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IMPERFECT FOODS, INC.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

**DELVIN REED, individually and on behalf of
all others similarly situated**

Plaintiff,

vs.

**IMPERFECT FOODS, INC.; and DOES 1-100
inclusive,**

Defendants.

Case No. CGC-20-588656

JOINT STIPULATION FOR CLASS
ACTION SETTLEMENT AND RELEASE

1 This Joint Stipulation of Class Action Settlement and Release (hereinafter, “Settlement”) is
2 made and entered into by and between Plaintiff Delvin Reed (“Plaintiff”), individually and on
3 behalf of the Settlement Class, as defined below, and Defendant Imperfect Foods, Inc.
4 (“Defendant” or “Imperfect”), and is subject to the terms and conditions hereof and the approval of
5 the Court.

6 **DEFINITIONS**

7 1. “Action” means the consolidated lawsuit between the Parties pending in the
8 Superior Court for the County of San Francisco as Case No. CGC-20-588656, including the
9 alleged class claims, representative claims, and individual claims asserted therein.

10 2. “Bonus Class” means all current and former non-exempt California employees of
11 Defendant who earned a Quarterly Bonus during a workweek when he or she also either (i) worked
12 overtime (ii) redeemed paid sick leave, or (iii) was paid a meal period premium on at least one occasion
13 between December 29, 2016 and November 10, 2023 (the “Bonus Timeframe”).

14 3. “Class Counsel” refers to the law firm of Mayall Hurley P.C.

15 4. “Class” shall collectively refer to all persons who fall within the scope of the
16 definition of the Bonus Class or the Post-*Ibirhim* Non-Exempt Class as defined herein.

17 5. “Class Member” shall refer to any person who falls within the scope of the
18 definition of the Bonus Class or the Post-*Ibirhim* Non-Exempt Class as defined herein.

19 6. “Class Notice” means the Notice of Proposed Class Action Settlement that shall be
20 mailed to Settlement Class Members, subject to court approval, in substantially the form attached
21 hereto as “**Exhibit A.**”

22 7. “Class Period” is the period from December 29, 2016 through and including
23 November 9, 2023.

24 8. “Defendant” refers to Defendant Imperfect Foods, Inc.

25 9. “Defendant’s Counsel” refers to the law firm of DLA Piper, LLP.

26 10. “LWDA” means the California Labor & Workplace Development Agency.

27 11. “PAGA” means the California Labor Code’s Private Attorneys General Act of 2004,
28 as amended, section 2698, *et seq.*

13. “Parties” means Plaintiff and Defendant, collectively.

14. “Plaintiff” means named Plaintiff Delvin Reed.

15. “Post-*Ibrihim* Non-Exempt Class” shall mean all current and former California non-exempt employees of Defendant who worked at least one shift between April 24, 2019 and November 10, 2023 (the “Post-*Ibrihim* Timeframe”).

16. “Settlement” or “Settlement Agreement” shall be the collective terms and conditions set forth by way of this Joint Stipulation of Class Action Settlement and Release to completely settle and resolve any and all claims in and pertaining to this Action.

17. “Settlement Administrator” means ILYM Group, Inc. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

18. “Settlement Class” shall refer collectively to any and all members of the Bonus Class or the Post-*Ibrihim* Non-Exempt Class who do not timely seek exclusion from the Settlement Agreement.

19. “Settlement Class Member” means a Class Member (i.e. a member of either or both of the Bonus Class and the Post-*Ibrihim* Non-Exempt Class) who does not timely seek exclusion from the Settlement Agreement. All Settlement Class Members shall be included in the Settlement and shall receive a Settlement Share in exchange for the full release of the Released Class Claims (as defined herein) for the entire Class Period.

20. “Total Workweeks” means the number of calendar workweeks that the respective Settlement Class Member worked during the Bonus Timeframe and/or the Class Period.

BACKGROUND

21. On November 23, 2020, Plaintiff submitted a notification letter to Defendant and the Labor & Workforce Development Agency (“LWDA”) alleging several wage and hour claims, including the failure to pay minimum wage, the failure to properly calculate and pay overtime wages, the failure to provide meal and rest periods or appropriately calculate and pay meal/rest period

1 premiums, the failure to timely pay wages, the failure to provide accurate itemized wage statements,
2 and the failure to pay all wages due and owing at the time of separation (the “PAGA Claims”).

3 22. On December 29, 2020, Plaintiff filed a Class and Representative Action Complaint in
4 the Superior Court of California, County of San Francisco Case No. CGC-20-588656 (the “Class
5 Action”) alleging several wage and hour claims on a class-wide basis, including failure to properly
6 calculate and pay overtime wages, failure to provide meal periods and associated premiums, failure to
7 properly calculate and pay sick leave wages, failure to furnish accurate itemized wage statements,
8 failure to pay all wages due and owing at the end of employment, and unlawful business practices
9 (the “Class Claims”).

10 23. On March 19, 2021, Plaintiff filed a Representative Action for Penalties in the
11 Superior Court of California, County of San Francisco Case No. CGC-21-590511 seeking to assess
12 civil penalties under the PAGA arising out of the PAGA Claims (the “PAGA Action”).

13 24. On September 13, 2021, pursuant to Stipulation by the Parties, Plaintiff filed the
14 operative First Amended Class and Representative Action in the Class Action in order to add the
15 PAGA Claims to the Class Action (the “FAC”), which added a class-wide cause of action for alleged
16 violation of Government Code section 12953 and Labor Code section 432.6 (the “Arbitration
17 Agreement Class Claim”) and the allegations from the PAGA Action. On September 29, 2021, the
18 PAGA Action was dismissed, without prejudice, as all of the PAGA Claims are now included in the
19 Class Action.

20 **RECITALS**

21 25. The Parties have conducted formal and informal discovery and investigation of the
22 facts and law in this Action. Such discovery and investigation have included, inter alia, the
23 exchange of informal data and discoverable information in preparation for the mediation session
24 and the provision of formal sworn discovery responses. The Parties have analyzed payroll and
25 other data pertaining to Plaintiff and members of the Class during the relevant Class Period,
26 including but not limited to, employee workweeks, time records, meal period records, wage
27 statements, wages, hours worked, compensation paid, and rates of hourly pay.

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1 26. Plaintiff believes the action is meritorious. Plaintiff and Class Counsel have
2 considered the expense and length of continued proceedings necessary to continue the action
3 against Defendant through litigation, pre-trial motions, trial, and any possible appeals. Plaintiff
4 and Class Counsel have also taken into account the uncertainty and risk of the outcome of further
5 litigation, and the difficulties inherent in such litigation. Plaintiff and Class Counsel are also aware
6 of the burdens of proof necessary to establish liability for the claims asserted, Defendant's defenses
7 thereto, and the potential difficulties in establishing Plaintiff's entitlement to monetary recovery
8 and relief. Plaintiff and Class Counsel have also considered the settlement negotiations conducted
9 by the Parties with the experienced class action mediator, Miriam Zadeh, Esq., and independently
10 following the mediation session. Based on the foregoing, Plaintiff and Class Counsel have
11 determined that the Settlement is fair, adequate, and reasonable, and in the collective best interest
12 of Plaintiff and the Class.

13 27. Defendant disputes the merits of the action and denies all liability and wrongdoing
14 of any kind associated with the claims alleged in the Action, or otherwise. Defendant contends,
15 inter alia, that at all times they fully complied with all state and federal wage and hour laws,
16 including all Labor Code and Wage Order requirements, and all regulations applicable to Plaintiff
17 and the Class in connection with the services performed for Defendant. Nothing contained in this
18 Settlement Agreement, nor any documents referred to herein, nor any action taken to carry out
19 and/or consummate the Settlement is, or may be construed as, or may be used as, an admission of
20 liability, culpability, negligence or wrongdoing by or against Defendant as to the merits or lack
21 thereof of the claims being settled by this Settlement Agreement.

