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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

EDUARDO LEE, individually, and on behalf
of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act

Plaintiff,

v.

DEL MONACO FOODS, INC., an unknown
business entity; DEL MONACO SPECIALTY
FOODS, INC., an unknown business entity;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: 19CV347471

Honorable Sunil R. Kulkarni
Department 1

CLASS ACTION

**DECLARATION OF EDWIN AIWAZIAN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

[Plaintiff's Motion for Preliminary Approval of
Class Action Settlement; Declaration of
Proposed Class Representative (Edwardo Lee);
and [Proposed] Order filed concurrently
herewith]

Date: March 10, 2022
Time: 1:30 p.m.
Department: 1

Complaint Filed: May 3, 2019
FAC Filed: November 12, 2019
SAC Filed: March 1, 2021
Trial Date: None Set

DECLARATION OF EDWIN AIWAZIAN

I, Edwin Aiwarzian, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers for Justice, PC, attorneys of record for Plaintiff Edwardo Lee. The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would competently testify thereto.

EDUCATION

2. In May of 2004, I graduated from *Pepperdine University School of Law* with a Juris Doctor degree. I have extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, I have previously served as a *pro bono* mediator for the Los Angeles Superior Court. In October of 2000, I obtained a Litigation Paralegal Certificate from the *UCLA Extension Program*. During the summer of 2000, I studied Legal Writing at *Harvard University*. In April of 1999, I obtained a Bachelor of Arts degree in Communication with a concentration in Natural Sciences from *Pepperdine University*.

JUDICIAL EXTERNSHIPS

3. From approximately September 2002 to approximately December 2002, I served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the *United States Court of Appeals for the Ninth Circuit*. From approximately June 2002 to approximately August 2002, I served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the *California Court of Appeal for the Second Appellate District*.

LITIGATION AND CLASS ACTION EXPERIENCE

4. In December of 2004, I obtained a license to practice law from the California State Bar. From approximately December 2004 to approximately August 2008, I was employed by the law firm of *Girardi & Keese*.

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1 5. At *Girardi & Keese*, my practice focused on class actions and other complex cases
2 involving toxic torts and products liability. In addition, I gained substantial experience on cases
3 involving insurance bad faith, premises liability, and medical negligence. While employed by
4 *Girardi & Keese*, I argued approximately 100 motions, took or defended approximately 150
5 depositions, and prepared dozens of expert witnesses for deposition or trial.

6 6. Since its inception, in or around October of 2008, *Lawyers for Justice, PC* has almost
7 exclusively focused on the prosecution of consumer and employment class actions, involving
8 wage-and-hour claims, race discrimination, unfair business practices or consumer fraud.
9 Currently, we are the attorneys of record in over a dozen employment-related putative class actions
10 in both state and federal courts in the State of California. Our firm has successfully litigated cases
11 involving the executive, administrative, and other overtime exemptions to the State of California
12 and federal overtime compensation requirements. During this relatively short time, in association
13 with other law firms, we have recovered millions of dollars on behalf of thousands of individuals
14 in California.

15 **EXAMPLES OF CLASS ACTION RESULTS**

16 7. What follows are just a few examples of the type of results we have achieved on
17 behalf of our clients:

18 a) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
19 and-hour class and representative action against a major property management company involving
20 allegations of misclassification of various “manager” positions. On September 20, 2010, the court
21 granted final approval of the class and representative action settlement. The Los Angeles County
22 Superior Court Case Number is BC400414.

23 b) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
24 and-hour class action against a national retailer involving allegations of misclassification of the
25 “Assistant Store Manager” position. On October 28, 2010, the court granted final approval of the
26 class action settlement. The Los Angeles County Superior Court Case Number is BC413498.

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1 c) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
2 and-hour class and representative action against a national property management company
3 involving allegations of misclassification of the “Property Manager” position. On May 23, 2012,
4 the court granted final approval of the class and representative action settlement. The Los Angeles
5 County Superior Court Case Number is BC430918.

6 d) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
7 and-hour class action against a national retailer involving allegations of misclassification of the
8 “Store Manager” position. On June 10, 2011, the court granted plaintiffs’ motion for class
9 certification. On August 26, 2013, the court granted final approval of the class action settlement.
10 The Los Angeles County Superior Court Case Number is BC424012.

11 e) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
12 and-hour class and representative action against a bank, involving allegations of misclassification
13 of the “Assistant Branch Manager” position. On August 27, 2013, the court granted final approval
14 of the class and representative action settlement. The Kern County Superior Court Case Number
15 is S-1500-CV-273194-LHB.

16 f) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
17 and-hour class and representative action against a national wholesale distributor of plumbing and
18 builder supplies, involving allegations of misclassification of multiple salaried “manager”
19 positions. On May 22, 2014, the court granted final approval of the class and representative action
20 settlement. The Sacramento County Superior Court Case Number is 34-2012-00136285.

21 g) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
22 and-hour class action involving allegations of misclassification of the “Operations Manager”
23 position. On September 16, 2014, the court granted plaintiffs’ motion for class certification. The
24 Los Angeles County Superior Court Case Number is BC478769.

