

B. James Fitzpatrick (SBN: 129056)
Laura L. Franklin (SBN: 282642)
FITZPATRICK & SWANSTON
555 S. Main Street
Salinas, CA 93901
Telephone: (831) 755-1311
Facsimile: (831) 755-1319

Larry W. Lee (SBN: 228175)
Max W. Gavron (SBN: 291697)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile (213) 488-6554

Attorneys for Plaintiff,
YANNET JIMENEZ on behalf of herself and all similarly situated employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

YANNET JIMENEZ on behalf of herself
and all similarly situated employees,

v.

SAMBRAILO PACKAGING; and DOES 1
through 50, inclusive,

Defendants.

Case No. 20CV003281

**DECLARATION OF MAX W. GAVRON IN
SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: June 30, 2023
Time: 8:30 a.m.
Dept: 15

Complaint Filed: December 7, 2020
FAC Filed: April 18, 2023
Trial Date: Not Set

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

- 3
- 4
- 5
- 6

7

8
9
10

11

12

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 regarding the start time of their next shift. Plaintiff also alleges that Defendant regularly
2 rounded employee time punches to the detriment of employees. As such, Plaintiff alleges that
3 she and other employees were not paid all for all hours worked, including minimum and
4 overtime wages. In addition, Plaintiff alleges that employees did not receive reporting time
5 pay on occasions when employees reported to work but were not permitted to work, were not
6 provided off-duty meal and rest periods or paid premiums in lieu thereof, and were not
7 reimbursed for work-related expenses such as personal cell phone costs and mileage incurred
8 for travel to and from Defendant's facilities. Moreover, Plaintiff alleges that Defendant failed
9 to timely pay wages when due and upon separation of employment. Finally, Plaintiff alleges
10 that Defendant failed to provide accurate itemized wage statements as a result of the above
11 practices.

12 5. Since the initiation of the lawsuit, the Parties have conducted significant written
13 discovery and three depositions. Defendant produced over 27,000 pages of documents and
14 data including a 20% sampling of the putative class members' time and payroll records. I also
15 reviewed Defendant's written policies and procedures regarding meal and rest periods,
16 timekeeping, overtime, rounding, reimbursement, payment of final wages, among others.
17 Outside of the rounding policy, most of Defendant's written policies were at least facially
18 compliant. This investigation enabled Plaintiff to perform an analysis of the putative class and
19 Defendant's liability.

20 6. On January 6, 2023, the Court granted Plaintiff's Motion for Class Certification
21 and certified a class consisting of: "All current and former non-exempt employees of
22 Defendants who worked for Defendants in California at any time from June 10, 2016, through
23 December 31, 2021" (the "Class"). The Court also certified two sub-classes of: "All current
24 and former non-exempt employees of Defendants who worked for Defendants in California at
25 any time who worked any work shift of more than 5 hours between June 10, 2016, and
26 December 31, 2021" (the "Meal Period Sub-Class"); and "All current and former non-exempt
27 employees of Defendants who worked for Defendants in California at any time who worked at
28 more than one location during the same workday between June 10, 2016, through December

1 31, 2021¹” (the “Travel Time Sub-Class”). Plaintiff continued to litigate the other theories of
2 liability on a PAGA basis, but only obtained certification for those classes addressed above.
3 Plaintiff also moved to amend the complaint to include an additional class representative but
4 the Court ultimately denied that motion, as moot, in conjunction with the ruling on Plaintiff’s
5 Motion for Class Certification.

6 **MEDIATION**

7 7. Throughout the litigation, the Parties have engaged in multiple settlement
8 attempts, including private mediation with neutral Michael Masuda, Esq. on November 4,
9 2021, multiple follow up calls with Mr. Masuda, and another private mediation with neutral
10 Deborah Saxe, Esq. on March 9, 2023, following Plaintiff obtaining class certification.

11 8. After thorough investigation and evaluation of the facts and claims, as well as
12 arm’s length negotiation, the Parties accepted a mediator’s proposal following the mediation
13 with Ms. Saxe and later memorialized the terms of their agreement in the Joint Stipulation and
14 Settlement Agreement of Class Action and PAGA Claims. A true and correct copy of the
15 Settlement Agreement is attached hereto as **Exhibit A**.

16 9. The Parties recognize the risk, expense, and delay in continuing litigation with
17 the class and PAGA claims, and believe the settlement to be fair, reasonable, and adequate.
18 Each side has apprised the other of and litigated their respective factual contentions, legal
19 theories, and defenses, resulting in negotiations taking place between the Parties.

20 10. From the inception of the case, Class Counsel have zealously represented the
21 interests of the Settlement Class. Class Counsel have engaged in formal and informal
22 discovery, as well as significant meet and confer discussions with opposing counsel to obtain
23 informal data and documents and to discuss the merits of the claims on behalf of the
24 Settlement Class. The settlement was obtained for the benefit of the Settlement Class, as
25 opposed to the individual Class Representative.

26 //

27
28 ¹ Through the discovery process, Plaintiff learned that Defendant revised its practices to stop rounding employee
time beginning in January 2022, which is why the class period for this sub-class was limited.

1 11. Further, Class Counsel have been approved as class counsel on a number of prior
2 cases, have litigated numerous other class action cases, and are competent to represent the
3 Settlement Class.

4 **SUMMARY OF THE MONETARY TERMS OF THE SETTLEMENT**

5 12. The material terms of the settlement are memorialized in the Settlement
6 Agreement. As defined by the Settlement Agreement, the proposed Settlement Class consists
7 of: all current and former non-exempt employees of Defendant who worked for Defendant in
8 California during the Class Period (the “Settlement Class”).” *See* Settlement Agreement ¶ 32.
9 The Class Period is defined as “June 10, 2016, through the earlier of June 9, 2023, or the date
10 of preliminary approval of the class settlement.” *See* Settlement Agreement ¶ 5. Because of
11 the hearing date of Plaintiff’s Motion for Preliminary, the class period will end June 9, 2023.

12 13. The Settlement Agreement provides for One Million Four Hundred Thousand
13 Dollars and Zero Cents (\$1,400,000.00) as the Gross Settlement Amount. *See* Settlement
14 Agreement ¶ 44.c. The Net Settlement Amount (calculated after deduction of Class Counsel’s
15 attorneys’ fees (up to \$490,000.00), costs (up to \$30,000.00), Class Representative Service
16 Payment (up to \$5,000.00), payment of PAGA penalties (\$50,000.00), and Settlement
17 Administration Costs (up to \$14,000.00) is estimated to be approximately \$811,000.00. *See*
18 Settlement Agreement ¶¶ 44.c-44.d.viii. Each Settlement Class Member who does not opt-out
19 of the settlement will receive their share of the Net Settlement Amount based upon the number
20 of workweeks employed during the Class Period. *See* Settlement Agreement ¶ 44.d.i.

21 14. Based on a raw average, each Settlement Class Member potentially may recover
22 approximately \$702.77. The amount actually paid to each Settlement Class Member will
23 increase or decrease depending on the actual number of workweeks he or she worked during
24 the Class Period.

25 15. Funds from any checks that have not been cashed within 180 days of issuance
26 shall be paid to the Watsonville Law Center as the *cy pres* beneficiary. *See* Settlement
27 Agreement ¶ 44.d.iii. I do not have any conflicts of interest with the proposed *cy pres*
28 recipient.

1 16. In conjunction with preparing this Motion, I obtained a bid to administer the
2 settlement from Phoenix Settlement Administrators, which is a well-recognized administrator.
3 Attached hereto as **Exhibit B** is a true and correct copy of the bid for distribution, which
4 includes the cost of the notice being translated into Spanish. The proposed cost for
5 administration is approximately \$12 per class member.

6 **POTENTIAL DAMAGES AND PENALTIES**

7 17. Leading into mediation in March 2023, Defendant represented that the putative
8 class included 1,154 non-exempt employees who worked approximately 44,000 workweeks.
9 Plaintiff retained an expert to analyze the 20% sampling of time and pay records and create a
10 damages model. Plaintiff estimated the potential damages, without accounting for various risk
11 factors, totaled approximately:

- 12 • \$1,700,000 for meal period violations based analysis of the time records
13 showing violation rates ranging from 59.6% in 2016 to as low as 23.5% in 2023;
- 14 • \$839,750 for rest period violations assuming a 25% violation rate;
- 15 • \$140,000 for improperly rounded wages;
- 16 • \$322,000 for unpaid overtime and minimum wages premised on 30 minutes of
17 unpaid time per workweek with an average rate of pay of \$14.65;
- 18 • \$1,300,000 for Labor Code § 226(e) penalties premised on 14,537 pay periods
- 19 • \$440,000 for unreimbursed business expenses premised on \$10 per workweek;
- 20 and
- 21 • \$3,864,084 in waiting time penalties premised on 1099 former employees x
22 (\$14.65 average hourly rate x 8 hours x 30 days)

23 18. The total potential class penalties are thus approximately \$8.6 million.

24 19. Plaintiff further estimated the maximum potential PAGA penalties to be
25 approximately \$1,453,700, which is premised on \$100 per pay period penalty, which assumes
26 that the Court would not “stack” PAGA penalties for distinct violations of the Labor Code
27 occurring in the same pay period. If the Court did stack penalties, the value of the PAGA
28 claim could be higher, subject to the Court’s discretion to reduce the award, discussed below.

1 20. Defendant presented several defenses that support the reasonableness of the
2 proposed settlement. First, Defendant argued that many of Plaintiff's claims were not
3 certifiable as class claims. This is supported by the fact that Plaintiff only moved for class
4 certification on distinct theories of liability—namely, Defendant's improper rounding of meal
5 periods and the unpaid wages and reimbursement associated with traveling to locations other
6 than an employee's assigned location for work. The damage calculations above assume that
7 Plaintiff would have obtained certification on all of her claims. However, difficulty in
8 obtaining certification on some of her claims, including, for example, her rest period theory of
9 liability, warrants a reduction in Defendant's potential exposure.

10 21. Because employees were not required to clock in and out for rest periods,
11 proving this claim on a class basis is especially difficult. While Plaintiff argued that
12 employees were required to respond to calls during their rest periods, essentially rendering
13 them "on-duty," Defendant disputed this claim. Defendant's written rest period policy advised
14 employees, "Employees are not required to clock in and out for rest periods but since this time
15 is counted and paid as time worked, you must not be absent from your workstation beyond the
16 allotted time." Plaintiff argued this would support her claim, but Defendant argued that
17 employees were free to leave their worksites and did not have to respond to calls during their
18 breaks. These factors warrant the estimated 25% violation rate.

