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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE 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]*

**[PROPOSED] ORDER APPROVING
SETTLEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
AND JUDGMENT AND DISMISSAL
WITH PREJUDICE ENTERED
THEREON**

Hearing

Date: July 6, 2022
Time: 8:30 a.m.
Dept.: 1

Reservation #: 266157493719

Complaint filed: October 20, 2020

1 The Motion to Approve the First Amendment to the PAGA Representative Action
2 Settlement Agreement and Release of PAGA Claims (the “Settlement” or “Settlement
3 Agreement”) between Plaintiffs Daniel Lara Diaz and Glenn Fite and Defendant Shamrock
4 Foods Company (“Defendant” or “Shamrock”) came before this Court on for a hearing in
5 accordance with Labor Code § 2699(1)(2) of the Private Attorneys General Act of 2004
6 (“PAGA”).

7 Plaintiffs’ First Amended Complaint and LWDA notice letters sought civil penalties
8 against the Released Parties for the “Released Claims” on behalf of the State of California and
9 all current and former non-exempt employees employed by Defendant in California at any
10 time during the period of October 2, 2019 through March 5, 2022 (the “Aggrieved
11 Employees”). The “Released Parties” mean “Defendant, together with its parent corporation,
12 affiliates (including but not limited to Shamrock Farms Company, an Arizona corporation),
13 subsidiaries, and divisions; such entities’ predecessors, successors and assigns; and officers
14 and directors of such entities, to the fullest extent permitted by law.” The “Released Claims”
15 are defined in the Settlement Agreement, as follows

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

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1 The Court, having considered the Settlement, including proposed PAGA penalties,
2 embodied in the Settlement Agreement (attached hereto as Exhibit “A”) between Plaintiffs
3 and Defendant, pursuant to Labor Code § 2699(1)(2), having considered the papers filed in
4 support of the application for court approval and the arguments of counsel, and good cause
5 appearing, HEREBY ORDERS THE FOLLOWING:

6 1. In a settlement of a PAGA action brought by an aggrieved employee, the Court
7 “shall review and approve any settlement of any civil action filed pursuant to this part.” Cal.
8 Lab. Code § 2699(1)(2).

9 2. The Court finds that the instant Action presented a good faith dispute of the
10 Released Claims as defined in the Settlement Agreement, and the Court finds in favor of
11 Settlement Approval and the Settlement Approval Order is hereby entered resolving all claims
12 set forth in Plaintiffs’ First Amended Complaint and LWDA notice letters pursuant the terms
13 of the Settlement Agreement, and entering the Judgment of Dismissal with Prejudice.

14 3. The Court approves the Settlement of the above-captioned action, as set forth
15 in the Settlement Agreement and each of the releases and other terms, as fair, just, reasonable,
16 and adequate. The Parties are directed to comply with the terms set forth in the Settlement
17 Agreement, including that Defendant is directed to make payments in accordance with the
18 Settlement Agreement, by and through the Settlement Administrator.

19 4. By this Order and Judgment and Dismissal with Prejudice, Plaintiffs release,
20 relinquish, and discharge all Released Claims on behalf of themselves and the State of
21 California, as defined in the Settlement Agreement. The Parties are to bear their own costs,
22 except as otherwise provided in the Settlement Agreement.

23 5. In accordance with the Settlement Agreement, Defendant agreed to pay
24 \$470,000 (the “Settlement Amount”), inclusive of payments to the LWDA and Aggrieved
25 Employees (as defined in the Settlement Agreement), attorneys’ fees and litigation costs, and
26 Settlement Administrator costs. As part of the Settlement, Plaintiffs’ Counsel sought an
27 award of attorney’s fees of \$156,666.66, actual litigation expenses of \$17,764.39, and
28 \$10,000 to the Settlement Administrator, Phoenix Class Action Administrators. Defendant

1 does not oppose these requests. The Court finds that the Settlement Amount is fair,
2 reasonable and adequate, and approves each of these payments set from the Settlement
3 Amount, and directs Defendant and Settlement Administrator to make the following payments
4 from the Settlement Amount within 15 days of the Effective Date:

- 5 a. \$156,666.66 in attorneys' fees which shall be allocated equally between
6 Lauby Mankin Lauby LLP and Mallison & Martinez;
- 7 b. \$17,764.39 in litigation costs, which shall be allocated as \$11,905.51 to
8 Lauby Mankin Lauby LLP and \$5,858.88 to Mallison & Martinez;
- 9 c. \$10,000 to Phoenix Class Action Administrators for administration
10 costs.

11 6. After deducting the foregoing payments, the remainder of approximately
12 \$285,568.95 shall form the PAGA Award, which will then be allocated pursuant to Labor
13 Code § 2699(i) with 75 percent (\$214,176.71) being paid to the LWDA, and the remaining 25
14 percent (\$71,392.24) paid to the Aggrieved Employees on a pro rata basis, as set forth in the
15 Settlement Agreement. The Court approves these payments and directs the Settlement
16 Administrator to issue checks to the LWDA and Aggrieved Employees, as set forth
17 Settlement Agreement. The Court approves the proposed notice to Aggrieved Employees and
18 orders that the Settlement Administrator mail the Notice of PAGA Settlement and Payment to
19 the Aggrieved Employees with the settlement check (attached hereto as Exhibit "B").