22 28. On November 9, 2023, the Parties mediated the Action before Miriam Zadeh, Esq.,
23 who is a highly experienced and well-regarded mediator in employment litigation, specifically
24 including wage and hour class action matters. After a full day of mediation, the Parties agreed to
25 an initial mediator's proposal. While reducing their resolution to writing, a number of issues arose
26 requiring the Parties to continue discussions and renegotiate and modify some terms of the
27 resolution. The mediator was generally involved in these ongoing discussions. The Parties
28 continued settlement negotiations for nearly a month and formally reduced their agreement to an

1 initial Memorandum of Understanding executed December 4, 2023 (the “MOU”).

2 29. The Parties now enter into this formal Settlement Agreement to supersede the MOU
3 and submit to the Court for evaluation and approval. As more particularly set forth below, it is the
4 desire of the Parties to fully, finally and forever settle, compromise and discharge the Released
5 Class Claims and the Released PAGA Claims as set forth below. In addition, Plaintiff agrees to
6 enter into a general release of all claims as more particularly set forth below.

7 30. For settlement purposes only, the Parties conditionally stipulate and agree that all of
8 the requisites for establishing class certification are met with respect to the Bonus Class and the
9 Post-*Ibrihim* Non-Exempt Class, as defined above, and stipulate to certification under Code of
10 Civil Procedure section 382 of these classes. Defendant does not waive, and instead expressly
11 reserves, its right to challenge the propriety of class certification for any purpose should the Court
12 not approve the Settlement. Defendant’s willingness to stipulate to class certification as part of the
13 Settlement shall have no bearing on, and shall not be admissible in or considered in connection
14 with, the issue of whether a class should be certified in a non-settlement context in this Action and
15 shall have no bearing on, and shall not be admissible or considered in connection with, the issue of
16 whether a class should be certified in any other lawsuit.

17 31. Should the Settlement not achieve final approval for any reason, the Parties agree
18 that this Action shall revert to the procedural posture that existed as of the date the Parties agreed to
19 a settlement in principle, December 4, 2023, including but not limited to any pending discovery
20 requests, and no Party shall have waived any rights between the Parties and/or the Class, and/or
21 any individual member of the Class.

22 32. The Parties intend that this Settlement Agreement shall include a full and complete
23 settlement and release, as more particularly set forth below, of: (i) named Defendant Imperfect
24 Foods, Inc.; (ii) each of Defendant’s respective past, present and future parents, subsidiaries, and
25 affiliates including, without limitation, any corporation, limited liability company, partnership,
26 trust, foundation, and non-profit entity which controls, is controlled by, or is under common control
27 with Defendant; (iii) Defendant’s successor Misfits Market, Inc.; (iv) the past, present and future
28 shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners,

1 managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit
2 plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (v) any
3 individual or entity which could be jointly liable with any of the foregoing. (the “Released
4 Parties”).

5 33. In connection with the proposed certification of the Bonus Class and the Post-
6 *Ibrihim* Non-Exempt Class, the Parties shall cooperate and present to the Court for its
7 consideration any additional competent evidence, as may be requested by the Court, under the
8 applicable due process requirements and standards for class certification, and shall take all steps
9 necessary and appropriate to obtain preliminary and final approval of the Settlement and to
10 effectuate all aspects of the Settlement.

11 34. The Parties, Class Counsel and Defense Counsel represent that they are not aware of
12 any other pending matter or action asserting claims that will be extinguished or affected by the
13 Settlement.

14 **SETTLEMENT STRUCTURE**

15 35. NOW, THEREFORE, in consideration of the mutual covenants, promises, and
16 warranties set forth herein, the Parties agree, subject to the Court’s approval, as follows:

17 A. Settlement: This Action shall be settled and compromised as between
18 Plaintiff, the Settlement Class, and Defendant, subject to the terms and conditions set forth in this
19 Settlement Agreement and the approval of the Superior Court of California, County of San
20 Francisco. In the event Judgment is not entered, or in the event this Settlement Agreement is
21 modified in any material respect, or in the event that the Effective Date, as defined herein, does not
22 occur, this Settlement Agreement shall be deemed null and void and shall be of no force or effect
23 whatsoever, and shall not be referred to or utilized for any purpose whatsoever.

24 B. Gross Settlement Amount: The settlement is in the gross amount of One
25 Million One Hundred Forty Seven Thousand Eight Hundred Dollars (\$1,147,800.00) (hereinafter,
26 the “Gross Settlement Amount”). This Gross Settlement Amount is all-inclusive of all payments
27 contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the
28 Individual Settlement Shares allocated to wages which shall be separately paid by Defendant to the

1 Settlement Administrator. The Gross Settlement Amount shall be inclusive of, as described and
2 defined herein, all settlement payments to Settlement Class Members, the costs of settlement
3 administration, Class Counsel's reasonable attorneys' fees, Class Counsel's reasonable litigation
4 expenses and costs, the Service Award to Plaintiff, and the PAGA Payment. No other funds shall
5 be owed or paid by Defendants in excess of the Gross Settlement Amount, other than the
6 employer-side tax obligations identified above, unless the escalator clause, described in
7 Paragraph 35.F is triggered.

8 C. Net Class Settlement Amount: The Net Class Settlement Amount shall be
9 the Gross Settlement Amount, less all of the following: the costs of settlement administration
10 (subject to the approval of the Court), Class Counsel's reasonable attorneys' fees, expenses, and
11 costs (subject to the approval of the Court), Plaintiff's service fee award (subject to the approval of
12 the Court), and the PAGA Amount (subject to the approval of the Court). It is estimated that the
13 Net Class Settlement Amount will be at least Six Hundred Thirty-Four Thousand Two Hundred
14 Dollars and Zero Cents (\$634,200.00).

15 D. Settlement Allocation: The Gross Settlement Amount is allocated 45% to
16 the Bonus Class and 55% to the Post-*Ibrihim* Non-Exempt Class. For distribution purposes, the Net
17 Class Settlement Amount will be allocated 45% to the Bonus Class and 55% to the Post-*Ibrihim*
18 Non-Exempt Class.

19 E. Settlement Share of Settlement Class Members: Each Settlement Class
20 Member's respective individual share of the Net Class Settlement Amount shall be calculated as
21 follows:

22 i. Bonus Class Members.

23 The Settlement Share for each participating Bonus Class Member will be
24 determined by dividing the total dollar amount apportioned to the Bonus Class
25 by the total number of Workweeks worked by the participating Bonus Class
26 Members during the Bonus Timeframe, resulting in a payment ratio. A
27 workweek will be any week during which the Bonus Class Member worked at
28 least one day/shift and each individual Bonus Class Member will be credited

1 with at least one Workweek. The ratio will then be multiplied by the number
2 of Workweeks each individual participating Bonus Class Member was
3 employed to determine his or her individual Settlement Share. Bonus Class
4 Members whose employment has ended will receive credit for an additional
5 five (5) Workweeks in order to account for his/her potential waiting time
6 penalty claim.

7 ii. Post-Ibrihim Non-Exempt Class Members.

8 The Settlement Share for each participating Post-Ibrihim Non-Exempt Class
9 Member will be determined by the number of workweeks worked by the
10 Participating Post-Ibrihim Non-Exempt Class Member during the Post-Ibrihim
11 Timeframe in proportion to the total workweeks worked by all Post-Ibrihim
12 Class Members during that timeframe. Post-Ibrihim Non-Exempt Class
13 Members whose employment has ended will receive credit for an additional
14 five (5) Workweeks in order to account for his/her potential waiting time
15 penalty claim.

16 The total Individual Settlement Share due to each Settlement Class Member shall be the sum
17 of that Settlement Class Member's individual Settlement Shares as a member of the Bonus Class
18 and/or the Post-Ibrihim Non-Exempt Class, as the case may be.

