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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

DANIEL LARA DIAZ and GLENN FITE,
individually, on a representative basis, and on
behalf of all others similarly situated;

Plaintiffs,

vs.

SHAMROCK FOODS CO., an Arizona
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: RIC 2004126
*[Assigned to Hon. Judge Craig Riemer, Dept
1, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION TO
APPROVE SETTLEMENT PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

Hearing

Date: July 6, 2022

Time: 8:30 a.m.

Dept.: 1

Reservation #: 266157493719

Complaint filed: October 20, 2022

1 I, Brian J. Mankin, state and declare:

2 1. I am an attorney licensed to practice before all of the courts of the State of
3 California. I am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in
4 Orange County and Riverside County, and I manage the firm's employment law department. I
5 am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I
6 submit this declaration in support of Plaintiffs' Motion to Approve Settlement Pursuant to the
7 Private Attorney General Act of 2004 (the "PAGA"). If called as a witness, I could and would
8 competently testify thereto.

9 **I. COUNSEL'S EXPERIENCE**

10 2. I have been a member, in good standing, of the State Bar of California since
11 2001. I am admitted to practice in the United States District Courts for the Central and
12 Southern District of California and the Ninth Circuit Court of Appeal and have tried cases in
13 various courts in California.

14 3. I have handled over 500 employee vs. employer litigation matters during my 21
15 years in practice. Over the last 15 years, my practice has almost entirely consisted of
16 representing employees, the majority of which has included class action and representative
17 action wage and hour matters. In total, I have handled over 250 class action and representative
18 action wage/hour cases, and have been appointed by the court as class counsel and have
19 received final court approval and judgment over half of those actions to date, and anticipate
20 receiving final approval in many more of those in the future.

21 4. As part of these settlements and judgments, I have recovered in excess of \$250
22 million in damages for my clients and the class members (who often work as nurses, ambulance
23 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
24 countless other trades). My team and I once held the record for the largest known PAGA-only
25 case in California's history - a \$12.5 million-dollar court approved settlement, which followed
26 extensive litigation, summary adjudication and writs to the CA Supreme Court against a Fortune
27 50 company (*Garcia v. Macy's*, San Bernardino Superior Court).

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1 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
2 2018, I was lead counsel in a PAGA case that my firm tried in the Orange County Superior
3 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
4 against Walmart in District Court, wherein the jury awarded Plaintiffs and the class over \$6
5 million. Both cases were appealed.

6 6. Over each of the last several consecutive years, I have been consecutively
7 selected by my peers as a “Super Lawyer” in Employment Litigation.

8 **II. PROCEDURAL BACKGROUND**

9 7. My firm began investigating this matter in the Fall of 2020. After being retained
10 by Plaintiff Diaz, my office submitted a claim on October 2, 2020, to the California Labor
11 Workforce and Development (“LWDA”) for civil penalties under the California Labor Code
12 Private Attorneys General Act of 2004 (Lab. Code §§ 2698, et seq.), which is attached hereto as
13 **Exhibit A.** At the same time, we sent a letter to Defendant requesting the production of
14 Plaintiff Diaz’s personnel and timekeeping records in order to further evaluate his wage and
15 hour claims while also serving a litigation hold on Defendant to preserve potentially relevant
16 electronically stored information.

17 8. While the 65-day LWDA waiting period was underway, Plaintiff Diaz filed a
18 class and representative action complaint on October 20, 2020, in this Court (Case No.
19 RIC2004126). Defendant retained counsel and on December 18, 2020, removed the class action
20 to the United States District Court under the Class Action Fairness Act and diversity jurisdiction
21 (Case No. 5:20-CV-02610-FMO-SHK). After the case was removed, Defendant responded to
22 the demand for records by producing, among other things, an arbitration agreement signed by
23 Plaintiff that contained a purported class action waiver. On that basis, Plaintiff Diaz moved for
24 leave to amend his complaint to omit any non-PAGA class and individual claims or,
25 alternatively, to dismiss those claims and remand the PAGA claims. Defendant also filed a
26 motion to dismiss class claims and compel arbitration of the individual claims, pursuant to the
27 Parties’ alleged arbitration agreement. On April 5, 2021, the District Court issued an Order
28 dismissing Plaintiff Diaz’s individual and class claims without prejudice, remanding the

1 remaining PAGA claims to this Court, and denying Defendant's motion as moot.

2 9. On about May 28, 2021, the Court issued a PAGA Case Management Order #1
3 (the "CMO") and scheduled a Case Management Conference. The CMO stayed all formal
4 discovery while directing the Parties to engage in informal discovery and "private mediation at
5 the earliest practicable time" after sufficient informal discovery had been exchanged to enable a
6 meaningful mediation.

7 10. After Defendant made Plaintiffs Diaz and Fite aware of each other's cases via
8 Notices of Related Case, Plaintiffs and their counsel entered into a joint prosecution agreement
9 and agreed to jointly mediate their cases with Defendant. In preparation for the mediation, the
10 Parties exchanged documents and information that allowed both sides to calculate the potential
11 damages and evaluate potential risk, including policies and procedures pertaining to each of the
12 claims alleged. Defendant also produced and Plaintiffs' expert analyzed timekeeping records
13 showing, among other things, the number of shifts, pay periods and number of Aggrieved
14 Employees. Defendant also produced work activity logs ("scan data") which reflected when
15 work was being performed. Plaintiffs' expert also compared that scan data to the time records to
16 check for violations. In total, Plaintiffs' expert evaluated the data of a sampling of employees
17 including approximately 12,000 pay periods, thereby giving Plaintiffs essentially a trial-ready
18 roadmap of the claims and damages for mediation. Additionally, during this process, we
19 analyzed, researched, and investigated the potential issues, including matters related to the
20 calculation of damages, trial, and appellate issues and risks.

21 11. On January 4, 2022, the Parties mediated with Steve Serratore, Esq., one of the
22 most respected class and PAGA mediators in California. The mediation took place on January
23 4, 2022. After a full day of mediation, Mr. Serratore issued a mediator's proposal that both
24 Parties accepted, resulting in a settlement of all PAGA claims alleged in the action, as well as
25 Plaintiffs' individual claims. The Parties entered into a Memorandum of Understanding, and
26 then memorialized the terms of the settlement. The long-form Settlement Agreement is now
27 presented to this Court for approval (attached hereto as **Exhibit B**).

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1 12. The Parties also settled and resolved Plaintiffs’ individual (non-PAGA) claims at
2 mediation. Pursuant to the CMO, the nature and valuation of Plaintiffs’ individual claims are
3 discussed below.

4 13. Pursuant to the terms of the Settlement Agreement, Plaintiff Fite dismissed his
5 District Court action and joined this case via the filing of a Consolidated First Amended
6 Complaint on February 16, 2022.

7 **III. ANALYSIS OF THE CLAIMS AND VALUATION [CMO ¶ F(2)-(3)]**

8 **A. NATURE OF THE ALLEGED VIOLATIONS [CMO ¶ F(2)(A)]**

9 14. In preparation for mediation, Plaintiffs’ counsel fully worked up the PAGA
10 claims, engaged our expert to prepare penalty calculations and provided Defendant with our
11 mediation brief and calculations regarding the PAGA claims. Some of the information stated
12 below is based on information and belief because it was prepared with the assistance of my co-
13 counsel and partner, Misty Lauby.

14 15. Plaintiffs alleged seven claims in this action, as follows: Unpaid Regular and
15 Minimum Wage Claims, Unpaid Overtime Claims, Meal and Rest Break Claims, Claims for
16 Failure to Timely Pay Wages Each Pay Period and Final Wages, and Failure to Provide
17 Accurate Itemized Wage Statements (including failure to maintain accurate records, including
18 payroll records).

19 16. Plaintiffs’ unpaid minimum wage claims were based on an alleged practice of
20 requiring Plaintiffs and the Aggrieved Employees to perform “off-the-clock” work (such as
21 working through lunch) in order to carry out their duties for Defendant. Defendant vehemently
22 opposed that any such practice existed and argued that Defendant’s policies specifically
23 prohibited this form of off-the-clock work, including during lunch periods.

24 17. Plaintiffs’ unpaid minimum wage claims were based on an alleged practice of
25 requiring Plaintiffs and the Aggrieved Employees to perform “off-the-clock” work (such as
26 working through lunch) to carry out their duties for Defendant. Defendant argued that – at all
27 relevant times – it had a policy that specifically prohibited off-the-clock work, including during
28 lunch periods (and these alleged practices also formed the basis for Plaintiffs’ meal and rest

break claims). Defendant therefore argued that, to prove this “off-the-clock” claim, Plaintiff’s evidence would necessarily consist of testimony from each Aggrieved Employee that claimed to work off-the-clock. And Defendant further argued that this sort of this individualized is completely unmanageable on a PAGA basis.

18. Plaintiffs’ minimum wage claims were also based on the allegation that Defendant required Aggrieved Employees to submit to off-the-clock security checks upon entering/leaving Defendant’s facilities, and to submit to temperature checks upon entry out of concern for bringing covid-19 into the workplace. Defendant argued this time was de minimis in nature, and as it was unrecorded, would have similarly required extensive, individualized testimony. Plaintiffs’ overtime claims were also premised on these practices, to the extent such resulted in Aggrieved Employees working overtime hours.

19. Plaintiffs’ wage statement claims were based on the allegation that Defendant failed to provide Plaintiffs and the Aggrieved Employees with wage statements that complied with the requirements of Labor Code § 226(a) by failing to accurately state gross wages earned, failing to accurately state total hours worked, failing to accurately state net wages earned, and failing to state all applicable hourly rates in effect during the pay period and the corresponding number of hours at each hourly rate by the employee.

20. Plaintiffs also brought claims for failure to timely pay wages each period under Labor Code § 204 and also upon separation of employment under Labor Code §§ 201-203. Each of these claims were derivative; Defendant’s liability (if any) was dependent on the above unpaid wage claims. And because these claims were derivative, Defendant argued that each would fail for the same reasons discussed above. Finally, Plaintiffs brought wage statement claims based on the allegation that Defendant failed to provide Plaintiffs and the Aggrieved Employees with wage statements that complied with the requirements of Labor Code § 226(a) by failing to accurately state gross wages earned, failing to accurately state total hours worked, failing to accurately state all deductions, failing to accurately state net wages earned, and failing to state all applicable hourly rates in effect during the pay period and the corresponding number of hours at each hourly rate by the employee.

21. In addition to the defenses cited above, Defendant also intended to raise additional defenses in Court that pertain to damages, including the proper measure of civil penalties and the appropriate discount to place on any assessment of such penalties. Defendant contends that many of Plaintiff's PAGA claims are merely derivative of other claims. Thus, if Defendant were liable, Defendant argues that a substantial discount should be applied to the civil penalties for these derivative (i.e., "stacked") violations. In sum, each aspect of the case was vigorously contested by the parties.