25 h) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
26 and-hour class and representative action against a national retailer of household items, on behalf
27 of hourly-paid or non-exempt employees. On May 27, 2015, the court granted final approval of
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1 the class and representative action settlement. The San Francisco County Superior Court Case
2 Number is CGC-13-532344.

3 i) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
4 and-hour class action involving allegations of misclassification of the salaried residential
5 “Property Manager” position. On September 17, 2015, the court granted plaintiffs’ motion for
6 class certification. The Los Angeles County Superior Court Case Number is BC474784.

7 j) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
8 and-hour class and representative action against a national retailer of upscale hardware and home
9 furnishings, on behalf of non-exempt employees. On April 28, 2016, the court granted final
10 approval of the class and representative action settlement. The Los Angeles County Superior
11 Court Case Number is JCCP4794.

12 k) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
13 and-hour class and representative action against a national retailer of apparel and fashion
14 accessories, on behalf of non-exempt employees. On August 5, 2016, the court granted final
15 approval of the class and representative action settlement. The Los Angeles County Superior
16 Court Case Number is BC488069.

17 l) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
18 and-hour class action against a national retailer of apparel, accessories, and home products,
19 involving allegations of misclassification of the “Department Manager” position. On August 12,
20 2016, the court granted plaintiffs’ motion for class certification in part and certified a class. The
21 Alameda County Superior Court Case Number is RG13680477.

22 m) Our firm represented the plaintiff in a representative action under the Private
23 Attorneys General Act, against a real estate and property management company, on behalf of non-
24 exempt employees. On November 4, 2016, the Court granted approval of the settlement. The
25 Orange County Superior Court Case Number is 30-2015-00775439-CU-OE-CXC.

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1 n) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
2 and-hour class action against a full-service bank, on behalf of non-exempt employees. On
3 November 18, 2016, the court granted final approval of the class action settlement. The San
4 Francisco County Superior Court Case Number is CJC-13-004839.

5 o) Our firm represented the plaintiffs in a wage-and-hour class and
6 representative action against a foodservice distributor, on behalf of non-exempt employees. On
7 January 26, 2017, the court granted final approval of the class and representative action settlement.
8 The San Bernardino County Superior Court Case Number is CIVDS1507260.

9 p) Our firm, on behalf of the plaintiff and respondent in a PAGA representative
10 action, successfully opposed in the trial court, and briefed and argued an appeal with respect to the
11 employer's motion to compel arbitration, which resulted in a published opinion by the California
12 Court of Appeal in favor of employees. *Roberto Betancourt v. Prudential Overall Supply*, 9
13 Cal.App.5th 439 (Cal. App. 4th Dist., Mar. 7, 2017), review denied, cert. denied (U.S. Supreme
14 Court Docket No. 17-254).

15 q) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
16 and-hour class and representative action against a consumer packaging company, on behalf of non-
17 exempt employees. On March 10, 2017, the court granted final approval of the class and
18 representative action settlement. The Los Angeles County Superior Court Case Number is
19 BC590429.

20 r) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
21 and-hour class action and representative action against a manufacturer of food service industry
22 supplies on behalf of non-exempt employees. On April 14, 2017, the court granted final approval
23 of the class and representative action settlement. The Orange County Superior Court Case Number
24 is 30-2015-00810013-CU-OE-CXC.

25 s) Our firm represented the plaintiff in a wage-and-hour class and
26 representative action against a property management company, on behalf of non-exempt
27 employees. On June 14, 2017, the court granted final approval of the class and representative
28 action settlement. The Los Angeles County Superior Court Case Number is BC586234.

1 t) Our firm represented the plaintiffs in a wage-and-hour class action and
2 representative action against a food company on behalf of non-exempt employees. On June 30,
3 2017, the court granted final approval of the class and representative action settlement. The
4 Sacramento County Superior Court Case Number is 34-2015-00175871.

5 u) Our firm represented the plaintiffs in a wage-and-hour class action and
6 representative action against a chocolate company on behalf of non-exempt employees. On July
7 19, 2017, the court granted final approval of the class and representative action settlement. The
8 Alameda County Superior Court Case Number is RG15764300.

9 v) Our firm represented the plaintiffs in a wage-and-hour class action and
10 representative action against a manufacturer of plastic containers on behalf of non-exempt
11 employees. On October 31, 2017, the court granted final approval of the class and representative
12 action settlement. The Los Angeles County Superior Court Case Number is BC577233.

13 w) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-
14 hour class action and representative action against a property management company on behalf of
15 hourly-paid and non-exempt employees. On January 4, 2018, the court entered an order granting
16 final approval of the class and representative action settlement. The Los Angeles County Superior
17 Court Case Number is JCCP 4819.

18 x) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-
19 hour class action and representative action against a global provider of flexible office space
20 solutions. On February 15, 2018, the court entered an order granting final approval of the class
21 and representative action settlement. The Los Angeles County Superior Court Case Number is
22 BC498401.

23 y) Our firm, in association with co-counsel, represented the plaintiff in a wage-
24 and-hour class action against a container manufacturer, on behalf of non-exempt employees. On
25 October 15, 2018, the court granted the plaintiff's motion for class certification. The Tulare County
26 Superior Court Case Number is VCU264528.

