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Attorneys for Defendant
Q & B FOODS, INC., a California corporation

[additional counsel on the next page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

USA CORRALES-ROJAS, on behalf of himself
and all others similarly situated,

Plaintiffs,

vs.

Q & B FOODS, INC., a California corporation;
ESG EMPLOYER RESOURCES INC., an
Indiana corporation; and DOPES 1 through 100
inclusive,

Defendants.

Case No. 20STCV40885

CLASS ACTION

*Assigned for All Purposes to Hon. Elihu M.
Berle in Department 6*

**STIPULATION TO SETTLE CLASS
ACTION**

Complaint Filed: October 26, 2020
Trial Date: None Set

FISHER & PHILLIPS LLP

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Attorneys for Defendant

ESG Employer Resources, Inc.

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval
2 of the Court pursuant to section 382 of the California Code of Civil Procedure, that the
3 settlement of this Litigation shall be effectuated upon and subject to the following terms and
4 conditions. Capitalized terms used herein shall have the meanings set forth in Article I or
5 elsewhere in this Stipulation and Agreement to Settle Class Action.

6 This Agreement is made by Defendants Q & B Foods, Inc., ESG Employer Resources,
7 Inc. and Plaintiff and Class Representative Usa Corrales-Rojas.

8 The Parties agree that the Litigation shall be ended, settled, resolved, and concluded by
9 agreement of Defendants to pay the Gross Settlement Amount of One Million, One Hundred and
10 Fifty Thousand Dollars and Zero Cents (\$1,150,000.00), unless it is escalated at Defendant
11 Q&B's option pursuant to Paragraph IV(D)(3) of this Agreement, upon the terms and conditions
12 of this Agreement and for the consideration set forth herein, including but not limited to a release
13 of claims by Participating Class Members.

14 **I. DEFINITIONS.**

15 Unless otherwise defined herein, the following terms used in this Agreement shall have
16 the meanings ascribed to them as set forth below:

17 **A. "Alleged Aggrieved Employees"** refers to all Settlement Class Members working
18 in Covered Job Positions during any portion of the PAGA Period.

19 **B. "Agreement," "Settlement Agreement," "Settlement," or "Stipulation and**
20 **Agreement"** means this Stipulation and Agreement to Settle Class Action, including the attached
21 Exhibits.

22 **C. "First Amended Complaint"** means the First Amended Class Action Complaint
23 filed in the Lawsuit.

24 **D. "Class Counsel"** shall mean and refer to David D. Bibiyan of Bibiyan Law
25 Group, P.C.

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1 **E.** “**Class Period**” shall mean the period between October 26, 2016 and the date of
2 preliminary approval of the Settlement, or, at Defendants’ election, on the date on which the
3 number of Qualifying Work Weeks reaches 46,653.

4 **F.** “**Class Representative**” or “**Plaintiff**” refers to Plaintiff Usa Corrales-Rojas.

5 **G.** “**Covered Job Position**” means any California non-exempt, hourly-paid position
6 for Q&B employees and all positions occupied by non-exempt, hourly-paid temporary workers
7 assigned to work at Q&B by any staffing agency at any time during the Class Period.

8 **H.** “**Court**” means the California Superior Court, Los Angeles County, 312 North
9 Spring Street, Los Angeles, CA 90012.

10 **I.** “**Defendants**” refers to Q & B Foods, Inc. and ESG Employer Resources, Inc.,
11 collectively.

12 **J.** “**Defendants’ Counsel**” refers to Defense Counsel for ESG and Defense Counsel
13 for Q&B collectively.

14 **K.** “**Defense Counsel for ESG**” or “**Counsel for Defendant ESG**” is:

15 **FISHER & PHILLIPS LLP**
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23 **L.** “**Defense Counsel for Q&B**” or “**Counsel for Defendant Q&B**” is:

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Facsimile: 213.629.1033

M. “Effective Date” shall be the date that is the later of (1) sixty days after the Court’s entry of Judgment and Final Order Approving Settlement of Class Action have expired without a notice of appeal having been timely filed under California Rules of Court 8.104, 8.108, and 8.60; and (2) the date on which any appeal from the Court’s Judgment and Final Order Approving Settlement of Class Action has been fully and finally resolved.

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

O. “ESG” refers to Defendant ESG Employer Resources, Inc.

P. “Individual PAGA Payment” means a payment to an Alleged Aggrieved Employee of his or her share of the PAGA Payment.

Q. “Individual Payment Amount” is the amount of money, inclusive of any taxes withheld, that shall be paid to each Settlement Class Member who does not timely request exclusion and opt out of this Settlement.

R. “Litigation” means the lawsuit *entitled Usa Corrales-Rojos v. Q & B Foods, Inc. and ESG Employer Resources, Inc.*, Los Angeles Superior Court Case No 20STCV40885.

S. “LWDA Payment” means the payment to the LWDA for its seventy-five percent (75%) share of the total amount allocated toward penalties under the PAGA, which is to be paid from the Gross Settlement Amount.

T. “Objection” refers to a written objection that complies with the process set forth in Section III(C)(2) of this Agreement.

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1 **U. “PAGA Group”** means all individuals who worked in a Covered Job Position at
2 any time between September 16, 2019, and the date of preliminary approval of the Settlement (or
3 earlier at the sole discretion of Defendant Q&B) (the “PAGA Period”).

4 **V. “PAGA Payment”** is the 25% portion of the amount attributed to PAGA civil
5 penalties that is payable to Alleged Aggrieved Employees in addition to their Individual Payment
6 Amount if they do not submit a timely and valid Request for Exclusion.

7 **W. “PAGA Period”** means the period from September 16, 2019 through the date on
8 which the Class Period ends.

9 **X. “Participating Class Members”** refers to all Settlement Class Members who do
10 not timely and validly request exclusion from the Settlement.

11 **Y. “Parties”** are Defendants and Plaintiff collectively.

12 **Z. “Q&B”** refers to Defendant Q & B Foods, Inc.

13 **AA. “Qualifying Work Week”** refers to any week within the Class Period wherein a
14 Settlement Class Member worked any portion of that week in a Covered Job Position based on
15 hire dates, termination dates, and re-hire dates provided by Defendants to the Settlement
16 Administrator.

17 **BB. “Released Claims”** shall refer collectively to the Released Class Claims and
18 Released PAGA Claims.

19 **CC. “Released Class Claims”** means all claims, actions or causes of action during the
20 Class Period, alleged in the First Amended Complaint, or that could have been alleged or raised
21 in the First Amended Complaint based upon or arising out of the facts alleged therein, as well as
22 any claims for interest or attorney’s fees and costs thereon, including, without limitation: failure
23 to pay wages, including overtime wages and minimum wages, including any claim for unpaid
24 wages, unpaid penalties, failure to pay overtime or other hours worked, “off-the-clock” claims,
25 “rounding” claims, and failure to pay overtime wages due based on the correct regular rate of
26 pay, failure to provide compliant meal or rest periods, along with failure to make penalty
27 payments or premium pay in lieu of providing meal or rest periods; failure to reimburse
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1 reasonable business expenses, failure to pay wages timely during employment, failure to pay due
2 wages upon termination of employment, failure to provide accurate wage statements, failure to
3 maintain adequate payroll records; and any other corresponding claims under the Fair Labor
4 Standards Act (“FLSA”); and Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 510,
5 512, 1174, 1194, 1194.2, 1197, and 2802; applicable portions of the Code of Regulations, Title
6 8, section 11040, applicable portions of the applicable California Wage Order, or federal law;
7 and any claim under Business and Professions Code section 17200 *et seq.* predicated on the
8 above claims which were alleged or could have been alleged based upon the facts pled in the
9 First Amended Complaint at any time during the Class Period. Settlement Class members will
10 opt-in to a release of the FLSA claims included in the Released Class Claims by endorsing or
11 negotiating their settlement checks.

12 **DD. “Released Parties”** means Defendants Q & B Foods, Inc., ESG Employer
13 Resources, Inc. and their respective present and former parents, owners, subsidiaries, and any
14 affiliated or related persons or entities and each of their respective officers, directors, employees,
15 partners, shareholders, attorneys and agents and any other successors, assigns or legal
16 representatives. Released Parties shall also include any and all other temporary agencies
17 (namely, Aerotek, Inc., SkillSet Group, LLC, Randstad, and Express Services, Inc.) solely in
18 relation to their placement of temporary workers at Q&B during the respective Class or PAGA
19 Period and their respective present and former parents, owners, subsidiaries, and any affiliated or
20 related persons or entities and each of their respective officers, directors, employees, partners,
21 shareholders, attorneys and agents and any other successors, assigns or legal representatives
22 regarding such Q&B placements.