B. NUMBER OF ALLEGED VIOLATIONS AND TOTAL POTENTIAL PAGA PENALTIES
[CMO ¶ F(2)(B)-(C) & F(3)]

22. Based upon the strength of Plaintiffs' claims, and in light of the defenses, Plaintiffs' counsel formulated a detailed expert penalties model to evaluate the claims in preparation for mediation and in order to reach a realistic and reasonable resolution. The following summarizes the potential damages and reasons for a reduction.

23. During the informal discovery process and in preparation for mediation, Defendant provided timekeeping and work activity log records that allowed Plaintiffs' expert to assess penalties for 12,070 pay periods, 105,094 shifts, and 872 Aggrieved Employees during the PAGA Period – roughly ½ of the 1569 Aggrieved Employees, resulting in approximately 24,140 pay periods. Assuming the Court adopted Defendant's argument that Plaintiffs can only recover one PAGA civil penalty per pay period (e.g., "no stacking"), then the maximum potential penalty would be \$2,414,000.

24. However, Plaintiffs argued that Defendant's "no stacking" defense was without merit, and that Defendant would be liable – at times – for multiple violations per pay period. Pursuant to the CMO, the following paragraphs provide the maximum potential penalties, as well as the reasonable risk-adjusted amount of penalties, for each claim as follows:

Unpaid Minimum and Overtime Wage Claims

25. For the unpaid minimum wage claims (which, on eligible shifts, sometimes gave rise to unpaid overtime as well) Plaintiffs argued that Defendant occasionally required its employees to work "off-the-clock" without compensation and, after investigation, Plaintiffs

1 alleged that these violations occurred during 20% of the pay periods. As such, there was a
2 maximum theoretical value of \$482,800 ($24,140 \times .2 = 4,828$ pay periods $\times \$100 = \$482,800$)
3 for the minimum wage claims.

4 26. But Plaintiffs' unpaid wage claims faced many challenges, as Defendant argued
5 that such claims had no merit. Specifically, Defendant argued that – at all relevant times – it
6 had a policy that specifically prohibited off-the-clock work, including during lunch periods.
7 Further, Defendant argued that the workers were fully informed of this policy and that if anyone
8 was caught performing off-the-clock work, or if managers were requiring the workers to do so,
9 the employees were subject to discipline. Defendant therefore argued that, to prove this “off-
10 the-clock” claim, Plaintiffs' evidence would necessarily consist of testimony from each
11 Aggrieved Employee that claimed to work off-the-clock. And Defendant further argued that
12 this sort of this individualized is completely unmanageable on a PAGA basis. Further, with
13 regard to the temperature- and security-check claims, Defendant contended they suffered from
14 the same deficiencies, and were, in any event, de minimis and thus not actionable.

15 27. Based on these defenses, as well as a review of Defendant's policies and
16 practices, Plaintiffs estimated that there was an 80% risk of defeat on the minimum wage
17 claims. However, unlike the claims where Plaintiffs anticipated a substantial discretionary
18 reduction of the penalties, Plaintiffs believe that any PAGA penalties for unpaid wages would
19 only receive a slight reduction by this Court (10%) given that the claims, if true, caused harm to
20 the Aggrieved Employees through the deprivation of earned wages – and this reduction would
21 occur mainly because the violations, if any occurred, happened despite Defendant's attempt to
22 enact and apply a compliant policy regarding these claims.

23 28. Therefore, Plaintiffs believe that the reasonable trial estimate for the unpaid
24 minimum wage claims is \$48,280 ($\$482,800 \times 90\%$).

25 **Meal and Rest Break Claims**

26 29. Plaintiffs also alleged meal and rest break violations. Based on timekeeping
27 records and information gained from discovery, Plaintiffs alleged that the Aggrieved Employees
28 were subjected to meal and rest break violations during approximately 20,578 pay periods.

1 Therefore, the maximum theoretical value for the meal and rest break claims is \$2,057,800.

2 30. However, these claims face many risks that make it unrealistic to only look at the
3 maximum potential value. Indeed, because Defendant argued that it had fully compliant written
4 meal and rest break policies (which it provided in informal discovery as confirmation), and that
5 Plaintiffs' claims were based solely on "individualized issues" since its policies were compliant
6 and the employees had ample latitude regarding whether, when, and how they took their breaks.
7 Therefore, Defendant asserted that any meal and rest break claims were inherently
8 unmanageable on a representative basis given that a fact-finder would have to determine for
9 each Aggrieved Employee whether a break was missed and why, and why a break was
10 noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to
11 the defendant.

12 31. Defendant also argued that, even if Plaintiffs were permitted to proceed with
13 these claims on a representative basis, it would defeat the claims on the merits because
14 Defendant utilized compliant policies and practices and it would present sufficient evidence that
15 the workers were properly provided with all breaks. Moreover, Defendant argued that Plaintiffs
16 would be unable to present sufficient evidence establishing the number of meal and rest period
17 violations in order to allow a fact-finder to appropriately determine the number of violations.

18 32. Taking all of these defenses into account, and after a careful review of
19 Defendant's written policies and practices, Plaintiffs believed that there was a 50% risk of
20 defeat on these claims. And, even if these claims succeeded, Plaintiffs believe that the Court
21 would reduce any penalties by 50% given Defendant's compliant written policies and practices
22 which show a good faith effort to comply with California law. As such, Plaintiff believes that
23 the these claims have a reasonable trial estimate of \$514,450 [$\$2,057,800 \times 50\% \times 50\%$].

24 **Wage Statement Claims**

25 33. As discussed above, Plaintiffs argued that Defendant failed to provide accurate
26 itemized wage statements to the Aggrieved Employees. Based on information learned from
27 both formal and informal discovery, the maximum theoretical value of this claim was
28

1 \$2,414,000 [24,140 allegedly violative wage statements x \$100¹].

2 34. However, this maximum figure ignores the many risks and defenses of this wage
3 statement claim. After a thorough analysis of this claim and the corresponding defenses,
4 Plaintiffs estimate that there was a 30% risk of defeat on the merits. Plaintiffs also believe that
5 the Court would reduce the assessed penalty amount by 70% because a higher assessment
6 would be “unjust, arbitrary and oppressive, or confiscatory” in light of “the facts and
7 circumstances of [this] particular case” (Labor Code § 2699(h)); namely, Defendant contended
8 that it would be “unjust” to impose significant penalties for the alleged wage statement
9 violations because the Aggrieved Employees did not suffer any injury in relation to these
10 claims. See *Fleming v. Covidien* (C.D. Cal. 2011) No. ED CV 10-01487 RGK (OPx), 2011
11 U.S. Dist. LEXIS 154590 (approximate 82.14% reduction of PAGA penalties on Labor Code §
12 226 claim); *Aguirre v. Genesis Logistics* (C.D. Cal 2013) No. SACV 12-00687 JVS (ANx),
13 2013 WL 10936035 (applying approximate 73% reduction on PAGA penalties for Labor Code
14 § 226 claims).

15 35. Furthermore, while a PAGA claim for violation of Labor Code § 226 does not
16 require a showing of knowledge or willfulness (*Lopez v. Friant & Associates, LLC* (2017) 15
17 Cal.App.5th 773), Defendant contended that it would be “unjust” to impose significant penalties
18 for the alleged wage statement violations because the Aggrieved Employees did not suffer any
19 injury in relation to these claims.

20 36. As such, Plaintiffs believe that wage statement claim has a reasonable trial
21 estimate of \$506,940 [\$2,414,000 x 70% x 30%].

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26 ¹ The PAGA provides that the civil penalty is \$100 for each aggrieved employee per pay period for the initial
27 violation and \$200 for each aggrieved employee per pay period for each subsequent violation if no other civil
28 penalties apply. Labor Code § 2699(f)(2). Defendant argued that because it had not been previously cited for a
violation that the \$200 violation rate does not apply and that for most claims a \$100 first violation civil penalty
applied. Assuming the Court agrees with Defendant, the applicable PAGA penalty is \$100 per pay period per
violation.

1 **Failure to Timely Pay Wages**

2 37. Plaintiffs also raised claims for failure to timely pay wages under two theories:
3 (1) failure to timely pay wages each period under Labor Code § 204, and (2) failure to timely
4 pay wages on separation of employment under Labor Code §§ 201 – 203.

5 38. Plaintiffs first raised a claim for direct violations of Labor Code § 204 due to
6 Defendant’s practice of failing to pay Plaintiffs and Aggrieved Employees for all hours worked
7 “off-the-clock” and failure to pay premium wages for meal and rest break violations. Thus, the
8 claim was entirely derivative and duplicative of penalties for unpaid wages. And because
9 Plaintiffs believe that they could not stack penalties in this manner, Plaintiffs believe that the
10 only potential recovery (if any) for failure to timely pay wage claim was under Labor Code §
11 201 – 203.

12 39. For the Labor Code §§ 201 – 203 claims, Plaintiffs calculated the maximum
13 penalty as \$67,100, which is the \$100 penalty multiplied by 671 *former* Aggrieved Employees
14 that allegedly did not receive all wages owed upon separation of employment.

15 40. Because Plaintiffs believe that these individuals were subjected to the unpaid
16 wage claims discussed above, these derivative claims rise and fall based on the same defenses
17 and risks. Therefore, Plaintiffs applied only a 5% risk of defeat on the merits and also assumed
18 that the Court would only reduce the penalties by 5%. Thus, the reasonable trial value of these
19 derivative claims is \$60,558.

20 **Summary of Reasonable Trial Estimates**

21 41. As shown above, we calculate the reasonable estimate of PAGA penalties after
22 trial, taking into account the likelihood of prevailing, other risks, and the Court’s ability to apply
23 a discretionary discount, as \$1,130,228.

24 **C. FACTORS SUPPORTING A REDUCTION IN TOTAL PENALTY AMOUNT**

25 **[CMO ¶ F(3)(D)]**

26 42. The PAGA gives the court wide latitude to reduce the amount of civil penalties
27 “based on the facts and circumstances of a particular case” and if “to do otherwise would result
28 in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h).

1 Some factors courts have considered in reducing the amount of civil penalties include whether
2 (1) the violation arises from an unsettled legal obligation (*Cotter v. Lyft, Inc.*, (N.D. Cal. 2016)
3 193 F.Supp.3d 1030, 1037); and (2) the employer's willingness to fix the violation. (*Fleming v.*
4 *Covidien*, (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9). For instance, in the *Lyft* case,
5 the Court found that a \$1M PAGA settlement was fair and reasonable in light of the unsettled
6 nature of the law, which awarded \$2.52 per pay period (397,110 pay periods / \$1M PAGA
7 settlement), which was a 97.5% reduction from the maximum penalty. In *Fleming v. Covidien*,
8 the Court reduced the potential penalties by over 82 percent, awarding \$500,000 for 28,742 pay
9 periods at issue. Similarly, in *Sanchez v. McDonald's Restaurants of California*, BC499888,
10 Los Angeles Superior Court entered summary adjudication against McDonald's for violating
11 the overtime laws, but the Court's tentative ruling at trial was to award only \$750,000 in PAGA
12 penalties against McDonald's, despite a substantial number of violations at 119 stores at issue.