27 z) Our firm represented the plaintiffs in a wage-and-hour class and representative
28 action against a behavioral health service provider on behalf of non-exempt employees. On

1 November 13, 2018, the court granted final approval of the class and representative action
2 settlement. The Alameda County Superior Court Case Number is RG16811450.

3 aa) Our firm, in association with co-counsel, represented the plaintiff in a representative
4 action under the Private Attorneys General Act, against a global provider of products and services
5 to the energy industry, on behalf of hourly-paid and non-exempt employees. On November 19,
6 2018, the Court granted approval of the settlement. The Kern County Superior Court Case Number
7 is S-1500-CV-280215-SDC.

8 bb) Our firm represented the plaintiff in a wage-and-hour class action against a
9 parking company on behalf of non-exempt employees. On September 3, 2019, the court granted
10 the plaintiff's motion for class certification and certified a class. The Santa Clara County Superior
11 Court Case Number is 16CV292208 and the Judicial Council Coordination Proceeding Number is
12 JCCP 4886.

13 cc) Our firm, in association with other counsel, on behalf of the plaintiff and
14 respondent in a PAGA representative action, successfully opposed in the trial court, and briefed
15 and argued an appeal with respect to the employer's motion to compel arbitration, resulting in a
16 notable decision from the California Supreme Court clarifying the law and finding, in part, that
17 employer arbitration agreements are unenforceable where they block a PAGA claim from
18 proceeding, *ZB, N.A. v. Superior Court*, 8 Cal.5th175 (2019).

19 dd) Our firm represented the plaintiffs in a wage-and-hour class and
20 representative action against a bank on behalf of non-exempt employees. On September 27, 2019,
21 the court granted the plaintiffs' motion for class certification in part and certified a class. The
22 Alameda County Superior Court Case Number is RG15757606 and the Judicial Council
23 Coordination Proceeding Number is JCCP 4921.

24 ee) Our firm represented the plaintiffs in a wage-and-hour class and
25 representative action against a national retailer of apparel and fashion accessories, on behalf of
26 non-exempt employees. On October 9, 2019, the court granted the plaintiffs' motion for class
27 certification in part and certified a class. The Sacramento County Superior Court Case Number is
28 34-2015-00175330-CU-OE-GDS.

ff) Our firm represented the plaintiff in a wage-and-hour class and representative action against a medical equipment supplier on behalf of non-exempt employees. On February 13, 2020, the court granted the plaintiff's motion for class certification and certified a class. The San Bernardino County Superior Court Case Number is CIVDS1505744.

gg) Our firm, in association with other counsel, represented the plaintiff in a wage-and-hour class and PAGA representative action against a large national drug testing laboratory on behalf of non-exempt employees. On February 21, 2020, the court granted the plaintiff's motion for class certification and certified a class. The San Diego County Superior Court Case Number is 37-2018-00019611-CU-OE-CTL.

hh) Our firm represented the plaintiffs in a wage-and-hour class and representative action against a national retailer of sportswear, footwear, and camping equipment on behalf of non-exempt employees. On March 16, 2020, the court granted in part the plaintiff's motion for class certification and certified a class. The Riverside County Superior Court Case Number is RICJCCP4930.

ii) Our firm represents the plaintiff in a wage-and-hour class action against a nutritional products manufacturer on behalf of non-exempt production line employees. On December 13, 2021, the court granted the plaintiff's motion for class certification in part and certified a class. The Solano County Superior Court Case Number is FCS051001.

PRELIMINARY APPROVAL

8. Marked and attached hereto as "**EXHIBIT 1**" is the Joint Stipulation of Class Action and PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiff Edwardo Lee ("Plaintiff"), individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendants Del Monaco Foods, Inc. and Del Monaco Specialty Foods, Inc. ("Defendants"), on the other hand (collectively, the "Parties"). The Parties and their counsel have approved the proposed Notice of Class Action and PAGA Settlement ("Notice"), which is attached to the Settlement Agreement as "Exhibit 1" and respectfully request that the Court approve it as well.

9. Based on information provided by Defendants, as of July 22, 2020, the Class is

1 estimated to consist of approximately four hundred fifty (450) individuals.

2 10. The effectiveness of Lawyers *for* Justice, PC (“Class Counsel”) in prosecuting this
3 matter has translated into tangible monetary benefits for the Class Members in the following
4 respects: (1) Class Members recover over a reasonably short period of time as opposed to waiting
5 additional years for the same, or possibly worse, result; (2) a guaranteed result that compares
6 favorably with other similar class action settlements of this type given the strengths and
7 weaknesses of the case; and (3) significant savings in Class Counsel’s fees and/or costs that would
8 have only increased significantly had the case progressed through certification, trial, and/or
9 appeals.

