calculating estimated amounts per aggrieved employee, tax reporting, distributing the PAGA Penalties Fund and any Individual Payment Amount, providing necessary reports and declarations, and other duties and responsibilities as requested by the Parties. The Settlement Administration Costs will be paid from the Maximum Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum necessary to administer the Settlement, which is currently anticipated to be no greater than Fifteen Thousand Dollars (\$15,000). To the extent actual Settlement Administration Costs are greater than \$15,000, such excess amount will be deducted from the PAGA Penalties Fund. Within twenty-one (21) days of receipt of the deposit of the final installment of the Maximum Settlement Amount by the Settlement Administrator from Defendant, the Settlement Administrator shall pay itself the amount described in this paragraph.

11. Court Approval of the Settlement and Distribution of Settlement Payments: Within thirty (30) days of the Parties executing this Settlement Agreement, Plaintiff will file a stipulation or motion requesting that the Court issue an order approving and incorporating by reference the terms and conditions of the Settlement Agreement and entering judgment. Plaintiff and Defendant will jointly

prepare the proposed Approval Order and Judgment to be entered by the Court to enforce this Agreement and dismissing this case with prejudice. The proposed Approval Order and Judgment will be submitted concurrently with the documents asking the court to approve the settlement. Plaintiff shall promptly submit a copy of this Settlement Agreement to the LWDA at the same time the stipulation or motion for settlement approval is filed with the Court.

12. Funding of the Settlement: Defendant will pay the Maximum Settlement Amount to the Settlement Administrator in two installments as follows: (1) fifty percent (50%) of the Maximum Settlement Amount to be paid within six (6) months of the Parties' execution of this Agreement or within thirty (30) days after the Effective Date, whichever is later; and (2) the remaining fifty percent (50%) of the Maximum Settlement Amount to be paid within six (6) months of the payment of the first installment.

13. Settlement Payments to Aggrieved Employees: No later than thirty (30) days after the Effective Date, Defendant shall provide the Settlement Administrator with a list of all Aggrieved Employees ("Aggrieved Employees List"). The Aggrieved Employees List shall state the first name and last name for each Aggrieved Employee; the last known address for each Aggrieved Employee; each Aggrieved Employee's social security number; and the number of pay periods during which each was employed in a non-exempt position for Defendant in California during the Settlement Period. No later than twenty-one (21) days after receipt of the final installment of the Maximum Settlement Amount from Defendant, the Settlement Administrator will issue each Aggrieved Employee a check for his or her share of the PAGA Penalties Fund, along with an explanatory letter in the form attached hereto as **Exhibit A**. Checks will remain negotiable for one hundred twenty (120) days. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other similar search using the name, address or Social Security number of the Aggrieved Employee involved, and will then perform a single re-mailing. Funds represented by settlement checks returned as undeliverable, and those settlement checks remaining un-cashed for more than one hundred twenty (120) days after issuance, will be tendered to the State Controller's Office, Unclaimed Property Division. In the event that an

Aggrieved Employee's check is undeliverable, uncashed, or otherwise distributed to the State Controller's Office, Unclaimed Property Division, the terms of the final judgment and the Release of Claims will nevertheless be binding upon that Aggrieved Employee and the State of California with respect to that Aggrieved Employee. All payments made to Aggrieved Employees shall, if required by applicable state and/or federal law, be reported on a federal form 1099 that shall be provided to the individual Aggrieved Employees. Aggrieved Employees are responsible for correctly characterizing this compensation for tax purposes and paying any taxes owing on said amounts.

14. Release of Claims for Aggrieved Employees and the State of California: Upon issuance of the Court's approval order and judgment, Plaintiff, all Aggrieved Employees, and the State of California shall fully release and forever discharge any and all claims against the Released Parties arising during the Settlement Period for civil penalties under PAGA that were asserted or could reasonably have been asserted based on the facts alleged in the Action and/or the PAGA letter submitted by Plaintiff to the LWDA (the "Released Claims"). "Released Parties" shall mean Defendant, its past and present parents, subsidiaries, predecessors, successors, assigns, owners, officers, directors, employees, agents, trustees, affiliated entities, attorneys or legal representatives, insurers, fiduciaries, beneficiaries, partners, and/or any other entity or individual which could be liable for the acts or omissions of Defendant in relation to the Released Claims. Upon issuance of the Court's approval order and judgment, Plaintiff, all Aggrieved Employees, and the State of California will be forever barred from pursuing against Defendant and the Released Parties any and all claims for PAGA civil penalties under the Labor Code, Wage Orders, and/or other provisions of law alleged or that reasonably could have been alleged to have been violated in the Action with respect to the Aggrieved Employees based on the facts alleged in the Action.