19 F. Escalator Clause. Defendant certifies that the number of workweeks for all
20 Bonus Class Members during the Class Period as of the date of the mediation was 36,620. Defendant
21 certifies that the number of Bonus Class Members through the date of mediation was 720. Defendant
22 certifies that the number of workweeks for all Post-Ibrihim Non-Exempt Class Members during the
23 Post-Ibrihim Timeframe (April 24, 2019 through November 10, 2023) was 61,447. Defendant certifies
24 that the number of Post-Ibrihim Non-Exempt Class Members through the date of mediation was
25 1,259. Defendant will provide a declaration under penalty of perjury confirming the number of Class
26 Members and workweeks they worked during each relevant period of time. If either the actual
27 number of Class Members and/or workweeks for each respective class during the Class Period should
28 exceed the above numbers by more than ten percent (10%), the portion of the Gross Settlement

1 Amount allocated to that Class shall be increased by the percentage difference of the actual number of
2 Class Members and/or workweeks over 10% that accrued. If both the number of Class Members and
3 the number or workweeks exceeds the above numbers by more than 10%, the factor with the greatest
4 numerical percentage increase shall control. By way of example, if the total number of workweeks
5 worked by all Bonus Class Members during the Class Period is determined to be 11% higher than
6 36,620 and the number of Class Members is determined to be 13% higher than 3,232, the portion of
7 the Gross Settlement Amount allocated to that Class will be increased by 3%. Similarly, if the total
8 number of workweeks worked by all Post-*Ibrihim* Non-Exempt Class Members during the Post-
9 *Ibrihim* Timeframe is determined to be 11% higher than 61,447 and the number of Class Members is
10 determined to be 13% higher than 61,447, the 50% portion of the Gross Settlement Amount allocated
11 to the Post-*Ibrihim* Non-Exempt Class will be increased by 3%.

12 Settlement Shares will not count as earnings or compensation for purposes of any
13 benefits (e.g., 401(k) plans or retirement plans) sponsored by Defendant.

14 G. Class Counsel Attorneys' Fees: Defendant agrees that it will not oppose
15 Plaintiff's request for an award of attorneys' fees to Class Counsel in an amount up to one-third
16 (1/3) of the Gross Settlement Amount (presently \$382,600) in order to compensate and reimburse
17 Class Counsel for all of the work already performed in this case, all of the work remaining to be
18 performed by Class Counsel in documenting the Settlement, securing Court approval of the
19 Settlement, making sure that the Settlement is fairly administered and implemented, and obtaining
20 final approval of this Settlement. Plaintiff believes such a percentage fee is warranted considering,
21 without limitation: (1) the time and labor required of Class Counsel in this Action; (2) the
22 complexity involved and the results obtained; (3) the potential contingent nature of the
23 compensation; (4) the opportunity costs to Class Counsel in the time the engagement has taken
24 away from other potential matters; and (5) the informed consent of Plaintiff to a percentage fee to
25 Class Counsel of up to one-third of the Gross Settlement Amount. The Parties acknowledge and
26 understand that Class Counsel's attorneys' fees will be paid entirely from the Gross Settlement
27 Amount, regardless of the amount approved by the Court, and that should the Court approve a

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1 lesser amount than set forth in this subparagraph, the unapproved amount shall be allocated to the
2 Class Net Settlement Amount.

3 H. Class Counsel's Costs: Class Counsel will separately seek recovery of their
4 actual, reasonable litigation costs and expenses. Defendant agrees that it will not oppose or
5 otherwise object to Plaintiff's request for an award of costs in an amount up to Twenty Thousand
6 Dollars (\$20,000). The Parties acknowledge and understand that Class Counsel's costs will be paid
7 entirely from the Gross Settlement Amount, regardless of the amount approved by the Court, and
8 that should the Court approve a lesser amount than set forth in this subparagraph, the unapproved
9 amount shall be allocated to the Net Class Settlement Amount.

10 I. Class Representative Service Award for Plaintiff: Subject to Court approval,
11 Defendant will not object to application for a service fee award of Fifteen Thousand Dollars
12 (\$15,000) for Plaintiff. It is understood that this service fee award is in addition to Plaintiff's
13 Settlement Share as a Settlement Class Member. The Settlement Administrator will issue IRS
14 Form 1099 for the service fee award to Plaintiff. Plaintiff shall assume full responsibility and
15 liability for correctly characterizing this compensation on his personal income tax return for tax
16 purposes and for paying any taxes on the amounts received. The Parties acknowledge and
17 understand that the service fee award will be paid entirely from the Gross Settlement Amount,
18 regardless of the amount approved by the Court, and that should the Court approve a lesser
19 amount(s) than set forth in this subparagraph, the unapproved amount(s) shall be allocated to the
20 Net Class Settlement Amount.

21 J. PAGA Payment: The Parties have agreed that Eighty Thousand Dollars
22 (\$80,000) of the Gross Settlement Amount shall be allocated to the resolution of all Class
23 Members' claims arising under PAGA (the "PAGA Payment") during the PAGA Period. Pursuant
24 to PAGA, seventy-five percent (75%) of the PAGA Payment shall be paid to the LWDA, and the
25 remaining 25% shall be distributed amongst Class Members employed during the PAGA Period
26 (the "Employee PAGA Amount"), regardless of whether the Class Member is a Settlement Class
27 Member, in exchange for the PAGA Release. Any Class Member employed during the PAGA
28 Period will be entitled to a pro rata share of the Employee PAGA Amount based on the number of

workweeks that individual worked for Defendant during the PAGA Period. The Parties acknowledge and understand that the PAGA Amount will be paid entirely from the Gross Settlement Amount, regardless of the amount approved by the Court, and that any unapproved amount of the PAGA Amount shall be allocated to the Net Class Settlement Amount.

K. Settlement Administration Costs: The Settlement Administrator has agreed to perform all necessary class administration duties for a fee estimated to be no more than Sixteen Thousand Dollars (\$16,000). These administration duties shall include, without limitation, searching for updated addresses before mailing Class Notices, performing necessary skip traces on notices returned as undeliverable, calculating, processing, and mailing settlement checks, handling tax withholding, contributions, reporting and filings, and maintaining a static informational website for Class Members. The Parties acknowledge and understand that the Settlement Administrator's fees will be paid entirely from the Gross Settlement Amount, regardless of the amount approved by the Court, and that any unapproved or unused portion below the amount set forth in this paragraph shall be allocated to the Net Class Settlement Amount.

36. Effective Date: The "Effective Date" is a condition of performance of the obligations under this Settlement. The Effective Date is the latter of: (a) the Court's final approval of the settlement if no objections by or on behalf of Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; (c) the final resolution of any appeal that has been filed.

37. Settlement Funding and Payment Timetable: Within thirty (30) calendar days of the Effective Date, Defendant will deposit the entire Gross Settlement Amount, plus applicable payroll taxes, into a Qualified Settlement Account to be established by the Settlement Administrator. The Settlement Administrator shall be responsible for depositing the funds in the Settlement Account and solely responsible for taking all necessary and reasonable steps to ensure the entirety of the funds are securely deposited into and remain in the Settlement Account for the distributions specified in this Agreement.

A. Within fourteen (14) calendar days of the Settlement Administrator's receipt of the entire Gross Settlement Amount from Defendant, the Settlement Administrator will make all

1 required distributions pursuant to this Settlement and the order and Judgment of final approval
2 including, to the extent ordered, all Settlement Shares to Settlement Class Members and Court-
3 approved attorneys' fees, costs, service payment, costs of settlement administration, and PAGA
4 Payment.

5 38. Resolution of Dispute: If any Settlement Class Member timely disputes the number
6 of his or her Total Workweeks, by way of a written dispute that is postmarked within the Notice
7 Period (as defined below) as provided for in the Class Notice, the dispute shall be determined by
8 the Settlement Administrator, who shall examine all available written records in an attempt to
9 resolve the dispute. Defendant's records shall be presumed accurate and control unless the
10 Settlement Class Member provides satisfactory proof that Defendant's records are incorrect. In
11 any event, the Settlement Administrator will make every reasonable effort to resolve any such
12 disputes before final approval of this Settlement. The Settlement Administrator's determination of
13 the eligibility for and amount of any Settlement Share shall be final, not subject to appeal, and
14 binding upon the Settlement Class Member and the Parties.