10 11. Class Counsel has litigated the case for over two years, and was actively preparing
11 the matter for class certification and trial. The Parties have engaged in extensive settlement
12 negotiations and participated in a formal, full-day mediation on July 28, 2020, conducted by
13 Jeffrey Krivis, Esq., a well-respected mediator experienced in mediating complex labor and
14 employment matters. Prior to and during the mediation and settlement discussions, the Parties
15 exchanged extensive information and engaged in an extensive discussion regarding their
16 evaluations of the case and various aspects of the case, including but not limited to, the risks and
17 delays of further litigation, the risks to the Parties of proceeding with class certification and/or
18 representative adjudication, the law relating to off-the-clock theory, meal and rest periods, PAGA
19 representative actions, and federal and state wage-and-hour law and enforcement, as well as the
20 evidence produced and analyzed, and the possibility of appeals, among other things. During all
21 settlement discussions, the Parties conducted their negotiations at arm’s length in an adversarial
22 position. Arriving at a settlement that was acceptable to all Parties was not easy. Defendants and
23 their counsel felt strongly about their ability to prevail on the merits and at certification, and
24 Plaintiff and Class Counsel believed that they would be able to obtain class certification and
25 prevail at trial. After conducting investigations, informal discovery, and exchange of information,
26 extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have
27 agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's
28 principal claims, as well as the costs and risks to both sides that would attend further litigation.

1 The Settlement is a fair, reasonable, and adequate resolution of the Released Claims of Plaintiff
2 and Settlement Class Members, against the Released Parties.

3 12. The Parties used the pre-mediation time to investigate the veracity, strength, and
4 scope of the claims, and Class Counsel was preparing the action for class certification and trial.
5 Prior to engaging in mediation, Plaintiff conducted significant investigation and informal
6 discovery regarding the facts of the case, including and not limited to, the exchange, review, and
7 analysis of thousands of pages of documents and data obtained from Defendants and other sources.
8 The volume of data and documents that Class Counsel reviewed and analyzed included and was
9 not limited to: Plaintiff and other Class Members' employment records, a detailed sampling of
10 Class Members' time and pay data, multiple iterations of Defendants' Team Member Guidebook,
11 company policy acknowledgements (e.g., Meal Break Coaching Acknowledgement, Final
12 Paycheck Acknowledgement, New Hire Receipt Acknowledgement, Harassment Training
13 Acknowledgement), internal memoranda, new hire orientation checklists, Defendants' operations
14 and employment practices, procedures (including but not limited to, Wage and Hour Rules form,
15 Expense Report, and Meal Break Waiver form), and policies (including but not limited to Meal
16 and Rest Period Policy and Business Expense Reimbursement Policy), among other information
17 and documents. Class Counsel interviewed Plaintiff and other Class Members to gather facts and
18 to identify potential witnesses. Counsel for the Parties also met and conferred on numerous
19 occasions, e.g., to discuss issues relating to the pleadings and the production of documents and
20 data prior to the mediation. Class Counsel also drafted pleadings and mediation brief and prepared
21 for and attended court proceedings, mediation, and settlement negotiations, among other tasks.

22 13. Counsel for the Parties have also invested time researching and investigating the
23 applicable law, which is constantly evolving as it relates to certification, representative PAGA
24 claims, off-the-clock theory, meal and rest periods, federal and state wage-and-hour law and
25 enforcement, Plaintiff's claims and damages, and Defendants' defenses thereto, as well as facts
26 discovered. Based on our analysis, I submit that the result achieved in this litigation is fair,
27 adequate, and reasonable.

28 14. The Settlement provides for a Maximum Settlement Amount of Seven Hundred

1 Thousand Dollars and no cents (\$700,000.00). The Net Settlement Amount is the Maximum
2 Settlement Amount less the following amounts subject to approval by the Court: Class Counsel
3 Award to Class Counsel, Class Representative Service Award to Plaintiff, Settlement
4 Administration Costs to Settlement Administrator, and LWDA Payment to the Labor and
5 Workforce Development Agency (“LWDA”). Assuming that the amounts allocated under the
6 Settlement toward these payments are awarded by the Court, the Net Settlement Amount that will
7 be available for distribution to Settlement Class Members is currently estimated to be Three
8 Hundred Sixty Seven Thousand Five Hundred Dollars and no cents (\$367,500.00). The Maximum
9 Settlement Amount will be fully distributed in accordance with the terms of the Settlement and
10 there is no reversion to Defendants.

11 15. The Parties have agreed to retain Simpluris, Inc. (“Simpluris” or “Settlement
12 Administrator”) to handle the notice and settlement administration process. The Parties
13 respectfully request that the Court appoint Simpluris to handle these procedures and serve as the
14 Settlement Administrator. Defendants will provide Simpluris with a list of Class Members that
15 Defendants will compile from its records, which will include each Class Member’s full name; last
16 known address, last known telephone number, Social Security Number, and information sufficient
17 to allow the Settlement Administrator to calculate the number of Workweeks for all Class
18 Members during the Class Period (“Class Data”), and Simpluris will calculate each Class
19 Member’s estimated share of the Net Settlement Amount (“Individual Settlement Payment”).
20 Simpluris will also receive requests for exclusion from the Settlement, objections to the
21 Settlement, and disputes regarding Workweeks; provide necessary reports and declarations;
22 calculate, subtract, and transmit necessary taxes and withholdings; prepare and submit
23 informational and other tax filings and documents; issue and transmit all payments provided for
24 by the Settlement, including and not limited to, mailing Individual Settlement Payment checks to
25 the Settlement Class Members; and perform any other usual and customary duties for
26 administering a class action settlement. Settlement Administration Costs are currently estimated
27 not to exceed Fifteen Thousand Dollars and no cents (\$15,000.00) and will be paid out of the
28 Maximum Settlement Amount, subject to approval of the Court.