15. Plaintiff Released Claims: Upon issuance of the Court's approval order and judgment, Plaintiff shall fully and finally release the Released Parties from any and all claims, known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, including, but not limited to, claims arising from or related to employment with Defendant or the Released Parties and compensation while an employee of Defendant or the Released Parties ("Plaintiff Released Claims"). The Plaintiff Released Claims include, but are not limited to, the Released Claims

and all claims asserted in, arising from, or related to the Action. The Plaintiff Released Claims also include, but are not limited to, all claims for unpaid wages, premiums, and penalties including, but not limited to, claims for failure to pay minimum wages, straight time compensation, overtime, and interest; the calculation of the regular rate of pay; wages related to time rounding and timekeeping; missed meal period and rest period premiums; meal period waivers; failure to reimburse for all necessary business expenditures or losses; payment for all hours worked, including off-the-clock work and uncompensated work time; wage statements; deductions; failure to pay wages and final wages in a timely manner; failure to keep accurate records; failure to provide employment records; unfair business practices; penalties, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, waiting-time penalties, statutory and civil penalties; and attorneys' fees and costs. The Plaintiff Released Claims also include but are not limited to all claims arising under the Labor Code; the Wage Orders of the California Industrial Welfare Commission; the PAGA; Business and Professions Code §§ 17200, et seq.; the Civil Code, to include but not limited to, sections 3287, 3336 and 3294; 12 CCR § 11040; 8 CCR § 11060; Code of Civil Procedure § 1021.5; the common law of contract; the FLSA, 29 U.S.C. §§ 201, et seq.; federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001, et seq. The Plaintiff Released Claims also include but are not limited to all claims for emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment, retaliation, and wrongful termination, such as, by way of example only, 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, and the California Fair Employment and Housing Act; privacy claims of any type; and the law of contract and tort. This release excludes the release of claims not permitted by law.

The Plaintiff Released Claims include both known and unknown claims. Even if Plaintiff discovers facts in addition to or different from those that she now knows or believes to be true with respect to the subject matter of the Plaintiff Released Claims, those claims will remain released and forever barred. Thus, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits of section 1542 of the California Civil Code, which 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.

Notwithstanding the foregoing provisions, the General Release by Plaintiff does not constitute a waiver of any claims that cannot by law be waived. Plaintiff agrees he will not file any new claims or initiate any further action against the Released Parties relating in any way to the subjects of the Agreement or the release set forth herein, except in the event action is necessary to enforce the terms of the Agreement.

16. No Credit Toward Benefit Plans: Payments to Aggrieved Employees as referenced herein will not be utilized to calculate any additional benefits under any benefit plans to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

17. Tax Liability: Defendant and Plaintiff's Counsel make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Aggrieved Employees shall not rely on any statement or representation by Defendant or Plaintiff's Counsel in this regard. Aggrieved Employees will be solely responsible for the payment of their portion of any taxes and penalties assessed on the payments described herein, and will defend, indemnify, and hold Defendant and the Released Parties free and harmless from and against any claims resulting from treatment of such payments as non-taxable damages. Plaintiff understands and agrees that if any action is asserted against Defendant, Defendant's agents, the Released Parties, Plaintiff, or Plaintiff's agents, by any taxing authority or government agency with respect to the payments to Plaintiff under this Agreement, he shall be liable for any taxes owed, and further agrees that he will hold Defendant and Defendant's agents and the Released Parties free and harmless and indemnify them from and against any demands or lawsuits for payment of income taxes and

payroll taxes, interest, or penalties relating to the monies paid to Plaintiff or for his benefit pursuant to this Agreement.

18. No Prior Assignments: The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

19. Nullification of Settlement Agreement: In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

20. Continued Jurisdiction: After entry of the Court's approval order and judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement; (ii) settlement administration matters; and (iii) such post-Court Approval matters as may be appropriate under court rules or as set forth in this Settlement.