13 43. Additionally, Plaintiffs believe that the amount obtained in settlement, and the
14 reasonable estimates provided above, are justified given that Defendant vehemently argued
15 against any contention that its violations were "knowing and intentional" since it had compliant
16 policies and practices in place at all times. (CMO ¶ F(3)(b)).

17 44. Finally, the parties only reached settlement and the agreed-upon PAGA penalties
18 after extensive litigation, discovery, and arms-length negotiation between the parties and
19 through an experienced mediator.

20 **IV. THE AGREED UPON PENALTIES ARE FAIR [CMO ¶ F(3)(F)]**

21 45. The settlement requires Defendant to pay \$470,000 inclusive of payments to the
22 LWDA and approximately 1569 Aggrieved Employees, Plaintiff's attorneys' fees
23 (\$156,666.67) and actual litigation costs (\$17764.39), and third-party administrator
24 ("Administrator") costs (\$10,000). After payment of the attorneys' fees and costs, and
25 Administrator costs, approximately \$285,568.95 will remain as the estimated PAGA Award.

26 46. The PAGA Award will be allocated to the PAGA Penalties and, pursuant to
27 Labor Code § 2699(i), 75 percent shall be paid to the LWDA (which shall be used to assist in
28 the enforcement of labor laws and education of employers and employees about their rights and

responsibilities under the Labor Code), and the remaining 25 percent being paid to the Aggrieved Employees based the number of pay periods each Aggrieved Employee worked during the PAGA Period. A following chart reflects the estimated payments from the Settlement Agreement:

	Total Amount
<i>Settlement Amount</i>	\$470,000
Attorneys' Fees (1/3)	\$156,666.66
Actual Litigation Costs	\$17,764.39
Administrator Costs	\$10,000.00
<i>PAGA Award</i>	\$285,568.95
• 75% to the LWDA	\$214,176.71
• 25% to the Aggrieved Employees	\$71,392.24
<i>Balance</i>	\$0

47. As such, the LWDA will receive approximately \$214,176.71 (which shall be used to assist in the enforcement of labor laws and education of employers and employees about their rights and responsibilities under the Labor Code), and the Aggrieved Employees will receive \$71,392 on a pro rata basis. Each Aggrieved Employee will receive approximately \$45.50 on average, although the actual amount will be based on the number of eligible pay periods each person worked during the Settlement Period. The portion of each Aggrieved Employee's Individual Share will be treated as non-wage income and reported by the Settlement Administrator on IRS Form 1099 to the respective Aggrieved Employee and applicable governmental authorities.

48. In exchange for these payments and benefits, and in accordance with the Court's Case Management Order, the release in the Settlement Agreement binds the named Plaintiffs only for civil penalties claims they brought under Labor Code § 2699.

V. THE REQUESTED ATTORNEY'S FEES AND COSTS ARE REASONABLE

49. In accordance with the Settlement, the Parties agreed that my office would receive one-third of the settlement amount as attorney's fees. It has been my experience that the benchmark for attorney fee awards in California state cases is one-third of a common settlement fund. Here, pursuant to the Settlement Agreement, and in recognition of the work performed by

1 Plaintiff's Counsel, and the results we achieved for the State and Aggrieved Employees, my
2 firm is seeking a one-third fee, which is substantially less than Plaintiffs' Counsel's combined
3 lodestar, resulting in a negative multiplier.

4 50. In my experience, Court's award attorney's fees in the amount of one-third of the
5 common fund settlement amount in a PAGA only case.

6 51. At my office, this case was primarily handled by Misty Lauby and me. Ms.
7 Lauby works exclusively with me on employment law matters and has been in practice for over
8 14 years. Her experience is summarized in her declaration, noting that she bills at the hourly
9 rate of \$650. I have been in practice for 21 years, with most of those years handling complex
10 litigation and for over the last 15 years, my practice has almost entirely consisted of handling
11 class action wage and hour matters. My billing rate is \$775/hour. I believe these rates are
12 consistent with Plaintiff and Defense attorneys who handle complex class action litigation, if
13 not somewhat lower.

14 52. The hourly rates above are comparable to those of other attorneys with equal or
15 similar experience, if not somewhat lower (i.e., the Laffey Matrix at www.laffeymatrix.com
16 indicates that the benchmark rate for an 8–10-year attorney to be \$676/hour and a 11-19 year
17 attorney at \$764/hour, and a 20+ year attorney at \$919/hour). Moreover, the Wolters Kluwer
18 Real Rate Report ("Real Rate Report"), provides directly applicable information in this regard.
19 The Real Rate Report is based on an enormous and statistically significant compilation of data.
20 For instance, in 2017, the report was based on 25.8 million billing entries and 23.9 million hours
21 billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in
22 fees billed. The Real Rate Report then compiles and analyzes this data to provide the hourly
23 rates for partners and associates in major metropolitan areas. In 2018, for the southern
24 California area, which is based on billing entries for 999 partners and 1,361 associates, the Real
25 Rate Report states that: (a) the median rate for partners in Los Angeles is \$695 and the upper
26 quartile is \$995 per hour, and (b) the median rate for associates in Los Angeles is \$550 and the
27 upper quartile is \$721 (2018 Kluwer Real Rate Report, page 21). And, perhaps most
28 importantly, the information provided in the Real Rate Report is not based on self-reported

numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual hours and fees billed by law firms.

53. The actual aggregated lodestar between the Plaintiffs’ attorneys that worked on this case is approximately \$239,377.10. My billing records are attached hereto as **Exhibit C** and Ms. Lauby and Mr. Mallison’s time and billing records are attached to their declarations. This results in a substantial *negative multiplier*, as summarized in the following table:

Attorney/Timekeeper	Role	Yrs Experience	Rate	Hours	Fee
Brian J. Mankin (Partner - LML)	Trial Counsel	21	\$775	88.3 ²	\$68,432.50
Misty M. Lauby (Partner - LML)	Handling Attorney	15	\$650	110.3	\$71,695
Mallison & Martinez	Partners to Paralegals	(See Decl)	\$208-919	197.6	\$99,249.60
Grand Total for All Attorneys					\$239,377.10

54. In the course of prosecuting this action, Plaintiffs’ counsel has incurred expenses that were incidental and necessary to the effective representation of the Class. These costs include mediation fees, filing fees, and other costs that include Attorney Service charges, CourtCall charges, and process service fees. My firm’s expenses total \$11,905.51 through the conclusion of this matter, which includes costs of filing, serving and attend the approval hearing (see **Exhibit D** attached hereto). My co-counsel reports incurring \$5,858.88 in costs, for total combined costs of \$17,764.39, which is the amount requested. The savings will be placed in the PAGA Award and paid to the LWDA and Aggrieved Employees. Defendant does not oppose this request.

² Includes an estimated 35 hours that will be expended after May 18, 2022, in finalizing the motion papers, attending the hearing, working with the parties and administrator regarding the notice and payment process, and filing any post judgment paperwork.

1 **VI. PLAINTIFFS' INDIVIDUAL SETTLEMENTS [CMO ¶ F(6)]**

2 55. Plaintiff Diaz's individual settlement is addressed here and in Plaintiff Diaz's
3 Declaration in Support of Motion to Approve the PAGA Settlement. Plaintiff Fite's individual
4 settlement is addressed in the Declaration of Stan Mallison and Plaintiff Fite's Declarations in
5 Support of Motion to Approve the PAGA Settlement.

6 56. Though, named Plaintiffs in PAGA actions are typically granted a service award
7 of \$5,000 to \$10,000, here, there is no request for a service award. Instead, the parties agreed to
8 settle and release Plaintiff Diaz's individual wage and hour claims. However, Plaintiff Diaz
9 estimate that he spent over thirty (30) hours engaged in activities to the benefit of the aggrieved
10 employees as set forth in his concurrently filed declaration. A request for a \$7,500 service award
11 would typically be justified based on (a) the time Diaz spent on the case, which resulted in a
12 good settlement for the Aggrieved Employees, (b) the risks he took in bringing this case and the
13 impact on his ability to find work, and (c) his agreement to waive all of my individual claims
14 beyond what is alleged in the complaint including any potential claims for harassment,
15 retaliation, and wrongful termination.

16 57. After the PAGA settlement was finalized, the parties agreed to negotiate Plaintiff
17 Diaz's outstanding individual claims. Part of that separate agreement was that Diaz is required
18 to compromise on and waive his separate individual wage and hour claims that were dismissed
19 due to the arbitration agreement, but the other aggrieved employees still retain the right to pursue
20 those claims.

21 58. The claims that he intended to file when initially contemplating this lawsuit were
22 the same wage and hour claims that were alleged on behalf of the aggrieved employees including
23 failure to pay minimum and overtime wages, failure to provide meal periods and rest breaks,
24 failure to timely pay final wages, and failure to provide accurate itemized wage statements.

25 59. The value of his individual claims if entirely successful at trial is estimated as
26 follows: unpaid overtime wages of \$3,278 (estimated at 15 minutes per day of lost overtime
27 wages (OT rate \$27.38) for a total of \$6.84 per day multiplied by an estimated 479 total shifts);
28 failure to pay meal periods damages of \$4,371 (50% of 479 shifts multiplied by regular rate of

1 pay at \$18.25); failure to pay rest break damages of \$2,185 (25% of 479 shifts multiplied by
2 regular rate of pay at \$18.25); failure to pay final wages of \$6,776 (average daily rate of pay
3 estimated at \$225.88 multiplied by 30); and failure to provide accurate itemized wage statements
4 of \$450 (\$50 initial violation plus \$100 x 4 pay periods from October 2019 through December
5 2019); plus interest in the amount of \$2,000. Therefore, the total potential recovery if he were to
6 win at trial would be approximately \$19,061. Additionally, he would expect to be awarded
7 attorney's fees estimated to be \$65,000 through trial (estimated 100 hours of work multiplied by
8 \$650 per hour).

9 60. Taking into consideration all potential risks of taking the individual claims to trial
10 and defenses set forth by Defendant, we placed an approximately 50% risk adjusted damages
11 value on the individual claims and agreed to a \$15,000 individual settlement including attorney's
12 fees (attorney's fees were reduced to 1/3 of the individual recovery).

13 61. The individual settlement will be paid in cash with ten thousand dollars (\$10,000)
14 payable to Plaintiff Diaz and five thousand dollars (\$5,000) payable as attorney's fees to Lauby,
15 Mankin & Lauby LLP.

16 **VII. DISMISSAL OF ACTION [CMO ¶ F(8)]**

17 62. The Settlement Agreement provides for a judgment and dismissal with prejudice
18 to be entered, which will not result in prejudice to the Aggrieved Employees, but instead will
19 compensate them according to the PAGA Statute. To my knowledge, my office has not been in
20 contact with any Aggrieved Employees apart from the named plaintiffs.

21 63. Plaintiffs contend that the Aggrieved Employees will not be prejudiced because
22 the dismissal is contingent on approval of the resolution of the PAGA claims, including
23 payment of PAGA penalties to the State of California and the Aggrieved Employees. And each
24 Aggrieved Employee will preserve their individual claims if they wish to pursue them.