1 16. Based on investigation and information discovered, Class Counsel believes that
2 there is sufficient evidence to support the allegations made in the lawsuit, including the allegations
3 that Defendants, with respect to Plaintiff and the Class Members, *inter alia*, failed to properly pay
4 overtime and minimum wages and associated premium pay, failed to provide compliant meal and
5 rest periods and to pay associated premium pay, failed to timely pay wages during employment
6 and upon termination of employment, failed to provide compliant wage statements, failed to
7 maintain requisite payroll records, and failed to reimburse necessary business expenses, and
8 thereby engaged in unfair business practices and conduct giving rise to civil penalties recoverable
9 under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, et seq.).
10 Plaintiff also asserted that Class Members were expected to perform similar job duties and were
11 subject to the same or similar operations and employment policies, practices, and procedures.
12 Additionally, Plaintiff asserted that Defendants' recordkeeping practices with respect to Plaintiff
13 and the Class Members were substantially the same during the time period at issue. As a result of
14 said alleged uniform practices, Plaintiff claims that the Class Members, were not paid all of the
15 compensation that was owed to them by Defendants since May 3, 2015. Thus, in Class Counsel's
16 view, it is clear that the outcome of this litigation would be determined by Defendants' uniform
17 operations and employment practices, policies, and procedures that Plaintiff alleges applied across
18 their hourly-paid or non-exempt employees in California during the Class Period.

19 17. Class Counsel is aware of the defenses and position of Defendants, but believes that
20 Plaintiff could potentially obtain class certification despite many obstacles. Plaintiff has also taken
21 into account the uncertainty and risk of the outcome of further litigation, and the difficulties and
22 delays inherent in such litigation, including those involved in class certification and/or
23 representative adjudication. Plaintiff further recognizes the burdens of proof necessary to establish
24 liability for the claims asserted in the lawsuit, Defendants' defenses, and the difficulties in
25 establishing entitlement to monetary recovery. Plaintiff has also considered the Parties' settlement
26 discussions, as well as the evaluations of the mediator, who is experienced and well-regarded in
27 complex labor and employment matters.

28 18. Defendants, on the other hand, denied and continue to deny any liability and

wrongdoing of any kind associated with the claims alleged in the lawsuit, and further deny that the lawsuit is appropriate for class treatment or representative adjudication for any purpose other than this Settlement. Defendants believe that they would ultimately succeed in the matter. Both sides have also had the opportunity to interview witnesses and review documents and information relating to Plaintiff's and Class Members' employment with Defendants, and Defendants' operations and employment policies, practices, and procedures. The Parties also reviewed and analyzed thousands of pages of documents and data, including but not limited to a detailed sampling of Class Members' time and pay information, to determine the potential value and strength of the claims. The available information enabled Class Counsel to estimate the potential claims of the Class and prepare damages/valuation models. Accordingly, the Parties have conducted adequate investigation and discovery to be sufficiently informed of the nature and extent of the Class Members' claims, and to enable both sides to fully evaluate the Settlement for its fairness, adequacy, and reasonableness. The Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation. The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification, trial, and/or appeals.

19. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees in an amount of up to thirty-five percent (35%) of the Maximum Settlement Amount and expenses and costs in an amount not to exceed twenty-five thousand dollars and no cents (\$25,000.00), which will be paid out of the Maximum Settlement Amount, subject to approval by the Court. It should be noted that Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.

20. The Settlement Agreement provides for payment of up to ten thousand dollars and no cents (\$10,000.00) to Plaintiff as a Class Representative Service Award, to be paid out of the Maximum Settlement Amount subject to approval by the Court. Plaintiff spent considerable time and effort to produce relevant documents and past employment records and to provide the facts and evidence necessary to attempt to prove the allegations. Plaintiff was available whenever Class

1 Counsel needed him and actively tried to obtain information that would benefit the Class.
2 Accordingly, it is appropriate and just for Plaintiff to receive a Class Representative Service
3 Award, in addition to his Individual Settlement Payment, for his services on behalf of the Class.

4 21. Class Counsel submits that the Settlement is fair, reasonable, and adequate, and is
5 in the best interest of the Class and State of California. Class Counsel further submits that the
6 Settlement is within an acceptable range of recovery for this type of litigation given the strengths
7 and weaknesses of the case, the inherent costs and risks of further litigation, and the costs and risks
8 associated with class certification, representative adjudication, trial, and/or appeals.

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

11 Executed on this 15th day of February 2022, at Glendale, California.

12 

13 _____
14 Edwin Aiwanian

EXHIBIT 1

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

Edwardo Lee v. Del Monaco Foods, Inc., et al.
Santa Clara Superior Court, Case No. 19CV347471

Subject to the Court's approval, the Parties have entered into this Agreement pursuant to the terms and conditions in this Joint Stipulation of Class Action and PAGA Settlement Agreement ("Agreement" or "Settlement Agreement") between the Plaintiff Edwardo Lee, individually and on behalf of the Settlement Class, and Defendants Del Monaco Foods, Inc. and Del Monaco Specialty Foods, Inc. ("Defendants").