19 22. These risks on class certification are compounded by the California Supreme
20 Court's holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiffs
21 obtained class certification and subsequently prevailed at trial after eight years of litigation,
22 but the judgment and the certification ruling were reversed by the California Supreme Court
23 after an additional five years of litigation. The case was remanded to superior court where
24 class certification was denied and plaintiffs' subsequent appeal also was denied.

25 23. Defendant stopped rounding employee's time and meal periods in January 2022.
26 This change in policy benefits the class members and also impacts the potential exposure on
27 the meal period and unpaid wages claims. Because of Defendant's revised practices, the
28 rounding claims end in December 2021. Review of the records produced by Defendant also

1 demonstrated a higher facial compliance rate for meal periods of 76% in 2023 after the policy
2 change. Defendant also claimed that it had compliant meal and rest period policies, which met
3 its obligations under the law to provide—but not police—meal periods. *See Brinker Rest.*
4 *Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040 (2012) (“On the other hand, the employer is not
5 obligated to police meal breaks and ensure no work thereafter is performed.”). This too
6 warrants a discount to the maximum exposure addressed above.

7 24. With respect to the travel time and reimbursement claim, Defendant’s witnesses
8 testified that the only employees who traveled between locations were a small crew of
9 approximately twelve employees used to clean different facilities during the pandemic. The
10 possible limited scope of this claim is also not reflected in the estimated exposure above,
11 which assumed a ½ hour of unpaid time a workweek and \$10 a workweek in reimbursement
12 costs associated with using cellular phones for communication and mileage reimbursement for
13 the entire putative settlement class. Further post-certification discovery may have revealed
14 that Defendant’s assertions regarding the limited scope of this claim were correct. If so, the
15 value of this claim would have been significantly reduced.

16 25. Plaintiff also would have faced “good faith” defenses regarding the imposition
17 of waiting time penalties and wage statement penalties. In *Naranjo v. Spectrum Security*
18 *Services, Inc.*, __ Cal. Rptr. 3d __, 2023 WL 2261253 (Feb. 27, 2023), *review granted* 2023
19 WL 3745105 (May 31, 2023), the court upheld an employer’s good faith defense to the
20 plaintiff’s claim for waiting time penalties, pursuant to Labor Code § 203. The employer
21 argued that it had a viable legal defense, which precluded the imposition of waiting time
22 penalties because its acts were not “willful” within the meaning of the statute. *Naranjo* also
23 permitted a good faith defense to rebut the plaintiff’s claim for penalties, pursuant to Labor
24 Code § 226.

25 26. Here, Defendant would have argued that it was not liable for waiting time or
26 wage statement penalties because it acted in good faith. For example, in 2021, the California
27 Supreme Court’s issued its opinion in *Donohue v AMN Services, LLC*, 11 Cal.5th 58 (2021),
28 which largely supported Plaintiff’s rounding theories of liability. Defendant would have

1 argued that it revised its practices by the end of 2021 after *Donohue* clarified previously
2 ambiguous law regarding the propriety of rounding in the wage and hour context. *See, e.g.*
3 *See's Candy Shops, Inc. v. Superior Ct.*, 210 Cal. App. 4th 889, 900, 148 Cal. Rptr. 3d 690,
4 698 (2012) (permitting rounding of employee time).

5 27. With respect to the PAGA penalties, trial courts have considerable discretion to
6 reduce the penalty award. Pursuant to Labor Code § 2699(f)(2) the Court can decline to award
7 the full amount of PAGA penalties where “if, based on the facts and circumstances of the
8 particular case, to do otherwise, would result in an award that is unjust, arbitrary and
9 oppressive, or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington*
10 *v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court
11 reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith
12 attempt at complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court
13 of Appeal found such reduction to be proper and affirmed a judgment which only provided for
14 a PAGA penalty of \$5 per pay period. *Id.* at 539; *see O’Connor*, 2016 WL 4398271, at *17
15 (noting that even if PAGA penalties amounted to \$1 billion, such award “could well be
16 reduced, as a court may reduce the penalty when to do otherwise would result in an award that
17 is unjust, arbitrary and oppressive, or confiscatory”); *c.f. Bernstein v. Virgin Am., Inc.*, 3 F.4th
18 1127, 1144 (9th Cir. 2021) (“Virgin was not notified by the Labor Commissioner or any court
19 that it was subject to the California Labor Code until the district court partially granted
20 Plaintiffs’ motion for summary judgment. On this basis, we reverse the district court’s holding
21 that Virgin is subject to heightened penalties for any labor code violation that occurred prior to
22 that point.”).

23 28. Courts routinely award far less than the statutory maximum amount of civil
24 penalties, even where an underlying violation of the Labor Code is found. In *Magadia v. Wal-*
25 *Mart Assocs., et al.*, while the trial court imposed substantial PAGA penalties upon the
26 defendant, such amount still represented reductions of 67% and 80% of the potential PAGA
27 penalties at issue. 2019 U.S. Dist. Lexis 91792 at *87-*100 (N.D. Cal. May 31, 2019).
28 Moreover, this was only after the plaintiff in *Magadia* had prevailed after trial. Thereafter, the

1 Ninth Circuit reversed the trial court's ruling, which demonstrates the significant risk
2 presented in moving forward with litigation. *Magadia v. Wal-Mart Assocs., Inc.*, 999 F.3d 668,
3 677 (9th Cir. 2021).

4 29. Based on the potential exposure discussed above, the class and PAGA penalties
5 total approximately \$10,059,534. As such, Plaintiff's counsel estimates that the settlement
6 value is approximately 14% of the maximum exposure, which is fair, adequate, and reasonable
7 given the risks described above.

8 30. Although Plaintiff believes that the class can be certified and certain sub-classes
9 were certified, Plaintiff also believes in the fairness of the settlement that is based on factoring
10 in the uncertainty and risks to Plaintiff involved in not prevailing on one or more of the causes
11 of action or theories alleged in the operative Complaint, the possibility of decertification, and
12 the potential for appeals.

13 31. Taking these defenses above into account on the class and PAGA claims,
14 Plaintiff believes that the settlement for the amount stated herein is fair, reasonable, and
15 adequate.

16 32. Thus, the settlement for each Settlement Class Member is fair, reasonable, and
17 adequate, given the inherent risks of litigation, including the substantial risks relative to class
18 certification, the costs of pursuing such litigation, and the risks associated with the Court's
19 discretion to reduce PAGA penalties. The settlement is the result of extensive arm's-length
20 negotiations between the Parties and their counsel and was facilitated by an experienced and
21 neutral mediator after hard fought litigation.

22 **ATTORNEY EXPERIENCE**

23 33. I am one of the primary attorneys on this matter. My qualifications are as
24 follows: I received a full-tuition scholarship, and graduated from Southwestern Law School in
25 2013, magna cum laude. I was in the top 5% of my class. During my time at Southwestern, I
26 was a Notes and Comments Editor on the Southwestern Law Review. I also received awards
27 for achieving the highest grade in my class in several courses. In 2012, I was a full-time
28 extern, at the United States District Court for the Central District. Immediately after law

1 school, I taught several courses at Southwestern, including Principles of Legal Analysis and
2 Legal Methods. I taught those courses for approximately four years.

3 34. I practiced civil litigation at Haight Brown & Bonesteel LLP from
4 approximately September 2013, through January 2016. I was third-chair in a federal court jury
5 trial that resulted in a defense verdict in our client's favor on a \$21 million commercial breach
6 of contract dispute. I also regularly litigated cases across the civil litigation spectrum,
7 including employment matters.

8 35. From February 2016, through Fall 2017, I practiced at the international law firm
9 of Arnold & Porter, which had recently merged with Kaye Scholer, LLP. I defended Fortune
10 50 companies in Multi-District Litigation primarily in the product liability sphere. I also
11 successfully drafted an appellate brief in the Ninth Circuit resulting in the reversal of a
12 summary judgment decision regarding trade secret issues, in addition to working in several
13 other practice groups.

14 36. From September 2017, through September 2018, I served as a law clerk to a
15 Judge sitting on the United States District Court, Central District of California. I regularly
16 prepared bench memoranda, on cases involving all types of civil litigation, including regularly
17 working on wage and hour class actions.

18 37. I am currently an associate at the law firm Diversity Law Group, P.C., an
19 employment law firm that has handled numerous wage and hour class and individual actions,
20 on both plaintiff and defense sides. My current practice focuses on employment matters
21 involving both class actions, and single plaintiffs. The firm currently has cases in the Los
22 Angeles Superior Courts, the Orange County Superior Courts, the San Diego County Superior
23 Courts, and the United States District Courts for the Central, Northern, and Eastern Districts of
24 California. I am currently handling, or have handled, numerous wage and hour class action
25 lawsuits with the firm, including, but not limited to: *Weybrew v. BEI Construction*, Solano
26 County Superior Court Case No. FCS055658 (January 14, 2022), *In re See's Candies Wage*
27 *and Hour Cases*, Case No. JCCP5004 (March 30, 2022), Los Angeles Superior Court, *Pevey*
28 *v. Lumber City Corp*, San Bernardino County Superior Court Case No. CIVDS2010240 (May

2, 2022), *Ross v Stater Bros. Markets*, San Bernardino County Superior Court Case No. CIVDS1902518 (September 8, 2022), and *Schneider v. Amazon Retail LLC*, Los Angeles County Superior Court Case No. 21STCV26226 (December 1, 2022); *James v RADC Enterprises, Inc.*, San Bernardino County Superior Court, Case No. CIV-DS1933035 (September 29, 2020), *Hector Luna v. Triple Canopy, Inc.*, Santa Clara County Superior Court, Case No. 19CV345169 (October 22, 2020), *Melbert Magpugay v. Harbor Electronics, Inc.*, Santa Clara County Superior Court Case No. 19CV352547 (January 27, 2021), *Foster v. Schindler Elevator Corp.*, Alameda County Superior Court Case no. RG19029640 (March 2, 2021), *Martin v. Streetplus Company, LLC, et al*, Los Angeles Superior Court Case No. 19STCV15522 (July 13, 2021), *Morris v. Blue Mountain Enterprises, LLC*, Solano County Superior Court, Case No. FCS05.858 (August 4, 2021).