23 **EE. “Response Deadline”** means the deadline for Settlement Class Members to mail
24 any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator,
25 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in
26 English and Spanish by the Settlement Administrator. However, if a Settlement Class Member’s
27 notice is re-mailed, the Response Deadline for the Settlement Class Member shall be the later of
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1 fifteen (15) days from the re-mailing, or forty-five (45) days from the date of the initial mailing,
2 whichever is later. The date of the postmark shall be the exclusive means for determining
3 whether a Request for Exclusion, Objection, or Workweek Dispute was submitted by the
4 Response Deadline.

5 **FF. “Service Award”** is the amount that shall be paid to Plaintiff and Class
6 Representative Usa Corrales-Rojas pursuant to Section III(D)(4) below.

7 **GG. “Settlement Administrator”** means Phoenix Settlement Administrators, or such
8 other third-party administrator that the Court approves for purposes of administering the notice
9 and/or settlement.

10 **HH. “Settlement Class,” “Settlement Class Members” or “Class Members”** means
11 all individuals who worked in a Covered Job Position at any time during the Class Period.

12 **II. “Settlement Class Counsel” is:**

13 **BIBIYAN LAW GROUP, P.C.**

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16 Diego Aviles (SBN 315533)

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

23 **JJ. “Weekly Recovery”** refers to the amount computed by the Settlement
24 Administrator to be recovered by Settlement Class Members for each Qualifying Work Week.

25 **KK. “Workweek Dispute”** refers to a dispute by a Settlement Class Member and/or
26 Alleged Aggrieved Employee regarding the number of Qualifying Work Weeks attributed to him
27 or her in the Class Notice, be it in the Class Period or PAGA Period.

28 **II. BACKGROUND.**

1. On September 16, 2020, in accordance with the Private Attorneys General Act of
2004 (“PAGA”), Usa Corrales-Rojas filed a Notice with the California Department of Industrial
Relations (“PAGA Notice”) alleging that Defendants had violated California Labor Code

1 sections 201, 202, 203, 204, 226, 226.7, 227.3, 246 *et seq.*, 404, 432, 510, 512, 1174, 1194,
2 1194.2, 1197, 1198.5, 2810.5, 2802, and the California Wage Orders and sought penalties under
3 California Labor Code sections 226.3, 210, 558, 1174.5, 1197.1, 2699, and 2810.3.

4 2. On October 26, 2020, Plaintiff filed a lawsuit in the Los Angeles County Superior
5 Court on behalf of himself and “all others similarly situated” alleging eight causes of action
6 against Defendants: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3)
7 failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6)
8 wage statement violations; (7) failure to indemnify; and (8) unfair competition in violation of
9 Business and Professions Code section 17200 *et seq.* The matter was stayed by order of the
10 Court and no answer was filed by Defendants.

11 3. On January 27, 2021, Plaintiff filed a First Amended Complaint, adding six more
12 causes of action: (1) civil penalties under Labor Code section 210; (2) civil penalties under Labor
13 Code section 226.3; (3) violation of Labor Code section 558; (4) violation of Labor Code section
14 1174.5, (5) violation of Labor Code section 1197.1 and (6) civil penalties under Labor Code
15 section 2699 (i.e., PAGA).

16 4. On December 6, 2021, after the exchange of informal discovery, the Parties
17 participated in a mediation with mediator Deborah C. Saxe, Esq. After extensive negotiations,
18 the Parties reached this Settlement following a mediator’s proposal. The settlement negotiations
19 included discussion and examination of the Parties’ respective positions regarding the legal and
20 factual issues pertaining to the claims asserted by Plaintiff.

21 5. Plaintiff and Class Counsel concluded, after taking into account the sharply
22 disputed factual and legal issues involved in this Lawsuit, the risks attendant to further
23 prosecution, the informal discovery conducted to date, and the substantial benefits received and
24 to be received pursuant to the compromise and settlement of the Litigation, that settlement on the
25 terms hereinafter set forth was in the best interest of Plaintiff and the Settlement Class.

26 6. Class Counsel believes that the Settlement reached is fair to the Settlement Class
27 and confers substantial benefits on the Settlement Class, offering all Settlement Class Members
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1 certain and meaningful recoveries in the near term. Based on their evaluation, Class Counsel
2 determined that the Settlement set forth in this Agreement is in the best interest of Plaintiff and
3 the Settlement Class.

4 7. Similarly, Defendants and counsel for Q&B and ESG concluded that there were
5 benefits associated with settling. Based on the disputed factual and legal issues involved in the
6 Lawsuit, the risks attendant to further defense, the expense and burden of protracted litigation,
7 and Defendants' desire to put the controversy to rest, Defendants and counsel for Defendants
8 believe that settlement on the terms hereinafter set forth is also in Defendants' best interest.

9 8. As part the settlement of this matter, the Parties agree that Plaintiff will take all
10 action to exhaust administrative requirements so that a PAGA claim under Labor Code section
11 1197.5 is released and if necessary, file a Second Amended Complaint to include a claim under
12 Labor Code section 1197.5. Defendants will not object to the exhaustion of administrative
13 remedies or the amendment of the complaint to the extent it is for the sole purpose of
14 effectuating this settlement. The Parties agree that Defendants do not waive any objections to
15 this exhaustion or amendment if for any reason this settlement does not become effective.

16 9. This Settlement contemplates the (a) entry of a final order approving settlement of
17 the class action Litigation; and (b) discharge of the Released Parties from the Released Claims.
18 The terms of this Settlement Agreement and the anticipated Judgment and Final Order are
19 binding on the Plaintiff and each Settlement Class Member who has not been excluded from the
20 Settlement Class and the Parties intend that said terms shall have a res judicata and other
21 preclusive effect to the fullest extent allowed under the law in all pending and future claims,
22 lawsuits, or other proceedings involving the Released Class Claims, as that term is defined in
23 Section I(R), that are brought or maintained by or on behalf of Plaintiffs and/or any Participating
24 Class Member. The Judgment and Final Order are also intended to bind Settlement Class
25 Members who opt in pursuant to Section III(D)(13). The Judgment and Final Order will also
26 bind Plaintiff, the PAGA Group, and the State of California and have a res judicata and other
27 preclusive effect to the fullest extent allowed under the law in all pending and future claims,
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lawsuits, or other proceedings involving the claims covered by the Released PAGA Claims.

III. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT.

The Parties and their respective counsel shall take all steps that may be requested by the Court relating to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain Court approval and implement this Agreement. The procedure for obtaining Court approval of and implementing this Agreement shall be as follows:

A. Preliminary Approval.

Settlement Class Counsel will submit this Agreement to the Court for its preliminary approval. The Court's preliminary approval of this Agreement shall be embodied in an Order Granting Preliminary Approval of Class Action Settlement and Certification of Settlement Class for settlement purposes only, Appointing Class Counsel for settlement purposes only, and providing for Notice of Class Action Settlement. Settlement Class Counsel will take all necessary steps to ensure that there is exhaustion of PAGA claims as to Labor Code section 1197.5 to the extent required by the court and also submit the Settlement Agreement to the LWDA pursuant to the requirements of Labor Code section 2699(l).

B. Notice to Settlement Class Members.

The Settlement Administrator shall disseminate the Notice of Class Action Settlement, which the Parties will ask the Court to approve in a form substantially similar to the one attached hereto as Exhibit A ("Notice of Class Settlement" or "Notice"), by giving notice by first-class United States mail as described in Section III(B)(1).

1. Class Notice.

Notice shall be provided to Settlement Class Members in the following manner:

a. Prior to the filing of the motion for preliminary approval the Parties will stipulate to a request that the Court lift the stay to allow the Parties to subpoena third party staffing agencies who assigned non-exempt employees to Q&B during the Class Period to obtain the names, social security numbers and last known home address and telephone numbers for every such staffing agency employee who provided services to Q&B during the Class Period and the

1 dates the employee provided such services. Q&B will subpoena the third-party staffing agencies
2 requesting this information not later than three (3) court days after the Court lifts the stay to
3 allow this subpoena.

4 b. In order to better assure receipt of the third party staffing agency information
5 necessary for the Class List (defined below), at the time the parties request that the stay be lifted
6 to subpoena the third-party service provider, the Parties will ask the Court to allow Q&B to
7 move to compel on shortened time (less than 21 days' notice and 5 days for mailing the motion)
8 and reserve a date for such motion, and if that is not allowed, Q& B will request a hearing date
9 for a motion to compel that is 60 days after the stay of discovery is lifted. The Parties will
10 stipulate that it will request sanctions for failure to comply in violation of the Court's order and
11 seek the Court's guidance on this as part of the motion for preliminary approval.