21. Preclusive Effect of Settlement Agreement and Approval: The terms of this Agreement, the Approval order, and the Judgment are binding on Plaintiff, the State of California, and all Aggrieved Employees, as well as their heirs, executors and administrators, successors and assigns, and any other persons or entities acting on their behalf, and those terms shall have res judicata, collateral estoppel and other preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits or other proceedings constitute Released Claims as set forth in the Agreement. Notwithstanding any other provision in this Agreement, this Agreement, the Approval order, and the Judgment in the Action may be filed in any action against or by Defendant or the Released Parties to support a defense of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

22. Entire Agreement: This Settlement Agreement constitutes the entirety of the Parties' settlement terms with regard to the settlement of the claims discussed herein. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

23. Amendment or Modification: This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest.

24. Authorization to Enter Into Settlement Agreement: The Parties warrant and represent that they expressly authorized their legal counsel to negotiate this Settlement Agreement. The Parties will direct their counsel to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties through their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

25. Binding on Successors and Assigns: This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

26. California Law Governs: All terms of this Settlement Agreement and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.

27. Execution and Counterparts: This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument. To facilitate execution and delivery of this Settlement Agreement, the parties may execute and exchange by facsimile or electronic image (*i.e.*, as a ".pdf" file) counterparts of the signature pages and/or sign by electronic means (*i.e.*, with DocuSign).

28. Acknowledgement that the Settlement is Fair and Reasonable: The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations. The Parties further acknowledge they are represented by

competent counsel and they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

29. Invalidity of Any Provision: Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable. Any provisions deemed invalid shall be severable from the rest of the Settlement Agreement.

30. Captions: The captions and section numbers in this Settlement Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Settlement Agreement.

31. Waiver: No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

32. Enforcement Action: In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

33. Mutual Preparation: The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

34. Representation By Counsel: The Parties acknowledge they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

35. Attorneys' Fees and Costs: Except as expressly provided herein, Defendant and Plaintiff shall each bear their own attorney's fees and costs.

36. Cooperation and Execution of Necessary Documents: All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

37. Binding Agreement: The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

38. Confidentiality: Plaintiff and his counsel agree that they have not and will not publish the results of the Settlement in any forum. In response to any inquiries, Plaintiff will state that "the case was resolved and it was resolved confidentially." Plaintiff's Counsel shall not report the Settlement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff or the Aggrieved Employees or the Settlement on their website, and shall not contact any reporters or media regarding the Settlement. Plaintiff's Counsel is authorized to make limited disclosures as necessary to the Court and to the LWDA for the purposes of obtaining the approval of the Settlement. These disclosures shall be limited to court filings and neither Plaintiff nor their Counsel or representatives are permitted to disseminate or publish, distribute, or discuss the information provided to the Court in those filings outside the filings themselves and any hearing held on those filings, unless ordered otherwise by the Court.

39. No Admission of Liability: The Parties expressly recognize that the making of this agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant or the Released Parties. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal,

state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

PLAINTIFF JOSE LUIS LOPEZ GARCIA

Dated: 5-9-2022 Jose Luis Lopez Garcia

DEFENDANT SMITH PACKING, INC.

Dated: _____

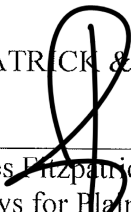
By: _____

Its Authorized Signatory

APPROVED AS TO FORM AND CONTENT:

Dated: May 11, 2022

FITZPATRICK & SWANSTON

By: 

B. James Fitzpatrick / Laura L. Franklin

Attorneys for Plaintiff

JOSE LUIS LOPEZ GARCIA

MULLEN & HENZELL L.L.P.

Dated: _____

By: _____

Rafael Gonzalez / Brian T. Daly

Attorneys for Defendant

SMITH PACKING, INC.

state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

PLAINTIFF JOSE LUIS LOPEZ GARCIA

Dated: _____

DEFENDANT SMITH PACKING, INC.

Dated: May 16, 2022

By: Vernon L. Smith III

Its Authorized Signatory

APPROVED AS TO FORM AND CONTENT:

FITZPATRICK & SWANSTON

Dated: _____

By: _____

B. James Fitzpatrick / Laura L. Franklin
Attorneys for Plaintiff
JOSE LUIS LOPEZ GARCIA

MULLEN & HENZELL L.L.P.

Dated: May 16, 2022

By: [Signature]

Rafael Gonzalez / Brian T. Daly
Attorneys for Defendant
SMITH PACKING, INC.