38. On June 14, 2019, I argued two related cases in front of the Ninth Circuit Court of Appeals. One of them was *Rodriguez v Nike Retail Service Inc.*, Case No. 17-16866. On June 28, 2019, the Ninth Circuit issued a published decision, reversing and remanding in favor of our clients. *Rodriguez v. Nike Retail Servs., Inc.*, 928 F.3d 810 (9th Cir. 2019).

39. I have also assisted the firm in numerous wage and hour class action mediations.

40. My co-counsel and I will adequately represent the Settlement Class Members in this action. Class Counsel have and will zealously represent Plaintiff and the Settlement Class and pursue this lawsuit to its conclusion.

41. I have no conflicts with the Settlement Class and will adequately represent the Settlement Class.

NOTICE TO THE LWDA

42. Concurrent with the filing of the Motion for Preliminary Approval of Class Action Settlement, my office uploaded the Motion and Settlement Agreement to the LWDA's website.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 7th day of June 2023, at Los Angeles, California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


Max W. Gavron

EXHIBIT A

B. James Fitzpatrick (SBN: 129056)
Laura L. Franklin (SBN: 282642)
FITZPATRICK & SWANSTON
555 S. Main Street
Salinas, CA 93901
Telephone: (831) 755-1311
Facsimile: (831) 755-1319

Larry W. Lee (SBN: 228175)
Max W. Gavron (SBN: 291697)
DIVERSITY LAW GROUP, P.C.
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile (213) 488-6554

Attorneys for Plaintiff,
YANNET JIMENEZ on behalf of herself and all similarly situated employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

YANNET JIMENEZ on behalf of herself
and all similarly situated employees,

v.

SAMBRAILO PACKAGING; and DOES 1
through 50, inclusive,

Defendants.

Case No. 20CV003281

**JOINT STIPULATION AND
SETTLEMENT AGREEMENT OF CLASS
ACTION AND PAGA CLAIMS**

Complaint Filed: December 7, 2020
Trial Date: Not Set

143950576.1

1

144726749.1

1 This Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims
2 (“Stipulation of Settlement” or “Settlement”) is made and entered into by and between
3 Plaintiff Yannet Jimenez (the “Class Representative”), individually and on behalf of all others
4 similarly situated (“Plaintiffs”), and Defendant Sambrailo Packaging (“Defendant”).

5 THE PARTIES STIPULATE AND AGREE as follows:

6 **DEFINITIONS**

7 1. “Action” shall mean the lawsuit entitled *Yannet Jimenez, et al. v. Sambrailo*
8 *Packaging*, originally filed in the Superior Court of the State of California for the County of
9 Monterey, on December 7, 2020, Case No. 20CV003281.

10 2. “Attorneys’ Fees” shall mean, subject to the Court’s approval, the maximum
11 amount of attorneys’ fees provided for by the Settlement, which shall not exceed Four
12 Hundred and Ninety-Thousand Dollars (\$490,000), or thirty-five percent (35%) of the Gross
13 Settlement Amount

14 3. “Class Counsel” shall mean B. James Fitzpatrick and Laura L. Franklin of
15 Fitzpatrick & Swanston and Larry W. Lee and Max W. Gavron of Diversity Law Group, P.C.

16 4. “Class Members” means members of the Settlement Class who do not opt out of
17 the class action portion of the settlement by submitting a valid request for exclusion as
18 described below.

19 5. “Class Period” means June 10, 2016, through the earlier of June 9, 2023, or the
20 date of preliminary approval of the class settlement.

21 6. “Class Representative” or “Plaintiff” shall mean Plaintiff Yannet Jimenez.

22 7. “Class Counsel Costs” shall mean Class Counsel’s actual costs not to exceed
23 Thirty-Thousand Dollars (\$30,000).

24 8. “Court” means the Superior Court of the State of California for the County of
25 Monterey.

1 9. “Court’s Final Order and Judgment” means the Final Order Approving Class
2 Action Settlement and Judgment in a form to be agreed upon by the Parties and approved by
3 the Court.

4 10. “Defendant’s Counsel” shall mean Keith Chrestionson and Gabrielle E. Gordon
5 of Fox Rothschild LLP.

6 11. “Effective Date” shall mean the date when all of the following events have
7 occurred: (i) this Stipulation of Settlement has been executed by Plaintiff, Defendant, Class
8 Counsel, and Defendant’s Counsel; (ii) the Court has given preliminary approval to the
9 Settlement; (iii) the Notice has been sent to the Settlement Class, providing them the
10 opportunity to object to the Settlement and the opportunity to opt out of the Settlement; (iv)
11 the Court has held a formal fairness hearing and entered the Court’s Final Order and
12 Judgment; and (v) only in the event there are written objections filed prior to the formal
13 fairness hearing which are not later withdrawn, the later of the following events: (A) when the
14 period for filing any appeal, writ, or other appellate proceeding opposing the Settlement has
15 elapsed without any appeal, writ, or other appellate proceeding having been filed; (B) when
16 any appeal, writ, or other appellate proceeding opposing the Settlement has been dismissed
17 finally and conclusively with no right to pursue further remedies or relief; or (C) when any
18 appeal, writ, or other appellate proceeding has upheld the Court’s Final Order and Judgment
19 with no right to pursue further remedies or relief.

20 12. “Final Approval Hearing” shall mean the hearing where the Court shall consider
21 any timely objections to the Settlement from Settlement Class Members, testimony from the
22 Parties or their counsel, declarations regarding the claims process from the Settlement
23 Administrator, and otherwise make a final determination regarding the fairness of the
24 Settlement as set forth herein.

25 13. “Gross Settlement Amount” refers to One Million Four Hundred Thousand
26 Dollars (\$1,400,000.00), which is the maximum amount that Defendant will pay pursuant to

143950576.1

3

144726749.1

1 this Settlement, excluding Defendant's share of payroll taxes. The Gross Settlement Amount is
2 based on Defendant's representation that there are 44,000 workweeks between June 10, 2016,
3 and February 9, 2023. If the number of workweeks between June 10, 2016, and the end of the
4 Class Period exceeds the estimate by 5% (*i.e.*, 46,200), Defendant may either (i) modify the
5 end date of the Class Period to reach 46,200 workweeks or (ii) increase the Gross Settlement
6 Amount in proportion to the increased percentage of workweeks (*e.g.*, increase the Gross
7 Settlement Amount by 5% for a 5% increase in the number of workweeks).

8 14. "Individual PAGA Payment" means the amount payable from the Net PAGA
9 Penalties to each PAGA Group Member.

10 15. "Individual Settlement Payment" means the amount payable from the Net
11 Settlement Amount to each Class Member.

12 16. "LWDA Payment" means seventy-five percent (75%) of the PAGA Payment,
13 *i.e.*, the sum of Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00), which shall be
14 paid to the California Labor and Workforce Development Agency ("LWDA").

15 17. "Net Settlement Amount" shall mean the Gross Settlement Amount less the
16 Attorneys' Fees, Class Counsel Costs, Service Payment to the Class Representative,
17 Settlement Administration Costs, and PAGA Payment.

18 18. "Net PAGA Penalties" means the portion of the PAGA Payment that will be
19 distributed to the PAGA Group, which is Twelve Thousand Five Hundred Dollars
20 (\$12,500.00).

21 19. "Notice of Proposed Settlement" or "Notice" means the Notice of Pendency of
22 Class Action, including a Spanish translation thereof, in substantially the form attached hereto
23 as **Exhibit A**, and as approved by the Court.

24 20. "PAGA" shall mean the California Labor Code Private Attorneys General Act,
25 Labor Code § 2698, *et seq.*

21. "PAGA Group" or "PAGA Group Member" shall mean all current and former non-exempt employees of Defendant who worked for Defendant in California at any time from June 10, 2019, through the earlier of June 9, 2023, or the date of preliminary approval of the settlement.

22. "PAGA Payment" means the portion of the Gross Settlement Amount that the Parties have agreed will be allocated to resolve all claims, penalties, and remedies under PAGA. The amount of the PAGA Payment is subject to Court approval pursuant to California Labor Code § 2699(l). The Parties have agreed that Fifty Thousand Dollars (\$50,000.00) of the Gross Settlement Amount shall be allocated to the resolution of the PAGA Group's claims arising under PAGA. Pursuant to the PAGA, seventy-five percent (75%) of the PAGA Payment, *i.e.*, the sum of Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00), shall be paid to the LWDA. The remaining twenty-five percent (25%) of the PAGA Payment, *i.e.*, the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00) ("Net PAGA Penalties"), shall be distributed to the PAGA Group.

23. "PAGA Period" means June 10, 2016, through the earlier of June 9, 2023, or the date of preliminary approval of the class settlement.

24. "Parties" shall refer to the Plaintiffs and Defendant, each of whom is a "Party."

25. "Released Claims" means any and all claims, actions, or causes of action alleged in the Action, or that could have been alleged or raised in the Action based upon or arising out of the facts alleged therein, during the Class Period, except for those arising under PAGA.

26. "Released PAGA Claims" means claims during the PAGA Period arising under the California Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* predicated on violations of Labor Code §§ 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 227.3, 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2800, and 2802, and which were alleged in the Action and/or could have been alleged in the Action based on the facts alleged in the Action and/or the notice(s) to the Labor

1 and Workforce Development Agency (“LWDA”).

2 27. “Released Parties” collectively means Defendant and its current and former
3 parents, owners, subsidiaries, divisions, and affiliated or related persons or entities, and each
4 of their respective officers, directors, employees, partners, shareholders, attorneys, agents,
5 executors, and assigns.

6 28. “Service Payment” shall mean the special service payment made to Plaintiff in
7 her respective capacity as a Class Representative, which sum is over and above her respective
8 pro-rata share as a Settlement Class Member and shall not exceed Five Thousand Dollars
9 (\$5,000.00).

10 29. “Settlement” or “Stipulation of Settlement” means this Joint Stipulation and
11 Settlement Agreement of Class Action and PAGA Claims.

12 30. “Settlement Administration Costs” means the fees and expenses reasonably
13 incurred by the Settlement Administrator as a result of the procedures and processes expressly
14 required by this Settlement, which are estimated at Fourteen Thousand Dollars (\$14,000.00).
15 Any portion of the Settlement Administration Costs not used or approved by the Court shall be
16 added to the Net Settlement Amount.