12 c. Within twenty twenty-one (21) calendar days of receipt by Defendants' Counsel
13 of (1) the Court's Order re Preliminary Approval of Class Action Settlement, or (2) 45 days after
14 a motion to compel production of information from the third party vendors is granted, in
15 accordance with Section III(B)(1)(a) above, whichever is later, Defendants will provide the
16 Settlement Administrator with a list of all Settlement Class Members ("Class List"). However,
17 the Class List can be amended up and until the final approval date if Q&B receives the
18 subpoenaed information from the third-party vendors. This Class List shall state the social
19 security number and the last known home address and telephone numbers for each Settlement
20 Class Member. The Class List shall also state the dates worked by each such Settlement Class
21 Member during the Class Period in a Covered Job Position as indicated in, as applicable,
22 Defendants' records or those subpoenaed from the staffing agencies. This information shall be
23 treated as and remain confidential, shall be used solely to manage the notice and claims process
24 described herein, and shall not be disclosed to anyone other than the Settlement Administrator
25 and applicable taxing authorities, or pursuant to express written authorization of Defendants, the
26 individual in question, or by order of the Court

27 d. Within ten (10) calendar days of receipt of the Class List from Defendants, the
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1 Settlement Administrator shall mail the Notice of Class Settlement by first-class United States
2 mail, postage prepaid, to the last known address of each Settlement Class Member, or, in the case
3 of Settlement Class Members known to be deceased, to the legal representative of the estate. The
4 Notice will include the estimated Individual Payment Amount for the Settlement Class Member
5 to whom it is addressed, as well as the estimated Individual PAGA Payment amount if the
6 Settlement Class Member is also an Alleged Aggrieved Employee. Prior to the initial mailing of
7 the Notice of Class Action Settlement, the Settlement Administrator shall perform a NCOA
8 (“National Change of Address”) update for each Settlement Class Member.

9 e. The Class Notice shall include a Statement of Weeks Worked that states the dates
10 that the Settlement Class Member worked during the Class Period in a Covered Position, along
11 with the Settlement Class Member’s estimated Individual Payment Amount based on the formula
12 set forth in Section III(D)(10) below, along with, if the Settlement Class Member is also an
13 Alleged Aggrieved Employee, the dates that the Settlement Class Member worked during the
14 PAGA Period in a Covered Position and the Alleged Aggrieved Employee’s estimated Individual
15 PAGA Payment based on the formula set forth below.

16 f. With respect to those Settlement Class Members whose Notice of Class
17 Settlement is returned to the Settlement Administrator as undeliverable, the Settlement
18 Administrator shall promptly attempt to obtain a valid mailing address by use of Equifax or
19 another skip trace method. If another address is identified, the Settlement Administrator shall
20 immediately thereafter send the Notice of Class Settlement by mail to the new address.

21 g. The Settlement Administrator shall also establish a toll-free number that
22 Settlement Class Members can call and a website in which Court Orders regarding the
23 Settlement are posted. All costs, including but not limited to those associated with the Notice of
24 Class Settlement, whether foreseen or not, shall be paid from the Settlement Sum in accordance
25 with Section III(D)(2) below.

26 **2. Declaration of Compliance.**

27 No later than twenty-one (21) court days before the Final Fairness and Approval Hearing,
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1 the Settlement Administrator shall provide Defendants' Counsel and Class Counsel with a
2 declaration attesting to completion of the notice process ("Declaration of Compliance"),
3 including the steps set forth in Section III(B)(1)(a)-(f), which shall be filed with the Court by
4 Class Counsel with the final approval motion.

5 Compliance with the procedures described in this section shall constitute due and
6 sufficient notice to Settlement Class Members of this proposed Settlement and the Final Fairness
7 and Approval Hearing. With the exception of the objection process set forth in Section III(C)(2),
8 this proposed Settlement shall not be subject to objection or collateral attack by any person or
9 entity and shall satisfy the requirement of due process. Nothing else shall be required of, or done
10 by, the Parties, Class Counsel, Defendants' Counsel, or the Settlement Administrator to provide
11 notice of the proposed Settlement and the Final Fairness and Approval Hearing unless ordered by
12 the Court.

13 **C. Responses to Notice.**

14 **1. Requests for Exclusion from Class.**

15 Any Settlement Class Member who receives a Notice of Class Settlement may request to
16 be excluded from the Settlement Class by submitting a written Request for Exclusion ("Request
17 for Exclusion"). The Request for Exclusion must contain the Settlement Class Member's name,
18 address, and last four digits of the Settlement Class Member's social security number, and it
19 must affirmatively state that the Settlement Class Member does not want to participate in the
20 Class Settlement. The Request for Exclusion must also be signed by the Settlement Class
21 Member. These procedures are set forth in the Notice of Class Settlement attached hereto as
22 Exhibit A and will be timely only if postmarked by the Response Deadline or if otherwise agreed
23 by the Parties, through Class Counsel and Defendants' Counsel, in writing. No Alleged
24 Aggrieved Employee may request exclusion from the PAGA Group. All Alleged Aggrieved
25 Employees will remain subject to the PAGA Release set forth in Section V(B) whether or not
26 they timely and properly request exclusion from the Settlement Class.

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1 **2. Objections to Settlement.**

2 Any Settlement Class Member wishing to object to the approval of this Settlement
3 (“Objecting Settlement Class Member”) shall inform the Settlement Administrator in writing of
4 any intent to object by following the procedure set forth in the Notice of Class Settlement, with a
5 written Objection postmarked no later than the Response Deadline. Any such written objections
6 must contain the Settlement Class Member’s name, address, and last four digits of the Settlement
7 Class Member’s social security number and must state the legal and factual bases for objection.
8 The objection must also be signed by the Settlement Class Member. These procedures are set
9 forth in the Notice of Class Settlement attached hereto as Exhibit A. Nevertheless, even if a
10 Settlement Class Member does not submit an Objection as set forth in the manner herein, the
11 Settlement Class Member may still appear at the Final Approval Hearing to orally present any
12 objections to the Court or otherwise comment on the Settlement.

13 **3. Responses to Objections.**

14 Counsel for the Parties shall file any response to any written objections submitted by
15 Objecting Settlement Class Members at least five (5) court days before the date of the Final
16 Fairness and Approval Hearing.

17 **4. Final Fairness and Approval Hearing.**

18 On the date set forth in the Order re Preliminary Approval of Class Action Settlement,
19 which shall be approximately seventy-five (75) calendar days after the mailing of the Notice of
20 Class Settlement, a Final Fairness and Approval Hearing shall be held before the Court in order
21 (1) to review this Agreement and determine whether the Court should give it final approval; and
22 (2) to consider any timely objections made pursuant to Section III(C)(2) above and all responses
23 by the Parties to such objections; provided, however that the Final Fairness and Approval
24 Hearing may be continued to allow notice to third party vendor Settlement Class Members, who
25 receive late notice due to a delay in obtaining Class List information subpoenaed from third
26 parties . At the Final Fairness and Approval Hearing, the Parties shall ask the Court to give final
27 approval to this Agreement. If the Parties’ request for final approval is granted, a Judgment and
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1 Final Order Approving Settlement of Class Action, in a form approved by the Parties, shall be
2 entered in the Litigation. Within five (5) calendar days of receipt of the Judgment and Final
3 Order by Class Counsel, Class Counsel shall furnish a copy of the Judgment and Final Order to
4 the Settlement Administrator. The Settlement Administrator will give notice to the Settlement
5 Class of the Judgment and Final Order by posting the document on its website for a period of not
6 less than one (1) year. Settlement Class Counsel will submit the Judgment and Final Order to the
7 LWDA pursuant to the requirements of Labor Code section 2699(l).