25 **VIII. APPOINTMENT OF PHOENIX AS THE ADMINISTRATOR**

26 64. After obtaining bids from multiple settlement administrators, the Parties selected
27 Phoenix Class Action Administration as the Settlement Administrator, who will perform all
28 duties relating to the issuance of checks, mailing the notices, locating employees, and

1 preparation and submission of tax forms for a fee of \$10,000, which is a capped amount based
2 on hourly rates, anticipated time spent on each task, and per-unit costs for postage and other
3 expenses. Phoenix's proposal is attached to the Declaration of Mike Moore of Phoenix, who
4 has concurrently filed a declaration explaining his fee and experience.

5 **IX. SUBMISSION TO THE LWDA**

6 65. The Motion and declarations, including the PAGA Settlement Agreement, have
7 concurrently been submitted to the LWDA through its online portal. (See **Exhibit E**).

8 **X. EXHIBITS AND CONCLUSION**

9 66. A true and correct copy of the LWDA letter is attached hereto as Exhibit A.

10 67. A true and correct copy of the PAGA Settlement Agreement is attached hereto as
11 Exhibit B.

12 68. A true and correct copy of my billing records are attached hereto as Exhibit C.

13 69. An itemized statement of my firm's costs is attached hereto as Exhibit D.

14 70. The LWDA's confirmation of receipt of this Motion and Declarations is attached
15 hereto as Exhibit E.

16 71. The Parties' Notice Letter to the Aggrieved Employees is attached here as
17 Exhibit F.

18 72. For the foregoing reasons, it is respectfully requested that the Court approve the
19 settlement.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct. Executed on June 13, 2022, at Riverside, California.

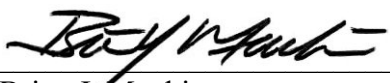
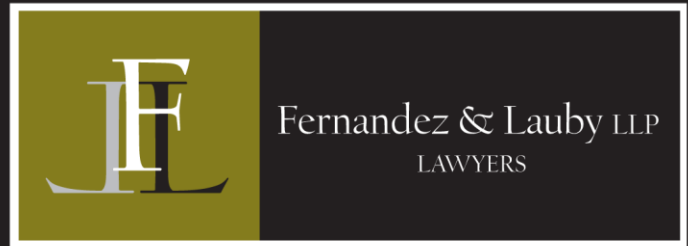
22
23 By: 
24 Brian J. Mankin

EXHIBIT “A”



October 2, 2020

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Shamrock Foods Co.
3900 E. Camelback Rd.
Phoenix, AZ 85018

Re: PAGA Civil Penalty Claim
Daniel Lara Diaz v. Shamrock Foods Co.

To the Labor and Workforce Development Agency, Shamrock Foods Co., and all affiliated entities:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Joseph Greendale (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), Shamrock Foods Co. and/or any affiliated entities (the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately October 2018 through September 28, 2020. Claimant alleges that, at all relevant times, he and all other employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company’s policies and practices, Claimant was subjected to meal period violations when Claimant was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the

Company, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second meal period on occasions for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, Claimant was unable to leave the premises for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including meal and rest period premiums. Additionally, the Company failed to pay Claimant and the Aggrieved Employees their final wages within the timeframe required by Labor Code §§ 201 – 203. Finally, during employment with the Company, Claimant and the Aggrieved Employees received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked as well as the failure properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, overtime wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees worked in excess of 8 and/or 12 hours per day, and/or forty hours per week without receiving proper payment of the requisite overtime and/or doubletime wages for all hours worked pursuant to Labor Code §§ 204 and 510 and/or the applicable IWC Wage Order.

Accordingly, Labor Code §§ 210, 558, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30

minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**
(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees. The Company violated Labor Code § 226(a) due to violations including: failure to accurately state gross wages earned; failure to accurately state total hours worked; failure to accurately state the name and address of the employer; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates; and failure to accurately state the corresponding number of hours worked at each hourly rate. Accordingly, Labor Code §§ 226.3 and 2699 impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199
(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company’s violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS’ FEES, INTEREST, AND PENALTIES
(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys’ fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and

California Labor and Workforce Development Agency
Shamrock Foods Co.
Re: Lara Diaz v. Shamrock Foods co., et al.
October 2, 2020
Page 5

former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Misty M. Lauby', with a stylized flourish at the end.

By: Misty M. Lauby, Esq.
E-mail: MML@fernandezlauby.com
www.California-EmploymentLawyers.com

EXHIBIT “B”

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Attorneys for Defendant Shamrock Foods Company

SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

DANIEL LARA DIAZ, and GLENN FITE,
individually, on a representative basis, and
on behalf of all others similarly situated;

Plaintiffs,

vs.

SHAMROCK FOODS CO., an Arizona
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: RIC2004126

[Assigned to Hon. Craig Riemer, Dept I, for all purposes]

**FIRST AMENDED PAGA
REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT AND
RELEASE OF PAGA CLAIMS**

Complaint Filed: October 20, 2020

1 **PAGA REPRESENTATIVE ACTION SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS**

2 This First Amendment to the Private Attorneys General Act of 2004 (“PAGA”) Representative
3 Action Settlement Agreement and Release of PAGA Claims (“Settlement Agreement”) is made and
4 entered into by and between Plaintiffs Daniel Lara Diaz (“Diaz”) and Glenn Fite (“Fite”) and
5 Defendant Shamrock Foods Company, subject to the terms and conditions hereof and the approval of
6 the Superior Court of the State of California for the County of Riverside (“Court”). Plaintiffs and
7 Defendant shall be collectively referred to herein as “the Parties.”

8 Plaintiffs enter into this First Amendment to the Settlement Agreement (“First Amended
9 Agreement”) on behalf of themselves, the State of California and all current and former non-exempt
10 employees employed by Defendant in California at any time from October 2, 2019 through March 5,
11 2022. This First Amended Agreement replaces and supersedes the Settlement Agreement entered into by and
12 between the Parties in March 2022.

13 **A. Definitions**

14 1. **“Action”** means the case entitled *Daniel Lara Diaz and Glenn Fite, individually, on a*
15 *representative basis, and on behalf of all others similarly situated v. Shamrock Foods Company, an*
16 *Arizona Corporation; and DOES 1 through 20, inclusive*, pending in the Superior Court of the State
17 of California for the County of Riverside, Case No. RIC2004126.

18 2. **“PAGA Agreement” or “PAGA Settlement Agreement”** shall mean this First
19 Amendment to the PAGA Representative Action Settlement Agreement and Release of PAGA Claims,
20 including the attached Exhibit.

21 3. **“Aggrieved Employees”** means Plaintiffs Diaz and Fite, and all current and former
22 non-exempt employees employed by Defendant in California at any time during the PAGA Release
23 Period. Defendant estimates that there are approximately 1,569 Aggrieved Employees covered by this
24 PAGA Agreement.

25 4. **“Aggrieved Employee List”** shall be on one spreadsheet and include each Aggrieved
26 Employee’s full name; most recent mailing address on file with Defendant; Social Security Number;
27 and number of pay periods worked during the Statutory Period. The Aggrieved Employee List will
28 remain confidential and not be shared with Plaintiffs’ counsel.

1 5. **“Attorneys’ Costs”** means an award of costs to be paid to Plaintiffs’ Counsel for the
2 costs they have incurred in prosecuting the Action, subject to Court approval. Such costs shall not
3 exceed Twenty Thousand Dollars (\$20,000). Any costs not approved by the Court will be reallocated
4 to the PAGA Award, with Seventy-Five Percent (75%) to be paid to the LWDA and Twenty-Five
5 Percent (25%) to the Aggrieved Employees.

6 6. **“Attorneys’ Fees”** means an award of attorneys’ fees to be paid to Plaintiffs’ Counsel
7 for the services they have rendered and will render to the Aggrieved Employees in the Action, subject
8 to Court approval. Such attorneys’ fees shall not exceed one-third of the Settlement Amount
9 (\$156,666.66). Any attorneys’ fees not approved by the Court will be reallocated to the PAGA Award,
10 with Seventy-Five Percent (75%) to be paid to the LWDA and Twenty-Five Percent (25%) to the
11 Aggrieved Employees.

12 7. **“Complaint”** means and refers to the operative First Amended Complaint filed in the
13 Action, which seeks an assessment of PAGA penalties for: (1) Failure to Pay Minimum or Contractual
14 Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide
15 Rest Breaks; (5) Failure to Timely Pay Wages Each Payroll Period; (6) Failure to Timely Pay Final
16 Wages; and (7) Failure to Provide Accurate Itemized Wage Statements.

17 8. **“Defendant”** means Shamrock Foods Company.

18 9. **“Defense Counsel”** means Conn Maciel Carey LLP.

19 10. **“Effective Date”** means the date by which this Settlement is fully and finally approved
20 as provided in this PAGA Agreement and the Final Order becomes binding, and can no longer be
21 subject to challenge or otherwise appealed, which shall occur upon the later of the following events:
22 (1) when the period for filing any appeal, writ or other appellate proceeding opposing the Settlement
23 has elapsed without any appeal, writ or other appellate proceeding having been filed; (2) any appeal,
24 writ or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively
25 with no right to pursue further remedies or relief; or (3) any appeal, writ or other appellate proceeding
26 has upheld the Final Order with no right to pursue further remedies or relief. In this regard, the
27 Effective Date does not occur until the Final Order approving the Settlement is final and binding, and
28 there is no further recourse by an intervenor, appellant or objector who seeks to contest the Settlement.

1 11. **“Eligible Pay Period”** means any payroll period during the Statutory Period in which
2 an Aggrieved Employee worked at least one shift.

3 12. **“Final Order”** means the order entered by the Court unconditionally approving the
4 Settlement.

5 13. **“Individual PAGA Payment”** means the portion of the PAGA Award allocated to
6 each Aggrieved Employee.

7 14. **“LWDA”** means the California Labor Workforce Development Agency.

8 15. **“LWDA Settlement Proceeds”** means the seventy-five percent (75%) of the PAGA
9 Award that shall be paid to the LWDA.

10 16. **“Notice”** means the form of notice that will be sent to the Aggrieved Employees
11 accompanying their Individual PAGA Payments.

12 17. **“PAGA Award”** means the Settlement Amount remaining to distribute to the LWDA
13 and Aggrieved Employees after the following amounts are subtracted from the Settlement Amount:
14 (a) Attorney’s Fees, (b) Attorney’s Costs, and (c) Settlement Administration Costs.

15 18. **“Parties”** means Plaintiffs, the Aggrieved Employees, and Defendant, collectively.

16 19. **“Plaintiffs”** means Plaintiffs Daniel Lara Diaz and Glenn Fite.

17 20. **“Plaintiffs’ Counsel”** means Brian Mankin and Misty Lauby of Lauby Mankin Lauby
18 LLP and Stan Mallison, Hector Martinez and Daniel Keller of Mallison & Martinez.