17 31. “Settlement Administrator” means Phoenix Settlement Administrators.

18 32. “Settlement Class” or “Settlement Class Members” shall mean all current and
19 former non-exempt employees of Defendant who worked for Defendant in California during
20 the Class Period.

21 33. “Settlement Payment Check” means the payment of the Individual Settlement
22 Payment to Class Members and Individual PAGA Payment to PAGA Group Members.

23 **RECITALS**

24 34. This Settlement is made and entered into by and between Plaintiff and
25 Defendant, and is subject to the terms and conditions hereof, and to the Court’s approval. The
26 Parties expressly acknowledge that this Agreement is entered into solely for the purpose of

27 143950576.1

6

28 144726749.1

1 compromising significantly disputed claims and that nothing herein is an admission of liability
2 or wrongdoing by Defendant.

3 35. Plaintiff, on behalf of herself, the State of California, and Settlement Class
4 Members, seeks to recover damages and penalties for alleged wage and hour violations by
5 Defendant.

6 36. Procedural History.

7 a. On October 8, 2020, Plaintiff provided notice of alleged PAGA claims to
8 Defendant and the LWDA, on behalf of herself and all similarly situated current and former
9 employees of Defendant.

10 b. On or about November 18, 2020, Plaintiff provided supplemental notice
11 to Defendant and the LWDA of additional PAGA claims.

12 c. On December 7, 2020, Plaintiff filed a class and representative action
13 complaint against Defendant. The initial complaint alleges the following causes of action: (1)
14 violation of Labor Code §§ 226.7 and 1198 regarding meal periods and premiums; (2)
15 violation of Labor Code §§ 226.7 and 1198 regarding rest periods and premiums; (3) violation
16 of Labor Code §§ 1194 and 1198 regarding overtime wages; (4) violation of Labor Code §§
17 1194, 1197, and 1199 regarding minimum wages; (5) violation of Labor Code §§ 226, 1174,
18 and 1175 regarding itemized wage statements; (6) violation of Labor Code §§ 201, 202, and
19 203 regarding payment of wages upon termination; (7) violation of Labor Code § 204
20 regarding timely payment of wages; (8) violation of Labor Code § 2802 regarding
21 reimbursement of work-related expenses; (9) violation of Labor Code § 2698 for PAGA
22 penalties; and (10) violation of Business and Professions Code § 17200, *et seq.* for unfair
23 business practices. Since the filing of the original complaint, the Parties have engaged in
24 significant litigation and discovery, including filing a Motion for Class Certification, taking
25 the depositions of Plaintiff and Defendant's Persons Most Knowledgeable, producing and
26 reviewing the production of documents totaling thousands of pages, and conducting other

1 written discovery.

2 d. On November 4, 2021, the Parties participated in private mediation with
3 mediator Michael Masuda, Esq. After a full day of mediation, the Parties were unable to reach
4 an agreement. The Parties resumed litigation and discovery. The Parties later reengaged with
5 Mr. Masuda in a second attempt to resolve the case but were unsuccessful.

6 e. On January 6, 2023, the Court granted Plaintiff's Motion for Class
7 Certification, certifying a class of "All current and former non-exempt employees of
8 Defendants who worked for Defendants in California at any time from June 10, 2016, through
9 December 31, 2021." The Court also certified the following sub-classes: "All current and
10 former non-exempt employees of Defendants who worked for Defendants in California at any
11 time who worked any work shift of more than 5 hours between June 10, 2016, and December
12 31, 2021 (the 'Meal Period Sub-Class') and "All current and former non-exempt employees
13 of Defendants who worked for Defendants in California at any time who worked at more than
14 one location during the same workday between June 10, 2016, through December 31, 2021
15 (the 'Travel Time Sub-Class')."

16 f. Following class certification, the Parties agreed to participate in another
17 mediation. On March 9, 2023, the Parties participated in private mediation with neutral
18 Deborah Saxe, Esq. After a full day of arm's-length negotiations, the Parties still had not
19 reached an agreement. Thereafter, Ms. Saxe issued a mediator's proposal for the Parties'
20 consideration.

21 g. The Parties ultimately accepted the mediator's proposal and entered a
22 memorandum of understanding, with the agreement to prepare a more detailed, formalized
23 settlement agreement to be submitted to the Court for preliminary and final approval. The
24 Parties now enter this more detailed, formalized settlement agreement to submit to the Court
25 for preliminary and final approval.

26 37. Solely for the purpose of settling this case only, the Parties stipulate and agree

1 that the requisites for establishing class certification with respect to the Settlement Class meet
2 the requirements of Code of Civil Procedure § 382.

3 38. Defendant denies any liability or wrongdoing of any kind whatsoever associated
4 with the claims in the Action, and further denies that, for any purpose other than settling this
5 lawsuit, this Action is appropriate for class action or representative treatment.

6 39. It is the Parties' desire to fully, finally, and forever settle, compromise, and
7 discharge all disputes and claims arising from or related to the allegations of this Action.

8 40. It is the Parties' intention that this Stipulation of Settlement shall constitute a full
9 and complete settlement and release of the Released Claims and Released PAGA Claims,
10 which release includes the Released Parties.

11 41. It is the Parties' intention that this Settlement shall not become effective until the
12 Effective Date.

13 42. Class Counsel has conducted a thorough investigation into the facts of this
14 Action, including an extensive review of relevant documents and data produced by Defendant,
15 and has diligently pursued an investigation of claims of the members of the Settlement Class
16 against Defendant. Based on their own independent investigation and evaluation, Class
17 Counsel are of the opinion that the Settlement with Defendant is fair, reasonable, and adequate
18 and is in the best interest of the Settlement Class in light of all known facts and circumstances,
19 including the risks of significant delay, the Settlement Class being decertified, and the
20 defenses asserted by Defendant. Defendant and Defendant's Counsel also agree that the
21 Settlement is fair and in the best interests of the Settlement Class.

22 43. The Parties agree to cooperate and take all steps necessary and appropriate to
23 consummate this Settlement.

24 **TERMS OF SETTLEMENT**

25 44. NOW THEREFORE, in consideration of the mutual covenants, promises and
26 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

27 143950576.1

9

28 144726749.1

1 a. It is agreed by and between Plaintiff and Defendant that this case and any
2 claims, damages, or causes of action arising out of the disputes which are the subject to this
3 case, be settled and compromised as between the Settlement Class and Defendant, subject to
4 the terms and conditions set forth in this Stipulation of Settlement and the Court's approval.

5 b. If the Court declines to approve the Settlement, the entire Stipulation of
6 Settlement is deemed void and unenforceable as if no settlement of any claim was ever
7 reached; and all negotiations, statements, and proceedings and data relating thereto shall be
8 protected by California Evidence Code § 1152 and shall be without prejudice to the rights of
9 any of the Parties, all of whom shall be restored to their respective positions prior to the March
10 9, 2023 mediation.

11 c. Settlement Amount: To implement the terms of this Settlement,
12 Defendant agrees to pay a maximum total payment of One Million Four Hundred Thousand
13 Dollars (\$1,400,000.00) ("Gross Settlement Amount"). The Gross Settlement Amount shall be
14 used to satisfy all of Defendant's liabilities arising from this settlement, other than its liability
15 for employer-side payroll taxes on amounts paid to Class Members. The Gross Settlement
16 Amount includes Individual Settlement Payments to Class Members (excluding any
17 appropriate and lawfully required employer-side payroll taxes owed by Defendant on such
18 payments which Defendant shall be separately responsible for apart from the Gross Settlement
19 Amount), Individual PAGA Payments to PAGA Group Members, Service Payment to the
20 Class Representative, LWDA Payment, Settlement Administration Costs, approved Attorneys'
21 Fees, and Class Counsel Costs. Defendant shall transfer the Gross Settlement Amount to the
22 Settlement Administrator within fifteen (15) calendar days of the Effective Date.

23 d. Allocation of Gross Settlement Amount: The Parties agree the Gross
24 Settlement Amount, subject to Court approval, shall be allocated as follows:

1 i. Individual Settlement Payments: Settlement Class Members who
2 do not validly opt out shall receive their share of the Net Settlement Amount based upon the
3 number of workweeks employed during the Class Period.

4 ii. Each Settlement Class Member's respective number of applicable
5 workweeks and estimated share of the Net Settlement Amount shall be identified on the Notice
6 of Proposed Settlement. The Parties agree that if any Settlement Class Member disputes the
7 basis for determining their share of the Settlement, Defendant's records shall presumptively
8 control unless the Settlement Class Member can produce documentation evidence of other
9 workweeks worked during the relevant time period. Upon the submission of such evidence,
10 the Settlement Administrator will make a determination as to any such dispute, which shall be
11 final and binding.

12 iii. Thirty percent (30%) of each Individual Settlement Payment shall
13 be classified as wages and the remaining seventy percent (70%) shall be classified as interest,
14 penalties, and other non-wage income. Settlement Class Members' shares of the Net
15 Settlement Amount shall be paid within fifteen (15) calendar days of the Settlement
16 Administrator's receipt of the Gross Settlement Amount. Class Members shall have one-
17 hundred eighty (180) days from the date of issuance of the check to negotiate the check. The
18 funds from any checks not negotiated within 180 days, shall be transmitted to the Watsonville
19 Law Center as the *cy pres* recipient. In such event, those Class Members will nevertheless
20 remain bound by the Settlement.

21 iv. Settlement Awards Do Not Trigger Additional Benefits: All
22 Individual Settlement Payment checks to the Class shall be deemed to be income solely in the
23 year in which such Individual Settlement Payment checks are actually received by the
24 members of the Class. It is expressly understood and agreed that the receipt of such Individual
25 Settlement Payment checks will not entitle any Class Member to additional compensation or
26 benefits under any company bonus, contest, or other compensation or benefit plan or

1 agreement in place (including, but not limited to, health and welfare benefits) during the
2 period covered by the Settlement, nor will it entitle any Class Member to any increased
3 retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is the
4 intent of this Settlement that the Individual Settlement Payments provided for in this
5 Agreement are the sole payments to be made by Defendant to the Class in connection with this
6 Settlement, and that the Class is not entitled to any new or additional compensation or benefits
7 as a result of having received the payments (notwithstanding any contrary language or
8 agreement in any benefit or compensation plan document that might have been in effect during
9 the period covered by this Settlement).