15 **NOTICE TO THE SETTLEMENT CLASS**

16 39. Subject to Court approval, the Parties agree that, within fourteen (14) calendar days
17 after the Court enters any Order granting preliminary approval of the Settlement, Defendant will
18 provide to the Settlement Administrator the following information for each Settlement Class
19 Member in a reasonable format requested by the Settlement Administrator: (1) name; (2) last
20 known home address and telephone numbers; (3) social security number; and (4) dates of
21 employment within the Class Period and within the Bonus Timeframe (collectively, the "Class
22 Information"). The Settlement Administrator will perform address updates and verifications, as
23 necessary, prior to the first mailing. Within fourteen (14) calendar days after the Settlement
24 Administrator receives the Class Information from Defendant, and subject to Court approval, the
25 Settlement Administrator will mail the Class Notice by first class mail.

26 **SETTLEMENT ADMINISTRATION**

27 40. Class Information. Any Class Information or other personnel data provided by
28 Defendant to the Settlement Administrator, shall be treated as confidential and shall not be used by

1 the Settlement Administrator for any purpose other than as permitted by this Agreement. Further,
2 the Settlement Administrator shall use commercially reasonable efforts to secure the data provided
3 by Defendant at all times so as to avoid inadvertent or unauthorized disclosure or use of such data
4 other than as permitted by this Agreement. At no time during the settlement process will any Class
5 Member's Social Security Number be filed with the Court, except under seal as may be ordered by
6 the Court. The Settlement Administrator shall ensure that the Notice and any other
7 communications to Class Members shall not include the Class Members' Social Security Number,
8 except for the last four digits, if necessary.

9 41. Notice Period. Class Members will be afforded the opportunity to submit an
10 objection to the Settlement ("Objection"), to exclude themselves from the Settlement ("Exclusion
11 Request") by mail, or to dispute the information as discussed in paragraph 43. Class Members will
12 be permitted no more than forty-five days (45) calendar days from the date the Class Notices are
13 mailed by the Settlement Administrator to postmark their Objection, Exclusion Request, or dispute
14 to the Settlement Administrator (the "Notice Period"). To be valid, an Objection, Exclusion
15 Request, or dispute must be timely submitted during the Notice Period and must follow the
16 procedures outlined below. These procedures must also be described in the Class Notice. A Class
17 Member may not submit both an Objection and an Exclusion Request; if a Class Member submits
18 to Exclusion Request to exclude himself or herself from the Settlement, he or she has no right to
19 submit an Objection to the Settlement.

20 42. Exclusion Requests. Any Class Member, other than Plaintiff, may elect to submit
21 an Exclusion Request during the Notice Period. To be effective, any such election: (i) must be
22 made in writing; (ii) must contain the name and sufficient information to verify the individual's
23 identity in the opinion of the Settlement Administrator, which may include address, telephone
24 number, and/or last four digits of the social security number of the Class Member requesting
25 exclusion; (iii) must be signed by the Class Member who is electing to be excluded; and (iv) must
26 be mailed to the Settlement Administrator on or before the end of the Notice Period. As
27 applicable, the date of the postmark on the mailing envelope shall be the exclusive means to
28 determine whether an Exclusion Request is timely. Any Class Member who timely submits an

1 Exclusion Request in compliance with these requirements shall not be a Settlement Class Member,
2 shall not be entitled to receive any Settlement Share, shall not be entitled to submit an Objection to
3 the Settlement Agreement, and shall not be bound by the terms of this Settlement Agreement,
4 except that the PAGA Release shall apply to all Class Members and all Class Members shall still
5 be entitled to his or her individual share of the Employee PAGA Amount. Under no circumstances
6 may any Class Member request exclusion from that portion of the Settlement relating to the PAGA
7 Allocation, and any request for exclusion shall not have any effect on the PAGA Release, which
8 shall remain in full force and effect.

9 43. Objections: Any Settlement Class Member (one who does not timely seek exclusion
10 from the Settlement Agreement), other than Plaintiff, may submit an Objection to final approval of
11 this Settlement, provided that the Objection is made in writing and mailed to the Settlement
12 Administrator by no later than the last day of the Notice Period. As applicable, the date of the
13 postmark on the mailing envelope shall be the exclusive means to determine whether the Objection
14 is timely. An Objection must clearly state the name of the case and case number and must also
15 include the objector's full name, address, and the basis for any Objection and, if the objector is
16 represented by counsel, the name and address of the objector's counsel. The Objection must also
17 state whether the Settlement Class Member intends to appear at the final approval hearing and
18 present oral argument. At the Court's discretion, any Settlement Class Member who has not
19 complied with these requirements may not be heard at the final approval hearing. Any Settlement
20 Class Member who fails to comply with these requirements will be deemed to have waived any
21 right to submit an Objection to the Settlement Agreement. The Settlement Administrator shall
22 promptly forward any and all Objections that it receives to Class Counsel and Defendant's
23 Counsel.

24 44. Re-mailing. The Settlement Administrator will perform one skip-trace on any
25 returned Class Notices and re-mail Class Notices to any updated address (if any) within seven (7)
26 calendar days of receipt of the returned mail for all returned mail received by the Settlement
27 Administrator by the conclusion of the Notice Period. The deadline for a Settlement Class
28 Member, who has been re-mailed the Class Notice, to submit the Exclusion Request, or to object to

1 the Settlement, shall be the later of the conclusion of the Notice Period or fifteen (15) calendar days
2 from the date the Class Notice is re-mailed. It is the intent of the Parties that the Settlement
3 Administrator use reasonable and customary means to locate Class Members.

4 45. Deficiency Notice. Within seven (7) calendar days of receipt by the Settlement
5 Administrator of any timely submitted, but deficient, Exclusion Request, the Settlement
6 Administrator will send a deficiency notice to the Settlement Class Member regarding any
7 irregularities (“Deficiency Notice”). The Deficiency Notice will provide any applicable Settlement
8 Class Member no more than fifteen (15) calendar days from the mailing of any Deficiency Notice
9 to postmark the response to any deficiencies in writing. The failure of a Settlement Class Member
10 to cure a deficiency shall invalidate an Exclusion Request, unless counsel for both of the Parties
11 stipulate otherwise.

12 46. Weekly Report. On a weekly basis, the Settlement Administrator will advise Class
13 Counsel and Defendant’s Counsel regarding the number of Exclusion Requests and/or Objections
14 that have been submitted. The Settlement Administrator shall be responsible for calculating the
15 Settlement Share for each Settlement Class Member, issuing payments to Settlement Class
16 Members, and performing all other settlement administration duties required by this Settlement
17 Agreement. Upon completion of the Notice Period, the Settlement Administrator shall provide
18 Class Counsel and Defendant’s Counsel with a report listing the amount of all payments to be
19 made to each Settlement Class Member. Proof of Payment will be filed with the Court and
20 provided to the Parties’ respective counsel.

21 47. Tax Payment. The Settlement Administrator shall withhold all payroll and income
22 taxes required by law to be withheld and/or paid on behalf of the employees from its distributions
23 to the Settlement Class, and report and remit the same to the appropriate government agencies.
24 The Settlement Administrator shall report individual settlement amounts to all required taxing and
25 other authorities, and issue IRS Forms W-2 and 1099. Upon completion of administration of the
26 Settlement, the Settlement Administrator shall provide written certification of such completion to
27 the Court and counsel for all Parties.

28 ///

1 48. Settlement Checks. Checks issued by the Settlement Administrator to Settlement
2 Class Members for their respective Settlement Shares shall be negotiable for one hundred and
3 twenty (120) calendar days. At the conclusion of the 120-day period the checks shall be void. A
4 Qualified Class Member's act of negotiating his or her Settlement Share for payment shall operate
5 as, and be deemed to express, the Qualified Class Member's intent to opt in, join, settle, and fully
6 release and discharge all of the Settlement Class Released Claims, including any claims the
7 Qualified Class Member may have under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

8 49. Uncashed Funds. With the sole exception of the residual, if any, resulting from any
9 Settlement Class Members' failure to deposit the check issued to them for their respective
10 Settlement Shares within the 120-day period provided above (hereafter, the "Residual"), the Parties
11 agree that Code of Civil Procedure section 384 ("Section 384") is not applicable to any portion of
12 the Gross Settlement Amount (including but not limited to any portion of the Net Settlement
13 Amount). Neither Plaintiff nor Class Counsel shall take, or cause any other person to take, a
14 position before the Court that Section 384 applies to any portion of the Gross Settlement Amount,
15 with the sole exception of the Residual. The Parties agree that any Residual will be distributed to
16 the nonprofit organization CASA of San Francisco County, a child advocacy program that places
17 Court Appointed Special Advocates For Children, and accordingly there will be no "unpaid cash
18 residue and unclaimed or abandoned funds" within the meaning of Section 384. However, in the
19 event the Residual is determined by the Court to constitute "unpaid cash residue and unclaimed or
20 abandoned funds" within the meaning of Section 384, the Residual shall be distributed in
21 compliance with Section 384, as directed by the Court after a hearing regarding the actual amount
22 paid to the class members, to the nonprofit organization CASA of San Francisco County.

