

1 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND**
2 **RELEASE OF CLAIMS**

3 This Class Action and PAGA Settlement Agreement and Release of Claims is entered
4 into by and between Plaintiff Patrick Farley (“Plaintiff”), individually and on behalf of all
5 others similarly situated, and Defendant Bimbo Bakeries USA, Inc. (“Defendant”), and is
6 approved by their respective counsel of record, subject to the terms and conditions hereof and
7 the Court’s approval.

8 **A. Definitions**

9 1. “Action” or “Lawsuit” means and refers to the case entitled *Patrick Farley v.*
10 *Bimbo Bakeries USA, Inc.*, pending in Eastern District of California, Case No. 2:20-cv-02223-
11 TLN-KJN, initially filed in Sacramento County Superior Court Case No. 34-2020-00285248.

12 2. “Aggrieved Employees” include all current and former individuals who are or
13 previously were employed by Defendant in California who were classified as non-exempt
14 employees under California law during the period September 8, 2019 through Preliminary
15 Approval Date.

16 3. “Agreement,” “Settlement Agreement,” “Settlement,” or “Stipulation” shall
17 mean this Class Action and PAGA Settlement Agreement and Release of Claims, including any
18 attached Exhibits.

19 4. “Class Claims” includes any and all wage and hour and wage payment claims,
20 obligations, demands, actions, rights, causes of action, and liabilities (including state statutory
21 and common law claims) that accrued or arose during the Class Period, including: (a) failure to
22 pay minimum wages; (b) failure to pay overtime wages; (c) failure to timely pay wages during
23 employment; (d) failure to pay final wages to discharged and quitting employees; (e) failure to
24 provide accurate itemized wage statements; (f) failure to provide compliant meal and rest
25 periods and/or failure to pay meal and rest period premiums at the regular rate; (g) failure to
26 maintain required records; (h) all other claims that are or were asserted or that could have been
27 asserted based on the facts alleged in this action; (i) unfair competition; and (j) penalties
28 (including civil, statutory, and/or wage penalties, including penalties under PAGA based on the

underlying Labor Code violations), liquidated damages, interest, attorneys' fees, litigation costs, restitution, equitable relief, or additional damages which allegedly arise from the claims described in (a) through (i) above under any applicable law.

The release specifically will include the following claims:

Statutory Claims: any and all claims that were pled or that could have been pled based on the facts alleged in this action arising under the Cal. Labor Code, including, §§ 201-204, 210, 218.5, 218.6, 221-224, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1199, 2698-2699.5, Cal. Business & Professions Code §§ 17200, *et seq.*, Cal. Civil Code §§ 3287-3288, and Cal. Code of Civil Procedure §1021.5.

Common Law and/or Equitable Claims: Any and all common law or equitable claims, under any theory whatsoever, to the extent that such claims arise out of the alleged facts, circumstances, and occurrences underlying the allegations as set forth in the complaints and/or actions (class action and PAGA action).

The release excludes all other claims, including claims for wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period and PAGA claims outside of the PAGA Period.

5. "Class Counsel" refers to Mehrdad Bokhour of Bokhour Law Group, PC and Joshua Falakassa of Falakassa Law, PC.

6. "Class Data" means a complete list that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator and shall include the Settlement Class Members' full names; last known addresses; telephone numbers; Social Security Numbers; and dates of employment and/or number of Workweeks Worked as non-exempt employees of Defendant in California during the Class Period and the PAGA Period for each Settlement Class Member.

7. "Class Period" and "Class Release Period" shall mean September 14, 2016 through Preliminary Approval Date.

8. "Class Representative" or "Plaintiff" means and refers to Patrick Farley.

1 9. “Complaint” refers to the Complaint filed in the Action entitled *Patrick Farley v.*
2 *Bimbo Bakeries USA, Inc.*, pending in Eastern District of California, Case No. 2:20-cv-02223-
3 TLN-KJN, initially filed in Sacramento County Superior Court, Case No. 34-2020-00285248.

4 10. “Court” means the California Superior Court, County of Sacramento or any
5 Court of competent jurisdiction.

6 11. “Defendant” means and refers to Bimbo Bakeries USA, Inc.

7 12. “Defendant’s Counsel” or “Defense Counsel” means and refers to Kathy H. Gao
8 and Claire M. Lesikar of Morgan, Lewis & Bockius LLP.

9 13. “Effective Date” means the latest of the following dates: (i) if no Settlement
10 Class Member objects, intervenes, or files a motion to vacate the judgment approving the
11 Settlement Agreement under California Code of Civil Procedure § 663, then the date the Court
12 enters an order granting Final Approval of the Settlement and entering Judgment; (ii) if a
13 Settlement Class Member objects, intervenes, or files a motion to vacate the judgment
14 approving the Settlement Agreement, then sixty-one (61) calendar days following the date the
15 Court enters an order granting Final Approval of the Settlement and entering Judgment,
16 assuming no appeal is filed; or (iii) if a timely appeal is filed, the date of final resolution of that
17 appeal (including any requests for rehearing and/or petitions for *certiorari*), resulting in final
18 judicial approval of the Settlement.

19 14. “Final” means that the Settlement has been granted “Final Approval” by the
20 Court and the “Effective Date” has occurred.

21 15. “Final Approval” refers to the order of the Court granting final approval of this
22 Settlement Agreement and entering a Judgment approving this Settlement on the same terms
23 provided herein (unless explicitly excepted herein) or as may be modified by subsequent written
24 and executed agreement of the Parties.

25 16. “Final Settlement Class” or “Final Settlement Class Members” means,
26 collectively, all Participating Class Members and all Aggrieved Employees.

27 17. “Individual Settlement Amount” shall have the meaning ascribed to it in
28 Paragraph 49(d) below.

1 18. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph
2 49(c) below.

3 19. “Notice” means the Notice of Settlement of Class and PAGA Action that will be
4 sent to the Settlement Class Members.

5 20. “Notice Response Deadline” is 45 calendar days from the date the Notice is
6 mailed to the Settlement Class Members.

7 21. “Objecting Settlement Class Member” means a Settlement Class Member, other
8 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
9 respect to the Class Claims pursuant to Paragraph 71(a) below.

10 22. “PAGA” shall refer to the California Labor Code Private Attorneys General Act
11 of 2004, California Labor Code Sections 2698, *et seq.*

12 23. “PAGA Claims” shall include any and all claims for civil penalties pursuant to
13 PAGA based on the allegations stated in the PAGA Notices that accrued or arose during the
14 Class Period, including claims that were pled in the operative Complaint and/or that could have
15 been pled based on the facts alleged therein, claims for unpaid wages (including failure to pay
16 full, regular, overtime, minimum, timely, and/or final wages), failure to provide compliant meal
17 and rest periods and/or failure to pay meal and rest period premiums, failure to provide accurate
18 itemized wage statements, failure to pay all earned wages due to separated employees, and
19 failure to maintain required records.