10 v. Settlement Administrator: The Settlement Administrator will
11 demonstrate the proven ability, and will contract to, maintain acceptable electronic and
12 physical security protocols to adequately protect and safeguard the private employee
13 information it will have access to as a result of the claims process. The fees and expenses of
14 the Settlement Administrator, up to a maximum amount of Fourteen Thousand Dollars
15 (\$14,000.00), for work done shall be paid from the Gross Settlement Amount.

16 vi. Attorneys' Fees and Class Counsel Costs: Subject to the Court's
17 approval, Defendant will pay Class Counsel's attorneys' fees of up to a maximum of thirty-
18 five percent (35%) of the Gross Settlement Amount, and litigation costs not to exceed Thirty
19 Thousand Dollars (\$30,000.00). Defendant will not object to Class Counsel's application for
20 attorneys' fees and costs in these amounts. The amount set forth above will cover all work
21 performed and all fees and costs incurred to date, and all work to be performed and all fees
22 and costs to be incurred in the future in connection with the approval by the Court of this
23 Stipulation of Settlement, the administration of the Settlement, and obtaining dismissal with
24 prejudice of this case.

25 vii. Class Representative: Subject to the Court's approval, Defendant
26 will not oppose the Class Representative's request for a Service Payment up to a maximum of

Five Thousand Dollars (\$5,000.00) from the Gross Settlement Amount for reimbursement for her service as the Class Representative and in recognition of her broader release of claims as described in Paragraph 53 below. It is understood that the Service Payment is in addition to any claimed Individual Settlement Payment and Individual PAGA Payment to which the Class Representative is entitled.

viii. PAGA Payment: Subject to the Court's Approval, the amount of Fifty Thousand Dollars (\$50,000.00) will be allocated from the Gross Settlement Amount for alleged penalties under PAGA. Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00), representing 75% of the penalties paid pursuant to the PAGA, shall be paid to the California Labor and Workforce Development Agency and Twelve Thousand Five Hundred Dollars (\$12,500.00), representing 25% of the penalties paid pursuant to the PAGA, shall be paid to PAGA Group Members ("Net PAGA Penalties").

1. Individual PAGA Payments: PAGA Group Members shall receive their share of the Net PAGA Penalties based upon the number of pay periods employed during the PAGA Period. Each PAGA Group Member's respective number of applicable pay periods and estimated share of the Net PAGA Penalties shall be identified on the Notice of Proposed Settlement. The Parties agree that if any PAGA Group Member disputes the basis for determining their share of the Net PAGA Penalties, Defendant's records shall presumptively control unless the PAGA Group Member can produce documentation evidence of other pay periods worked during the relevant time period. Upon the submission of such evidence, the Settlement Administrator will make a determination as to any such dispute, which shall be final and binding. One hundred percent (100%) of the Individual PAGA Payment shall be classified as penalties. PAGA Group Members' shares of the Net PAGA Penalties shall be paid within fifteen (15) calendar days of the Settlement Administrator's receipt of the Gross Settlement Amount. PAGA Group Members shall have one-hundred eighty (180) days from the date of issuance of the check to negotiate the check. The funds

1 from any checks not negotiated within 180 days, shall be transmitted to the Watsonville Law
2 Center as the *cy pres* recipient. In such event, those PAGA Group Members will nevertheless
3 release the Released PAGA Claims.

4 ix. Tax Forms and Indemnification: The Settlement Administrator
5 shall be responsible for issuing the payments and withholding all required state and federal
6 taxes in accordance with this Stipulation of Settlement. The Settlement Administrator will
7 issue IRS Forms W-2 with respect to the amounts paid as wages to the Class Members, and
8 IRS Forms 1099 with respect to the amounts paid as interest and penalties to the Class
9 Members and PAGA Group Members. The Settlement Administrator will also issue IRS
10 Forms 1099 to: (1) Plaintiff for the Service Payment for her service as Class Representatives
11 and (2) Class Counsel for the amount paid for approved fees and costs. The Settlement
12 Administrator will be responsible for preparing these forms correctly. The Settlement
13 Administrator shall also be responsible for submitting Defendant's share of payroll taxes to the
14 appropriate government agencies on behalf of Defendant. Plaintiff, Class Members, PAGA
15 Group Members, and Class Counsel will be responsible for correctly characterizing this
16 compensation for tax purposes and for paying any taxes on the amounts received. Plaintiff,
17 Class Members, PAGA Group Members, and Class Counsel agree to indemnify Defendant for
18 any liability it incurs to any tax authority on account of Plaintiff, Class Members, PAGA
19 Group Members, and/or Class Counsel's failure to pay all taxes due on the Service Payment,
20 awarded attorneys' fees and costs, or any other amounts recorded on an IRS Form 1099.

21 **NOTICE TO THE SETTLEMENT CLASS**

22 45. Within fourteen (14) calendar days of preliminary approval of this Settlement by
23 the Court, Defendant shall provide to the Settlement Administrator a Settlement Class List,
24 consisting of the full names, last known addresses, Social Security numbers, total number of
25 workweeks Settlement Class Members were employed during the Class Period, and total
26 number of pay periods PAGA Group Members were employed during the PAGA Period.

27 143950576.1

14

28 144726749.1

1 46. The Settlement Administrator (along with any of its agents) shall represent and
2 warrant that it will: (1) provide reasonable and appropriate administrative, physical and
3 technical safeguards for any personally identifiable information (“PII”), which it receives from
4 Defendant’s Counsel and/or Class Counsel; (2) not disclose the PII to third parties, including
5 agents or subcontractors, without Defendant’s consent; (3) not disclose or otherwise use the
6 PII other than to carry out its duties as set forth herein; (4) promptly provide Defendant with
7 notice if PII is subject to unauthorized access, use, disclosure, modification, or destruction;
8 and (5) destroy the PII upon termination of its services. The Settlement Administrator may
9 provide notice to both Parties if the PII is subject to unauthorized access, use, disclosure,
10 modification, or destruction; however, all additional communications from the Settlement
11 Administrator regarding the scope, circumstances, and substance shall be communicated solely
12 to Defendant.

13 47. The Settlement Administrator shall send Notice of Proposed Settlement to each
14 Settlement Class Member by first class mail within ten (10) calendar days of receipt of the
15 Settlement Class List. Prior to mailing the Court approved Notice, the Settlement
16 Administrator shall update the addresses of the Settlement Class Members by reference to the
17 National Change of Address Database maintained by the United States Postal Service. If a
18 Notice of Proposed Settlement is returned as non-deliverable but with a forwarding address,
19 the Settlement Administrator shall resend the Notice of Proposed Settlement to the forwarding
20 address. If a Notice of Proposed Settlement is returned as non-deliverable with no forwarding
21 address, the Settlement Administrator shall conduct an advanced skip trace to locate the most
22 current address of the person to whom the Notice of Proposed Settlement was addressed and
23 shall re-send the Notice of Proposed Settlement within five (5) calendar days to any updated
24 address. Upon completion of these steps, the Parties shall be deemed to have satisfied their
25 obligations to provide the Notice of Proposed Settlement to the affected members of the
26 Settlement Class.

143950576.1

15

144726749.1

1 48. The Settlement Administrator shall provide to the Court, concurrently with
2 Plaintiff's Motion for Final Approval, a declaration of due diligence and proof of mailing with
3 regard to the mailing of the Notice of Proposed Settlement.

4 **REQUESTS FOR EXCLUSION (OPT OUT)**

5 49. Each Settlement Class Member shall have forty-five (45) calendar days from the
6 mailing of the Notice of Proposed Settlement within which to postmark a written request for
7 exclusion, for return to the Settlement Administrator. The request need not be in any particular
8 form and will be considered a valid request for exclusion so long as it communicates a clear
9 desire by the Settlement Class Member not to be included in the Settlement and/or Class,
10 identifies his/her full name, last four (4) digits of his/her Social Security number, current
11 address, and his/her signature. No requests for exclusion shall be accepted if postmarked after
12 the forty-five (45) calendar day period for the filing of exclusions. Settlement Class Members
13 are responsible for maintaining a photocopy of their request for exclusion, reflecting that it
14 was submitted in a timely manner. Any disputes regarding the timeliness of a request for
15 exclusion or whether a written communication constitutes a valid request that cannot be
16 resolved between the Parties shall be determined by the Court, whose determination shall be
17 final.

18 Any Settlement Class Member who validly excludes him/herself from this Settlement
19 shall not be bound by this Settlement and shall not be entitled to any portion of the Net
20 Settlement Amount, except that in light of the binding nature of a PAGA judgment on non-
21 party employees, Settlement Class Members employed during the PAGA Period who exclude
22 themselves from this Settlement shall still be bound by the release of the Released PAGA
23 Claims, as well as any Judgment that may be entered by the Court thereon. At no time shall
24 any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class
25 Members to submit a Request for Exclusion. Class Counsel shall not represent any Settlement
26 Class Members with respect to any such request.

OBJECTIONS TO THE SETTLEMENT

50. Each Settlement Class Member shall have forty-five (45) calendar days from the mailing of the Notice of Proposed Settlement, or such number of days as the Court shall specify, within which to postmark a written objection, for return to the Settlement Administrator. Any Settlement Class Member wishing to object to the approval of this settlement ("Objecting Class Member") shall inform the Court and the Parties in writing of his or her intent to object. The written objection must contain: (1) the name and case number of this lawsuit: ***Yannet Jimenez v. Sambrailo Packaging, Case No. 20CV003281***; (2) full name and current address of the Objecting Class Member; (3) the specific reason(s) for the objection; and (4) any and all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) to be considered by the Court. Any Objecting Class Member who wishes to appear at the Settlement Hearing and be heard orally in support of, or in opposition to the Settlement, must state so in the objection sent to the Settlement Administrator.

51. Any Settlement Class Member who fails to timely file such a written statement of his or her intention to object shall be foreclosed from making any objection to this settlement or from filing an appeal to the Court's Final Order and Judgment unless otherwise ordered by the Court.

52. Counsel for the Parties shall file any response to the objections submitted by Objecting Class Members, if any, at least seven (7) calendar days before the date of the Final Approval Hearing.