19 21. **“Released Claims” or “PAGA Claims”** means any and all actual or potential PAGA
20 claims reasonably arising out of or relating to the factual allegations pled in the First Amended
21 Complaint and/or Plaintiffs’ LWDA notice letter, including but not limited to, claims for (a) failure to
22 pay minimum or contractual wages; (b) failure to pay overtime wages, (c) failure to provide compliant
23 meal periods; (d) failure to provide compliant rest periods; (e) failure to timely pay wages each payroll
24 period; (f) failure to timely pay final wages; and (g) failure to provide accurate itemized wage
25 statements. Without limiting the foregoing, this release includes claims alleging violations of the
26 California Labor Code (including Cal. Labor Code sections 200, 201, 202, 203, 204, 204.1, 208, 221,
27 222, 223, 226, 226.2, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, and 1198); the
28 applicable Industrial Welfare Commission Wage Orders Sections 3(A), 4, 7, 9, 11 and 12; and

attorneys' fees and expenses related to these claims based on the facts and causes of action alleged in the Action.

22. **"Released Parties"** means Defendant, together with its parent corporation, affiliates (including but not limited to Shamrock Farms Company, an Arizona corporation), subsidiaries, divisions, such entities' predecessors, successors, assigns, and officers and directors of such entities, to the fullest extent permitted by law.

23. **"Settlement"** means the terms and conditions set forth in this PAGA Settlement Agreement.

24. **"Settlement Administration Costs"** means the amount from the Settlement Amount, which shall be allocated to the Settlement Administrator for services rendered in administering the Settlement, not to exceed ten thousand dollars and no cents (\$10,000.00), subject to Court approval. Any Settlement Administration Costs not approved by the Court will be reallocated to the PAGA Award, with Seventy-Five Percent (75%) to be paid to the LWDA and Twenty-Five Percent (25%) to the Aggrieved Employees.

25. **"Settlement Administrator"** means Phoenix Class Action Administration, the third-party entity selected by the Parties who will administer the settlement, subject to approval by the Court, in accordance with this PAGA Settlement Agreement.

26. **"Settlement Amount"** means the maximum amount that Defendant will be required to pay if the Court approves this Settlement and the Effective Date occurs, which is Four Hundred Seventy Thousand Dollars (\$470,000). The Settlement Amount will be used to pay: (a) the PAGA Award to the LWDA and the Aggrieved Employees; (b) the award of Attorneys' Fees to Plaintiffs' Counsel; (c) the award of Attorneys' Costs to Plaintiffs' Counsel; and (c) Settlement Administration Costs.

27. **"Statutory Period" or "PAGA Release Period"** means any and all time during the period of October 2, 2019 through March 5, 2022.

B. Procedural Posture

28. On October 2, 2020, Plaintiff Diaz gave written notice to the Labor and Workforce Development Agency ("LWDA") and Defendant of alleged violations of California Labor

Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199 and/or applicable sections of the California Industrial Welfare Commission Wage Orders for wage and hour penalty claims. Plaintiff Diaz then filed a class and representative action complaint in the Court. On December 18, 2020, Defendant removed the Diaz action to the United States District Court for the Central District of California, pursuant to the Class Action Fairness Act. Upon removal to District Court, Plaintiff Diaz became aware of an alleged arbitration agreement between himself and Defendant and, on that basis, moved for leave to amend his complaint to omit any non-PAGA class and individual claims or, alternatively, to dismiss those claims and remand the PAGA claims. Defendant also filed a motion to dismiss class claims and compel arbitration of the individual claims, pursuant to the Parties' alleged arbitration agreement. On April 5, 2021, the District Court issued an Order dismissing Plaintiff Diaz's individual and class claims without prejudice, remanding the remaining PAGA claims to this Court, and denying Defendant's motion as moot.

29. On January 5, 2021, Plaintiff Glenn Fite filed a Rule 23 class, FLSA collective, and PAGA representative action in the Eastern District of California, Case No. 2:21-CV-00023-JAM-KJN, against Defendant based on essentially the same Labor Code violations alleged in *Diaz*. After becoming aware of an alleged arbitration agreement between Plaintiff Fite and Defendant, Plaintiff Fite filed a First Amended Complaint alleging a sole PAGA claim on April 21, 2021.

30. After Defendant made Plaintiffs Diaz and Fite aware of each other's cases via Notices of Related Case, Plaintiffs and their counsel entered into a joint prosecution agreement and agreed to jointly mediate their cases with Defendant.

31. On January 4, 2022, the Parties mediated the PAGA Action and Released Claims, as well as Plaintiffs' separate individual (non-PAGA) claims with Steve Serratore. The matter resolved globally pursuant to a mediator's proposal, including a settlement of this PAGA Action and Plaintiffs' individual (non-PAGA) claims against Defendant. As part of the Settlement, the Parties agreed to seek the Court's permission for leave to file a consolidated amended complaint that joins the Diaz and Fite cases together in the Court, and then seek the Court's approval of the Settlement.

32. The PAGA Action asserts representative PAGA Claims for civil penalties, including

1 an award of reasonable attorney's fees and costs, pursuant to PAGA, based on alleged predicate
2 violations of the California Labor Code including, but not limited to, Sections 200, 201, 202, 203,
3 204, 204.1, 208, 221, 222, 223, 226, 226.2, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197,
4 1197.1, and 1198 *et seq.*, and Sections 3, 4, 7, 9, 11 and 12 of the applicable Wage Order.

5 33. The Parties agree that neither the Parties' settlement, this PAGA Agreement, nor the
6 acts to be performed or judgment to be entered pursuant to the terms of the settlement and PAGA
7 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of any
8 statute or law or liability on the claims or allegations in the Action.

9 34. Defendant denies all of the allegations in the Action, including all PAGA Claims, and
10 denies that it has committed any misconduct, statutory or regulatory violation, wrongdoing, or any
11 other actionable conduct of any kind and further denies that this PAGA Action is appropriate for
12 PAGA representative treatment for any purpose other than settling this Action. Defendant has denied
13 and continues to deny each and every material factual allegation and alleged claims asserted against it
14 in the PAGA Action.

15 35. The Parties have conducted a thorough investigation into the facts of the PAGA Action.
16 This included conducting extensive informal discovery, and exchanging information and documents
17 relating to the Released Claims. Based on the foregoing data and on their own independent
18 investigation and evaluation, Plaintiffs' Counsel is of the opinion that the settlement with Defendant
19 for the consideration and on the terms set forth in this PAGA Settlement Agreement is fair, reasonable,
20 and adequate and is in the best interest of the LWDA and Aggrieved Employees in light of all known
21 facts and circumstances, including the risk of significant delay, uncertainty associated with litigation,
22 various defenses asserted by Defendant, and numerous potential appellate issues. Defendant and
23 Defendant's Counsel also agree that the settlement is fair and in the best interest of the LWDA and
24 Aggrieved Employees. The Parties desire to completely dispose of the Action by this PAGA
25 Settlement Agreement and the separate Individual Settlement Agreement (as defined below). The
26 Parties further acknowledge that they are each represented by competent counsel and that they have
27 had an opportunity to consult with their counsel regarding the fairness and reasonableness of this
28 settlement.

1 36. Under California Law, the State may assess and collect civil penalties from employers
2 for violations of certain provisions of the Labor Code. (See Cal. Lab. Code §§ 2699 *et seq.*) Under
3 PAGA, however, if an “aggrieved employee” “give[s] written notice by certified mail to the [State]
4 and the employer of the specific provision of the [Labor Code] alleged to have been violated,” and the
5 State thereafter decides not to investigate, as was the case here, or does investigate and determines that
6 a citation against the employer should not issue, the employee may, “as an alternative” to enforcement
7 by the State, act as a proxy or agent of the state’s labor law enforcement agencies and bring a civil
8 action under PAGA to recover civil penalties “on behalf of himself or herself and other current or
9 former employees.” *Id.* “[C]ivil penalties recovered by aggrieved employees shall be distributed as
10 follows: 75 percent to the state and 25 percent to the aggrieved employees.” *Id.*

11 37. California Labor Code § 2699(l)(2) provides that “The superior court shall review and
12 approve any settlement of any civil action filed pursuant to this part.”

13 38. In consideration of the promises and agreements contained herein, the Parties agree and
14 covenant as follows.

15 **C. Terms of Settlement.**

16 39. Subject to the Court’s approval of the Settlement pursuant to Labor Code § 2699(l)(2),
17 which counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the
18 following binding settlement and disposal of the entire Action in exchange for Defendant’s agreement
19 to pay the Settlement Amount of \$470,000.

20 40. The Settlement shall have three components: (a) Attorneys’ Fees and Costs;
21 (b) Settlement Administration Costs, and (c) the PAGA Award. All of these components are included
22 in the Settlement Amount, and will be paid by Defendant, which shall be administered by the
23 Settlement Administrator. The Settlement Amount will be allocated as follows:

- 24 a. **Attorneys’ Fees and Costs.** The Parties agree that, subject to the Court’s review and
25 approval, Plaintiffs’ Counsel will be paid up to one-third of the Settlement Amount as
26 attorneys’ fees (\$156,666.66), plus actual litigation costs not to exceed \$20,000 from
27 the Settlement Amount. Any portion of the Attorneys’ Fees or Attorney’s Costs not
28 awarded to Plaintiffs’ Counsel will be reallocated to the PAGA Award. Defendant

1 agrees not to oppose any request by Plaintiffs' Counsel for attorneys' fees under the
2 common fund doctrine and/or lodestar multiplier method. The Settlement
3 Administrator will report these payments on an IRS Form 1099 issued to Plaintiffs'
4 Counsel. Plaintiffs' Counsel shall divide the Attorney Fees' awarded equally between
5 the two law firms and shall divide Attorney Costs based on each firm's actual costs
6 incurred and approved by the Court.

7 b. **Settlement Administration Costs.** The costs associated with settlement
8 administration (e.g., NOCA searches, preparing and mailing payments/notices to
9 LWDA and Aggrieved Employees, tax documentation, etc.) shall be paid from the
10 Settlement Amount and shall not exceed \$10,000.00. Any Settlement Administration
11 Costs not awarded by the Court will be reallocated to the PAGA Award.

12 c. **PAGA Award.** After deducting the amounts specified in items (a) and (b) from the
13 Settlement Amount, the balance remaining will form the PAGA Award that will be
14 paid to the Aggrieved Employees and the LWDA in full satisfaction of all claims for
15 PAGA civil penalties under the California Labor Code, Wage Orders, regulations,
16 and/or other provisions of law alleged to have been violated in the Complaint and/or
17 LWDA notice letter with respect to Aggrieved Employees. Pursuant to PAGA,
18 Seventy-Five Percent (75%) of the PAGA Award will be paid to the LWDA. The
19 remaining Twenty-Five Percent (25%) will be paid to all Aggrieved Employees on a
20 pro-rata basis according to the following formula.

21 i. The Settlement Administrator will calculate the total number of Eligible
22 Pay Periods worked by all Aggrieved Employees during the Statutory
23 Period, and the resulting figure will be referred to as the "Divisor."