20 24. “PAGA Notices” shall refer to the notices sent by Plaintiff, by and through
21 counsel, on or about September 8, 2020 and November 23, 2021, to the California Labor &
22 Workforce Development Agency (“LWDA”) and to Defendant, alleging that Defendant
23 engaged in violations of the California Labor Code and California Wage Orders.

24 25. “PAGA Payment” shall mean a payment of \$100,000 to be paid from the Gross
25 Settlement Amount, with 25% of the payment going to the Aggrieved Employees, and 75% of
26 the payment going to the LWDA. These payments will be made whether or not the Aggrieved
27 Employees opt out of the Settlement since the Aggrieved Employees will not have the ability of
28 opting out of the PAGA portion of the Settlement.

1 26. “PAGA Period” and “PAGA Release Period” shall mean September 8, 2019
2 through Preliminary Approval Date.

3 27. “Participating Class Member” means any and all Settlement Class Members who
4 do not opt out of the Settlement of the Class Claims by submitting timely and valid Requests for
5 Exclusion and will be mailed an Individual Settlement Amount for their participation in the
6 Settlement.

7 28. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class Members, the
8 Aggrieved Employees, and Defendant, collectively.

9 29. “Preliminary Approval Date” means the date the Court preliminarily approves
10 the Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

11 30. “Preliminary Approval Order” means the judicial Order to be entered by the
12 Court, upon the application or motion of Plaintiff, preliminarily approving this Settlement and
13 providing for the issuance of the Notice of Settlement of Class and PAGA Action , an
14 opportunity to opt out of the Settlement of the Class Claims, an opportunity to submit timely
15 objections to the terms of this Settlement related to the Class Claims, and setting a hearing on
16 the fairness of the terms of Settlement, including approval of attorneys’ fees and costs.
17 Defendant will not object to Plaintiff’s motion for preliminary approval as long as it comports
18 with the terms of this Agreement and after giving Defendant’s counsel three weeks for
19 reasonable review and comment prior to the filing of motion for preliminary approval.

20 31. “QSF” means the Qualified Settlement Fund set up by the Settlement
21 Administrator for the benefit of the Final Settlement Class, and from which the settlement
22 payments shall be made, and which is intended to be a fund that qualifies under Internal
23 Revenue Code Section 468.

24 32. “Release” shall mean the complete release and discharge of the Class Claims by
25 Plaintiff and all of the Participating Class Members and the complete release and discharge of
26 the PAGA Claims by Plaintiff and all of the Aggrieved Employees.

27 33. “Released Parties” shall refer to Defendant and all affiliated and related parties
28 and entities (including their past and/or present affiliates, parents, subsidiaries, predecessors,

owners, successors, shareholders, division, and each of these entities' past and present directors, officers, managing agents, employees, partners, benefit plans, shareholders, and representatives).

34. "Request for Exclusion" shall have the meaning ascribed to it in Paragraph 70(a) below.

35. "Service Payment" or "Service Award" means the amount approved by the Court to be paid to the Class Representative in addition to their Individual Settlement Amount as a Participating Class Member.

36. "Settlement Administration Costs" means the costs payable from the Gross Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, translating the class notice into Spanish, tax reporting, due diligence, reporting and remittance obligations, distributing the Gross Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Gross Settlement Amount.

37. Settlement Administrator" means and refers to Simpluris agreed to by the Parties, that will provide the Notice to the Settlement Class Members and distribute the settlement amounts as described in this Agreement.

38. "Settlement Amount" or "Gross Settlement Amount" shall have the meaning ascribed to it in Paragraph 49(a) below.

39. "Settlement Class Member" or "Class Member" refers to individual members of the Settlement Class.

40. "Settlement Class" and "Settlement Class Members" refers to all current and former individuals who are or previously were employed by Defendant in California who were classified as non-exempt employees under California law during the Class Period (*i.e.*, September 14, 2016 to Preliminary Approval Date).

41. "Workweeks Worked" for each Settlement Class Member and Aggrieved Employee means any workweek during the Class Period, as applicable, in which the Settlement

1 Class Member and/or Aggrieved Employee performed work for Defendant as a non-exempt
2 employee in California.

3 **B. General Terms**

4 42. On or about September 14, 2020, Plaintiff filed a class and PAGA representative
5 action complaint for unpaid wages (including failure to pay full, regular, and overtime wages
6 and minimum wages), failure to provide accurate itemized wage statements, failure to pay all
7 earned wages due to separated employees, and PAGA penalties based on the foregoing Labor
8 Code violations. The Parties will stipulate to the filing of an amended Complaint after review
9 and reasonable comment by Defendant which adds the following claims as class claims and
10 predicate violations to the PAGA claim: meal period claim, rest period claim, and the following
11 PAGA-only claim: recordkeeping.

12 43. Defendant denies Plaintiff's claims and allegations and contends that the Action
13 is not suitable for class certification and/or representative treatment. Defendant and the
14 Released Parties deny that they have engaged in any unlawful activity, they have failed to
15 comply with the law in any respect, or that they have any liability to anyone under the claims
16 asserted in this Action.

17 44. Class Representative believes he can proceed with his representative and class
18 claims, that the Action is meritorious, and that class certification is appropriate.

19 45. The Parties have conducted a thorough investigation into the facts of the Action.
20 This includes conducting extensive exchange of informal discovery, including Defendant's
21 written policies and practices and the production of payroll and timekeeping records for
22 Settlement Class Members and Aggrieved Employees. Class Counsel is both knowledgeable
23 about and has done extensive research with respect to the applicable law and potential defenses
24 to the claims of the Settlement Class Members and Aggrieved Employees. Class Counsel has
25 diligently pursued an investigation of the Class Members' claims against Defendant. Based on
26 the foregoing data and on their own independent investigation and evaluation, Class Counsel is
27 of the opinion that the settlement with Defendant for the consideration and on the terms set forth
28 in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the

1 Settlement Class Members and Aggrieved Employees in light of all known facts and
2 circumstances, including the risk of significant delay and uncertainty associated with litigation,
3 various defenses asserted by Defendant, and numerous potential appellate issues.

4 46. On October 8, 2021, the Parties participated in mediation with Tripper Ortman,
5 from Ortman Mediation, a highly experienced class action mediator. After a full-day mediation
6 and the issuance of a mediator's proposal, the Parties reached a settlement.

7 47. The Parties agree to remand the Action to the Superior Court for the County of
8 Sacramento solely for purposes of seeking approval of the Settlement. If the Superior Court for
9 the County of Sacramento does not approve the Settlement as requested by the Parties, a
10 Judgment is not entered in the action in state court, or either Party withdraws from the
11 Settlement, the Parties will revert to their respective status as of the date and time immediately
12 prior to the execution of this Settlement Agreement such that the Parties will revert to the
13 litigation of the Action in the United States District Court for the Eastern District of California.