53. Objecting Class Members will have the right to appear at the Court's hearing to provide final approval of the Settlement in order to have their objections heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit written objections to the Settlement or to appeal from the Court's Final Order and Judgment. Class Counsel shall not represent any Class Members with

respect to any such objections to this Settlement.

DEFENDANT'S RIGHT TO RESCIND

54. If five percent (5%) or more of the Settlement Class submit a timely and valid Request for Exclusion, Defendant will have the right, but not the obligation, to revoke and void this Settlement at its discretion. Defendant must exercise the option to rescind within fourteen (14) calendar days of the expiration of the opt-out period. If Defendant exercises this right to void the Settlement, then the Parties will have no further obligations under the Settlement, including, without limitation, any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Settlement, except that Defendant shall pay all Settlement Administration Costs incurred by the Settlement Administrator up to the date of Defendant's notice to rescind. In the event the Settlement is terminated, the Parties shall proceed in all respects as if this Stipulation of Settlement had not been executed. The Parties agree that they will not encourage any Settlement Class Member to object to the Settlement or to opt out.

RELEASE BY THE CLASS AND CLASS REPRESENTATIVE

55. Release by All Class Members: Upon the Effective Date and funding of the Gross Settlement Amount, Plaintiff and all Class Members hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged, to the fullest extent possible, any and all of the Released Parties of and from any and all Released Claims during the Class Period.

56. Release by PAGA Group Members: Upon the Effective Date and funding of the Gross Settlement Amount, Plaintiff and all PAGA Group Members hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged, to the fullest extent possible, any and all of the Released Parties of and from any and all Released PAGA Claims during the PAGA Period. Settlement Class Members employed during the PAGA Period shall still be bound by the Released PAGA Claims

1 regardless of whether a timely and valid Request for Exclusion is submitted.

2 57. Class Representative Release and 1542 Waiver: As of the Effective Date and
3 funding of the Gross Settlement Amount, in exchange for the consideration set forth in this
4 Agreement, Plaintiff, for herself and her heirs, successors and assigns, does hereby waive,
5 release, acquit, and forever discharge the Released Parties from any and all claims, actions,
6 charges, complaints, grievances, and causes of action, of whatever nature, whether known or
7 unknown, which exist or may exist on Plaintiff's behalf as of the date of this Agreement,
8 including, but not limited to, any and all tort claims, contract claims, wage claims, wrongful
9 termination claims, disability claims, benefit claims, public policy claims, retaliation claims,
10 statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims,
11 defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under
12 any federal, state or other governmental statute, law, regulation, or ordinance, including, but
13 not limited to, claims for violation of the FLSA, the California Labor Code, the Wage Orders
14 of California's Industrial Welfare Commission, other state wage and hour laws, the Americans
15 with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee
16 Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair
17 Employment and Housing Act, the California Family Rights Act, the Family Medical Leave
18 Act, California's Whistleblower Protection Act, California Business & Professions Code §
19 17200, *et seq.*, and any and all claims arising under any federal, state, or other governmental
20 statute, law, regulation, or ordinance. Plaintiff hereby expressly waives and relinquishes any
21 and all claims, rights, or benefits that she may have under California Civil Code § 1542, which
22 provides as follows:

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

26 Plaintiff may hereafter discover claims or facts in addition to, or different from, those

1 which she now knows or believes to exist, but Plaintiff expressly agrees to fully, finally, and
2 forever settle and release any and all claims against the Released Parties, known or unknown,
3 suspected or unsuspected, which exist or may exist on behalf of or against the other at the time
4 of execution of this Agreement, including, but not limited to, any and all claims relating to or
5 arising from Plaintiff's employment with Defendant. The Parties further acknowledge,
6 understand, and agree that this representation and commitment is essential to the Stipulation of
7 Settlement and that this Stipulation of Settlement would not have been entered into were it not
8 for this representation and commitment.

9 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

10 58. Class Counsel will be responsible for drafting all documents necessary to obtain
11 Preliminary approval.

12 59. Class Counsel shall promptly submit this Stipulation of Settlement to the Court
13 in support of Plaintiff's Motion for Preliminary Approval and determination by the Court as to
14 whether the proposed Settlement is within the range of possible judicial approval. Plaintiff will
15 provide Defendant with a draft of the Motion at least 1 business day prior to the filing of the
16 Motion to give Defendant an opportunity to propose changes or additions to the Motion. The
17 Parties further agree to meet and confer on acceptable language to be included in the motion
18 for preliminary approval referencing Defendant's extensive and successful wage-and-hour
19 compliance efforts and practices for reference in Plaintiff's *Kullar* analysis. Promptly upon
20 execution of this Stipulation of Settlement, Class Counsel shall apply to the Court for the entry
21 of an order substantially in the following form:

22 a. Scheduling of the Final Approval Hearing on the question of whether the
23 proposed Settlement, including payment of attorneys' fees and costs and the Class
24 Representative's Service Payment, should be finally approved as fair, reasonable, and
25 adequate as to the Settlement Class Members;

26 b. Certifying the Settlement Class;

27 143950576.1

20

28 144726749.1

1 c. Approving the manner and method for the Settlement Class Members to
2 request exclusion from the Settlement as contained herein and within the Notice of Pendency
3 of Class Action;

4 d. Directing the mailing of the Notice of Pendency of Class Action by first
5 class mail to the Settlement Class Members; and

6 e. Preliminarily approving the Settlement subject only to the objections of
7 the Settlement Class Members and final review by the Court.

8 **DUTIES OF THE PARTIES FOLLOWING FINAL APPROVAL**

9 60. Following final approval by the Court of the settlement provided for in this
10 Stipulation of Settlement, Class Counsel shall submit a proposed Final Order and Judgment in
11 approximately the following form: approving the Settlement, adjudging the terms thereof to
12 be fair, reasonable, and adequate, and directing consummation of its terms and provisions
13 including the approval of Class Counsel's application for an award of attorneys' fees and costs
14 and the Service Payment to the Class Representative.

15 **PARTIES' AUTHORITY**

16 61. The signatories hereto hereby represent that they are fully authorized to enter
17 into this Stipulation of Settlement and bind the Parties hereto to the terms and conditions
18 thereof.

19 **MUTUAL FULL COOPERATION**

20 62. The Parties agree to fully cooperate with each other to accomplish the terms of
21 this Stipulation of Settlement, including, but not limited to, execution of such documents and
22 taking of such action as reasonable may be necessary to implement the terms of this
23 Stipulation of Settlement. The Parties to this Stipulation of Settlement shall use their best
24 efforts, including all efforts contemplated by this Stipulation of Settlement and any other
25 efforts that may become necessary by order of the Court, or otherwise, to effectuate this
26 Stipulation of Settlement and the terms set forth herein. As soon as practicable after execution

1 of this Stipulation of Settlement, Class Counsel shall take all necessary steps to secure the
2 Court's final approval of this Stipulation of Settlement.

3 63. The Parties and their respective counsel agree that they will not attempt to
4 encourage or discourage Settlement Class Members from filing Requests for Exclusion.

5 **NO PRIOR ASSIGNMENTS**

6 64. The Parties and their respective counsel represent, covenant, and warrant that
7 they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign,
8 transfer, or encumber to any person or entity any portion of any liability, claim, demand,
9 action, cause of action, or right herein released and discharged except as set forth herein.

10 **NO ADMISSION**

11 65. Nothing contained herein, nor the consummation of this Stipulation of
12 Settlement, is to be construed or deemed an admission of liability, culpability, negligence, or
13 wrongdoing on the part of Defendant. Each of the Parties hereto has entered into this
14 Stipulation of Settlement solely with the intention to avoid further disputes and litigation with
15 the attendant inconvenience and expenses.

16 **ENFORCEMENT ACTIONS**

17 66. In the event one or more of the parties to this Stipulation of Settlement institutes
18 any legal action or other proceeding against any other party or parties to enforce the provisions
19 of this Stipulation of Settlement or to declare rights or obligations under this Stipulation of
20 Settlement, the successful party or parties shall be entitled to recover from the unsuccessful
21 party or parties reasonable attorneys' fees and costs, including expert witness fees incurred in
22 connection with any enforcement actions. All such disputes shall be resolved by the Court.

23 **NOTICES**

24 67. Unless otherwise specifically provided herein, all notices, demands, or other
25 communications given hereunder shall be in writing and shall be deemed to have been duly
26 given as of the third business day after mailing by United States registered or certified mail,

return receipt requested, addressed as follow:

**To Plaintiff, the Settlement Class,
and Class Counsel:**

B. James Fitzpatrick
Laura L. Franklin
FITZPATRICK & SWANSTON
555 S. Main Street
Salinas, CA 93901
Telephone: (831) 755-1311
Facsimile: (831) 755-1319

Larry W. Lee
Max W. Gavron
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

**To Defendant and Defendant's
Counsel:**

Keith Chrestionson
FOX ROTHSCHILD LLP
345 California Street, Suite 2200
San Francisco, CA 94104
Telephone: (415) 364-5540
Facsimile: (415) 391-4436

Gabrielle E. Gordon
FOX ROTHSCHILD LLP
10250 Constellation Blvd., Suite 900
Los Angeles, CA 90067
Telephone: (310) 598-4150

CONSTRUCTION

68. The Parties hereto agree that the terms and conditions of this Stipulation of Settlement are the result of lengthy, intensive arm's-length negotiations between the Parties with the assistance of neutral mediators, and this Stipulation of Settlement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her or its counsel participated in the drafting of this Stipulation of Settlement.

CAPTIONS AND INTERPRETATIONS

69. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Stipulation of Settlement or any provision of it. Each term of this Stipulation of Settlement is contractual and not merely a recital.

MODIFICATION

70. This Stipulation of Settlement may not be changed, altered, or modified, except in writing and signed by the Parties or their counsel and approved by the Court. This Stipulation of Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

143950576.1

23

144726749.1

INTEGRATION CLAUSE

71. This Stipulation of Settlement contains the entire agreements 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.

BINDING ON ASSIGNS

72. This Stipulation of Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

DISPUTES REGARDING LANGUAGE OF SETTLEMENT AGREEMENT

73. If the Parties have a dispute with regard to the language of the terms of the Agreement, the Parties agree to present any such dispute to the mediator Deborah Saxe, Esq. for resolution.