8 **D. Settlement Payment Procedures.**

9 **1. Gross Settlement Amount.**

10 The maximum Gross Settlement Amount for the class and the PAGA claim shall be
11 limited to a total of One Million, One Hundred and Fifty Thousand Dollars and Zero Cents
12 (\$1,150,000.00), or as may be escalated at Defendant Q&B's option pursuant to Paragraph
13 IV(D)(3) below (hereafter the "Escalator Option"). Defendant Q&B will contribute
14 \$1,100,000.00 to the Gross Settlement Amount, and Defendant ESG will contribute \$50,000.00
15 to the Gross Settlement Amount, and, to the extent the Escalator Option is triggered, Defendant
16 Q&B will contribute the increase in settlement amounts that are due. Defendant ESG will not
17 fund any employer side tax obligations that result from an increase in the settlement amount
18 created by the trigger of the escalator, any such increase will be funded by Defendant Q&B. The
19 Gross Settlement Amount shall be all-in with no reversion to Defendants. All amounts to be
20 paid by Defendants from the Gross Settlement Amount shall be paid to a qualified settlement
21 fund ("Qualified Settlement Fund"), which shall be administered by the Settlement
22 Administrator. All amounts to be paid to anyone pursuant to this Agreement ("Settlement
23 Amounts") shall be paid out of the Qualified Settlement Fund. Such Settlement Amounts shall
24 include all amounts to be paid to Plaintiffs and Settlement Class Members who do not timely
25 request exclusion and opt out of this Settlement; all amounts to be paid to Class Counsel as Class
26 Counsel's Attorneys' Fees, as set forth in Section III(D)(3) below; all amounts to be paid to
27 Class Counsel as Class Counsel's Litigation Costs, as set forth in Section III(D)(3) below; all
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1 amounts to be paid as a Service Award to Plaintiff as set forth in Section III(D)(4); all amounts
2 to be paid as Settlement Administration Costs, as defined in Section III(D)(2) below, the
3 payments to the LWDA and Alleged Aggrieved Employees for their respective portions of the
4 amount paid to settle the PAGA claim, as set forth in Section III(D)(6) below; and any other
5 Settlement Amounts to be paid under this Agreement. All such Settlement Amounts to be paid
6 under this Agreement shall be paid from the Qualified Settlement Fund and Defendant shall have
7 no obligations under this Agreement beyond its obligation to make payments to the Qualified
8 Settlement Fund, aside from Employer Taxes. After the initial deposit of the Gross Settlement
9 Amount by Defendants in the Qualified Settlement Fund, the Settlement Administrator shall
10 inform Defendants what additional amounts are necessary to be paid in Employer Taxes. ESG
11 shall pay its share of Employer Taxes only in connection with the Qualifying Work Weeks that
12 Class Members worked in a Covered Position who were employed by ESG and placed to work
13 with Q&B during the Class Period, with Q&B paying the balance of Employer Taxes owed.

14 Consistent with the terms of this Agreement, for purposes of determining the Net
15 Settlement Amount, the Settlement Administrator shall first deduct the Settlement
16 Administration Costs described in Section III(D)(2); deduct the amount of Attorneys' Fees and
17 Litigation Costs approved by the Court, described in Section III(D)(3); deduct the Service Award
18 to Plaintiff described in Section III(D)(4); and pay the LWDA and Alleged Aggrieved
19 Employees for their respective portions of the amount paid to settle PAGA claim, described in
20 Section III(D)(6). Thereafter, from the remaining funds (the "Net Settlement Amount"), the
21 Settlement Administrator shall pay the Individual Payment Amounts to Settlement Class
22 Members who do not timely request exclusion and opt out of this Settlement as described in
23 Section III(D)(5) below, as well as Individual PAGA Payments from PAGA Payment, which
24 shall be paid to Alleged Aggrieved Employees on a *pro rata* basis based on the number of
25 Qualifying Work Weeks each worked in a Covered Position as an Alleged Aggrieved Employee
26 during the PAGA Period. Defendants shall wire their respective contributions to the Gross
27 Settlement Amount to the Settlement Administrator for deposit into and the Qualified Settlement
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1 Fund, which shall be an interest-bearing account, no later than fourteen (14) calendar days after
2 the Effective Date, and their respective portion of Employer Taxes no later than seven (7)
3 calendar days after the amount owed by each Defendant is disclosed to the Parties by the
4 Settlement Administrator, so long as that is at least fourteen (14) calendar days after the
5 Effective Date. However, if there is no objector or intervenor to the settlement, Defendants
6 shall wire their respective contributions to the Gross Settlement Amount to the Settlement
7 Administrator for deposit into and the Qualified Settlement Fund, which shall be an interest-
8 bearing account, no later than fourteen (14) calendar days after the Court signs an Order granting
9 final approval of this Settlement (“Final Approval”) and the Final Approval order is served on
10 Defendants.

11 **2. Settlement Administration Costs.**

12 Except as provided herein, all costs of administering the Settlement, including but not
13 limited to all tax obligations, custodial fees, and accounting fees incurred by the Settlement
14 Administrator; all costs and fees associated with preparing, translating, issuing and mailing any
15 and all notices or reminders to Settlement Class Members, including a NCOA update of
16 addresses and a skip trace of any undeliverable notice packets; all costs and fees associated with
17 computing, processing, reviewing, issuing and paying the Service Award, the payment to the
18 LWDA, Individual Payment Amounts, Individual PAGA Payments, interest, taxes, and any other
19 payments to be made out of or into the Qualified Settlement Fund; all costs and fees associated
20 with preparing any tax returns and any other filings required by any governmental taxing
21 authority or agency; all costs and fees associated with preparing any other notices, reminders,
22 reports, or filings to be prepared in the course of administering disbursements from the Gross
23 Settlement Amount; and any other costs and fees incurred and/or charged by the Settlement
24 Administrator in connection with the execution of its duties under this Agreement (“Settlement
25 Administration Costs”), shall not exceed \$12,950.00, and shall also be paid from the Gross
26 Settlement Amount.

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1 **3. Attorneys' Fees and Costs.**

2 Subject to Court approval, Class Counsel will be paid up to thirty-five percent (35%) of
3 the Gross Settlement Amount, which, unless escalated pursuant to the Escalator Option, equals
4 Four Hundred and Two Thousand, Five Hundred Dollars and Zero Cents (\$402,500.00) for their
5 reasonable attorneys' fees ("Attorneys' Fees"). Subject to Court approval, Class Counsel will
6 also be paid reasonable and actual costs in prosecuting this Litigation from the Gross Settlement
7 Amount ("Litigation Costs") in an amount not to exceed Thirty Thousand Dollars and Zero
8 Cents (\$30,000.00). The Attorneys' Fees and Litigation Costs shall be paid out of the Gross
9 Settlement Amount. Class Counsel shall aim to provide Defendants' Counsel with copies of the
10 motion and declarations to be submitted in support of their fee request at least five (5) business
11 days before such documents are filed with the Court. Defendants agree not to oppose Class
12 Counsel's proposed fee request provided it comports with the terms of this Settlement
13 Agreement. Any amount not approved by the Court will revert to the Net Settlement Amount for
14 distribution among Class Members. The Settlement Administrator shall pay Class Counsel's
15 court approved Attorneys' Fees and Litigation Costs no later than seven (7) calendar days after
16 Defendants have wired their respective contributions to the Gross Settlement Amount and
17 Employer Taxes to the Settlement Administrator in accordance with Section III(D)(1).

18 **4. Service Award Payable to Plaintiff.**

19 Subject to Court approval, Plaintiff and Class Representative Usa Corrales-Rojas shall
20 receive a Service Award of up to five thousand dollars and zero cents (\$5,000.00). Plaintiff shall
21 provide the Released Parties a broader release than those provided by Class Members and
22 Alleged Aggrieved Employees, as further set out in Section V(D)(3). The Service Award shall
23 be paid out of the Gross Settlement Amount. The Service Award shall be payable no later than
24 seven (7) calendar days after Defendants pay the Gross Settlement Amount and Employer Taxes
25 to the Settlement Administrator. The Settlement Administrator will report the Service Award on
26 a Form 1099, which it will provide to Plaintiff and to the pertinent taxing authorities as required
27 by law.
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1 **5. Individual Payment Amounts Payable to Settlement Class Members.**

2 In accordance with the procedures set forth in Sections III(D)(10)-(12), the Settlement
3 Administrator shall pay each Settlement Class Member who does not timely request exclusion
4 and opt out of this Settlement the Settlement Class Member's Individual Payment Amount.

5 A portion of each Settlement Class Member's Individual Payment Amount shall
6 represent wages, and a portion shall represent interest and penalties. Seventy-five percent (75%)
7 of each Settlement Class Member's Individual Payment Amount shall represent penalties and
8 interest. Twenty-five percent (25%) of each Settlement Class Member's Individual Payment
9 Amount shall represent wages. That portion of each Settlement Class Member's Individual
10 Payment Amount representing wages will be subject to normal employment tax withholdings
11 (e.g., withholdings for state and federal income tax, employee FICA tax, California SDI) with
12 the Settlement Administrator remitting all such employment tax withholdings directly to the
13 pertinent state and federal taxing authorities.

14 That portion of each Settlement Class Member's Individual Payment Amount
15 constituting interest or penalties will be reported on a Form 1099 provided to each Settlement
16 Class Member, with the required copies of the Form 1099 provided to the pertinent taxing
17 authorities.