14 48. The Parties agree that neither the Parties' Settlement, this Agreement, nor the
15 acts to be performed or judgments to be entered pursuant to the terms of the Settlement and
16 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
17 any statute or law or liability on the claims or allegations in the Action.

18 49. Stipulation for Class Certification and Representative Treatment. For settlement
19 purposes only, Defendant will stipulate that the Settlement Class Members described herein
20 who do not Request Exclusion from the Settlement Class may be conditionally certified as a
21 settlement class and that the Aggrieved Employees are appropriate for representative treatment
22 for purposes of settlement only. This stipulation to certification and representative treatment is
23 in no way an admission that class action certification and/or representative treatment is proper
24 and shall not be admissible in this or in any other action except for the sole purposes of
25 enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval,
26 or the Effective Date does not happen, the Parties' stipulation to class certification and
27 representative treatment as part of the Settlement shall become null and void *ab initio* and shall
28 have no bearing on and shall not be admissible in connection with the issue of whether or not

1 class certification and/or representative treatment would be appropriate in a non-settlement
2 context. Defendant expressly reserves its rights and declares that it will continue to oppose class
3 certification, representative treatment, and the substantive merits of the case should the Court
4 fail to issue Final Approval or the Effective Date does not happen. Plaintiff expressly reserves
5 his rights and declares that he will continue to pursue class certification and representative
6 treatment and a trial should the Court fail to issue Final Approval or the Effective Date does not
7 happen.

8 **C. Terms of Settlement**

9 50. The financial terms of the Settlement are as follows:

10 (a) Gross Settlement Amount: The Parties agree to settle this Action for Two
11 Million Five Hundred Thousand Dollars (\$2,500,000) (“the Settlement Amount”). The
12 Settlement Amount is the maximum amount that will be paid by Defendant, and includes
13 Individual Settlement Amounts inclusive of applicable payroll taxes, attorneys’ fees of Class
14 Counsel, costs and expenses, the Service Payment to the Class Representative, all Settlement
15 Administration Costs, and the PAGA Payment.

16 (b) Net Settlement Amount: The “Net Settlement Amount” is defined as the
17 Settlement Amount less attorneys’ fees and litigation costs of Class Counsel as approved and
18 awarded by the Court, the Service Payment to the Class Representative as approved and
19 awarded by the Court, the Settlement Administration Costs as approved and awarded by the
20 Court, and the PAGA Payment as described in paragraph 43 below. In the event that the Court
21 reduces the attorneys’ fees and litigation costs to Class Counsel or the Service Award,
22 Settlement Administration Costs, or either increases or decreases the amount allocated of the
23 PAGA Payment, the Net Settlement Amount shall be increased or decreased accordingly.

24 (d) Individual Settlement Amounts for the Settlement Class: The Settlement
25 Administrator will use the Class Data provided by Defendant to calculate each Participating
26 Class Member’s and Aggrieved Employee’s Individual Settlement Amounts based on the
27 following formula:

28 i. PAGA Payment: \$100,000 of the Gross Settlement Amount has been

1 designated to the PAGA Claims. Twenty-five percent (25%), or \$25,000, shall be paid out to
2 Aggrieved Employees. Each Aggrieved Employee shall receive a portion of the \$25,000
3 proportionate to the number of Workweeks Worked by the Aggrieved Employees during the
4 PAGA Period compared to the total number of Workweeks Worked by all Aggrieved
5 Employees during the PAGA Period.

6 ii. Class Amount: The Net Settlement Amount designated to the Class
7 Claims shall be allocated to each Participating Class Member based on his or her proportionate
8 Workweeks Worked during the Class Period compared to the total number of Workweeks
9 Worked by all Participating Class Members during the Class Period. Each Settlement Class
10 Member's respective estimated Workweeks Worked shall be identified in the Notice of
11 Settlement of Class and PAGA Action. If there are any timely submitted Requests for
12 Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement
13 Amounts for each Participating Class Member so that the amount actually distributed to
14 Participating Class Members equals 100% of the Net Settlement Amount allocated toward Class
15 Claims.

16 (e) Allocation of Individual Settlement Amounts: The Individual Settlement
17 Amounts paid to Participating Class Members for Class Claims will be allocated for tax
18 purposes based on the allegations in the Action as follows: one-third (33.33%) will be allocated
19 as wages subject to withholdings of all applicable local, state, and federal taxes; and two-thirds
20 (66.67%) will be allocated as interest and as civil penalties (pursuant to, e.g., California Labor
21 Code sections 203, 226) from which no taxes will be withheld. The Settlement Administrator
22 will issue to each Participating Class Member an Internal Revenue Service Form W-2 and
23 comparable state forms with respect to the wage allocation and a Form 1099 with respect to the
24 civil penalties and interest allocations, if required. Aggrieved Employees shall have their
25 Individual Settlement Amount from the PAGA Payment allocated as one hundred percent
26 (100%) civil penalties for which no taxes will be withheld and for which a Form 1099 will be
27 issued by the Settlement Administrator, if required.
28

1 (f) Service Payment to Class Representative: The amount awarded to the Class
2 Representative as a Service Payment will be set by the Court in its discretion, not to exceed
3 \$10,000. Defendant agrees not to oppose this request. The Service Payment to the Class
4 Representative will be paid out of the Gross Settlement Amount. The Class Representative will
5 be issued a Form 1099 in connection with this payment. Plaintiff shall be solely and legally
6 responsible to pay any and all applicable taxes on this payment. The Parties agree that any
7 amount awarded by the Court as the Service Payment to Plaintiff less than the requested amount
8 shall not be a basis for Plaintiff or Class Counsel to rescind the Settlement Agreement or
9 otherwise void the Settlement. Should the Court approve a lesser amount for the Service
10 Payment, the unawarded amount shall be added to the Net Settlement Amount to be distributed
11 to the Participating Class Members. In the event of any appeal of the amount of the Service
12 Award (if any) approved by the Court, if, after the exhaustion of any such appellate review,
13 additional amounts not awarded to Class Representative shall be added to the Net Settlement
14 Amount to be distributed to the Participating Class Members.