CLASS MEMBER SIGNATORIES

74. It is agreed that because the Settlement Class Members are so numerous, it is impossible or impractical to have each member execute this Stipulation of Settlement. The Notice of Pendency of Class Action, Exhibit "A" hereto, will advise the Settlement Class of the binding nature of the release, and the release shall have the same force and effect as if this Stipulation of Settlement were executed by each member.

COUNTERPARTS

75. This Stipulation of Settlement may be executed in counterparts and by facsimile or electronic signatures, 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 Stipulation of Settlement binding upon and effective as to all Parties.

1 IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this
2 Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims between
3 Plaintiff and Defendant as of the date(s) set forth below.

4 Dated: 05/22/2023

DocuSigned by:
Yannet Jimenez
F8FA472050F947A...
Yannet Jimenez, Plaintiff and Class
Representative

8 Dated: 05/26/2023

Defendant Sambrailo Packaging

DocuSigned by:
Mark Sambrailo
783901F04EA34ED...
By: Its
Mark Sambrailo, President & CEO,
Sambrailo Packaging

13 Dated: 5/22/2023

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

By: B. James Fitzpatrick, Esq.
Larry W. Lee, Esq.
Attorneys for Plaintiff Yannet Jimenez, on
behalf of herself and all similarly situated
employees

20 Dated: 05/26/2023

FOX ROTHSCHILD LLP

By: Gabrielle E. Gordon
Keith Chrestionson, Esq.
Gabrielle E. Gordon, Esq.
Attorneys for Defendant Sambrailo
Packaging

143950576.1

25

144726749.1

EXHIBIT A

Yannet Jimenez v. Sambrailo Packaging
SETTLEMENT ADMINISTRATOR
PHOENIX SETTLEMENT ADMINISTRATORS

IMPORTANT LEGAL NOTICE

<<FIRST AND LAST NAME>>

<<ADDRESS>>

<<CITY AND ZIP CODE>>

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY
Yannet Jimenez v. Sambrailo Packaging
Case No. 20CV003281

NOTICE OF PENDENCY OF CLASS ACTION

**YOU ARE ESTIMATED TO RECEIVE APPROXIMATELY \$<<EstimatedAward>>
THROUGH THIS SETTLEMENT.**

To: All current and former non-exempt employees of Defendant who worked for Defendant in California during the Class Period (June 10, 2016, through June 9, 2023)

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED. YOU MAY BE ENTITLED TO RECEIVE MONEY FROM THIS PROPOSED SETTLEMENT.

TO RECEIVE YOUR SHARE, YOU DO NOT NEED TO DO ANYTHING.

This Notice is Court Approved. This is not a solicitation from an attorney.

1. WHY DID I GET THIS NOTICE?

You received this Notice because a proposed settlement (the “Settlement”) has been reached in the class action lawsuit entitled “*Yannet Jimenez v. Sambrailo Packaging*” and assigned Case No. 20CV003281 (hereinafter referred to as the “Action”). Defendant Sambrailo Packaging (“Defendant”) has agreed to pay a total of \$1,400,000.00 (the “Gross Settlement Amount”) to settle all class claims arising out of the Action. There was a hearing on **INSERT PRELIMINARY APPROVAL DATE** in the Superior Court of the State of California for the County of Monterey, at which time Judge Thomas W. Wills preliminarily approved the Settlement as being fair and reasonable to the members of the Settlement Class.

The Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the

Settlement, including information about how you can see a copy of the Settlement Agreement, see Section 17, below.

2. WHAT IS THE ACTION ABOUT?

This Action is the class case entitled *Yannet Jimenez v. Sambrailo Packaging*, originally filed in Monterrey County Superior Court on December 7, 2020, assigned Case No. 20CV003281, and subsequently amended. The operative Complaint alleges claims on behalf of Plaintiff and other similarly situated employees for: (1) failure to provide meal periods or compensation in lieu thereof in violation of Labor Code §§ 226.7 and 1198 and the Wage Order; (2) failure to provide rest periods or compensation in lieu thereof in violation of Labor Code §§ 226.7 and 1198 and the Wage Order; (3) failure to pay hourly and overtime wages in violation of Labor Code §§ 1194 and 1998 and the Wage Order; (4) failure to pay minimum wage in violation of Labor Code §§ 1194, 1197, and 1199 and the Wage Order; (5) failure to comply with itemized employee wage statement requirements in violation of Labor Code §§ 226, 1174, and 1175 and the Wage Order; (6) failure to pay all wages upon termination in violation of Labor Code §§ 201, 202, and 203 and the Wage Order; (7) failure to pay wages timely in violation of Labor Code § 204; (8) failure to reimburse work related expenses in violation of Labor Code § 2802 and the Wage Order; (9) California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698; and (10) unfair business practices in violation of Business and Professions Code § 17200, *et seq.* and common law.

Defendant denies all allegations of wrongdoing and maintains that it complied with all applicable laws, rules, and regulations at issue in this litigation. The Court has not ruled on the merits of the lawsuit.

3. WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more persons sue on behalf of other people who have similar claims. Yannet Jimenez (hereinafter “Plaintiff”) is the person who is bringing this Action on your behalf and on behalf of other similarly situated employees.

In the Action, the Plaintiff seeks to represent you on a class basis. A class action allows the Court to resolve the claims of all the members of the class at the same time. A class member is bound by the determination or judgment entered in the case, whether the class wins or loses, and may not file his or her own lawsuit on the same claims that were decided in the class action. A class action allows one court to resolve all of the issues in a lawsuit for all the members of the class who choose not to exclude themselves from the class.

4. WHO IS INCLUDED IN THE SETTLEMENT CLASS?

All current and former non-exempt employees of Defendant who worked for Defendant in California during the Class Period (the “Settlement Class” or “Settlement Class Members”). The period from June 10, 2016, through June 9, 2023 is the “Class Period.” You are receiving this Notice because Defendant’s records show that you are a member of the Settlement Class.

5. WHY IS THERE A SETTLEMENT?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff thinks she could have won at trial. Defendant thinks it could have won at trial. But there was no trial. Instead, both parties agreed to a settlement. That way, they avoid the cost of litigation, and the individuals potentially affected will get compensation. Plaintiff and her counsel (“Class Counsel”) believe the Settlement is a fair and reasonable compromise that is in the best interests of the Class.

6. WHAT ARE THE TERMS OF THE SETTLEMENT?

As stated above, Defendants have agreed to pay a total of \$1,400,000.00 to settle all class claims arising out of the lawsuit. Subject to the Court’s approval, the Gross Settlement Amount will be used to pay Settlement Class Members for the settlement and release of the Released Claims described below, settlement administration costs (estimated at \$14,000.00), attorneys’ fees for Class Counsel in the amount of \$490,000.00 (or 35% of the Gross Settlement Amount), reasonable litigation costs/expenses not to exceed \$30,000.00, a “service payment” to Plaintiff as the Class Representative (up to \$5,000.00); and PAGA penalties in the amount of \$50,000.00. The amount of money remaining after all of these payments (the “Net Settlement Amount”) will be distributed to Settlement Class Members who do not opt out of the Settlement (the “Class Members”).

The Settlement Class Members who do not opt out will each receive a payment (“Individual Settlement Payment”) representing their pro-rata share of the Net Settlement Amount, based upon the number of workweeks employed during the Class Period.

Based on Defendant’s records, the number of workweeks you were employed during the Class Period is <<Workweeks>> and your estimated Individual Settlement Payment is \$<<EstimatedAward>>. Thirty percent (30%) of the Individual Settlement Payment will be considered wages and will be reported on an IRS Form W-2, and seventy percent (70%) of the Individual Settlement Payment will be considered interest, and other non-wage income and will be reported on an IRS Form 1099 misc., if applicable.

Regardless of whether you opt out of the class portion of the settlement, you may also receive a payment (“Individual PAGA Payment”), representing your share of the PAGA penalties.

The PAGA penalties allocated as part of this settlement, or “PAGA Payment,” will be distributed to the California Labor and Workforce Development Agency (“LWDA”) and aggrieved employees known as the PAGA Group. Pursuant to requirements of Labor Code § 2698, *et seq.*, the LWDA will receive 75% of the PAGA Payment. The remaining 25% of the PAGA Payment, or “Net PAGA Penalties,” will be distributed to the PAGA Group, based upon the number of workweeks employed during the PAGA Period. The PAGA Group is defined as all current and former non-exempt employees of Defendant who worked for Defendant in California at any time from June 10, 2019, through June 9, 2023. The PAGA Period is defined as June 10, 2019, through June 9, 2023.

Based on Defendant's records, the number of workweeks you were employed during the PAGA Period is <<PAGA Workweeks>> and your estimated Individual PAGA Payment is \$<<PAGAEstimatedAward>>. One hundred percent (100%) of the Individual PAGA Payment will be considered penalties, and will be reported on an IRS Form 1099 misc., if applicable.

Any questions regarding your workweek counts or the amount of your Individual Settlement Payment or Individual PAGA Payment should be directed to the Settlement Administrator at the address listed in Section 9 below.

7. WHAT DO I NEED TO DO TO RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT?

You do not need to do anything to participate in the settlement. You will receive your Individual Settlement Payment and/or Individual PAGA Payment from this Settlement in or around [REDACTED], 2023 if the Court approves the Settlement and no written objections or appeals are filed. Class Counsel have been appointed and approved by the Court and Class Counsel will represent you.

Upon receipt of your settlement check, it will be your responsibility to cash the check before the expiration date of the check (180 days from the check's issuance). You will not be retaliated against for cashing the settlement check. Checks that are not cashed or negotiated within 180 days from the date of issuance of the check will become void and be transmitted to the *cy pres* recipient, Watsonville Law Center.

8. HOW DOES THE SETTLEMENT AFFECT MY RIGHTS?

After the Court has approved the Settlement, each Settlement Class Member will release Defendant and its current and former parents, owners, subsidiaries, divisions, and affiliated or related persons or entities, and each of their respective officers, directors, employees, partners, shareholders, attorneys, agents, executors, and assigns ("Released Parties") from any and all claims, actions, or causes of action alleged in the Action, or that could have been alleged or raised in the Action based upon or arising out of the facts alleged therein, during the Class Period, except for those arising under PAGA ("Released Claims").