24 ii. Each Aggrieved Employee's *pro rata* share of the Aggrieved
25 Employees Settlement Proceeds will be determined by dividing the
26 Eligible Pay Periods that each Aggrieved Employee worked by the
27 Divisor and then multiplying the product by the total settlement
28 proceeds payable to the Aggrieved Employees. The product of the

1 foregoing formula shall be referred to as the Aggrieved Employee's
2 "Individual Share."

3 d. **Taxes and Reporting.** Each Aggrieved Employee's Individual Share shall be treated
4 as penalties (i.e., non-wage income) for all purposes and reported by the Settlement
5 Administrator on IRS Form 1099 to the respective Aggrieved Employee and applicable
6 governmental authorities. No portion of the Aggrieved Employees Settlement
7 Proceeds is or shall be construed as wages. Nothing in this PAGA Settlement
8 Agreement is intended to constitute legal advice regarding federal, state and/or local
9 tax obligations or legal requirements for attribution of settlement proceeds. The
10 Aggrieved Employees will be solely responsible for correctly characterizing any
11 compensation received under the settlement on his/her personal income tax returns for
12 tax purposes, and paying all appropriate taxes due for any and all amounts paid to them
13 under the settlement. Plaintiffs, Defendant, Plaintiffs' Counsel, and Defendant's
14 Counsel make no representations or warranties with respect to tax consequences of any
15 payment under this PAGA Settlement Agreement, do not intend anything contained in
16 this PAGA Settlement Agreement to constitute advice regarding taxes or taxability, nor
17 shall anything in this PAGA Settlement Agreement be relied upon as such. To the
18 extent that this PAGA Settlement Agreement or any of its attachments is interpreted to
19 contain or constitute advice regarding any U.S. or Federal tax issue, such advice is not
20 intended or written to be used, and cannot be used, by any person for the purpose of
21 avoiding penalties under the Internal Revenue Code. Defendant, Defendant's Counsel,
22 Plaintiffs and Plaintiffs' Counsel are not responsible for any employee tax obligations
23 arising out of the Aggrieved Employee's Individual Share.

24 e. The Parties agree that the settlement is fair and reasonable and will so represent to the
25 Court. The Parties agree that should the Court deny approval of the settlement based
26 on the allocation of the Settlement Amount or the PAGA Award, the Parties agree to
27 re-negotiate the allocation of funds in good faith in an effort to obtain approval of the
28 settlement.

1 **D. Settlement Approval and Implemental Procedures.**

2 41. Upon the Court granting the Parties' stipulation to file a first amended complaint to
3 consolidate the Diaz and Fite cases, Plaintiffs shall file the First Amended Complaint. Plaintiffs'
4 Counsel shall then prepare a motion for approval of the settlement pursuant to California Labor Code
5 § 2699(1)(2), advocating that the Settlement is fair, adequate, and reasonable, and Plaintiffs' Counsel
6 shall send a draft of the motion to Defendant's Counsel allowing sufficient time for review and
7 revisions prior to filing. Plaintiff will then move the Court for approval of the PAGA Settlement
8 Agreement ("Motion"), including the allocation of the PAGA Award, Plaintiffs' Counsel's Attorneys'
9 Fees and Costs, and Settlement Administration Costs consistent with this Settlement, which Defendant
10 will not oppose. Plaintiffs' Counsel will serve the Motion on Defendant's Counsel via email and
11 submit it to the LWDA through the online filing system. Pursuant to California Labor Code
12 section 2698, *et seq.*, Plaintiffs' Counsel shall undertake all required submissions and disclosures to
13 the LWDA and the Court to obtain approval of the settlement. The Parties further agree to jointly
14 request that the Court enter the Final Order, including a judgment of dismissal.

15 42. The Parties have agreed to the appointment of the Settlement Administrator to perform
16 the duties of a settlement administrator, including mailing the Notice, using standard devices to obtain
17 forwarding addresses, resolving any disputes regarding the calculation or application of the formula
18 for determining the Individual PAGA Payments, drafting and mailing the settlement checks to
19 Aggrieved Employees, issuing 1099 forms, and performing such other tasks as set forth herein or as
20 the Parties mutually agree or that the Court orders. Any disputes relating to administration of the
21 settlement by the Settlement Administrator shall be referred to the Court, if necessary, which will have
22 continuing jurisdiction over the terms and conditions of this PAGA Settlement Agreement, until all
23 payments and obligations contemplated by this PAGA Settlement Agreement have been fully carried
24 out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to
25 resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall
26 also be responsible for issuing to Plaintiffs, Aggrieved Employee, and Plaintiffs' Counsel any 1099,
27 or other tax forms as may be required by law for all amounts paid pursuant to this PAGA Agreement.
28 The Settlement Administrator shall also be responsible for setting up all necessary tax accounts and

1 forwarding all payments to the appropriate government authorities.

2 43. Upon the Court's entry of the Final Order, the Settlement Administrator will perform
3 all settlement administration duties, including (i) performing a National Change of Address ("NCOA")
4 search on all Aggrieved Employees to update the addresses of the Aggrieved Employees, (ii) issuing
5 the Notice and payments to the Aggrieved Employees, (iii) issuing any required IRS forms, and
6 (iv) issuing payment to the LWDA and Plaintiffs' Counsel. Within ten (10) calendar days after the
7 Effective Date, the Settlement Administrator shall send counsel for Defendant electronic wiring
8 instructions to fund the Settlement Amount.

9 44. List of Aggrieved Employees. Within five (5) calendar days after the Effective Date,
10 Defendant will send to the Settlement Administrator the Aggrieved Employees List. This information
11 shall be treated as and remain confidential and shall be used solely by the Settlement Administrator to
12 manage the notice and payment process described herein, shall not be disclosed to anyone other than
13 the Settlement Administrator, except to applicable taxing authorities, or pursuant to express written
14 authorization of Defendant, the Aggrieved Employee in question, or by order of the Court.

15 45. Funding of the Settlement. Defendant shall fund the Settlement Amount by wire
16 payment to the Settlement Administrator within 15 days of the Effective Date.

17 46. Disbursement of the Settlement Amount. Within ten (10) days of receiving the wire
18 payment from Defendant, the Settlement Administrator shall mail or wire the respective settlement
19 payments to the Aggrieved Employees, LWDA, Plaintiffs, Plaintiffs' Counsel, and will pay itself for
20 the Settlement Administration Costs, as set forth in the payment plan herein. The payments will be
21 accompanied by the notice form attached as Exhibit 1.

22 47. Aggrieved Employees' Check Cashing Deadline. Aggrieved Employees shall have
23 180 calendar days after mailing to cash their settlement checks. If any Aggrieved Employee's check
24 is not cashed within that period, the check will be voided and a stop-payment will be issued. The
25 release nevertheless will be binding regardless of whether an Aggrieved Employee cashes his or her
26 check within the 180-day period. In the event that any settlement check is returned to the Settlement
27 Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business
28 days of receipt of the returned settlement check, perform a skip trace to locate the individual, and

1 notify Defendant's Counsel and Plaintiffs' Counsel of the results. If a new address is located by these
2 means, the Administrator will have ten (10) business days to issue the check. Any funds in the
3 Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be
4 paid to the LWDA. Defendant, Defense Counsel, Plaintiffs' Counsel and Plaintiffs shall not have any
5 liability for lost or stolen settlement checks, forged signatures on settlement checks, unauthorized
6 negotiation of settlement checks or failure to timely cash a settlement check within the 180-day period.

7 48. The Settlement Administrator will provide the Parties with a declaration confirming
8 that distribution of payments has been completed in accordance with the PAGA Settlement Agreement
9 and the Court's Final Order, within ten (10) business days of distributing all payments under the
10 settlement. Plaintiffs' Counsel will file the declaration with the Court and any required papers
11 (i.e., amended Final Order and/or Judgment) or as otherwise ordered by the Court. This PAGA
12 Settlement Agreement is expressly conditioned upon the Court entering the Final Order and the
13 Effective Date occurring, thereby disposing of the Action in its entirety. The Final Order and entry of
14 judgment of dismissal will not release or bar any claims other than the Released Claims as to Plaintiffs,
15 Aggrieved Employees, and State of California.

16 **E. Release of PAGA Claims**

17 49. On the date that the Court enters a Final Order, Plaintiffs, standing in the shoes of the
18 California Labor Commissioner and on behalf of the State of California, will forever completely
19 release and discharge the Released Parties from any and all of the Released Claims. The time period
20 governing the Released Claims shall be the Statutory Period.

21 50. It is the intent of the Parties that the Final Order entered by the Court shall have full
22 equitable and collateral estoppel and *res judicata* effect to the fullest extent permitted by law, and shall
23 bind Plaintiffs, the State of California, and the Aggrieved Employees.

24 **F. Separate Release and Individual Settlement by Plaintiffs.**

25 51. In addition to this PAGA Agreement, Plaintiffs have entered into a separate Settlement
26 Agreement and General Release of Individual Claims (the "Individual Settlement Agreements") with
27 Defendant for all of their separate individual (non-PAGA) claims arising out of their employment with
28 Defendant, in exchange for a full release of those claims. The Parties acknowledge and agree that the

1 Individual Settlement Agreement, and the covenants, promises and released claims contained therein,
2 shall not serve to modify or limit Plaintiffs' right to continue with this Action and seek the Court's
3 approval of this PAGA Settlement; however, Plaintiffs shall have no right to be the representative of
4 a class action lawsuit against Defendant. The Parties further agree that if for any reason the Effective
5 Date does not occur with regard to this PAGA Settlement Agreement and/or the Final Order is not
6 entered, then the Individual Settlement Agreements shall be null and void. Therefore, subject to the
7 Court's approval, Defendant agrees to pay Plaintiffs separately, in full and complete resolution of any
8 and all such claims, and subject to confidential settlement agreements and a complete and general
9 release and waiver of claims under California Civil Code section 1542, a total sum of Thirty Dollars
10 (\$30,000), less applicable withholdings. This Settlement is contingent on the Plaintiffs executing the
11 Individual Settlement Agreements. These payments will be made separate and apart from the PAGA
12 Settlement Amount and will be allocated as follows.

- 13 a. \$10,000, less lawful deductions, which shall be divided equally between Plaintiffs, and
14 shall be allocated as compensation for alleged lost wages to be reported on an IRS
15 Form W-2;
- 16 b. \$10,000 which shall be divided equally between Plaintiffs as compensation for alleged
17 statutory penalties and interest, which will be reported on an IRS Form 1099.
- 18 c. \$10,000, which shall be divided equally between the two law firm comprising
19 Plaintiffs' counsel as attorneys' fees and costs.

20 52. While the Individual Settlement Agreements with Plaintiff will not be filed with the
21 Court, the Parties agree to submit the monetary terms of the individual settlements, and the fact that
22 Plaintiffs are releasing claims, including subject to a Section 1542 waiver, to the Court for approval,
23 in conjunction with their motion for settlement approval.