15 (g) Attorneys' Fees and Costs: Defendant agrees to not oppose a request by Class
16 Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of the Gross
17 Settlement Amount, plus reasonable litigation costs not to exceed \$20,000 ("Attorneys' Fees
18 and Cost Award"). For purposes of this Settlement, Defendant agrees not to oppose any
19 contention by Class Counsel that attorneys' fees should be based on the common fund theory.
20 The Attorneys' Fees and Cost Award shall be paid from the Gross Settlement Amount, and
21 except for this award, Defendant shall have no further obligation to pay any attorneys' fees,
22 costs or expenses to Class Counsel. Should the Court approve a lesser amount than what is
23 sought by Class Counsel, the unawarded amount shall be added to the Net Settlement Amount
24 to be distributed to the Participating Class Members. Any Court order awarding less than the
25 amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or
26 otherwise void the Settlement. In the event of any appeal of the amount of the awards of
27 Attorneys' Fees and Costs (if any) approved by the Court, final funding and administration of
28 the portion of the Attorneys' Fees and/or Costs award in dispute will be segregated and stayed

1 pending the exhaustion of appellate review. If, after the exhaustion of any such appellate
2 review, additional amounts not awarded to as Attorneys' Fees and Costs shall be added to the
3 Net Settlement Amount to be distributed to the Participating Class Members. The Settlement
4 Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of
5 Attorneys' Fees and Costs awarded by the Court. Class Counsel agrees that any allocation of
6 fees between or among Class Counsel and any other attorney representing or claiming to
7 represent the Class Members shall be the sole responsibility of Class Counsel.

8 (h) Settlement Administration Costs: The fees and other charges of the Settlement
9 Administrator will be paid from the Gross Settlement Amount, not to exceed \$25,000 subject to
10 Court approval, unless approved by all Parties and the Court.

11 (i) Tax Liability: Class Counsel, Defendant and Defendant's Counsel make no
12 representations as to the tax treatment or legal effect of the Individual Settlement Amounts
13 called for hereunder, and Plaintiff and the Settlement Class Members are not relying on any
14 statement or representation by Class Counsel, Defendant, or Defendant's Counsel in this regard.
15 Plaintiff and the Final Settlement Class understand and agree that they will be solely responsible
16 for the payment of any taxes and penalties assessed on their respective Individual Settlement
17 Amounts described herein. Income tax withholding will also be made pursuant to applicable
18 federal, state and/or local withholding codes or regulations. Forms W-2 and/or Forms 1099 will
19 be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the
20 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
21 thereunder, or other applicable tax law, are changed after the date of this Agreement, the
22 processes set forth in this Section may be modified in a manner to bring Defendant into
23 compliance with any such changes.

24 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT
25 (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH
26 PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN
27 "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF
28 THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE

1 BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER
2 ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
3 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
4 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
5 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
6 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
7 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
8 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
9 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
10 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
11 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
12 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
13 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
14 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
15 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
16 ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
17 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
18 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
19 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

20 51. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
21 no circumstances will any portion of the Settlement Amount revert to Defendant. Settlement
22 Class Members will not have to make a claim in order to receive an Individual Settlement
23 Amount. Distributions, in the form of Individual Settlement Amounts, will be made directly to
24 each Participating Class Member. The Settlement Administrator shall be responsible for
25 accurately and timely reporting any remittance obligations with respect to unclaimed funds as a
26 result of a Participating Class Member not cashing an Individual Settlement Amount by the
27 check cashing deadline, as set forth herein.
28

52. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and adequate, and will so represent same to the Court.

D. Release by Plaintiff and the Final Settlement Class

53. Upon the Effective Date of this Settlement, Plaintiff and each Participating Class Member, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives (collectively, “Releasing Parties”), will forever completely release and discharge the Released Parties from the Release for the Class Period with respect to the Class Claims. Each Participating Class Member and/or Aggrieved Employee will be deemed to have made the foregoing Release as if by manually signing it.

54. Upon the Effective Date of this Settlement, Plaintiff, the LWDA, and each Aggrieved Employee, for themselves and the Releasing Parties will forever completely release and discharge the Released Parties from the Release for the PAGA Period with respect to the PAGA Claims regardless of whether any Aggrieved Employee submitted a Request for Exclusion. Each Aggrieved Employee and the LWDA will be deemed to have made the foregoing Release as if by manually signing it.

55. Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery based on, arising out of, and/or related to any and all of the Release with respect to the Class Claims. The Settlement Class Members shall be so notified in the Notice. This paragraph does not apply to any Settlement Class Member who timely and validly opts out of the Settlement.

56. Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Aggrieved Employees and the LWDA to obtain a recovery based on, arising out of, and/or related to any and all of the

1 Release with respect to the PAGA Claims. The Aggrieved Employees and the LWDA shall be
2 so notified in the Notice.

3 57. Class Representative, on behalf of himself and the Participating Settlement Class
4 Members, acknowledge and agree that the claims for unpaid wages, meal and rest period
5 violations, and untimely payment of wages in the Action, are disputed, and that the payments
6 set forth herein constitute payment of all sums allegedly due to them. Class Representative, on
7 behalf of himself and the Participating Settlement Class Members, acknowledge and agree that
8 California Labor Code Section 206.5 is not applicable to the Parties hereto. Section 206.5
9 provides in pertinent part as follows:

10 An employer shall not require the execution of any release of any claim or right
11 on account of wages due, or to become due, or made as an advance on wages to
12 be earned, unless payment of those wages has been made.

13 **E. Release by Class Representative**

14 58. As a material inducement to Defendant to enter into this Settlement Agreement,
15 in addition to the Class Representative's release of the Released Class Claims and Released
16 PAGA Claims, as discussed in Paragraphs 53 and 54 above, Class Representative does hereby,
17 for himself and for his spouses, domestic partners, marital community, children, estates, trusts,
18 attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees,
19 conservators, guardians, assigns, and representatives, forever completely release and discharge
20 the Released Parties from any and all charges, complaints, claims, liabilities, obligations,
21 promises, agreements, contracts, controversies, damages, actions, causes of action, suits, rights,
22 demands, costs, losses, debts, and expenses (including for back wages, statutory penalties, civil
23 penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of any
24 nature whatsoever, from the beginning of time through the execution of this Stipulation,
25 whether known or unknown, suspected or unsuspected, concealed or hidden, including but not
26 limited to all claims arising out of, based upon, or relating to Class Representative's
27 employment with Defendant or the remuneration for or termination of such employment
28 (collectively, the "Class Representative's Claims").