18 The Settlement Administrator shall be responsible for calculating such taxes owed by
19 Defendants and by the Qualified Settlement Fund (including any employer FICA or FUTA
20 taxes) and providing Defendants with a statement of all amounts due, which shall be due within
21 seven (7) calendar days of receiving the Gross Settlement Amount from Defendants. Defendants
22 shall then have an additional seven (7) calendar days to wire the amounts designated as owed for
23 Employer Taxes to the Settlement Administrator.

24 The Parties are mindful that the total consideration payable hereunder is allocated to a
25 number of separate and distinct claims for damages and penalties by Plaintiff and the Settlement
26 Class Members. Accordingly, having considered the matter in detail, having performed their
27 own separate and independent computations and estimations of the damages and penalties
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1 potentially awardable at trial or arbitration, the Parties mutually consent and agree that the
2 Settlement Class Members' Individual Payment Amounts be apportioned among the Settlement
3 Class Members' various wage and non-wage claims in this Litigation as set forth above.
4 Moreover, the Parties mutually consent and agree, and hereby represent to the Court in this
5 judicially supervised settlement transaction, that the apportionment of the Settlement Class
6 Members' Individual Payment Amounts as stated above is a reasonable and arm's length
7 determination of the character of the Individual Payment Amounts for all purposes, including for
8 tax purposes. Defendants' Counsel and Class Counsel make no representations as to the tax
9 treatment or legal effect of the payments called for hereunder, and Class Members are not relying
10 on any statement or representation by Defendants' Counsel or Class Counsel in this regard.
11 Class Members understand and agree that they will be solely responsible for the payment of their
12 portion of any taxes and penalties assessed on their Individual Payment Amounts today and in
13 the future.

14 **6. Payment of PAGA Penalties to the LWDA and Alleged Aggrieved**
15 **Employees.**

16 The Parties agree to allocate Fifty Thousand Dollars and Zero Cents (\$50,000.00) to the
17 settlement of PAGA penalties sought in the Lawsuit, which the Parties believe in good faith is a
18 fair and reasonable apportionment. The Settlement Administrator shall pay seventy-five percent
19 (75%), or \$37,500.00, of this amount to the LWDA and twenty-five percent (25%), or
20 \$12,500.00, of this amount to Alleged Aggrieved Employees, with each Alleged Aggrieved
21 Employee's share determined by multiplying \$12,500.00 by a fraction, the numerator of which is
22 the number of Qualifying Work Weeks worked in a Covered Position by that Alleged Aggrieved
23 Employee during the PAGA Period, and the denominator of which is the total number of
24 Qualifying Work Weeks worked in a Covered Position by all Alleged Aggrieved Employees
25 during the PAGA Period. Payment shall be made to the LWDA no later than seven (7) calendar
26 days after Defendants have wired their respective contributions to the Gross Settlement Amount
27 to the Settlement Administrator in accordance with Section III(D)(1). Payment to Alleged
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Aggrieved Employees shall be made at the same time as Individual Payment Amounts are paid to Settlement Class members in accordance with Section III(D)(12) below. All Alleged Aggrieved Employees will receive their proportional share of the Settlement amount allocated to PAGA penalties whether or not they timely and properly request exclusion from the Settlement Class as provided by Section III(C)(1). The PAGA penalty payments will be reported on a Form 1099 provided to each Alleged Aggrieved Employee, with the required copies of the Form 1099s provided to the pertinent taxing authorities.

7. No Spillover of Residuals.

To the extent there are any payments made to Settlement Class Members or Alleged Aggrieved Employees that remain uncashed one hundred and eighty (180) days after mailing, all such uncashed payments and interest from the date of entry of judgment shall be paid to Legal Aid at Work, 180 Montgomery St., Suite 600, San Francisco, California 94104 for use in Los Angeles County, subject to Court approval. Pursuant to Code of Civil Procedure section 384, the Settlement Administrator is ordered to submit a report to the court stating the total amount that was actually paid to Class Members thirty (30) calendar days after the 180th day following the mailing. After the report is received, the Parties shall request that the Court amend the Judgment to direct the Settlement Administrator to pay the sum of the unpaid residue or unclaimed or abandoned funds, plus any interest that has accrued thereon, to the *cy pres* recipient designated herein.

8. No Additional Contribution by Defendants.

Defendants' monetary obligations under this Agreement are limited to the amount defined in the Gross Settlement Amount, as the same may be escalated pursuant to the Escalator Option, along with Employer Taxes. Defendants may not be called upon or required to contribute additional monies above their respective shares of the Gross Settlement Amount, except as may be escalated pursuant to the Escalator Option, as well as their share of Employer Taxes, under any circumstances whatsoever. Payment and/or receipt of any Individual Payment Amount, or PAGA penalty allocation shall not trigger any other obligation, right, or entitlement.

1 The amounts paid under this Agreement do not represent a modification of any previously
2 credited hours of service under any employee benefit plan, policy, or bonus program sponsored
3 by either Defendant. Neither any Individual Settlement Payment or Individual PAGA Payment
4 shall form the basis for additional contributions to, benefits under, or any other monetary
5 entitlement under, benefit plans (self-insured or not) sponsored by either Defendant. Any
6 payments made under the terms of this Agreement shall not be applied retroactively, currently, or
7 on a going forward basis as salary, earnings, wages, or any other form of compensation for the
8 purposes of either Defendant's benefit plans, paid vacation policy, calculations, other policy, or
9 bonus program. Each Defendant retains the right to modify the language of its benefit plans,
10 policies, and bonus programs to effect this intent and to make clear that any amounts paid
11 pursuant to this Agreement are not for "hours worked," "hours paid," "hours of service," or any
12 similar measuring term as defined by applicable plans, policies, and bonus programs for purpose
13 of eligibility, vesting, benefit, accrual, or any other purpose, and that additional contributions or
14 benefits are not required by this Agreement.

15 In the event that this Agreement is canceled, rescinded, terminated, voided, or nullified,
16 however that may occur, or the Settlement of the Litigation is barred by operation of law, or
17 invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendants will
18 cease to have any obligation to pay any portion of the Gross Settlement Amount to the Qualified
19 Settlement Fund, or any other party under the terms of this Agreement, and all previous
20 disbursements made from Defendants to the Qualified Settlement Fund will immediately revert
21 back to Defendants, less any Settlement Administration Costs incurred, which shall be borne
22 equally by the Parties.

23 **9. The Settlement Administrator.**

24 The Parties have chosen Phoenix Settlement Administrators to administer this Settlement
25 and to act as the Settlement Administrator. The Settlement Administrator will administer
26 disbursements from the Gross Settlement Amount paid by Defendants into the Qualified
27 Settlement Fund, including, but not limited to, distributing the Notice of Class Settlement;
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1 calculating claims against the Qualified Settlement Fund; calculating interest owed providing a
2 calculation of Employer Taxes; preparing and issuing all disbursements of the Settlement
3 Amounts required to be paid to the Settlement Class Members who do not timely request
4 exclusion and opt out of this Settlement, Plaintiff, Class Counsel the LWDA, and the local state
5 and federal payroll tax authorities; tracking whether Settlement Class Members have cashed
6 issued checks; and handling inquiries about the calculation of the Individual Payment Amounts
7 and Individual PAGA Payments. The Settlement Administrator shall be responsible for the
8 timely filing of all federal, state and local tax returns of the Qualified Settlement Fund and
9 making the timely payment of any and all taxes and withholdings required with such returns.
10 The Settlement Administrator shall provide an address and toll-free telephone number to respond
11 to Settlement Class Members' inquiries about the Notice of Class Settlement and determination
12 of the Individual Payment Amounts and/or Individual PAGA Payments. All questions by
13 Settlement Class Members shall be directed to the Settlement Administrator.

14 All Settlement Administration Costs associated with administering disbursements from
15 the Qualified Settlement Fund, including, but not limited to, the fees and costs of the Settlement
16 Administrator and the cost of the Notice of Class Settlement, shall be paid entirely from the
17 Gross Settlement Amount paid by Defendants into the Qualified Settlement Fund. The
18 Settlement Administrator shall conduct all administration of all disbursements of the Gross
19 Settlement Amount.

20 **10. Calculation of Individual Payment Amounts.**

21 The Settlement Administrator shall determine the total number of Qualifying Work
22 Weeks worked by all Settlement Class Members by determining, for each Settlement Class
23 Member, the number of Qualifying Work Weeks worked in a Covered Job Position during the
24 Class Period. The Settlement Administrator shall compute the value of a Qualifying Work Week
25 ("Base Value") by dividing the amount of the Net Settlement Fund by the total number of
26 Qualifying Work Weeks worked by all Settlement Class Members. The Settlement
27 Administrator shall compute each Participating Class Member's Weekly Recovery by
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1 multiplying the Base Value by the number of Qualifying Work Weeks worked by the
2 Participating Settlement Class Member.