24 **G. Additional Settlement Terms and Conditions**

25 53. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
26 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at
27 this Settlement after extensive trial preparation and arm's-length negotiations by experienced counsel.
28 The Parties further acknowledge that they are each represented by competent counsel and that they

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

3 54. Denial of Liability. The Parties expressly recognize that the making of this Settlement
4 Agreement does not in any way constitute an admission or concession of liability, culpability,
5 negligence or wrongdoing on the part of Defendant or any of the other Released Parties. The Parties
6 hereto have entered into this Settlement with the intention of avoiding further disputes and litigation
7 with the attendant risk, inconvenience and expenses. Nothing in this Settlement, nor any action taken
8 in implementation thereof, nor any statements, discussions or communications, nor any materials
9 prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor
10 will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other
11 judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any
12 violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or
13 any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement
14 may be used in any court proceeding that has as its purpose the interpretation, implementation, or
15 enforcement of the Settlement or any orders or judgments of the Court entered into in connection
16 therewith.

17 55. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as referenced
18 herein will not be utilized to calculate any additional benefits under any benefit plans to which any
19 Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans,
20 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit
21 plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights,
22 contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

23 56. No Tax Advice. Plaintiffs' Counsel and Defense Counsel do not intend this Settlement
24 Agreement to constitute legal or tax advice regarding any federal, state or local tax issue. To the extent
25 that this Settlement Agreement, or its Exhibit, are interpreted to contain or constitute advice regarding
26 any federal, state or local tax issue, such advice is not intended or written to be used, and cannot be
27 used, by any person for the purpose of avoiding any tax liability or penalties.

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

5 58. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve
6 the Settlement as provided herein or as may be amended by the Parties by mutual agreement, in the
7 event that the Court does not approve it; or (ii) the Settlement does not become Effective for any other
8 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be
9 null and void, and the Parties will be returned to their original respective positions.

10 59. Judgment/Dismissal and Continued Jurisdiction. After entry of the Final Order, the
11 Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and
12 enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-
13 approval matters as may be appropriate under court rules or as set forth in this Settlement.

14 60. Right to Revoke: Either Party has the right in its sole and exclusive discretion to
15 terminate and withdraw from the Settlement at any time prior to Final Order if any of the following
16 occur: (a) the Settlement is construed in such a fashion that Defendant is required to pay more than
17 the Settlement Amount, in addition to the payments due under the Individual Settlement Agreements;
18 (b) the Court otherwise makes an order inconsistent with any of the terms of this Settlement (except
19 for an order reducing Plaintiffs' Counsel's proposed attorney's fees or costs, or the Settlement
20 Administrator's costs); or (c) the Court does not enter the Final Order. If for any reason the Settlement
21 is not approved by the Court, or if a Party terminates and withdraws from the Settlement pursuant to
22 this paragraph, this PAGA Agreement and any related settlement documents shall be null and void,
23 and any approval of the Settlement will be vacated. In such an event, neither the PAGA Agreement,
24 nor the settlement documents, nor the negotiations leading to the Settlement may be used as evidence
25 for any purpose. Defendant shall retain the right to challenge all claims and allegations in the action,
26 to assert all applicable defenses, and to dispute the propriety of the PAGA action on all applicable
27 grounds.

28 ///

1 61. Confidentiality. The Parties and their Counsel agree that they will not issue any press
2 releases, initiate any contact with the press, respond to any press inquiry or have any communication
3 with the press about the fact, amount or terms of the settlement. In addition, the Parties and their
4 Counsel agree that they will not engage in any advertising or distribute any marketing materials
5 relating to the settlement of this case prior to entry of the Final Order, including but not limited to any
6 postings on any websites maintained by Plaintiffs' Counsel. Any communication about the Settlement
7 to Aggrieved Employees will be limited to a statement that a settlement has been reached and the
8 details will be communicated in a forthcoming Court-approved notice.

9 62. Entire Agreement. This Settlement Agreement, including the Exhibit attached hereto,
10 constitutes the entirety of the Parties' settlement terms of the claims released herein. All prior or
11 contemporaneous agreements, understandings, representations and statements, whether oral or written
12 and whether by a Party or such Party's legal counsel, including the Memorandum of Understanding
13 between the Parties, are merged herein.

14 63. Amendment or Modification. This Settlement Agreement may be amended or
15 modified only by a written instrument, signed by either the Parties or their successors-in-interest or
16 counsel for all Parties.

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

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

28 ///

1 66. California Law Governs. All terms of this Settlement Agreement and the Exhibit
2 attached hereto will be governed by and interpreted according to the laws of the State of California,
3 regardless of its conflict of laws.

4 67. Execution and Counterparts. This Settlement Agreement is subject only to the
5 execution of all Parties. However, the Settlement Agreement may be executed in one or more
6 counterparts. All executed counterparts and each of them, including facsimile and scanned copies of
7 the signature page, will be deemed to be one and the same instrument.

8 68. Invalidity of Any Provision. Before declaring any provision of this Settlement
9 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
10 possible consistent with applicable precedents so as to define all provisions of this Settlement
11 Agreement valid and enforceable, and consistent with the intent of this Settlement Agreement based
12 on the language and terms used herein.

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

16 70. Waiver. No waiver of any condition or covenant contained in this Settlement
17 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to
18 imply or constitute a further waiver by such Party of the same or any other condition, covenant, right
19 or remedy.

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

25 72. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
26 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
27 construed more strictly against one Party merely by virtue of the fact that it may have been prepared
28 by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations

1 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

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

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

11 **AGREED AND UNDERSTOOD:**

12
13 Dated: May 25, 2022


daniel.lara (May 25, 2022 14:22 PDT)
Plaintiff Daniel Lara Diaz

14
15
16 Dated: May __, 2022

Plaintiff Glenn Fite

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18
19 Dated: May 26, 2022


Defendant Shamrock Foods Company
By: Vince Daniels
Chief Human Resources Officer

20
21
22 **APPROVED AS TO FORM:**

23
24 Dated: May 25, 2022


Brian Mankin
Lauby Mankin & Lauby LLP
Attorneys for Plaintiff Daniel Lara Diaz

1 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

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3 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
4 that this Settlement Agreement has been executed with the consent and advice of counsel, and
5 reviewed in full.

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

11 ***AGREED AND UNDERSTOOD:***

12
13 Dated: May ____, 2022

Plaintiff Daniel Lara Diaz

14
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16 Dated: June 01, 2022

Glenn Fite
ID oUhKUbnBdfApSn5G5gt9VMnx

Plaintiff Glenn Fite

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19 Dated: May ____, 2022

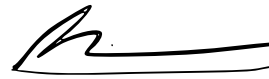
Defendant Shamrock Foods Company
By: Vince Daniels
Chief Human Resources Officer

20
21
22 ***APPROVED AS TO FORM:***

23
24 Dated: May ____, 2022

Brian Mankin
Lauby Mankin & Lauby LLP
Attorneys for Plaintiff Daniel Lara Diaz

1 Dated: June 01, 2022



Stan Mallison
Mallison & Martinez
Attorneys for Plaintiff Glenn Fite

2
3
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5 Dated: June 2, 2022



Andrew J. Sommer
Conn Maciel Carey LLP
Attorneys for Defendant Shamrock Foods
Company

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EXHIBIT 1

1 [SETTLEMENT ADMINISTRATOR LETTERHEAD]

2 Mailing Date

3 NOTICE OF SETTLEMENT

4 [SETTLEMENT ADMIN INFO]

5 Re: DANIEL LARA DIAZ AND GLENN FITE v. SHAMROCK FOODS CO. AND DOES 1-20;
6 Superior Court for the State of California for the County of Riverside, Case No. RIC2004126

7 Dear [Aggrieved Employee Name]:

8 A settlement was reached between the Plaintiffs Daniel Lara Diaz and Glen Fite ("Plaintiffs") and
9 Defendant Shamrock Foods Company in the matter of DANIEL LARA DIAZ AND GLENN FITE v.
10 SHAMROCK FOODS CO. AND DOES 1-20; Superior Court for the State of California for the County
11 of Riverside, Case No. RIC2004126. On XXXX XX, 2022, the Superior Court of California for the
12 County of Riverside issued an Order approving the settlement of claims brought by Plaintiffs under
the Labor Code Private Attorneys General Act of 2004 ("PAGA") for penalties arising from an alleged
wage and hour violations. Shamrock Foods Company ("Shamrock") denies any liability or
wrongdoing.

13 Shamrock maintains that it was in compliance with the California Labor Code and has entered into
14 this settlement with no admission of liability and solely for the purposes of compromising and settling
15 the action to avoid the cost and operational burden of continued litigation. The Court has not ruled on
the merit of Plaintiffs' claims or Shamrock's defenses.

16 After accounting for the Court approved deductions from the settlement amount for such things as
17 attorney's fees and costs, administration of the settlement, and payment to Plaintiffs for their work in
18 bringing these lawsuits, the remainder of the settlement allocated to PAGA penalties is \$285,568.95.
19 Of the remainder amount, the State of California will receive payment of \$214,176.71 (75% of the
20 penalties approved by the Court) and the eligible employees (described below) will each receive a pro-
rata share of the remaining \$71,392.24 (25% of the penalties approved by the Court). Please note that
California law requires that 75% of the net settlement proceeds for claims brought under PAGA be
paid to the State of California.

21 Individuals eligible to receive money under the Settlement include Plaintiffs and all persons who were
22 employed as non-exempt employees by Shamrock Foods Company ("Shamrock") in California for
23 one or more pay periods at any time from October 2, 2019 through March 5, 2022 ("Eligible
24 Employees"). The enclosed check represents your pro-rata share of the penalties and is based on a
25 formula that took into account the total number of your workweeks worked in relation to the number
of workweeks worked by all Eligible Employees during the time period from October 2, 2019 through
March 5, 2022.

26 The "Released Claims" as defined in the Court's Final Order and Judgment as defined as follows:
27 Any and all actual or potential PAGA claims reasonably arising out of or relating to the factual
28 allegations pled in the First Amended Complaint and/or Plaintiffs' LWDA notice letter, including but
not limited to, claims for (a) failure to pay minimum or contractual wages; (b) failure to pay overtime
wages, (c) failure to provide compliant meal periods; (d) failure to provide compliant rest periods;

1 (e) failure to timely pay wages each payroll period; (f) failure to timely pay final wages; and (g) failure
2 to provide accurate itemized wage statements. Without limiting the foregoing, this release includes
3 claims alleging violations of the California Labor Code (including Cal. Labor Code sections 200, 201,
4 202, 203, 204, 204.1, 208, 221, 222, 223, 226, 226.2, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2,
5 1197, 1197.1, and 1198); the applicable Industrial Welfare Commission Wage Orders Sections 3(A),
6 4, 7, 9, 11 and 12; and attorneys' fees and expenses related to these claims based on the facts and
7 causes of action alleged in the Action."

8 Your enclosed check is valid for 180 days from the date of issuance. After that date you cannot cash
9 the check and it will be null and void. Funds attributable to such uncashed checks will be sent to the
10 LWDA.