59. Without limiting the generality of the foregoing, Class Representative also expressly releases all claims or rights against Released Parties arising out of or relating to alleged violations of any contracts, express or implied (including but not limited to any contract of employment); any contract or covenant of good faith and fair dealing (express or implied); any tort, including but not limited to, negligence, fraud, misrepresentation and violation of California Labor Code section 970, negligent infliction of emotional distress, intentional infliction of emotional distress, defamation, “retaliation” claims and claims for violation of public policy, any claim for improper or unauthorized wage deductions, failure to pay the applicable wage, unpaid wages, unpaid vacation benefits, penalties, liquidated damages, other damages, overtime, and alleged “off the clock” work under federal and state law, including, but not limited to, California Labor Code Sections 204 and 558, waiting time penalties pursuant to California Labor Section 203, damages or penalties pursuant to California Labor Code Section 226, meal period and rest break payments and penalties pursuant to California Labor Code Sections 226.7 and 512, failure to provide itemized wage statements pursuant to California Labor Code Section 226, statutory or civil penalties pursuant to California Labor Code Sections 210, failure to indemnify for business expenses pursuant to Labor Code section 2802, failure to provide one day of rest in seven pursuant to California Labor Code Sections 551 and 552, unfair competition and unfair business practices pursuant to Business and Professions Code Section 17200 et seq., interest and costs pursuant to California Civil Code Section 3287 and California Labor Code Section 218.6, statutory or common law rights to attorneys’ fees and costs, including those pursuant to California Labor Code Section 1194 *et seq.*; claims under the Private Attorneys General Act of 2004, Labor Code section 2699 *et seq.*, and the alleged violation or breach of any other state or federal statute, rule and or regulation; including all applicable Industrial Welfare Commission Wage Orders, and all similar causes of action, including but not limited to, any claim for restitution, equitable relief, interest, penalties, costs or attorneys’ fees in connection with any of the foregoing, negligent infliction of emotional distress, intentional infliction of emotional distress, and defamation; any “wrongful discharge,” “constructive discharge,” and “retaliation” claims; any claims relating to any breach of public

1 policy; any legal restrictions on Defendant's right to discharge employees; and any federal,
2 state, or other governmental statute, regulation, or ordinance, including, without limitation: (1)
3 Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin
4 discrimination or harassment, including retaliation for reporting discrimination or harassment);
5 (2) 42 U.S.C. § 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d)(1) and California
6 Labor Code § 1197.5 (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. § 12100 et seq.
7 (disability discrimination); (5) Family and Medical Leave Act, 29 U.S.C. § 2601 et
8 seq. (family/medical leave); (6) California Fair Employment and Housing Act, Cal. Government
9 Code § 12900 et seq. (discrimination or harassment in employment and/or housing, including
10 discrimination or harassment based on race, religious creed, color, national origin, ancestry,
11 disability, marital status, sex (including pregnancy), or age, including retaliation for reporting
12 discrimination or harassment); (7) California Family Rights Act, Cal. Government Code §
13 12945.1 et seq. (family/medical leave); (8) California Labor Code, including Section 1720 et
14 seq., or any Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race,
15 color, religion, sex, and national origin discrimination or harassment); (10) Executive Order
16 11141 (age discrimination); (11) Sections 503 and 504 of the Rehabilitation Act of 1973
17 (handicap discrimination); (12) the Fair Labor Standards Act; (13) Employee Retirement
18 Income Security Act, 29 U.S.C. § 1000 et seq. (employee benefits); (14) the California Civil
19 Code; (15) the California Labor Code; (16) the California Constitution; (17) the National Labor
20 Relations Act; and (18) any other federal, state, or local statute or legislation.

21 60. Class Representative expressly waives and relinquishes all rights and benefits
22 afforded by Section 1542 of the Civil Code of the State of California and do so understanding
23 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil
24 Code of the State of California states:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
26 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT
27 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
28 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

1 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
2 DEBTOR OR RELEASED PARTY.

3 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
4 full and complete release and discharge of all parties, Class Representative and Class Counsel
5 expressly acknowledge that this Settlement Agreement is intended to include in its effect,
6 without limitation, all claims that Class Representative knew of, as well as all claims that he
7 does not know or suspect to exist in his favor against the Released Parties, or any of them, for
8 the time period from the beginning of time to the execution of this Settlement Agreement, and
9 that this Settlement Agreement contemplates the extinguishment of any such Class
10 Representative's claims.

11 **F. Interim Stay of Proceedings**

12 61. Pending completion of all of the prerequisites necessary to effectuate this
13 Settlement, including remanding this Action to state court and amending the operative
14 Complaint, the Parties agree, subject to Court approval, to a stay of all proceedings in the
15 Action except such as are necessary to effectuate the Settlement, including amending the
16 operative complaint.

17 **G. Notice Process**

18 62. Appointment of Settlement Administrator. The Parties have agreed to the
19 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
20 including translating the Notice to Spanish, mailing the Notice, using standard devices to obtain
21 forwarding addresses, independently reviewing and verifying documentation associated with
22 any claims or opt-out requests, resolving any disputes regarding the calculation or application of
23 the formula for determining the Individual Settlement Amounts, drafting and mailing the
24 settlement checks to Final Settlement Class Members, issuing W-2 and 1099 Tax Forms,
25 reporting to taxing authorities, due diligence, reporting and remittance obligations, and
26 performing such other tasks as set forth herein or as the Parties mutually agree or that the Court
27 orders. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Final
28 Settlement Class Members, and Class Counsel any W-2, 1099, or other Tax Forms as may be

1 required by law for all amounts paid pursuant to this Agreement. The Settlement Administrator
2 shall also be responsible for setting up all necessary tax accounts and forwarding all payroll
3 taxes and penalties to the appropriate government authorities.

4 63. Disputes Regarding Settlement Administration. Any and all disputes relating to
5 administration of the Settlement by the Settlement Administrator (except for disputes regarding
6 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
7 over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify
8 the Court that all payments and obligations contemplated by this Settlement Agreement have
9 been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will
10 confer in good faith to resolve the dispute without the necessity of Court intervention.

11 64. Class Data. Within fifteen (15) business days after entry of the Preliminary
12 Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The
13 Settlement Administrator will run a check of the Class Members' addresses against those on file
14 with the U.S. Postal Service's National Change of Address List. The Class Data provided to the
15 Settlement Administrator will not be provided to Class Counsel and it will remain confidential,
16 it shall be used solely to administer the Settlement, and it will not be used or disclosed to
17 anyone, except as required by applicable tax authorities, pursuant to Defendant's express
18 written consent, or by order of the Court.

19 65. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
20 Administrator to the Settlement Class Members, by first class mail within ten (10) business days
21 following the Settlement Administrator's receipt of the Class Data. The Settlement
22 Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses
23 of Settlement Class Members if any envelopes are returned undeliverable.

24 66. Returned Notices. The Settlement Administrator will take steps to ensure that the
25 Notice is correctly mailed to all Settlement Class Members, including utilization of the National
26 Change of Address Database maintained by the United States Postal Service to review the
27 accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any
28 Settlement Class Member for whom an updated address is located within ten (10) calendar days

1 following both the Settlement Administrator learning of the failed mailing and its receipt of the
2 updated address. The Notice shall be identical to the original Notice, except that it shall notify
3 the Settlement Class Member that the exclusion (opt-out) request or objection must be returned
4 by the later of the Notice Response Deadline or fifteen (15) days after the remailing of the
5 Notice.