I. DEFINITIONS

1. "Action" means the action entitled *Edwardo Lee v. Del Monaco Foods, Inc., et al.*, Santa Clara Superior Court, Case No. 19CV34747, commenced on May 3, 2019.
2. "Class" is defined as all current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the Class Period. As of the mediation date, the Class was estimated to consist of four hundred fifty (450) individuals.
3. "Class Counsel" means Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers for Justice, PC.
4. "Class Counsel Award" means an award of attorneys' fees and reimbursement of litigation expenses and costs to Class Counsel and paid from the Maximum Settlement Amount.
5. "Class Data" means information regarding Class Members that Defendants provide to the Settlement Administrator from their records. It shall be formatted as a Microsoft Excel spreadsheet and shall include each Class Member's full name, last known address, last known telephone number, and Social Security number; as well as information sufficient to allow the Settlement Administrator to calculate the number of Workweeks for all Class Members during the Class Period.
6. "Class Members" means members of the Class.
7. "Class Period" means the time period from May 3, 2015 until the Preliminary Approval Date.
8. "Class Representative" or "Plaintiff" means Edwardo Lee.
9. "Class Representative Service Award" or "Service Award" means the amount that the Court authorizes to be paid to the Class Representative from the Maximum Settlement Amount, which is in addition to his Individual Settlement Payment.
10. "Complaint" means the operative complaint in this Action, which is the Second Amended Class Action Complaint for Damages & Enforcement under the Private Attorneys General Act, California Labor Code § 2698, et seq., which was filed on March 1, 2021. The original complaint filed in this action was the Class Action Complaint for Damages filed on May 3, 2019. Plaintiff filed a First Amended Class Action Complaint for Damages on November 11, 2019.
11. "Court" means the Superior Court for the State of California, County of Santa Clara.

12. “Defendants” means Del Monaco Foods, Inc. and Del Monaco Specialty Foods, Inc.
13. “Defense Counsel” or “Counsel for Defendants” means Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
14. “Effective Date” is the later of the following: (a) if no objections to the settlement are submitted, then the date the Court enters judgment granting Final Approval; (b) if an objection to the settlement is submitted, then the date when the time expires to file an appeal of the Court’s Final Approval Order; or (c) if an objection is filed, as well as a timely Notice of Appeal of the Court’s Final Approval Order, then the date the appeal is finally resolved, with the final approval unaffected.
15. “Final Approval Order” means the Court’s order granting final approval of the Settlement.
16. “Individual Settlement Payment” means the amount payable from the Net Settlement Amount to each Settlement Class Member.
17. “Maximum Settlement Amount” means the maximum sum to be paid by Defendants pursuant to this Settlement, which is seven hundred thousand dollars (\$700,000). The Maximum Settlement Amount shall include all payments contemplated by this Settlement Agreement, including but not limited to, all Individual Settlement Payments to Settlement Class Members, the Service Award to Plaintiff, the Class Counsel Award to Class Counsel, the Settlement Administration Costs to the Settlement Administrator, and the PAGA Penalties. The Maximum Settlement Amount shall not include Defendants’ share of taxes on the wages portion of Individual Settlement Payments, which will be paid by Defendants separately and in addition to the Maximum Settlement Amount.
18. “Net Settlement Amount” means the Maximum Settlement Amount minus the Service Award, the Class Counsel Award, the LWDA Payment, and the Settlement Administration Costs.
19. “Notice” means the Notice of Class Action and PAGA Settlement in a form substantially similar to the form attached as **Exhibit 1**.
20. “PAGA” means the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*
21. “PAGA Letter” means Plaintiff’s November 17, 2020 letter to the Labor & Workforce Development Agency.
22. “PAGA Penalties” is the amount of \$50,000, which shall be deducted from the Maximum Settlement Amount. The PAGA Penalties shall be allocated as follows: twenty-five percent (25%) to the Net Settlement Amount for distribution to Settlement Class Members on a *pro rata* basis, and seventy-five percent (75%) to the LWDA pursuant to Cal. Lab. Code § 2699(i).
23. “Parties” mean the Plaintiff and Defendants collectively, and “Party” shall mean either Plaintiff or Defendants, individually.
24. “Payment Ratio” means the respective Workweeks for each Settlement Class Member divided by the total Workweeks for all Settlement Class Members.
25. “Preliminary Approval Date” means the date the Court enters the Preliminary Approval Order.
26. “Preliminary Approval Order” means the Order granting preliminary approval of the Settlement.