3 Prior to distribution of the settlement checks, the Individual Payment Amounts based on
4 amounts attributed to any Settlement Class Members who timely Request Exclusion from the
5 Class in accordance with Section III(C)(1) will be allocated on a *pro rata* basis, using the
6 methodology set forth herein, to the Settlement Class Members who do not timely Request
7 Exclusion from the Class.

8 **11. Resolution of Disputes.**

9 Any Settlement Class Member who disputes the information shown on his or her
10 Statement of Weeks Worked may indicate and explain such disagreement on the Statement of
11 Weeks Worked form, to be returned to the Settlement Administrator postmarked by the
12 Response Deadline. Any such Settlement Class Member may submit any documentation in his
13 or her possession relating to his or her dispute along with his or her completed Statement of
14 Weeks Worked form. The Settlement Administrator shall notify Defendants' Counsel and Class
15 Counsel of any such dispute no later than five (5) calendar days after receiving notice of the
16 dispute. The Settlement Administrator shall attempt to resolve the disagreement and may request
17 any information or assistance from Defendants' Counsel and/or Class Counsel that the
18 Settlement Administrator, in its sole discretion, believes may assist it in resolving the
19 disagreement. The Settlement Administrator shall have final and binding authority to resolve
20 any disputes based on the records of Defendants and any staffing agency records. The Parties
21 and their counsel shall use their best efforts to ensure that any and all such disputes are resolved.

22 **12. Payment of Individual Payment Amounts.**

23 The Settlement Administrator shall calculate the final Individual Payment Amount to be
24 paid to each Settlement Class Member and the proportional share of the PAGA Payment for each
25 Aggrieved Employee. The Settlement Administrator shall prepare a Final Statement of
26 Individual Payment Amount ("Final Statement") for each Settlement Class Member. For
27 Settlement Class Members who are also Alleged Aggrieved Employees, the Final Statement
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shall also set forth that Settlement Class Member's proportional share of the PAGA Payment. Alleged Aggrieved Employees who timely and properly requested exclusion from the Settlement Class will receive a similar statement ("PAGA Statement") that reflects only their proportional share of the PAGA Payment. Within seven (7) calendar days after Defendants have wired their respective contributions to the Gross Settlement Amount and Employer Taxes to the Settlement Administrator in accordance with Section III(D)(1), the Settlement Administrator shall issue and mail Class Members' Individual Payment Amounts and/or Alleged Aggrieved Employees' Individual PAGA Payments, in each case along with the Final Statement or PAGA Statement, as applicable. The mailing shall be by first-class United States mail to the last known mailing address of each Settlement Class Member or Alleged Aggrieved Employee (as updated, if applicable, during the Notice mailing process as set forth in Section III(B)(1)(e)).

13. Opt-In for FLSA Claims.

The cashing of the settlement check referred to in Section III(D)(12) by the Settlement Class Member shall be deemed to be an opt-in for purposes of the FLSA claims referred to in the Released Class Claims. The Settlement Administrator shall include a legend on the settlement check stating, "By cashing this check, I am opting into *Usa Corrales-Rojas v. Q & B Foods, Inc. and ESG Employer Resources, Inc.*, Los Angeles Superior Court Case No. 20STCV40885, under the Fair Labor Standards Act, 29 U.S.C. § 216(b), and releasing the Released Class Claims described in the Settlement Agreement."

14. Extension of Time to Pay and/or Process Claims.

Should the Settlement Administrator need more time than is provided under this Agreement to complete any of its obligations as set forth in this Agreement, the Settlement Administrator may request such additional time in writing (including an explanation of the need for additional time) from the Court and/or the Parties.

15. Public Statements.

Plaintiff and Settlement Class Counsel shall not hold any press conferences, issue any press releases, seek any publicity or publish any announcements on any website with respect to

1 this matter at any time in any fashion that may reasonably identify Defendants. Until the Parties
2 submit a request for preliminary approval from the Court, Plaintiff and Settlement Class Counsel
3 will keep the terms of this Agreement confidential. Prior to final approval of this Settlement,
4 Plaintiff and Class Counsel will not discuss this Litigation or Settlement or otherwise disclose
5 the terms of this Agreement with third parties other than Settlement Class Members, except
6 (1) as necessary to effectuate this Agreement and (2) to the Parties' tax advisors. After final
7 approval of this Settlement, Plaintiff, Defendants, and their respective Counsel shall not issue
8 any public statements with respect to the Litigation or Settlement, except as required by law or
9 expressly permitted by this Agreement. Upon such final approval, Plaintiff, Defendants and their
10 respective Counsel may issue, if at all, only a mutually agreeable joint press release, although
11 neither Party is required to agree to any press release of any kind. Unless otherwise agreed by
12 Plaintiff, Defendants, and their respective Counsel, any oral or written disclosure of information
13 related to the Settlement shall be restricted to the material discussed in this Stipulation and
14 Agreement. Plaintiff, Defendants, and their respective Counsel agree and acknowledge that the
15 phrase "material discussed in this Stipulation and Agreement" shall be narrowly construed.
16 Notwithstanding the specific limitations on public disclosure identified herein, neither
17 Defendants nor Class Counsel shall be precluded from disclosing the Parties to the lawsuit, and
18 the fact that the matter settled, to a Court or other tribunal. Furthermore, nothing herein limits
19 Plaintiff or any Settlement Class Member's ability to communicate with any government agency
20 or otherwise participate in any investigation or proceeding that may be conducted by any
21 government agency. This provision shall not prohibit Class Counsel from communicating with
22 Settlement Class Members after preliminary approval is granted for the sole purpose of
23 administering the Settlement or from otherwise ensuring that Class Members have notice of the
24 Settlement and any Judgment entered in connection therewith. This provision also does not limit
25 Class Counsel from complying with ethical obligations or from posting court-filed documents on
26 their website for viewing by Settlement Class Members.

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1 **IV. LIMITATIONS ON USE OF THIS SETTLEMENT.**

2 **A. No Admission.**

3 Neither the acceptance nor the performance by Defendants of the terms of this
4 Agreement nor any of the related negotiations or proceedings is or shall be claimed to be,
5 construed as, or deemed to be an admission by Defendants of the truth of any of the allegations
6 in the Lawsuit, the representative character of the Litigation, the validity of any of the claims that
7 were or could have been asserted by Plaintiff and/or Settlement Class Members in the Litigation,
8 or of any liability or guilt of Defendants in the Litigation.

9 **B. Non-Evidentiary Use.**

10 Neither this Agreement nor any of its terms shall be offered or used as evidence by any of
11 the Parties, Settlement Class Members, or their respective counsel in the Litigation or in any
12 other action or proceeding either as evidence or in discovery; provided, however, that nothing
13 contained in this Section IV(B) shall prevent this Agreement from being used, offered, or
14 received in evidence in any proceeding to enforce, construe, or finalize this Agreement or to
15 establish its preclusive effect as to a claim asserted by Plaintiff, any Settlement Class Member,
16 any Alleged Aggrieved Employee, or the State of California.

17 **C. No Collateral Attack.**

18 This Agreement shall not be subject to collateral attack by any Defendant, Plaintiff,
19 Settlement Class Member or any recipient of the Notice of Class Settlement after the Judgment
20 and Final Order described in Section III(C)(4) is entered. Such prohibited collateral attacks shall
21 include but not be limited to claims by Defendants regarding the escalation of the Gross
22 Settlement Amount, claims that the *pro rata* method of allocation for payment to the Settlement
23 Class Member was erroneous or that the Settlement Class Member failed for any reason to
24 receive timely notice of the Settlement or the procedure for disputing the calculation of his or her
25 Individual Payment Amount.

26 **D. Nullification.**

- 27 1. If (a) the Court should for any reason fail to certify a class for settlement; or
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1 (b) the Court should for any reason fail to approve the material terms of this Settlement in a form
2 agreed to by the Parties; or (c) the Court should for any reason fail to enter the Judgment and
3 Final Order; or (d) the Judgment and Final Order is reversed, modified, or declared or rendered
4 void, then (i) this Agreement shall be considered null and void, (ii) neither this Agreement nor
5 any of the related negotiations or proceedings shall be of any force or effect, (iii) all Parties to
6 this Agreement shall stand in the same position, without prejudice, as if the Agreement had been
7 neither entered into nor filed with the Court, and (iv) Settlement Class Counsel shall make
8 repayment of any disbursements it received from the Gross Settlement Amount.