6 67. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
7 if an envelope has not been returned within thirty (30) days of the mailing that the Settlement
8 Class Member received the Notice.

9 68. Disputes Regarding Class Data. Settlement Class Members are deemed to
10 participate in the Settlement, unless they submit a timely and valid Request for Exclusion. The
11 Notice will inform Settlement Class Members of his/her estimated number of Workweeks
12 Worked during the Class Period. Settlement Class Members may dispute their Workweeks
13 Worked if they feel their estimated Workweeks Worked is not accurate by timely submitting
14 evidence to the Settlement Administrator. Defendant's records will be presumed determinative
15 absent reliable evidence to rebut Defendant's records, but the Settlement Administrator will
16 evaluate the evidence submitted by the Settlement Class Member and provide the evidence
17 submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith
18 about the evidence to determine the Class Member's accepted number of Workweeks Worked.
19 If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to
20 the Settlement Administrator to render a final decision. Settlement Class Members will have
21 until the Notice Response Deadline to dispute Workweeks Worked, object or opt out, unless
22 extended by the Court. In the event that the Settlement Administrator increases the number of
23 Workweeks Worked for any Settlement Class Member, then the Settlement Administrator will
24 recalculate the Participating Class Members' Individual Settlement Amounts; however, in no
25 event will Defendant be required to increase the Gross Settlement Amount.

26 69. Declaration of Due Diligence. The Settlement Administrator shall provide
27 counsel for the Parties, at least twenty-five (25) days prior to the final approval hearing, a
28 declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

1 70. Settlement Class Members' Rights. Each Settlement Class Member will be fully
2 advised of the Settlement, the ability to object to the provisions of the Settlement related to the
3 Class Claims, and the ability to opt-out or request exclusion from the Class Claims provisions of
4 the Settlement. Settlement Class Members will have until the Notice Response Deadline to
5 object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
6 Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what
7 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
8 request of Class Counsel or Defense Counsel. The Notice will inform the Settlement Class
9 Members of the Court-established deadlines for filing objections or requesting exclusion from
10 the Class Claims provisions of the Settlement in accordance with the following guidelines:

11 (a) Requests for Exclusion from Participating Settlement Class. Any
12 Settlement Class Member, other than Plaintiff, may request to be excluded from the
13 Participating Settlement Class by submitting a "Request for Exclusion" to the Settlement
14 Administrator, postmarked on or before the Notice Response Deadline. The Request for
15 Exclusion should state:

16 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS
17 IN THE FARLEY V. BIMBO BAKERIES LAWSUIT. I
18 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE
19 SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY
20 FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS
21 LAWSUIT."

22 Any Request for Exclusion must include the full name, address, telephone number, last
23 four digits of the social security number or date of birth, and signature of the Settlement Class
24 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
25 Settlement Administrator at the specified address. Any such Request must be made in
26 accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if
27 postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing.
28 Any Settlement Class Member who timely requests exclusion in compliance with these
requirements: (i) will not have any rights under this Agreement with respect to the Class

1 Claims, including the right to object, appeal, or comment on the Settlement; (ii) will not be
2 entitled to receive any payments under this Agreement with respect to Class Claims; and (iii)
3 will not be bound by this Agreement, or the Judgment with respect to the Class Claims.

4 (b) Binding Effect on Final Settlement Class Members. Except for those
5 Settlement Class Members who exclude themselves in compliance with the procedures set forth
6 above, all Settlement Class Members will: (i) be deemed to be Final Settlement Class Members
7 for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
8 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
9 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
10 reasonableness, and adequacy of the Settlement.

11 (c) Objections to Settlement of Class Claims. Any Settlement Class Member,
12 other than Plaintiff, may object to the terms of this Agreement with respect to the Class Claims
13 and may appear at the Final Approval Hearing and object whether or not they have filed a
14 written objection as outlined herein. To object, a Settlement Class Member shall inform the
15 Settlement Administrator, in writing, of his or her objection, which shall be postmarked by the
16 Notice Response Deadline at the address set forth in the Notice. Such objection shall include the
17 full name, address, telephone number, last four digits of the social security number or date of
18 birth, signature of the Objecting Settlement Class Member, and the basis for the objection,
19 including any legal support and each specific reason in support of the objection, as well as any
20 documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is
21 represented by counsel, the name and address of his or her counsel. If any Objecting Settlement
22 Class Member wishes to speak at the Final Approval Hearing with respect to the Class Claims,
23 that Objecting Settlement Class Member's written submission should include a request to be
24 heard, and the Court will determine whether Objecting Settlement Class Members will be
25 permitted to speak. The Settlement Administrator shall provide objections, if any, to Class
26 Counsel and Defense Counsel within three (3) days of receipt, and the Settlement Administrator
27 shall attach the same to its declaration of due diligence it files with the Court prior to the Final
28 Approval Hearing. Any Participating Class Member who files an objection remains eligible to

1 receive an Individual Settlement Amount from the Settlement. Plaintiff and Defendant shall not
2 be responsible for any fees, costs, or expenses incurred by any Class Member and/or his or her
3 separately-retained counsel related to any objections to the Settlement. Submitting an objection
4 does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by
5 becoming a party of record by timely and properly intervening or filing a motion to vacate the
6 judgment under Code of Civil Procedure § 663. Settlement Class Members and Aggrieved
7 Employees may not object to or opt-out of the Settlement with respect to the PAGA Claims.

8 (d) Failure to Object. Any Settlement Class Member who desires to object
9 with respect to the Class Claims but fails to timely submit a written objection or appear at the
10 final approval hearing to request to be heard waives any right to object and will be foreclosed
11 from making any objection to this Settlement. Any Settlement Class Member who does not
12 timely and properly become a party of record by intervening or filing a motion to vacate the
13 judgment waives any and all rights to appeal from the Judgment, including all rights to any
14 post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment,
15 motion for new trial, a motion under California Code of Civil Procedure section 473, and
16 extraordinary writs.

17 (e) Responses to Objections. Counsel for the Parties may file a response to
18 any objections submitted by Objecting Settlement Class Members.

19 71. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
20 the QSF of the Gross Settlement Amount, as described in Paragraph 50(a) that is necessary to
21 make all payments required under this Settlement, within ten (10) business days after the
22 Effective Date.