11 If you have any questions concerning this Settlement, please contact [Settlement administrator].
12 [contact information]
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EXHIBIT “C”

Selection Criteria	
Time.Selection	Include: BJM
Clie.Selection	Include: Lara Diaz v Shamrock Foods
Slip.Transaction Type	Time
Slip.Classification	Open

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Phase/Task	Variance		
586949	TIME	BJM	2.50	0.00	0.00
11/15/2020		Other activity	2.50	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Case development review of new file, evaluate LWDA letter and complaint, review client file, research company, evaluate potential size and damages.			0.00		
586950	TIME	BJM	1.80	0.00	0.00
12/28/2020		Other activity	1.80	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Case development analysis of Def's notice of removal, evaluate claimed damages for potential remand, review OC's letter re arbitration .			0.00		
586951	TIME	BJM	1.30	0.00	0.00
1/12/2021		Other activity	1.30	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Further evaluate Def's notice of removal in light of the arbitration agreement, and potential dismissal of class claims .			0.00		
586952	TIME	BJM	0.80	0.00	0.00
2/11/2021		Other activity	0.80	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Case development review, including the motion and opposition papers re remand and motion to dismiss.			0.00		
586953	TIME	BJM	0.40	0.00	0.00
6/15/2021		Other activity	0.40	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Case development review, including status of litigation and scheduling mediation.			0.00		
586954	TIME	BJM	1.60	0.00	0.00
9/29/2021		Other activity	1.60	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Phase/Task	Variance		
Case development analysis re discovery, mediation, including review Def's discovery responses and document production; evaluate claims.			0.00		
586955	TIME	BJM	0.50	0.00	0.00
10/7/2021		Other activity	0.50	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Receipt, review and analysis of related federal court action filed by Plaintiff Fite , and evaluate potential overlap.			0.00		
586956	TIME	BJM	1.40	0.00	0.00
10/12/2021		Other activity	1.40	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Telephone call with Counsel for Fite re coordination/consolidation; mediation status; potential JPA ; review file re same.			0.00		
586957	TIME	BJM	0.70	0.00	0.00
12/20/2021		Other activity	0.70	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Case status review re mediation preparation, including brief, expert report and informal exchange .			0.00		
586958	TIME	BJM	2.40	0.00	0.00
12/28/2021		Other activity	2.40	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Further draft mediation brief.			0.00		
586959	TIME	BJM	2.90	0.00	0.00
1/3/2022		Other activity	2.90	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Prepare for mediation, including review reports, final briefs and calculations.			0.00		
586960	TIME	BJM	10.50	0.00	0.00
1/4/2022		Other activity	10.50	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Attend mediation via zoom followed by MOU workup .			0.00		
586961	TIME	BJM	1.50	0.00	0.00
1/6/2022		Other activity	1.50	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Further draft the MOU based on the Court's Case management order.			0.00		

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Phase/Task	Variance		
586962	TIME	BJM	1.30	0.00	0.00
1/12/2022		Other activity	1.30	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Multiple correspondences with CC and OC re changes to the MOU; further draft same.			0.00		
586963	TIME	BJM	1.80	0.00	0.00
1/21/2022		Other activity	1.80	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Case development analysis re process for joining cases together; further draft stipulation to consolidate complaints; multiple correspondences with CC re same.			0.00		
586964	TIME	BJM	7.60	0.00	0.00
1/27/2022		Other activity	7.60	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Draft long form PAGA Agreement; review multiple correspondences with CC and OC re consolidation.			0.00		
586965	TIME	BJM	0.30	0.00	0.00
1/28/2022		Other activity	0.30	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Draft correspondence to CC and OC re PAGA Agreement; Telephone call from OC re same.			0.00		
586966	TIME	BJM	0.50	0.00	0.00
2/14/2022		Other activity	0.50	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Draft correspondence to CC and OC re outstanding items.			0.00		
586967	TIME	BJM	2.50	0.00	0.00
3/15/2022		Other activity	2.50	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Multiple correspondence with OC and CC re Motion to Approve, settlement agreements, outstanding items; Draft correspondence to Phoenix re admin declaration and prepare same, as required by case management order.			0.00		
586968	TIME	BJM	0.80	0.00	0.00
4/19/2022		Other activity	0.80	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Multiple correspondence with OC and CC re Motion to Approve, settlement agreements, outstanding items.			0.00		

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Phase/Task	Variance		
586969	TIME	BJM	0.70	0.00	0.00
4/28/2022		Other activity	0.70	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Draft correspondence to OC re Case management order and potential changes to the long form.			0.00		
586970	TIME	BJM	1.80	0.00	0.00
5/9/2022		Other activity	1.80	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Telephone call with OC re Case management order and potential changes to the long form, and draft proposed changes; Draft correspondence to CC re outstanding items;			0.00		
586971	TIME	BJM	7.70	0.00	0.00
5/17/2022		Other activity	7.70	C@1	
WIP		Lara Diaz v Shamrock	0.00	Do Not Bill	
Draft my declaration in support of motion, further draft motion and order;			0.00		
Grand Total					
		Billable	0.00		0.00
		Unbillable	53.30		0.00
		Total	53.30		0.00

EXHIBIT “D”

Selection Criteria

Clie.Selection Include: Lara Diaz v Shamrock Foods
Slip.Transaction Type Expense
Slip.Classification Open

Rate Info - identifies rate source and level

Slip ID Dates and Time Posting Status Description		Timekeeper Activity Client Phase/Task	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
583386 10/5/2020 WIP LWDA Order No. ORD -000082180 for PAGA Letter	EXP	SJA Court fees Lara Diaz v Shamrock	1	75.00 Do Not Bill	75.00
583466 10/22/2020 WIP RVSC Submission ID #10456050 to file Complaint	EXP	SJA Court fees Lara Diaz v Shamrock	1	1450.00 Do Not Bill	1450.00
583394 10/31/2020 WIP 24 copies @ \$0.20 for Letter to employer	EXP	SJA Copying Lara Diaz v Shamrock	24	0.20 Do Not Bill	4.80
583395 10/31/2020 WIP Postage for the month of October 2020	EXP	SJA Postage Lara Diaz v Shamrock	1	8.00 Do Not Bill	8.00
585378 7/2/2021 WIP Serratore Law Inv dated 7-2-21 for Mediation Jan 4, 2022	EXP	SJA Mediation Fees Lara Diaz v Shamrock	1	10000.00 Do Not Bill	10000.00
586005 11/10/2021 WIP Budget Conferencing Inv #30741965 for 10-12-21	EXP	MAA Attorney Servic Lara Diaz v Shamrock	1	17.37 Do Not Bill	17.37
586064 12/1/2021 WIP Budget Conferencing Inv 30764069 for 11/8/21	EXP	MAA Attorney Servic Lara Diaz v Shamrock	1	10.98 Do Not Bill	10.98
586465 1/20/2022 WIP PACER Fees 10/1/21 - 12/31/21	EXP	MAA Court fees Lara Diaz v Shamrock	1	7.10 Do Not Bill	7.10

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Phase/Task	Variance		
586544	EXP	MAA	1	12.35	12.35
2/3/2022		Court fees			
WIP		Lara Diaz v Shamrock		Do Not Bill	
One Legal Order #17603214 to file stip and order					
586551	EXP	MAA	1	36.86	36.86
2/4/2022		Court fees			
WIP		Lara Diaz v Shamrock		Do Not Bill	
One Legal Order #17627168 to re-submit stip and order					
586642	EXP	TLG	1	16.27	16.27
3/1/2022		Court fees			
WIP		Lara Diaz v Shamrock		Do Not Bill	
OneLegal Order #17706023 to file FAC					
586811	EXP	TLG	1	16.78	16.78
4/26/2022		Attorney Servic			
WIP		Lara Diaz v Shamrock		Do Not Bill	
OneLegal Order#18100930 - file jt stmt and dec re OSC					
586696	EXP	TLG	1	250.00	250.00
6/13/2022		Attorney Servic			
WIP		Lara Diaz v Shamrock		Do Not Bill	
Estimated fees and costs for OneLegal file MFA and supporting documents					
Grand Total					
			Billable	0.00	0.00
			Unbillable	0.00	11905.51
			Total	0.00	11905.51

EXHIBIT “E”

EXHIBIT “F”

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Payment from *Diaz, et al. v. Shamrock Foods Co.*

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed is your payment from the settlement of a lawsuit entitled *Daniel Lara Diaz and Glenn Fite, on behalf of all aggrieved employees and the State of California v. Shamrock Foods Co., an Arizona Corporation; and DOES 1 through 20, inclusive*, which was pending in the Superior Court of the State of California for the County of Riverside, Case No. RIC2004126 (the “*Diaz case*” or “*Lawsuit*”).

The *Diaz case* was filed on October 20, 2020, against Shamrock Foods Co. (“Shamrock”) pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (“PAGA”). As such, the Lawsuit was brought on behalf of the State of California and all current and former non-exempt employees who worked for Heartland in California any time from October 2, 2019 to March 5, 2022 (allegedly the “Aggrieved Employees”).

Specifically, in the Lawsuit, Mr. Diaz and Mr. Fite alleged that Shamrock failed to pay regular (i.e. contractual) and/or minimum wages for all hours worked, failed to pay overtime wages, including, but not limited to, failed to pay at the correct and/or regular rate of pay for all such hours worked, failed to provide meal periods, failed to provide rest breaks, failed to pay the extra hour of pay due as a premium for non-compliant meal periods or rest breaks, failed to timely pay wages owing during employment, including, but not limited to, failed to timely pay wages at termination, failed to provide accurate itemized wage statements, and failed to maintain accurate records. Mr. Diaz and Mr. Fite sought PAGA penalties.

Shamrock denies the allegations made by Mr. Diaz and Mr. Fite, and denies that it owes any penalties. In an effort to avoid the time, expense and uncertainty of litigation, Mr. Diaz, Mr. Fite, and Shamrock agreed to settle the case. You have been identified as one of the alleged aggrieved employees on whose behalf Mr. Diaz and Mr. Fite filed their lawsuit, and for purposes of the Lawsuit, the Settlement, and the following paragraph, you are considered an “Aggrieved Employee”.

As such, the parties’ settlement resolves Mr. Diaz and Mr. Fite’s claims on behalf of all Aggrieved Employees, including those claims that were asserted or that could have been asserted in the Lawsuit by Mr. Diaz and Mr. Fite or by any of the Aggrieved Employees pursuant to PAGA against Shamrock and any entity named, identified, and/or determined to be an employer of Shamrock employees, including claims for violations of California Labor Code sections 200, 201, 202, 203, 204, 204.1, 208, 221, 222, 223, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, and 1198 and the applicable Wage Order.

The Court approved the Settlement on [REDACTED], 2022. As a result, the enclosed settlement check has been issued and shall remain valid for one hundred eighty (180) days. Checks remaining uncashed for more than 180 days after issuance will be voided and funds represented thereby will be remitted by the Settlement Administrator to the Labor and Workforce Development Agency.