23 **SETTLEMENT CLASS RELEASED CLAIMS AND PAGA RELEASE**

24 50. Other than the rights created by this Settlement Agreement, upon the Effective Date
25 and after full funding of the Gross Settlement Amount, Plaintiff and each Settlement Class Member
26 shall fully release and discharge the Released Parties for the entire Class Period from any and all
27 claims as follows:

28 ///

1 A. Released Class Claims: Settlement Class Members shall release the
2 Released Parties from causes of action, disputes, debts, liabilities, demands, obligations,
3 guarantees, costs, expenses, interest, attorneys' fees, penalties, and damages, whether suspected or
4 unsuspected, contingent or accrued, known or unknown, arising from the facts and claims set forth
5 in the Action, and occurring during the Class Period that were alleged or could have been alleged
6 based on the on the facts, claims, causes of action or legal theories pled in the operative pleading,
7 or which could have been alleged based on the factual allegations therein, specifically including:
8 Allegations of regular rate or overtime violations (including alleged failures to properly calculate
9 and pay overtime, redeemed sick leave, and meal period premiums), allegations of meal period
10 violations, and any claims for alleged violations of California Labor Code sections 201, 202, 203,
11 204, 210, 218, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1194, and 1198 and their subparts
12 and applicable IWC Wage Orders arising from the facts in the operative pleading; any derivative
13 claims for unpaid wages or penalties, and for unfair, unlawful, and fraudulent business practices
14 under the California Business and Professions Code sections 17200, *et seq.*; any other state or
15 federal statute, rule; and all related remedies of any nature whatsoever, including without limitation
16 all claims for restitution and other equitable relief, injunctive relief, statutory damages, liquidated
17 damages, exemplary damages, punitive damages, waiting-time penalties, statutory penalties, civil
18 penalties, interest, attorneys' fees, costs, or expenses (the "Released Class Claims").

19 No Class Member, other than Plaintiff, will waive/release any claims asserted on
20 behalf of the Unlawful Arbitration Agreement Class as outlined in the Action.

21 B. Released PAGA Claims: Upon entry of final judgment and Defendant
22 funding the Gross Settlement Amount, the Defendant and the Released Parties shall be entitled to a
23 release from the State of California of all PAGA claims for civil penalties pled or that could have
24 been pled based on the facts, claims, causes of action or legal theories pled in the operative
25 complaint or PAGA letters in the Action, or which could have been alleged based on the factual
26 allegations therein, that occurred during the PAGA Period as to the Aggrieved Employees and
27 expressly excluding all other claims, including claims for alleged failures to provide meal/rest
28 periods and/or properly pay meal/rest period premiums, claims for vested benefits, wrongful

1 termination, unemployment insurance, disability, social security, workers' compensation and
2 PAGA claims outside of the PAGA period. (the "Released PAGA Claims").

3 **PLAINTIFF'S GENERAL RELEASE OF ALL CLAIMS**

4 51. Other than the rights created by this Settlement Agreement, in addition to the
5 Released Class Claims and the Released PAGA Claims, Plaintiff individually and on behalf of
6 each of his executors, administrators, representatives, attorneys, successors and assigns knowingly
7 and voluntarily releases and forever discharges Defendant and the Released Parties, to the full
8 extent permitted by law, of and from any and all claims, known and unknown, asserted and
9 unasserted, which Plaintiff has or may have against the Released Parties as of the Effective Date of
10 this Settlement Agreement, including, but not limited to, any alleged violation of Title VII of the
11 Civil Rights Act of 1964; the Civil Rights Act of 1991; the Americans with Disabilities Act of
12 1990; the Age Discrimination in Employment Act of 1967; the Family and Medical Leave Act; the
13 Equal Pay Act; the California Family Rights Act – Cal. Gov't Code § 12945.2; the California Fair
14 Employment and Housing Act – Cal. Gov't Code § 12900 *et seq.*; the California Equal Pay Law –
15 Cal. Lab. Code § 1197.5; any provision of the California Labor Code, specifically including claims
16 pursuant to Labor Code section 432.6, and any other federal, state or local civil or human rights
17 law or any other federal, state or local law, regulation or ordinance; any public policy, contract, tort
18 or common law; or; any basis for fees or other expenses including attorneys' fees incurred in these
19 matters.

20 52. To affect a full and complete general release as described above, Plaintiff expressly
21 waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the State of
22 California, and does so understanding and acknowledging the significance and consequence of
23 specifically waiving section 1542. Section 1542 of the Civil Code of the State of California
24 provides, "**A general release does not extend to claims that the creditor or releasing party does**
25 **not know or suspect to exist in his or her favor at the time of executing the release and that, if**
26 **known by him or her, would have materially affected his or her settlement with the debtor or**
27 **released party.**" Thus, notwithstanding the provisions of section 1542, and to implement a full
28 and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this

1 Settlement Agreement is intended to include in its effect, without limitation, all claims Plaintiff
2 does not know or suspect to exist in their favor at the time of the Effective Date of this Settlement
3 Agreement, and that this Settlement Agreement contemplates the extinguishment of any such
4 claims.

5 **DUTIES OF THE PARTIES PRIOR TO PRELIMINARY APPROVAL**

6 53. The Parties shall promptly submit this Settlement Agreement to the Court in support
7 of a request for preliminary approval and determination by the Court as to its fairness, adequacy,
8 and reasonableness. Promptly upon execution of this Settlement Agreement, the Parties shall apply
9 to the Court for the entry of an order of preliminary approval, which shall:

10 A. Schedule a final fairness hearing on the question of whether the proposed
11 Settlement should be finally approved as fair, reasonable and adequate as to the Settlement Class.

12 B. Certify the Settlement Class for settlement purposes only;

13 C. Certify this action under Code of Civil Procedure section 382 and Rule
14 3.760, *et seq.*, of the California Rules of Court as a class action for settlement purposes only;

15 D. Approve as to form and content the proposed Class Notice;

16 E. Approve the Settlement Administrator and preliminarily approve the
17 estimated costs of settlement administration;

18 F. Direct the Settlement Administrator to mail the Class Notice by first class
19 mail to the Settlement Class Members;

20 G. Preliminarily approve the Settlement subject only to the Objections of
21 Settlement Class Members and final review by the Court;

22 H. Preliminarily approve Class Counsel's attorneys' fees and costs subject to
23 final review of the Court; and

24 I. Preliminarily approve the Plaintiff's service award subject to final review of
25 the Court.

26 **DUTIES OF THE PARTIES PRIOR TO FINAL APPROVAL**

27 54. In advance of the final approval hearing, Class Counsel will submit to the Court a
28 proposed order of final approval and Judgment, which shall:

1 A. Approve the Settlement, adjudging the terms thereof to be fair, reasonable
2 and adequate, and directing consummation of its terms and provisions;

3 B. Approve the award of attorneys' fees and costs to Class Counsel;

4 C. Approve the Service Award to Plaintiff as set forth in the Settlement; and

5 D. Approve the administration costs of the Settlement Administrator as set forth
6 in the Settlement.

7 **FINAL JUDGMENT AND CONTINUING JURISDICTION**

8 55. If the Court approves this Settlement at the Final Approval Hearing, the Parties shall
9 request that the Court enter the Final Judgment after the Settlement has been fully funded,
10 incorporating the terms of the Settlement in accordance with California Rules of Court, Rule
11 3.769(h). Pursuant to California Rule of Court 3.769(h), after granting final approval of the
12 Settlement, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment.