23 72. Distribution of Funds. No later than ten (10) calendar days after deposit of the
24 payment into the QSF, the Settlement Administrator will mail the payments to the Final
25 Settlement Class Members, the payment for the Attorneys' Fees and Costs to Class Counsel,
26 any Service Payment to the Class Representative, the PAGA Payment to the LWDA, and will
27 pay itself the Settlement Administration Costs.
28

1 73. Deadline for Cashing Settlement Checks. Final Settlement Class Members shall
2 have 180 calendar days after mailing by the Settlement Administrator to cash their settlement
3 checks. If any Final Settlement Class Member's check is not cashed within that period, the
4 check will be void and a stop-payment will be issued with any fees from the stop-payment paid
5 from the QSF. All unclaimed funds (less stop-payment fees) shall be paid to the State of
6 California's Unclaimed Property Fund in the name of the Participating Class Member. The
7 Release of the Class Claims will be binding upon all Final Settlement Class Members regardless
8 of whether they cash their checks within the 180-day period. In the event that any settlement
9 check is returned to the Settlement Administrator within 180 days of mailing, the Settlement
10 Administrator will, within five (5) business days of receipt of the returned settlement check,
11 perform a skip trace to locate the individual. If a new address is located by these means, the
12 Administrator will have ten (10) business days to re-issue the check and will notify Defense
13 Counsel and Class Counsel that a re-issued check has been sent. Neither Defendant, Defense
14 Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any liability for
15 lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized
16 negotiation of settlement checks. Without limiting the foregoing, in the event a Final Settlement
17 Class Member notifies the Settlement Administrator that he or she believes that a settlement
18 check has been lost or stolen, the Settlement Administrator shall immediately stop payment on
19 such check. If the check in question has not been negotiated prior to the stop payment order, the
20 Settlement Administrator will issue a replacement check.

21 74. No person shall have any claim against Defendant (or its designee), Defendant's
22 Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on mailings,
23 distributions, payments or reports made in accordance with or pursuant to this Agreement. This
24 provision does not, however, prevent a Party from seeking enforcement of this Agreement.

25 75. Without prejudice to any other remedies, the Settlement Administrator shall
26 agree to be responsible for any breach of its obligations (whether committed by the Settlement
27 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless
28 from and against all liabilities, claims, causes of action, costs and expenses (including legal fees

1 and expenses) arising out of any breach committed by the Settlement Administrator or its
2 agents.

3 **H. Duties of the Parties Prior to the Court's Approval**

4 76. Upon execution of this Agreement and the preparation and approval of the
5 Notice, Proposed Preliminary Approval Order, and Proposed Final Approval Order and
6 Judgment, the Parties will seek to remand the Action back to state court, thereafter the Parties
7 will stipulate to the filing of an amended Complaint and once it is deemed filed, Plaintiff will
8 move the Court for Preliminary Approval of this Settlement and entry of the Preliminary
9 Approval Order accomplishing the following:

10 (a) Scheduling the Final Approval Hearing on the issue of whether this
11 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
12 and a hearing on Attorneys' Fees, Costs and the Service Payment;

13 (b) Approving as to form and content the proposed Notice;

14 (c) Directing the mailing of the Notice by first class mail to the Settlement
15 Class Members;

16 (d) Preliminarily approving this Settlement; and

17 (e) Preliminarily certifying the class for purposes of this Settlement.

18 77. Reallocation of Settlement Proceeds. In the event the Court fails, on its first
19 hearing, to approve this Agreement because the amount of the PAGA Payment is not adequate,
20 then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within
21 this Agreement, in order to try to achieve Final Approval of the Agreement upon any
22 subsequent Court hearings.

23 **I. Duties of the Parties Following Court's Final Approval**

24 78. In connection with the Final Approval Hearing provided for in this Settlement
25 Agreement, Class Counsel shall submit a proposed Final Approval Order and Judgment:

26 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and
27 adequate, and directing consummation of its terms and provisions;

1 (b) Approving Class Counsel's application for an award of attorneys' fees and
2 reimbursement of litigation costs and expenses, the Service Payment to the Class
3 Representative, and the payment to the Settlement Administrator for costs of administering the
4 Settlement; and

5 (c) Entering judgment approving Settlement, thereby permanently barring all
6 Participating Class Members from prosecuting any Class Claims covered by the Release against
7 any of the Released Parties and permanently barring all Aggrieved Employees and the LWDA
8 from prosecuting any PAGA Claims covered by the Release against any of the Released Parties.

9 **J. Voiding the Agreement**

10 79. If the Court fails or refuses to issue the Final Approval Order or fails to approve
11 any material condition of this Settlement Agreement which effects a fundamental change of the
12 Settlement (unless explicitly excepted herein), the entire Settlement Agreement shall be
13 rendered voidable and unenforceable as to all Parties herein at the option of either Party.

14 80. If four percent (4%) or more of the Settlement Class Members timely submit
15 Requests for Exclusion, Defendant shall have the option of terminating or modifying this
16 Agreement without prejudice to its pre-settlement positions and defenses in the Action. If
17 Defendant exercises such option, under this paragraph it shall be relieved of any obligation to
18 pay the Settlement Amount or any other obligations from the Settlement by giving notice to
19 Plaintiff's Counsel and the Settlement Administrator within ten (10) days of the Notice
20 Response Deadline. If Defendant exercises its option under this paragraph, Defendant shall be
21 solely responsible for all Settlement Administration Costs incurred.

22 81. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will
23 have no further obligations under the Settlement, including any obligation by Defendant to pay
24 the Settlement Amount, or any amounts that otherwise would have been owed under this
25 Settlement.

26 82. If the Settlement is voided or fails for any reason, any costs incurred by the
27 Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise
28 specified in this Agreement.

1 **K. Other Terms**

2 83. Full and Complete Defense. This Agreement may be pleaded by any Released
3 Party as a full and complete defense to and may be used as the basis for an injunction against,
4 any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted,
5 asserting any claims covered by the Release.

6 84. Waiver. The waiver by one Party of any breach of this Agreement by another
7 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

8 85. No Publicity. Communications regarding this Settlement prior to the Final
9 Approval Date shall be limited to Court-Approved Notices in the Action. After the Final
10 Approval Date, Class Counsel and the Class Representative agree that they will not make any
11 direct or indirect comment or publication of the Settlement or of Defendant in terms of
12 affirmative or responsive media statements/comments, press releases or conferences, website
13 postings or content, social media postings or content, other Internet postings or content,
14 subscribed email messages, newsletters, disseminated updates, mass mailings, or any other
15 comment or publication to the press, media, or public at large. Nothing herein shall be construed
16 to prevent Class Counsel from the public filing of motions or other case materials in the Action
17 related to seeking and obtaining Court approval of this Settlement and the related awards of
18 attorneys' fees and costs, or to respond to communications from Settlement Class Members or
19 their representatives about this Settlement, or to prevent the Parties or their representatives from
20 communicating with financial or legal advisors regarding the Settlement. In response to any
21 media inquiry, Class Counsel may state only that the Action has been settled on terms mutually
22 agreeable to the Parties. Except as explicitly provided for in this paragraph, Class Counsel shall
23 not discuss, promote, and/or advertise the fact and/or terms of the Settlement and Class Counsel
24 will strictly maintain the confidentiality of the fact and/or terms of the Settlement except as to
25 enforce this Settlement Agreement or communicate with Settlement Class members or their
26 representatives after preliminary approval.