27. “Qualified Settlement Fund” means the fund set up by the Settlement Administrator into which the Maximum Settlement Amount shall be deposited and disbursements from it shall be made.
28. “Released Claims” means all claims, causes of action, and factual or legal theories alleged in the Complaint and the PAGA Letter, or reasonably could have been alleged based on the facts and legal theories alleged in Complaint and the PAGA Letter, including all of the following legal claims: (i) any and all claims for unpaid wages, including claims for minimum, overtime, and double-time wages, the alleged failure to pay for all time worked, the alleged failure to pay for all hours worked at correct rates, including overtime at the correct regular rates to include the use of commissions, non-discretionary bonuses, and other performance pay; (ii) any and all claims for meal period violations, including claims for late, short, interrupted and/or missed meal periods and/or the failure to pay premium wages, including premiums at the proper rates, and the alleged failure to properly record meal breaks; (iii) any and all claims for rest break violations, including claims for late, short, interrupted and/or missed rest breaks and/or the failure to pay premium wages, including premiums at the proper rates; (iv) any and all claims for unreimbursed expenses, including, but not limited to, expenses incurred for all costs incurred to comply with Defendant’s dress code, the costs of necessary personal protective equipment (including insulated pants, thick gloves, and thick socks), the costs of the use of personal cell phones for business related purposes, and mileage; (v) any and all claims for improper or inaccurate itemized wage statements, including any alleged violations of California Labor Code sections 226(a)(1)-(9), and including claims for injuries suffered therefrom; (vi) any and all claims for waiting time penalties under California Labor Code section 203 based on the facts, claims, causes of action, or legal theories alleged in the Complaint; (vii) any and all claims regarding the alleged failure to maintain required records in violation of California Labor Code §§ 226, 1174 and the applicable IWC Wage Order; (viii) any and all claims under the California Business & Professions Code (including section 17200 *et seq.*) premised on the facts, claims, or legal theories described herein or in the Action; (ix) any other claims and penalties under the wage and hour laws pleaded in the Complaint, including penalties for alleged violations of Sections 551 and 552 of the California Labor Code; (x) any and all damages, penalties, interest and other amounts recoverable under California and federal law, including the California Labor Code, as to the facts and theories alleged in the Complaint; and (xi) all claims for civil penalties under the PAGA alleged in the Complaint and the PAGA Letter, including alleged violations of Sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the applicable IWC Wage Order (collectively, the “Released Claims.”) The period of the release shall extend to the limits of the Class Period. The res judicata effect of the Judgment will be the same as that of the release.
29. “Released Parties” means Defendants and their past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.
30. “Request for Exclusion” refers to a formal request to be excluded from the Settlement as described in Section 52(g).
31. “Response Deadline” means forty-five (45) days after the Settlement Administrator initially mails the Notice to Class Members, and the last date on which Class Members may submit Requests for Exclusion, objections to the Settlement, and/or Disputes.
32. “Settlement” means the settlement and resolution of the Action in accordance with this Agreement.
33. “Settlement Administrator” means Simpluris, Inc., as approved by the Court.

34. “Settlement Administration Costs” means the amount to be paid to the Settlement Administrator from the Maximum Settlement Amount for administration of this Settlement.
35. “Settlement Class Member” or “Settlement Class” means Class Members who do not submit a timely and valid Request for Exclusion and will be bound by the terms of the Agreement, including the Released Claims, and any final judgment entered in the Action.
36. “Workweek” means a consecutive seven (7) day period starting on and including Monday through and including Sunday during which time the Class Data reflects that a given Settlement Class Member worked any amount of time, and does not include weeks when a Settlement Class Member was on PTO, leaves of absence, jury duty, or the like for the entire 7-day period. Each Class Member will be credited with at least one (1) Workweek.

II. RECITALS

37. Class Certification. The Parties stipulate and agree to certification of the Settlement Class for the purposes of this Settlement Agreement only and to agree that the Plaintiff shall be appointed as Class Representative, and that Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers *for* Justice, PC shall be appointed Class Counsel. Should the Settlement Agreement not obtain Court approval and become final and effective, class certification shall immediately be set aside and any order to certify the Settlement Class for settlement purposes shall be vacated. The Parties’ stipulation to class certification as part of the Settlement Agreement shall not be considered in connection with the issue of whether a class should be certified in this Action, and shall not be admissible in any such proceeding other than in the context of this Settlement Agreement.
38. Procedural History. The Action was commenced on May 3, 2019. On November 12, 2019, Plaintiff filed the First Amended Class Action Complaint for Damages. On July 28, 2020, the Parties participated in a mediation with Jeffrey Krivis, Esq., an experienced wage and hour class action mediator, and with the aid of the mediator’s evaluation, the Parties agreed to settle the Action. Pursuant to the terms of the agreement, Plaintiff filed a letter to the Labor and Workforce Development Agency (“LWDA”) on November 17, 2020, and a Second Amended Complaint on March 1, 2021.
39. Benefits of Settlement Agreement to Settlement Class Members. Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate this Action through trial and potential appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such proceedings. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendants’ defenses, and the difficulties in establishing damages for Class Members. Thus, Plaintiff and Class Counsel have determined that the terms set forth in this Settlement Agreement are fair, adequate and reasonable, and in the best interests of the Settlement Class Members.
40. Defendants’ Reasons for Settlement Agreement. Defendants have concluded that further defense of this Action would be protracted and expensive for all Parties. Substantial amounts of Defendants’ time and resources have been, and unless this Settlement Agreement is completed, will continue to be devoted to the defense of the Action. Defendants have also taken into account the risks of further litigation in reaching their decision to enter into this Settlement Agreement. Defendants firmly contend that they are not liable for any of Plaintiff’s

claims, but have agreed to settle along the terms set forth in this Settlement Agreement to fully resolve the Action.