13 **PARTIES' AUTHORITY**

14 56. The signatories hereto hereby represent that they are fully authorized to enter into
15 this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

16 **MUTUAL FULL COOPERATION**

17 57. The Parties agree to fully cooperate with each other to accomplish the terms of this
18 Settlement Agreement, including but not limited to, execution of such documents and to take such
19 other action as may reasonably be necessary to implement the terms of this Settlement Agreement.
20 The Parties to this Settlement Agreement shall use their best efforts, including all efforts
21 contemplated by this Settlement Agreement and any other efforts that may become necessary by
22 order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth
23 herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall,
24 with the assistance and cooperation of Defendants and their counsel, take all necessary steps to
25 secure the Court's preliminary and then final approval of this Settlement.

26 **NO PRIOR ASSIGNMENTS**

27 58. The Parties hereto represent, covenant, and warrant that they have not directly or
28 indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any

1 person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
2 released and discharged except as set forth herein.

3 **NO ADMISSION OF LIABILITY**

4 59. Nothing contained herein, nor the consummation of this Settlement Agreement, is to
5 be construed or deemed an admission of liability, culpability, negligence or wrongdoing on the part
6 of Defendants. Defendants expressly deny that they have violated the law in any manner and
7 affirmatively assert that their wage and hour practices, and any other acts related to their
8 employees, are and have been in full compliance with all applicable statutes and regulations. This
9 Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code
10 section 1152, be inadmissible as evidence in any proceeding except a proceeding to enforce its
11 terms. Each of the Parties hereto has entered into this Settlement Agreement with the intention to
12 avoid further disputes and litigation with the attendant inconvenience and expenses.

13 **CONSTRUCTION**

14 60. The Parties hereto agree that the terms and conditions of this Settlement Agreement
15 are the result of lengthy, arms-length negotiations between the Parties, and that this Settlement
16 Agreement shall not be construed in favor of or against any party by reason of the extent to which
17 any party or her or its counsel participated in this drafting of this Settlement Agreement.

18 **CAPTIONS AND INTERPRETATIONS**

19 61. Paragraph titles or captions contained herein are inserted as a matter of convenience
20 and for reference, and in no way define, limit, extend, or describe the scope of this Settlement
21 Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not
22 merely a recital.

23 62. This Settlement Agreement shall be subject to and governed by the laws of the State
24 of California. The Parties acknowledge that they are subject to the continuing jurisdiction of the
25 Court to enforce the terms of the Settlement contained herein.

26 **MODIFICATION**

27 63. This Settlement Agreement may not be changed, altered, or modified, except in
28 writing and signed by counsel of the Parties hereto, and approved by the Court. This Settlement

1 Agreement may not be discharged except by performance in accordance with its terms or by a
2 writing signed by the Parties hereto.

3 **DEFENDANT'S RIGHT TO RESCISSION**

4 64. Notwithstanding any other provision of this Settlement Agreement, Defendant
5 retains the right, in the exercise of its sole discretion, to nullify the Settlement within ten (10)
6 calendar days of the expiration of the Notice Period, if three percent (3%) or more of the Class
7 Members timely exclude themselves from this Settlement. If Defendant wishes to exercise this
8 right, Defendant must do so by written notice sent by mail or electronic mail to Class Counsel
9 within the ten (10) calendar day period. None of the Parties or respective counsel shall, directly or
10 indirectly, solicit or otherwise encourage Class Members to exclude themselves from the
11 Settlement. In the event of such a rescission, no party may use the fact that the Parties agreed to
12 settle this case in any future proceeding in this Action or any other action, including but not limited
13 to, in support of a motion for class certification or as evidence of Defendant's liability in this
14 lawsuit or the lack thereof.

15 **INTEGRATION CLAUSE**

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

21 **BINDING ON ASSIGNS**

22 66. This Settlement Agreement shall be binding upon and inure to the benefit of the
23 Parties hereto and their respective heirs, trustees, executors, administrators, successors, and
24 assigns, including, but not limited to, Misfits Market, Inc.

25 **SIGNATORIES**

26 67. It is agreed that because of the large number of Class Members, it is impossible or
27 impractical to have each Settlement Class Member execute this Settlement Agreement. The Class
28

1 Notice will advise all Class Members of the binding nature of the release and such shall have the
2 same force and effect as if this Settlement Agreement were executed by each Class Member.

3
4 **COUNTERPARTS**

5 68. This Settlement Agreement may be executed in counterparts, and when each party
6 has signed and delivered at least one such counterpart, each counterpart shall be deemed an
7 original, and, when taken together with other signed counterparts, shall constitute one Settlement
8 Agreement, which shall be binding upon and effective as to all Parties. Copies of the executed
9 Settlement Agreement shall be effective for all purposes as though the signatures contained therein
10 were original signatures.

11 DATED: 1/29/2024, 2024

DocuSigned by:

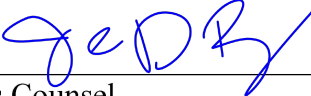
252FCEAD532346A
Delvin Reed, Plaintiff

12
13 DATED: _____, 2024

Authorized Agent for Defendant, Imperfect Foods, Inc.

14
15
16 **APPROVED AS TO FORM:**

17
18
19 DATED: January 30, 2024


Class Counsel
Robert J. Wassermann
Jenny D. Baysinger

20
21
22 DATED: _____, 2024

Counsel for Defendant
Ryan M. Estes
DLA Piper, LLP (US)

1 Notice will advise all Class Members of the binding nature of the release and such shall have the
2 same force and effect as if this Settlement Agreement were executed by each Class Member.

3
4 **COUNTERPARTS**

5 68. This Settlement Agreement may be executed in counterparts, and when each party
6 has signed and delivered at least one such counterpart, each counterpart shall be deemed an
7 original, and, when taken together with other signed counterparts, shall constitute one Settlement
8 Agreement, which shall be binding upon and effective as to all Parties. Copies of the executed
9 Settlement Agreement shall be effective for all purposes as though the signatures contained therein
10 were original signatures.

11 DATED: _____, 2024

12 Delvin Reed, Plaintiff

13 DATED: Feb. 2 _____, 2024

DocuSigned by:

Jill Savage

241203DDE8FB436...

14 Authorized Agent for Defendant, Imperfect Foods, Inc.

15
16 **APPROVED AS TO FORM:**

17
18
19 DATED: _____, 2024

20 Class Counsel
Robert J. Wassermann
Jenny D. Baysinger

21
22 DATED: February 2, 2024

Ryan Estes

23 Counsel for Defendant
Ryan M. Estes
24 DLA Piper, LLP (US)

EXHIBIT A

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
AND HEARING DATE FOR FINAL COURT APPROVAL**

**(Reed v. Imperfect Foods, Inc., Superior Court of California, County of San Francisco, Case
No. CGC-20-588656)**

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT
ACT. PLEASE READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. If the Settlement is approved by the Court, your estimated Settlement Share is: \$<<__>>. See the explanation in Section 5 below. If you do nothing, you will be considered a Settlement Class Member and will be part of the Settlement as explained more fully below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. In exchange for the Settlement Share payment, you will release the Released Class Claims as detailed in Section 4 below. If your address has changed, you must notify the Settlement Administrator as explained in Section 6 below.
Exclude Yourself The Response Deadline is 	To exclude yourself, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will not receive any Settlement Share and you will not be bound by the Settlement; however, if you were employed during the PAGA Period, you will still be paid your individual PAGA Payment and will release the Released PAGA Claims regardless of whether you submit a request for exclusion. If you choose to exclude yourself, you must notify the Settlement Administrator as explained in Section 7 below.
Object The Response Deadline is 	Write to the Court about why you object to or do not agree with the Settlement and/or appear at the Final Approval Hearing to make an oral objection. Instructions are provided in Section 8 below.