1 86. Parties' Authority. The signatories hereto represent that they are fully authorized
2 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
3 hereof.

4 87. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
5 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
6 such documents and to take such other action as may reasonably be necessary to implement the
7 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
8 best efforts, including all efforts contemplated by this Settlement Agreement and any other
9 efforts that may become necessary by order of the Court, or otherwise, to effectuate this
10 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
11 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
12 Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary
13 and final approval of the settlement, and the final entry of judgment.

14 88. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
15 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
16 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
17 cause of action or rights released and discharged by this Settlement Agreement.

18 89. No Admission. Defendant denies any and all liability to Plaintiff and/or any
19 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
20 that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and
21 compromise the matters at issue in the operative Complaint to avoid further substantial expense
22 and the inconvenience and distraction of protracted and burdensome litigation. Defendant also
23 has taken into account the uncertainty and risks inherent in litigation, and without conceding
24 any infirmity in the defenses that it has asserted or could assert against Plaintiff, has determined
25 that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the
26 terms and conditions set forth in this Agreement.

27 90. Inadmissibility of Agreement. Whether or not the Court issues the Final
28 Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement,

1 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing
2 on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has
3 entered into this Settlement Agreement with the intention of avoiding further disputes and
4 litigation with the attendant inconvenience and expenses. This Settlement Agreement is a
5 settlement document, and it, along with all related documents such as the notices, and motions
6 for preliminary and final approval, shall, pursuant to California Evidence Code section 1152
7 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an
8 action or proceeding to approve the settlement, and/or interpret or enforce this Settlement
9 Agreement. The stipulation for class certification as part of this Settlement Agreement is for
10 settlement purposes only and if, for any reason the settlement is not approved, the stipulation
11 will be of no force or effect.

12 91. Notices. Unless otherwise specifically provided herein, all notices, demands or
13 other communications given hereunder shall be in writing and shall be deemed to have been
14 duly given as of the third business day after mailing by United States registered or certified
15 mail, return receipt requested, addressed:

16 To the Settlement Class Members and Aggrieved Employees:

17 Mehrdad Bokhour
18 *mehrdad@bokhourlaw.com*
19 1901 Avenue of the Stars, Suite 450
20 Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

21 Joshua Falakassa
22 *josh@falakassalaw.com*
23 1901 Avenue of the Stars, Suite 450
24 Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (888) 505-0868

25 To Defendant:

26 Kathy H. Gao
27 *kathy.gao@morganlewis.com*
28 300 South Grand Avenue, 22nd Floor
Los Angeles, California 90071-3132
Tel: (213) 612-2500; Fax: (213) 612-2501

1 92. Construction. The Parties hereto agree that the terms and conditions of this
2 Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the
3 Parties and that this Settlement Agreement shall not be construed in favor of or against any
4 Party by reason of the extent to which any Party or her or its counsel participated in the drafting
5 of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and
6 statutory rule of construction that ambiguities should be construed against the drafter of an
7 agreement and further agree, covenant, and represent that the language in all parts of this
8 Agreement shall be in all cases construed as a whole, according to its fair meaning.

9 93. Captions and Interpretations. Paragraph titles or captions contained herein are
10 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
11 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
12 Settlement Agreement is contractual and not merely a recital.

13 94. Modification. This Settlement Agreement may not be changed, altered, or
14 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
15 Settlement Agreement may not be discharged except by performance in accordance with its
16 terms or by a writing signed by all of the Parties hereto.

17 95. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
18 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
19 provide written notice to the other Party and allow an opportunity to cure the alleged
20 deficiencies, and Plaintiff and Defendant agree to seek the help of the mediator identified in this
21 Agreement to resolve any dispute they are unable to resolve informally. During this period, the
22 Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any legal
23 action or other proceeding instituted by any person or entity other than Plaintiff or Defendant.

24 96. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment
25 pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure Section
26 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action over all
27 Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations of this
28 Agreement.

97. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b), this Agreement is intended by the Parties to be, and shall be, enforceable, binding, and admissible in a court of law.

98. Choice of Law. This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

99. Integration Clause. This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

100. Binding on Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

101. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Settlement Class are numerous, it is impossible or impractical to have each Final Class Member execute this Settlement Agreement. The Notice will advise all Settlement Class Members of the binding nature of the releases provided herein and such shall have the same force and effect as if this Settlement Agreement were executed by each Final Settlement Class Member.

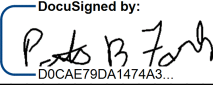
102. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

[Signatures on the Next Page]

APPROVAL AND EXECUTION BY PARTIES:

CLASS REPRESENTATIVE:

Dated: February __, 2022
2/3/2022

DocuSigned by:

D0CAE79DA1474A3...
Patrick Farley

DEFENDANT:

BIMBO BAKERIES USA, INC.

Dated: February __, 2022

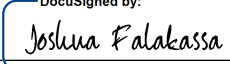
By: _____
Title: _____

APPROVED AS TO FORM:

CLASS COUNSEL:

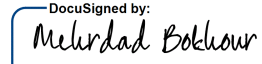
Dated: February __, 2022
2/3/2022

FALAKASSA LAW, PC

DocuSigned by:

15A628B2C5A149C...
Joshua Falakassa
Attorneys for Plaintiff and the Class

Dated: February __, 2022
2/3/2022

BOKHOUR LAW GROUP, P.C.

DocuSigned by:

D8D3643F5271940F...
Mehrdad Bokhour
Attorneys for Plaintiff and the Class

DEFENDANT'S COUNSEL:

MORGAN, LEWIS & BOCKIUS LLP

Dated: February __, 2022

Kathy H. Gao
Attorneys for Defendant, Bimbo Bakeries USA, Inc.

APPROVAL AND EXECUTION BY PARTIES:

CLASS REPRESENTATIVE:

Dated: February __, 2022

Patrick Farley

DEFENDANT:

BIMBO BAKERIES USA, INC.

Dated: February ⁴ __, 2022

Jackie Minka

By: Jackie Minka

Title: Sr Director, Human Relations

APPROVED AS TO FORM:

CLASS COUNSEL:

Dated: February __, 2022

FALAKASSA LAW, PC

Joshua Falakassa

Attorneys for Plaintiff and the Class

Dated: February __, 2022

BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour

Attorneys for Plaintiff and the Class

DEFENDANT'S COUNSEL:

MORGAN, LEWIS & BOCKIUS LLP

Dated: February ⁴ __, 2022

Kathy H. Gao

Kathy H. Gao

Attorneys for Defendant, Bimbo Bakeries USA, Inc.