20 7. The Court approves the handling of unclaimed funds set forth in the Settlement
21 Agreement, specifically that any unclaimed funds in the Settlement Administrator's account
22 as a result of a failure to timely cash a settlement check shall be deemed void, and
23 any unclaimed funds in the QSF as a result of the failure to cash Individual Settlement
24 Payment checks shall be transmitted by the Settlement Administrator to the Labor and
25 Workforce Development Agency, in accordance with the statutory objectives of PAGA,
26 within twenty-one (21) calendar days of the date those checks became void.

27 8. As to the Released Claims, this order and the resulting judgment are entitled to
28 preclusive effect, under the doctrine of res judicata and collateral estoppel, and shall bind

1 Plaintiffs, the State of California and Aggrieved Employees, pursuant to *Arias v. Superior*
2 *Court*, 46 Cal.4th 969 (2009).

3 9. The Action and the Released Claims alleged therein are Ordered dismissed
4 with prejudice as to Plaintiffs and the underlying PAGA claims for relief, as set forth in
5 Plaintiffs' First Amended Complaint and LWDA notice letters for the PAGA Release Period
6 of October 2, 2019 through March 5, 2022.

7 10. The Released Claims against the Released Parties during the period of October
8 2, 2019 through March 5, 2022 are hereby completely released and discharged.

9 11. The Settlement is not an admission of wrongdoing or violation by Defendant or
10 any of the other Released Parties, nor is this Judgment a finding of the validity of any claims
11 in the Action or of any wrongdoing by Defendant or any of the other Released Parties.
12 Neither this Settlement Approval Order, the Settlement, or the Judgment of Dismissal nor any
13 document referred to herein, nor any action taken to carry out the Settlement are, may be
14 construed as, or may be used as an admission by or against Defendant or any of the other
15 Released Parties of any fault, wrongdoing or liability whatsoever. The entering into or
16 carrying out of the Settlement, and any negotiations or proceedings related thereto, shall not
17 in any event be construed as, or deemed to be evidence of, an admission or concession with
18 regard to the denials or defenses by Defendant or any of the other Released Parties and shall
19 not be offered in evidence against Defendant or any of the Released Parties in any action or
20 proceeding in any court, administrative agency or other tribunal for any purpose whatsoever
21 other than to enforce the provisions of this Order, the Settlement, the Judgment of Dismissal,
22 or any related agreement or release. Notwithstanding these restrictions, any of the Released
23 Parties may file in the Action or in any other proceeding this Order, the Settlement, the
24 Judgment of Dismissal, or any other papers and records on file in the Action as evidence of
25 the Settlement and to support a defense of res judicata, collateral estoppel, release, waiver or
26 other theory of claim preclusion, issue preclusion or similar defense as to any of the Released
27 Claims.
28

1 **JUDGMENT**

2 12. Pursuant to California Labor Code section 2698, *et seq.*, the Court hereby
3 enters judgment of the Action, with prejudice, for the reasons set forth above, and upon the
4 terms set forth in the Settlement Agreement. Without in any way affecting the finality of this
5 Settlement Approval Order granting final judgment, this Court hereby retains exclusive and
6 continuing jurisdiction over the Action as to all matters relating to: (a) the implementation,
7 enforcement, construction and interpretation of the terms of the Settlement and this Order of
8 Judgment and Dismissal; (b) Settlement administration matters; and (c) such post-judgment
9 matters as may be appropriate under Court rules or as set forth in the Settlement.
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11 Dated: _____

12 _____
13 Hon. Craig Riemer
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EXHIBIT “A”

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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

1 Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1194,
2 1194.2, 1197, 1197.1, 1198, and 1199 and/or applicable sections of the California Industrial Welfare
3 Commission Wage Orders for wage and hour penalty claims. Plaintiff Diaz then filed a class and
4 representative action complaint in the Court. On December 18, 2020, Defendant removed the Diaz
5 action to the United States District Court for the Central District of California, pursuant to the Class
6 Action Fairness Act. Upon removal to District Court, Plaintiff Diaz became aware of an alleged
7 arbitration agreement between himself and Defendant and, on that basis, moved for leave to amend
8 his complaint to omit any non-PAGA class and individual claims or, alternatively, to dismiss those
9 claims and remand the PAGA claims. Defendant also filed a motion to dismiss class claims and
10 compel arbitration of the individual claims, pursuant to the Parties' alleged arbitration agreement. On
11 April 5, 2021, the District Court issued an Order dismissing Plaintiff Diaz's individual and class claims
12 without prejudice, remanding the remaining PAGA claims to this Court, and denying Defendant's
13 motion as moot.

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

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

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

28 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(l)(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.

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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.

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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

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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

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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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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:***

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13 Dated: May ____, 2022

Plaintiff Daniel Lara Diaz

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16 Dated: June 01, 2022

Glenn Fite
ID oUhKUbnBdfApSn5G5gt9VMnx

Plaintiff Glenn Fite

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19 Dated: May ____, 2022

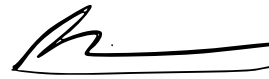
Defendant Shamrock Foods Company
By: Vince Daniels
Chief Human Resources Officer

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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
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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
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.

25 The "Released Claims" as defined in the Court's Final Order and Judgment as defined as follows:
26 Any and all actual or potential PAGA claims reasonably arising out of or relating to the factual
27 allegations pled in the First Amended Complaint and/or Plaintiffs' LWDA notice letter, including but
28 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 “B”

<<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.