1. Why did I get this Notice?

A proposed class action settlement of the above-captioned action (the “Settlement”) pending in the Superior Court of the State of California, in and for the County of San Francisco (the “Court”) has been reached between Plaintiff Delvin Reed (“Plaintiff”) and Defendant Imperfect Foods, Inc. (“Defendant”) and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

You have received this Class Notice because you have been identified as a member of one or more of the following groups within the Settlement Class defined as follows:

Post-Ibrihim Non-Exempt Class which includes all current and former California non-exempt employees of Defendant who worked at least one shift between April 24, 2019 and November 10, 2023 (the “Post-Ibrihim Timeframe”); and

Bonus Class which includes all current and former non-exempt California employees of Defendant who earned a Quarterly Bonus during a workweek when he or she also either: (i) worked overtime; (ii) redeemed paid sick leave; or (iii) was paid a meal period premium on at least one occasion between December 29, 2016 and November 10, 2023 (the “Bonus Timeframe”).

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Class Notice carefully as your rights may be affected by the Settlement. To exclude yourself from, or object to, the Settlement you must take action by certain deadlines. If you want to be part of the Settlement, you don’t need to do anything to obtain your Settlement Share. Defendant will not retaliate against you for any actions you take with respect to the Settlement.

2. What is this class and representative action lawsuit about?

On December 29, 2020, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of San Francisco, Case No. CGC-20-588656 (the “Action”), alleging the following claims against Defendant: failure to properly calculate and pay overtime, failure to provide meal periods and associated premiums, failure to properly calculate and pay sick leave wages, failure to furnish accurate itemized wage statements, failure to timely pay all wages due and owing at the end of employment and, unlawful business practices (the “Class Claims”). On September 13, 2021, Plaintiff amended his complaint to add a class allegation for alleged violation of Government Code section 12953 (the “Arbitration Agreement Class Claim”) and a claim seeking to assess and collect civil penalties pursuant to the PAGA arising out of the Class Claims.

Defendant denies and disputes all claims pending in the Action. Specifically, Defendant contends Plaintiff and the Settlement Class were properly compensated for wages, including sick pay wages, under California law; that Plaintiff and the Settlement Class were provided meal periods and/or premiums in compliance with California law; that Defendant complied with California wage statement and requirements; that Defendant is not liable for any damages or penalties claimed or that could be claimed in the Action; and that this Action cannot be maintained as a class action.

The Court granted preliminary approval of the Settlement on [REDACTED], 2024. At that time, the Court also preliminarily approved Plaintiff to serve as Class Representative and the law firm of Mayall Hurley P.C. to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of One Million One Hundred Forty-Seven Thousand Eight Hundred Dollars (\$1,147,800) (the “Gross Settlement Amount”) to fund the settlement of this Action. The Gross Settlement Amount includes all payments of Settlement Shares to Settlement Class Members, the costs of the Settlement Administrator, Class Counsel’s reasonable attorneys’ fees, expenses, and costs, Plaintiff’s Service Award, and the PAGA Payment. Any employer-side payroll taxes on the portion of the Settlement Shares allocated to wages shall be separately paid by Defendant.

Within thirty (30) calendar days of the Effective Date, Defendant will fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. The “Effective Date” is the

latter of: (a) the Court’s final approval of the Settlement if no objections by or on behalf of Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or has been withdrawn; or (c) the final resolution of any appeal that has been filed. Fourteen (14) calendar days after the settlement is funded, the Settlement Administrator will mail checks for the Settlement Shares to Settlement Class Members.

Amounts to be Paid From the Gross Settlement Amount. The following proposed payments, subject to Court approval, will be deducted from the Gross Settlement Amount before Settlement Shares are made to Class Members who do not request exclusion (“Settlement Class Members”):

- Settlement Administration Costs. Payment to the Settlement Administrator, estimated not to exceed \$16,000, for expenses, including expenses of notifying the Class Members of the Settlement, processing exclusion requests and objections, distributing Settlement Shares, the PAGA Payment, and tax forms, and handling inquiries and uncashed checks.
- Class Counsel’s Reasonable Attorneys’ Fees, Expenses, and Costs. Payment to Class Counsel of reasonable attorneys’ fees not to exceed one-third of the Gross Settlement Amount, which is presently \$382,600, and an additional amount to reimburse actual litigation costs incurred by the Plaintiff not to exceed \$20,000. Class Counsel has been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money) and has been paying all litigation costs and expenses. The amounts stated are what Class Counsel will request and the final amounts paid will be decided by the Court at the Final Approval Hearing.
- Class Representative Service Award. A Class Representative Service Award in an amount not to exceed \$15,000 to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook. The amount stated is what Plaintiff will request and the final amount paid will be decided by the Court at the Final Approval Hearing.
- PAGA Payment. A payment of \$80,000 relating to the claim for penalties under the Private Attorney Generals Act (“PAGA”), \$60,000 of which will be paid to the State of California’s Labor and Workforce Development Agency (“LWDA Payment”). The remaining \$20,000 will be distributed to Class Members employed during the PAGA Period (November 19, 2019 through November 10, 2023) based on the number of pay periods worked during the PAGA Period. Class Members employed during the PAGA Period will receive a pro rata distribution of the PAGA Payment, regardless of whether they submit a Request for Exclusion and will be subject to the PAGA Release.

Calculation of Payments to Class Members. After all of the payments of the Court-approved Class Counsel’s Reasonable Attorneys’ Fees, Expenses and Costs, the Class Representative Service Award, the PAGA Payment, and the Settlement Administration Costs are deducted from the Gross Settlement Amount, the remaining portion, called the “Net Settlement Amount”, shall be distributed as Settlement Shares to Settlement Class Members. The Net Settlement Amount is estimated to be at least \$634,200. The Net Settlement Amount will be allocated between the Post-*Ibrihim* Non-Exempt Class and the Bonus Class as follows:

Post- <i>Ibrihim</i> Non-Exempt Class:	55% of the Net Settlement Amount
Bonus Class:	45% of the Net Settlement Amount

Individual Settlement Shares from the Net Settlement Amount will be calculated as follows:

The Settlement Share for each participating Post-*Ibrihim* Non-Exempt Class Member will be determined by the number of workweeks worked by the Participating Post-*Ibrihim* Non-Exempt Class Member during the Post-*Ibrihim* Timeframe in proportion to the total workweeks worked by all Post-*Ibrihim* Class Members during that timeframe. Post-*Ibrihim* Non-Exempt Class Members whose employment has ended will receive credit for an additional five (5) Workweeks in order to account for his/her potential waiting time penalty claim.

The Settlement Share for each participating Bonus Class Member will be determined by dividing the total dollar amount apportioned to the Bonus Class by the total number of Workweeks worked by the participating Bonus Class Members during the Bonus Timeframe, resulting in a payment ratio. A workweek will be any week during which the Bonus Class Member worked at least one day/shift and each individual Bonus Class Member will be credited with at least one Workweek. The ratio will then be multiplied by the number of Workweeks each individual participating Bonus Class Member was employed to determine his or her individual Settlement Share. Bonus Class Members whose employment has ended will receive credit for an additional five (5) Workweeks in order to account for his/her potential waiting time penalty claim.

If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Settlement Share to the same address as this Class Notice. In addition, if the Settlement is approved by the Court and you were employed during the PAGA Period, you will automatically be mailed a check for your individual share of the PAGA Payment. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. For tax purposes, the Settlement Shares shall be allocated as follows: (1) the Settlement Share for each participating Post-*Ibrihim* Class Member shall be allocated 25% to wages and 75% to penalties; and (2) the Settlement Share for each participating Bonus Class Member shall be allocated 25% to wages and 75% to penalties. Neither Class Counsel nor Defendant's Counsel intend anything contained in this Class Notice to constitute advice regarding taxes or taxability. The tax issues for each Settlement Class Member are unique to him/her, and each Settlement Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court granting final approval of the Settlement and entering the Judgment.