9 2. If ten percent (10%) or more of the Settlement Class Members request exclusion
10 and opt out of this Settlement, then Q&B in its sole discretion may nullify and void this
11 Agreement in its entirety. Q&B shall have ten (10) calendar days after expiration of the opt-out
12 period, or ten (10) calendar days after notice from the Settlement Administrator, whichever is
13 later, to inform the Parties of its decision to nullify and void this Agreement if ten percent (10%)
14 or more of the Settlement Class has requested exclusion. Defendant Q&B shall pay all costs
15 incurred by the Settlement Administrator should it exercise its rights under this Section IV(D)(2).

16 3. If it is determined that the number of Qualifying Work Weeks between October
17 26, 2016 and preliminary approval of this settlement exceeds 46,653 Workweeks (42,412, plus
18 10% of 42,412), then, at its option, Defendant Q&B may elect to (A) increase the Gross
19 Settlement Amount in proportion to the increased percentage – for example, if such increase in
20 workweeks is 15% over 42,412 workweeks, the Gross Settlement Amount will increase by 5%,
21 or (B) end the Class Period on the date on which the number of Qualifying Work Weeks reaches
22 46,653. If Defendant Q&B elects to shorten the Class Period to prevent an increase in the Gross
23 Settlement Amount, then the Class Period will be shortened to the date on which the number of
24 Work Weeks reaches 46,653. The additional value of each Qualifying Work Week shall be
25 calculated by dividing \$1,150,000 by 42,412, which amounts to \$27.12. Thus, for example,
26 should there be 47,000 Qualifying Work Weeks between October 26, 2016 and preliminary
27 approval, and should Defendant Q&B elect to go with the first of these two options, then
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1 Defendant Q&B shall pay an additional \$9,410.64 as part of the Gross Settlement Amount.
2 ((47,000 Qualifying Work Weeks – 46,653 Qualifying Work Weeks) x \$27.12 / Qualifying
3 Work Week.)

4 4. Invalidation of any material term of this Agreement shall invalidate this
5 Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining
6 provisions shall remain in full force and effect.

7 5. In the event that for any reason final distribution of the Gross Settlement Amount
8 does not occur (for example, because this Agreement and/or the Judgment and Final Order is
9 modified or reversed on appeal), the entire Settlement Sum shall remain the sole property of
10 Defendants (minus any administrative expense and fees incurred by the Settlement
11 Administrator).

12 6. In the event of a timely appeal from the Judgment and Final Order, the Judgment
13 and Final Order shall be stayed, and the Settlement Sum shall not be distributed to Settlement
14 Class Members pending the completion of the appeal.

15 **V. RELEASE.**

16 **A. Release by Settlement Class Members**

17 Upon entry of the Judgment and Final Order in the Litigation and payment to the
18 Settlement Administrator of the Gross Settlement Amount (as the same may be escalated
19 pursuant to the Escalator Option) by Defendants, as well as the Employer's Taxes, Plaintiff and
20 each and every Participating Class Member shall have fully, finally, and forever released,
21 relinquished, and discharged each and all of the Released Parties in accordance with the
22 definition of the Released Class Claims in Section I(R) of this agreement. With respect to FLSA
23 claims, by negotiating the settlement check referred to in Section III(D)(12) and (13), a
24 Participating Class Member shall be deemed to have opted in and to have fully, finally, and
25 forever released, relinquished, and discharged each and all of the Released Parties from any and
26 all FLSA claims included in the Released Class Claims.

27 Each and every Participating Class Member shall be deemed to have acknowledged that
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1 this Agreement is intended to include in its effect all Released Class Claims.

2 Plaintiff and each and every Participating Class Member shall be deemed to have
3 acknowledged and agreed that: (1) their claims for missed meal and rest breaks, overtime
4 compensation, minimum wages, wages for all hours worked, statutory and civil penalties, and
5 any other payments and/or penalties sought in the Litigation are disputed; and (2) the payments
6 set forth in Section III(D)(5) above constitute full payment of any amounts allegedly due to them
7 in connection with the Released Class Claims. In light of the payment by Defendants of all
8 amounts due to them in connection with the Released Class Claims, Plaintiff and Class Members
9 shall be deemed to have acknowledged and agreed that California Labor Code section 206.5 is
10 not applicable to the Parties hereto. That section provides in pertinent part as follows:

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

14 Each Participating Class Member shall be deemed to have made the foregoing release as
15 if by manually signing it.

16 **B. PAGA Release**

17 Upon entry of the Judgment and Final Order in the Litigation and, payment to the
18 Settlement Administrator of the Gross Settlement Amount (as the same may be escalated
19 pursuant to the Escalator Option) and Employer's Taxes by Defendants, Plaintiff, each Alleged
20 Aggrieved Employee, and the State of California (to the extent permitted by law) shall have,
21 fully, finally, and forever released, relinquished, and discharged each and all of the Released
22 Parties of and from any and all claims, actions or causes of action under PAGA arising at any
23 time during the PAGA Period that were alleged in the Lawsuit and the PAGA Notice, or that
24 could have been alleged or raised in the Lawsuit based upon or arising out of the facts alleged
25 therein and in the PAGA Notice, as well as any claims for attorney's fees and costs thereon. The
26 claims released by this Section V(B) include any claim for civil penalties under PAGA for
27 alleged unpaid wages, failure to pay overtime or other hours worked, "off-the-clock" claims,
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1 “rounding” claims, failure to pay overtime wages due based on the correct regular rate of pay,
2 failure to provide compliant meal or rest periods, failure to make penalty payments or premium
3 pay in lieu of providing meal or rest periods, failure to provide pay minimum wages, failure to
4 reimburse reasonable business expenses, failure to pay wages timely during employment and
5 upon termination of employment, failure to provide accurate wage statements, failure to maintain
6 adequate payroll records, and for civil penalties under Labor Code sections 210, 226.3, 558,
7 1174.5, 1197.1 and 2699, any alleged violation of California Labor Code sections alleged to have
8 been violated in the First Amended Complaint, which includes, without limitation, Labor Code
9 sections 200, 201, 202, 203, 204, 226, 226.7, 227.3, 246, 404, 432, 510, 512, 1174, 1194, 1194.2,
10 1197, 1197.5, 1198, 1198.5, 2800, and 2802, 2810.3 and/or 2810.5 (“Released PAGA Claims”).

11 **C. Release by Plaintiff**

12 In addition to the releases provided above in Section V(A) and (B), and for a valuable
13 consideration, the receipt and adequacy of which is hereby acknowledged and except as
14 specifically provided below, Plaintiff on behalf of himself, and each of his heirs, executors,
15 administrators, attorneys, devisees, successors, and assigns, upon entry of the Judgment and
16 Final Order in the Litigation and payment to the Settlement Administrator of the Gross
17 Settlement Amount (as the same may be escalated pursuant to the Escalator Option), and
18 Employer’s Taxes, by Defendants, does hereby release and forever discharge the Released
19 Parties of and from any and all claims, causes of action, suits, debts, liens, contracts, judgments,
20 agreements, promises, liabilities, claims, demands, damages, losses, costs, or expenses of any
21 nature whatsoever, known or unknown, fixed or contingent (hereinafter called “Claims”), which
22 Plaintiff now has against the Released Parties, or any of them, by reason of any matter, event,
23 act, omission, cause or thing whatsoever from the beginning of time to the date of this
24 Agreement, including but not limited to any and all Claims relating to or arising out of the hire,
25 employment, demotion, termination or remuneration (including without limitation salary, bonus,
26 incentive or other compensation, sick leave or medical insurance benefits), of Plaintiff by the
27 Released Parties, including without limitation all Claims arising out of, based upon or relating to
28

1 the Litigation, to the extent permitted by law.

2 Without limiting the generality of the foregoing, the Claims of Plaintiff released herein
3 include any Claims arising out of, based upon, or in any way related to (i) claims of
4 discrimination, and harassment; (ii) tort claims, intentional or negligent misrepresentation,
5 invasion of privacy, loss of consortium, breach of fiduciary duty, assault, battery, sexual battery,
6 or any other common law claim of any kind; (iii) any other violation or alleged violation of 'Title
7 VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act, as amended, the Fair Labor
8 Standards Act, the Employee Retirement Income Security Act (to the extent permitted by law),
9 the Americans With Disabilities Act, the Family and Medical Leave Act, the California Family
10 Rights Act, the California Fair Employment and Housing Act, the Fair Credit Reporting Act,
11 provisions of California Labor Code, the California Business and Professions Code, the
12 California Industrial Wage Orders, the Civil Rights Act of 1866, and the Consolidated Omnibus
13 Budget Reconciliation Act; and (iv) claims relating to or arising under any other local, state or
14 federal statute, regulation or principle of common law governing the employment of individuals
15 and/or discrimination in employment, to the extent permitted by law. However, the Claims that
16 Plaintiff releases does not include, and expressly excludes, his individual claims against the
17 Released Parties for retaliation, wrongful termination of employment in violation of public
18 policy, intentional infliction of emotional distress, and negligent infliction of emotional distress.