In addition, each Settlement Class Member and/or PAGA Group Member will release the Released Parties from claims during the PAGA Period arising under the California Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* predicated on violations of Labor Code §§ 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 227.3, 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2800, and 2802, and which were alleged in the Action and/or could have been alleged in the Action based on the facts alleged in the Action and/or the notice(s) to the Labor and Workforce Development Agency ("Released PAGA Claims").

If you are a member of the Settlement Class and you do not elect to properly opt out from the Settlement, you will be deemed to have entered into the above releases and to have released

the above-described Released Claims and Released PAGA Claims. If you are a member of the Settlement Class and you elect to properly opt out from the Settlement, you will still be deemed to have released the above-described Released PAGA Claims. There is no opt out from the Released PAGA Claims.

If the settlement is approved by the Court and becomes final, the entire Settlement will be consummated. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

9. WHAT IF I DON'T WANT TO PARTICIPATE IN THIS SETTLEMENT?

If you do not want to be bound by the terms of the settlement, including the above release of class and PAGA claims, you may exclude yourself ("opt out") by sending written notice of your intention to opt out to the Settlement Administrator, at its address listed below:

**YANNETT JIMENEZ v. SAMBRAILO PACKAGING CLASS ACTION LAWSUIT
PHOENIX SETTLEMENT ADMINISTRATORS
ADDRESS**

The opt-out request must be in writing and include (1) the full name and current address of the person seeking exclusion; (2) last four digits of his/her Social Security number, (3) a statement that the person requests exclusion from the Settlement Class and does not wish to participate in the Settlement; and (4) the signature of the person seeking exclusion. Any person who opts out will not be affected by the terms of the Settlement, with the exception of the Released PAGA Claims. *Any opt-out request must be postmarked no later than* **2023.**

If you submit a timely and valid written opt out, you will no longer be a member of the Settlement Class, and you will not be eligible to receive an Individual Settlement Payment under the Settlement or object to the terms of the Settlement. You will be bound by the Released PAGA Claims; however, you will not be bound by the Released Claims, and you may pursue any class or individual claims you may have, at your own expense, against Defendant.

10. WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

If you do not opt-out of the Settlement by submitting a valid and timely request for exclusion as outlined in Section 9 above, you may object to any of the terms of the Settlement before the Final Approval Hearing. Failure to take the steps below will be deemed a waiver of your objections. If the Court rejects your objection, you will still be bound by the terms of the Settlement, but you will also receive an Individual Settlement Payment (and/or Individual PAGA Payment). To object, you must mail your written objection to the Settlement Administrator at the below address within 45 days from the mailing of this Notice.

**YANNETT JIMENEZ v. SAMBRAILO PACKAGING CLASS ACTION LAWSUIT
PHOENIX SETTLEMENT ADMINISTRATORS
ADDRESS**

Your written objections must state (1) your full name and current address; (2) the name and case number of this lawsuit: ***Yannett Jimenez v. Sambrailo Packaging, Case No. 20CV003281***; (3) the specific reason(s) for the objections, and (4) any and all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) to be considered by the Court. If you wish to appear at the Final Approval Hearing and be heard orally in support of, or in opposition to the Settlement, you must state so in your objection.

IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FINAL APPROVAL HEARING.

11. WILL THE NAMED PLAINTIFF BE COMPENSATED FOR BRINGING THIS LAWSUIT?

Plaintiff will request a service award of up to \$5,000.00 for her service as Class Representative and for her efforts in bringing the Action. The Court will make the final decision as to the amount to be paid to the Plaintiff.

12. DO I HAVE A LAWYER IN THIS CASE?

Yes. The Court decided that the law firms of Fitzpatrick & Swanston and Diversity Law Group, P.C., which represent the Plaintiff, are also qualified to represent you and all Settlement Class Members. You will not be charged for these lawyers. These law firms are referred to as “Class Counsel.” If you want to be represented by your own lawyer, you may hire one at your own expense.

The contact information for Class Counsel is as follows:

B. James Fitzpatrick, Esq.
Laura L. Franklin, Esq.
FITZPATRICK & SWANSTON
555 S. Main Street
Salinas, CA 93901
Telephone: (831) 755-1311

Larry W. Lee, Esq.
Max W. Gavron, Esq.
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555

If you have questions about the case or the Settlement, you should ask Class Counsel.

13. HOW WILL THE LAWYERS BE PAID?

Class Counsel will be requesting from the Court \$490,000.00 (or 35%) of the Gross Settlement Amount for their attorneys' fees and reimbursement of litigation costs not exceeding \$30,000.00. These fees will serve to compensate Class Counsel for their efforts in achieving the settlement for the benefit of the Settlement Class and for their risk in undertaking this representation on a contingency basis. Class Counsel have already spent many hours investigating this case, reviewing payroll and time records information provided by Defendant, researching the class claims, and negotiating this settlement for the Settlement Class. They will incur additional hours overseeing the final approval and implementing the plan of distribution. You have the right to review Class Counsel's motion for attorneys' fees and costs, which will be filed with the Court.

14. WHAT IS THE FINAL APPROVAL HEARING?

The Court has preliminarily approved the Settlement and will hold a hearing to decide whether to give final approval to the Settlement. The purpose of the Final Approval Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; to consider the award of attorneys' fees and expenses to Class Counsel; and to consider the request for service payment to the Named Plaintiff.

15. WHEN AND WHERE IS THE FINAL APPROVAL HEARING?

The Court will hold the Final Approval Hearing on [DATE] at [INSERT TIME] a.m., in Department 15 of the Superior Court of the State of California for the County of Monterey, 1200 Aguajito Road, Monterey, California 93940 ("Final Approval Hearing").

The Final Approval Hearing may be continued without further notice to the Class Members. It is not necessary for you to appear at the Final Approval Hearing unless you have timely filed an objection with the Court. However, you have the right to attend the Final Approval Hearing and be represented by your own counsel at your own expense. If you plan to attend the Final Approval Hearing, you may contact Class Counsel to confirm the date and time. If the Settlement is not approved by the Court or does not become final for some reason, the Action may continue to trial.

16. MAY I SPEAK AT THE FINAL APPROVAL HEARING?

At the hearing, the Court will be available to hear any objections and arguments concerning the Settlement. You may attend, but you do not have to attend. You may speak at the Final Approval Hearing only if (a) you have timely served and filed an objection, and (b) followed the procedures set forth in Section 10 above to provide notice that you intend to speak at the Final Approval Hearing. If you opt-out from the Settlement, however, you may not speak at the Final Approval Hearing.

17. HOW DO I GET MORE INFORMATION?

To see a copy of the Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims (which defines the capitalized terms used in this Notice and provides a brief summary of what has happened in the Action), the Court's Preliminary Approval Order, Class Counsel's application for attorneys' fees and costs, the Complaints, and other filed documents related to Plaintiff's lawsuit and this Settlement, you may view all such files at the Clerk's office at the Superior Court of the State of California for the County of Monterey, 1200 Aguajito Road, Monterey, California 93940.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at the address and telephone number listed below, toll free. Please refer to the Sambrailo Packaging Class Action Settlement.

YANNET JIMENEZ v. SAMBRAILO PACKAGING CLASS ACTION LAWSUIT
PHOENIX SETTLEMENT ADMINISTRATORS
ADDRESS
Toll-free number: [TBD]

You may also contact the attorneys for the Class, whose names and contact information are listed above.

18. WHAT IF MY INFORMATION CHANGES?

It is your responsibility to keep your current address and telephone number on file with the Settlement Administrator, to ensure receipt of your Settlement Award and applicable tax forms if the settlement is given final approval by the Court. If you change your mailing address, you should promptly contact the Settlement Administrator and provide the Settlement Administrator your new address and contact information.

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE
LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE**

EXHIBIT B



CASE ASSUMPTIONS

Class Members	1,200
Opt Out Rate	1%
Opt Outs Received	12
Total Class Claimants	1,188
Subtotal Admin Only	\$14,000.00

Not-to-Exceed Total \$14,000.00

For 1200 Members

Pricing Good for Scope of Estimate Only

April 3, 2023

Case: Jimenez v Sambrailo Opt-Out wTranslation

Phoenix Contact: Jodey Lawrence

Contact Number: 949.566.1455

Email: Jodey@phoenixclassaction.com

Requesting Attorney: Max W. Gavron

Firm: Diversity Law Group, APC

Contact Number: (213) 488-6555

Email: mgavron@diversitylaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on 1200 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	3	\$300.00
Programming Database & Setup	\$100.00	3	\$300.00
Toll Free Setup*	\$148.88	1	\$148.88
Call Center & Long Distance	\$2.00	16	\$32.00
NCOA (USPS)	\$210.00	1	\$210.00
Total			\$990.88

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Reporting

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$125.00	2	\$250.00
Data Merge & Duplication Scrub	\$0.25	1,200	\$300.00
Notice Packet & Opt-Out Form	\$1.25	1,200	\$1,500.00
Estimated Postage (up to 2 oz.)*	\$0.87	1,200	\$1,044.00
Static Website	\$200.00	1	\$200.00
Language Translation	\$1,200.00	1	\$1,200.00
Total			\$4,494.00

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	3	\$165.00
Skip Tracing Undeliverables	\$1.00	180	\$180.00
Remail Notice Packets	\$1.25	180	\$225.00
Estimated Postage	\$0.87	180	\$156.60
Programming Undeliverables	\$50.00	2	\$100.00
Total			\$826.60

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$125.00	2	\$250.00
Non Opt-Out Processing	\$125.00	1	\$125.00
Case Associate	\$55.00	4	\$220.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	3	\$30.00
Case Manager	\$85.00	2	\$170.00
Total			\$795.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$125.00	3	\$375.00
Disbursement Review	\$125.00	3	\$375.00
Programming Manager	\$95.00	3	\$285.00
QSF Bank Account & EIN	\$125.00	2	\$250.00
Check Run Setup & Printing	\$125.00	3	\$375.00
Mail Class Checks *	\$1.25	1,188	\$1,485.00
Estimated Postage	\$0.64	1,188	\$760.32
Total			\$3,905.32

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$100.00	4	\$400.00
Remail Undeliverable Checks (Postage Included)	\$1.50	119	\$178.20
Case Associate	\$50.00	2	\$100.00
Reconcile Uncashed Checks	\$70.00	2	\$140.00
Conclusion Reports	\$125.00	2	\$250.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$125.00	2	\$250.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,500.00	1	\$1,500.00
Total			\$2,988.20

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$14,000.00



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.