4. What Do I Release Under the Settlement?

Upon the Effective Date, Settlement Class Members will release claims against: (i) Defendant; (ii) each of Defendant's respective past, present and future parents, subsidiaries, and affiliates including, without limitation, any corporation, limited liability company, partnership, trust, foundation, and non-profit entity which controls, is controlled by, or is under common control with Defendant; (iii) Defendant's successor Misfits Market, Inc.; (iv) the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit

plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (v) any individual or entity which could be jointly liable with any of the foregoing (the “Released Parties”) as follows:

Released Class Claims: Settlement Class Members shall release the Released Parties from causes of action, disputes, debts, liabilities, demands, obligations, guarantees, costs, expenses, interest, attorneys’ fees, penalties, and damages, whether suspected or unsuspected, contingent or accrued, known or unknown, arising from the facts and claims set forth in the Action, and occurring during the Class Period that were alleged or could have been alleged based on the on the facts, claims, causes of action or legal theories pled in the operative pleading, or which could have been alleged based on the factual allegations therein, specifically including: Allegations of regular rate or overtime violations (including alleged failures to properly calculate and pay overtime, redeemed sick leave, and meal period premiums), allegations of meal period violations, and any claims for alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 218, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1194, and 1198 and their subparts and applicable IWC Wage Orders arising from the facts in the operative pleading; any derivative claims for unpaid wages or penalties, and for unfair, unlawful, and fraudulent business practices under the California Business and Professions Code sections 17200, *et seq.*; any other state or federal statute, rule; and all related remedies of any nature whatsoever, including without limitation all claims for restitution and other equitable relief, injunctive relief, statutory damages, liquidated damages, exemplary damages, punitive damages, waiting-time penalties, statutory penalties, civil penalties, interest, attorneys’ fees, costs, or expenses (the “Released Class Claims”).

No Class Member, other than Plaintiff, will waive/release any claims asserted on behalf of the Unlawful Arbitration Agreement Class as outlined in the Action.

In addition, a Settlement Class Member’s act of negotiating his or her Settlement Share for payment shall operate as, and be deemed to express, the Settlement Class Member’s intent to opt in, join, settle, and fully release and discharge all of the Settlement Class Released Claims, including any claims the Settlement Class Member may have under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

If you do not timely exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant and/or any other Released Party about any of the Released Claims resolved by the Settlement. It also means that all of the Court’s orders in the Action will apply to you and legally bind you.

Released PAGA Claims by All Class Members: Upon entry of final judgment and Defendant funding the Gross Settlement Amount, the Defendant and the Released Parties shall be entitled to a release from the State of California of all PAGA claims for civil penalties pled or that could have been pled based on the facts, claims, causes of action or legal theories pled in the operative complaint or PAGA letters in the Action, or which could have been alleged based on the factual allegations therein, that occurred during the PAGA Period as to the Aggrieved Employees and expressly excluding all other claims, including claims for alleged failures to provide meal/rest periods and/or properly pay meal/rest period premiums, claims for vested benefits, wrongful insurance, disability, social security, workers’ compensation and PAGA claims outside of the PAGA period. (the “Released PAGA Claims”).

5. How much will my payment be?

Defendant's records reflect that you have worked << [redacted] >> workweeks for Defendant as a Post-Ibrihim Class Member; << [redacted] >> workweeks for Defendant as a Bonus Class Member; and that you have/have not had your employment with Defendant end during the respective Timeframe.

Based on this information, your estimated Settlement Share [and portion of the PAGA Payment] from the Net Settlement Amount is << [redacted] >>.

If you wish to challenge the information set forth above, then you must submit a written and signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Class Notice no later than _____ [forty-five (45) days after the mailing of the Class Notice or 15 days after re-mailing, whichever is later] ("Response Deadline").

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. Following final approval of the Settlement by the Court, a check for your Settlement Share will be mailed automatically to the same address as this Class Notice. Similarly, if you were employed during the PAGA Period, payment for your individual share of the PAGA Payment will be mailed automatically following final approval of the Settlement by the Court. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator can be contacted at: _____ or (800) _____.

The Court will hold a Final Approval Hearing on _____ at _____ a.m./p.m. to decide whether to approve the Settlement and fix the amounts to be paid as attorneys' fees and costs to Class Counsel, the service award to Plaintiff, the costs for settlement administrator, and the PAGA Payment. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed approximately 45 days after this hearing. If there are objections or appeals, resolving them can take time, usually more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may request exclusion from the Settlement or "opt out." **If you opt out, you will not receive a Settlement Share from the Settlement, and you will not be bound by the Settlement which means you will retain the right to sue Defendant for the Released Class Claims.** However, you will still be paid your individual portion of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless of whether you submit a request for exclusion from the Settlement.

To opt out, you must mail to the Settlement Administrator, by First Class Mail, a written, signed and dated request to opt-out postmarked no later than the Response Deadline, which is _____ [forty-five (45) days after the mailing of the Class Notice or 15 days after re-mailing, whichever is later]. The request to opt-out: (i) must be made in writing; (ii) must contain the name and sufficient information to verify the individual's identity in the opinion of the Settlement Administrator, which may include address, telephone number, and/or last four digits of the social security number of the Class Member requesting exclusion; (iii) must be signed by the Class Member who is electing to be excluded; and (iv) must be mailed to the Settlement

Administrator on or before the end of the Notice Period. Please include the name and number of the case, which is *Reed v. Imperfect Foods, Inc.*, Case No. CGC-20-588656. The request to opt-out must be signed by you. No other person may opt-out for a living member of the Class.

The address for the Settlement Administrator is [REDACTED]. Written requests for exclusion that are postmarked after [REDACTED], or are incomplete or unsigned may be rejected; and if so, those Class Members will remain bound by the Settlement and the Released Class Claims described above.

8. How do I tell the Court that I don't agree with the Settlement?

Any Class Member who has not opted out and believes the Settlement should not be finally approved by the Court for any reason may object to the proposed Settlement, including the attorneys' fees, costs, and administration expenses, the service award, and/or the PAGA Payment, in writing. Objections must be made in writing and include the objector's full name, address, and the basis for any Objection and, if the objector is represented by counsel, the name and address of the objector's counsel. The Objection must also state whether the Settlement Class Member intends to appear at the final approval hearing and present oral argument. At the Court's discretion, any Settlement Class Member who has not complied with these requirements may not be heard at the final approval hearing. Any Settlement Class Member who fails to comply with these requirements will be deemed to have waived any right to submit an Objection to the Settlement Agreement. All written objections or other correspondence should also state the name and number of the case, which is *Reed v. Imperfect Foods, Inc.*, San Francisco Superior Court Case No. CGC-20-588656.

All written objections must be mailed to the Settlement Administrator at [REDACTED], no later than [REDACTED] [forty-five (45) days after the mailing of the Class Notice or 15 days after re-mailing, whichever is later].

To object to the Settlement, you must not opt out, and if the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object and you will still be mailed a check for your Settlement Share.

The addresses for Parties' counsel are as follows:

Class Counsel:

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Jenny D. Baysinger
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9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at _____ a.m./pm. on _____, 2024 at the San Francisco County Superior Court, located at 400 McAllister Street, San Francisco, California 94102, in Department _____ before Judge _____. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to fix the amounts to be paid as attorneys' fees and costs to Class Counsel, the service award to Plaintiff, the settlement administration costs, and the PAGA Payment. If there are objections, the Court will consider them. This hearing may be rescheduled by the Court without further notice to you. If you are interested in participating in the Final Approval Hearing, you should confirm the date, time and location by contacting Class Counsel. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at _____ or write to *Reed v. Imperfect Foods, Inc.* Settlement Administrator, c/o _____; or contact Class Counsel.

This Class Notice summarizes the proposed settlement. You may also get more details by examining the Court's file on the Internet via the public webpage for the San Francisco County Superior Court (<https://webapps.sftc.org>) and entering the Case No. CGC-20-588656. If you wish to view the Court files in person, you can go to the Clerk's Office at 400 McAllister Street, San Francisco, California 94102.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your Settlement Share and portion of the PAGA Allocation.
- Settlement checks will be null and void if not cashed within one hundred twenty (120) days after its mailing. In such event, the Settlement Administrator shall pay all unclaimed funds to the nonprofit organization CASA of San Francisco County, a child advocacy program that places Court Appointed Special Advocates For Children (website is www.sfcasa.org).
- If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.