19 Plaintiff expressly waives all rights and benefits afforded by section 1542 of the Civil
20 Code of the State of California, quoted below, with respect to all Claims contained in the release
21 above pertaining to the Released Parties and he does so understand the significance of that
22 waiver. Section 1542 of the Civil Code provides:

23 A general release does not extend to claims that the creditor or releasing party does not
24 know or suspect to exist in his or her favor at the time of executing the release and that, if known
25 by him or her, would have materially affected his or her settlement with the debtor or released
26 party.

27 This Agreement does not release claims that cannot be released as a matter of law,
28

1 including but not limited to claims for indemnity under California Labor Code section 2802,
2 workers' compensation benefits, or any right to file an application for award for original
3 information submitted pursuant to Section 21F of the Securities Exchange Act of 1934.

4 **VI. MISCELLANEOUS PROVISIONS.**

5 **A. Amendments.**

6 The terms and provisions of this Agreement may be amended only by a written
7 agreement that is both (a) signed by the Plaintiff, Class Counsel, and Defendants' Counsel and
8 (b) approved by the Court.

9 **B. Assignment.**

10 None of the rights, commitments, or obligations recognized under this Agreement may be
11 assigned by any Party, Settlement Class Member, Class Counsel, or Defendants' Counsel
12 without the express written consent of each Party and their respective counsel hereto. The
13 representations, warranties, covenants, and agreements contained in this Agreement are for the
14 sole benefit of the Parties under this Agreement and shall not be construed to confer any right or
15 to avail any remedy to any other person.

16 **C. Governing Law.**

17 This Agreement shall be governed, construed, and interpreted, and the rights of the
18 Parties shall be determined, in accordance with the laws of the State of California, irrespective of
19 the State of California's choice of law principles.

20 **D. Entire Agreement.**

21 This Agreement, including the Exhibits referred to herein, which form an integral part
22 hereof, contains the entire understanding of the Parties hereto with respect to the subject matter
23 contained herein. In case of any conflict between text contained in Sections I through VI of this
24 Agreement and text contained in Exhibits to this Agreement, the former shall be controlling.
25 There are no restrictions, promises, representations, warranties, covenants, or undertakings
26 governing the subject matter of this Agreement other than those expressly set forth or referred to
27 herein and the Memorandum of Understanding. This Agreement and the Memorandum of
28

Understanding supersede all prior agreements and understandings among the Parties hereto with respect to the settlement of the Litigation. In case of any conflict between this Agreement and the Memorandum of Understanding, this Agreement shall control.

E. Waiver of Compliance.

Any failure of any Party, Defendants' Counsel, and/or Class Counsel hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

F. Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts, facsimile and/or by PDF, AdobeSign, or DocuSign signatures and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

G. Attorneys' Fees and Costs.

Neither Class Counsel nor any other attorneys acting for, or purporting to act for the Settlement Class, Settlement Class Members, or Plaintiff may recover or seek to recover any amounts for fees, costs, or disbursements from the Released Parties or the Gross Settlement Amount except as expressly provided herein. However, if any party brings an action to enforce this Agreement, the prevailing party shall be entitled to its/his reasonable attorneys' fees and costs.

H. Meet and Confer Regarding Disputes.

Should any dispute arise among the Parties or their respective counsel regarding the

1 implementation or interpretation of this Agreement, Class Counsel and Defendants' Counsel
2 shall meet and confer in an attempt to resolve such disputes prior to submitting such disputes to
3 the Court.

4 **I. Jurisdiction of the Court.**

5 The Parties agree that this Settlement Agreement shall be enforceable by the Court
6 pursuant to California Code of Civil Procedure section 664.6. The Court shall retain jurisdiction
7 with respect to the interpretation, implementation, and enforcement of the terms of this
8 Agreement and all orders and judgments entered in connection therewith, and the Parties and
9 their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing,
10 and enforcing the settlement embodied in this Agreement and all orders and judgments entered in
11 connection therewith.

12 **IT IS SO STIPULATED.**

13 DATED: May 4, 2022
14 _____, 2022

Usa Corrales-Rojas

15 
16 By: Usa Corrales-Rojas (May 4, 2022 10:47 PDT)
17 Plaintiff and Class Representative

18 DATED: _____, 2022

Q & B Foods, Inc.

19
20 By: _____
21 Name: _____
22 Title: _____

23 DATED: _____, 2022

ESG Employer Resources, Inc.

24
25 By: _____
26 Name: _____
27 Title: _____
28

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10 and enforcing the settlement embodied in this Agreement and all orders and judgments entered in
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12 **IT IS SO STIPULATED.**

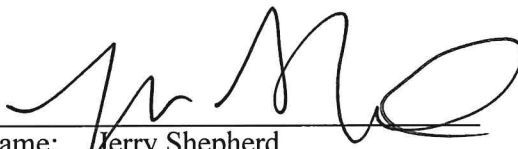
13
14 DATED: _____, 2022

Usa Corrales-Rojas

15
16 By: _____
Plaintiff and Class Representative

17
18 DATED: 5/4, 2022

Q & B Foods, Inc.

19
20 By: 
Name: Jerry Shepherd
Title: President

21
22
23 DATED: _____, 2022

ESG Employer Resources, Inc.

24
25 By: _____
Name: _____
Title: _____
26
27
28

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10 and enforcing the settlement embodied in this Agreement and all orders and judgments entered in
11 connection therewith.

12 **IT IS SO STIPULATED.**

13
14 DATED: _____, 2022

Usa Corrales-Rojas

15
16 By: _____
Plaintiff and Class Representative

17
18 DATED: _____, 2022

Q & B Foods, Inc.

19
20 By: _____
21 Name: _____
22 Title: _____

23 DATED: May 4, 2022

ESG Employer Resources, Inc.

24
25 By: 
26 Name: David Pinales
27 Title: Vice President
28

1 **APPROVED AS TO FORM:**

2
3 Dated: May 6, 2022

BIBIYAN LAW GROUP, P.C.

Vedang J. Patel

4
5 By: DAVID D. BIBIYAN
DIEGO AVILES
VEDANG J. PATEL

6
7 Attorneys for Plaintiffs
USA CORRALES-ROJAS, on behalf of
8 himself and all others similarly situated

9 Dated: _____, 2022

PILLSBURY WINTHROP SHAW PITTMAN
10 LLP

11
12 By: PAULA M. WEBER
Four Embarcadero Center, 22nd Floor
13 San Francisco, CA 94111-5998

14 Attorneys for Defendant
Q & B FOODS, INC.

15
16 Dated: _____, 2022

FISHER & PHILLIPS LLP

17
18 BY:

19 BORIS SORSHER
20 Attorneys for Defendant
ESG EMPLOYER RESOURCES INC.

1 **APPROVED AS TO FORM:**

2
3 Dated: _____, 2022

BIBIYAN LAW GROUP, P.C.

4
5 By: _____
6 DAVID D. BIBIYAN
7 DIEGO AVILES
8 VEDANG J. PATEL

Attorneys for Plaintiffs
USA CORRALES-ROJAS, on behalf of
himself and all others similarly situated

9 Dated: May 4
10 _____, 2022

PILLSBURY WINTHROP SHAW PITTMAN
LLP

11 

12 By: _____
13 PAULA M. WEBER
14 Four Embarcadero Center, 22nd Floor
15 San Francisco, CA 94111-5998

Attorneys for Defendant
Q & B FOODS, INC.

16 Dated: _____, 2022

FISHER & PHILLIPS LLP

17
18 BY:

19 _____
20 BORIS SORSHER
21 Attorneys for Defendant
22 ESG EMPLOYER RESOURCES INC.
23
24
25
26
27
28

1 APPROVED AS TO FORM:

2 Dated: _____, 2022

BIBIYAN LAW GROUP, P.C.

3 By: DAVID D. BIBIYAN
4 DIEGO AVILES
5 VEDANG J. PATEL

6 Attorneys for Plaintiffs
7 USA CORRALES-ROJAS, on behalf of
8 himself and all others similarly situated

9 Dated: _____, 2022

10 PILLSBURY WINTHROP SHAW PITTMAN
11 LLP

12 By: PAULA M. WEBER
13 Four Embarcadero Center, 22nd Floor
14 San Francisco, CA 94111-5998

15 Attorneys for Defendant
16 Q & B FOODS, INC.

17 Dated: 5-25, 2022

18 FISHER & PHILLIPS LLP

19 BY: 

20 BORIS SORSHER
21 Attorneys for Defendant
22 ESG EMPLOYER RESOURCES INC.
23
24
25
26
27
28