41. Class Members' Claims. The Class Representative claims that his allegations have merit in regards to the Class Members. Defendants claim that the Released Claims have no merit. This Settlement Agreement is a compromise and settlement of disputed claims. The amount to be paid by way of this Settlement Agreement is genuinely disputed and the Parties agree that the provisions of California Labor Code section 206.5 do not apply to this Settlement Agreement. Nothing in this Settlement Agreement or its exhibits, and no action taken to carry out this Settlement Agreement may be construed or used as an admission by or against the Class Members or Class Counsel as to the merits of the claims asserted.

III. TERMS OF SETTLEMENT AGREEMENT

42. Settlement Agreement Consideration by Defendants. Notwithstanding Section 46 below, Defendants shall pay the Maximum Settlement Amount and nothing more than the Maximum Settlement Amount, in the total amount of seven hundred thousand dollars (\$700,000.00).
43. Maximum Settlement Amount Modification. At the mediation, Defendants reported that the total Workweeks in the Class Period are 23,933. Defendants' report was based on data from May 3, 2015 until August 8, 2019, the date on which Defendants' operations ceased in California. If, at the time of preliminary approval, the total Workweeks are actually more than 10% higher than 23,933 (and thus is more than 26,326 Workweeks), the Parties agree that the Maximum Settlement Amount shall increase on a *pro rata* basis equal to the percentage increase in the number of Workweeks worked by the Class Members above ten percent (10%). For example, if the actual number of Workweeks is 11% more than reported, or 26,566 Workweeks, the Maximum Settlement Amount will increase by one percent (1%) to \$707,000. The Settlement Administrator shall review the Class Data and calculate the total number of Workweeks for all Class Members during the Class Period prior to mailing out the Notice to Class Members.
44. Release By Settlement Class Members. Upon the Effective Date, Plaintiff and all Class Members who do not submit a timely and valid Request for Exclusion (i.e., Settlement Class Members) will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Claims.
45. General Release of Claims By the Named Plaintiff. As of the Effective Date, in exchange for the consideration in this Settlement Agreement, Plaintiff, for himself and his heirs, successors and assigns, hereby waives, releases, acquits and forever discharges the Released Parties from any and all Released Claims as well as any and all claims, actions, charges, complaints, grievances and causes of action, of whatever nature, whether known or unknown, which exist or may exist on Plaintiff's behalf as of the date he signs this Settlement Agreement, including but not limited to, any and all tort claims, contract claims, claims for unpaid wages, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to, claims for violation of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code Section 17200 *et seq.* Plaintiff expressly waives and relinquishes any and all claims, rights or benefits they may have under

California Civil Code § 1542, which provides as follows: **“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”** Plaintiff may later discover claims or facts in addition to, or different from, those which he knows or believes to exist, but he expressly agrees to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist at the time he signs this Settlement Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff’s employment with Defendants. The Parties further acknowledge, understand and agree that this Settlement Agreement would not have been finalized without this representation and commitment from the Plaintiff.

46. Conditions Precedent: This Settlement Agreement will become final and effective only upon the occurrence of all of the following events: (a) the Court enters an order granting preliminary approval of the Settlement Agreement; (b) the Court enters an order granting final approval of the Settlement Agreement and a Final Judgment; and (c) the Effective Date occurs.
47. Nullification of Settlement Agreement. In the event that this Settlement Agreement is not finally approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendants from obtaining a complete resolution of the claims as described herein, then (a) this Settlement Agreement shall be void and inadmissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; (b) the conditional class certification for settlement purposes shall be void and not admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and (c) none of the Parties to this Settlement Agreement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.
48. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments in this Agreement. Settlement Class Members understand and agree that they will be responsible for the payment of any taxes assessed on the Individual Settlement Payments that they receive.
49. No Tax Advice. Neither Class Counsel nor Defendants’ Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
50. Preliminary Approval Motion. Class Counsel shall file with the Court a motion for preliminary approval of the Settlement and supporting papers, which shall include this Settlement Agreement. Class Counsel shall provide a courtesy draft of these papers to Defense Counsel at least five (5) business days before filing the documents.
51. Settlement Administrator. By accepting the role as Settlement Administrator, the Settlement Administrator is bound to all of the terms, conditions and obligations described in this Settlement Agreement. Among these obligations, the Settlement Administrator shall have sole and exclusive responsibility for: (a) calculating the Workweeks, Payment Ratio, and the Individual Settlement Payment for each Settlement Class Member; (b) processing and mailing payments to the Class Representative, Class Counsel, the LWDA, and the Settlement Class Members; (c) translating the Notice to Spanish; (d) printing and mailing the Notices to the Class Members as directed by the Court; (e) receiving and reporting objections, Requests for Exclusion, and Workweeks disputes; (f) deducting all legally required taxes from the Individual Settlement Payments and distributing tax forms; (g) processing and mailing any tax

payments to the appropriate state and federal taxing authorities; (h) providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement Agreement; and (i) other tasks that the Parties mutually agree on, or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of its duties. Defendants and their Counsel shall have no responsibility for validating or ensuring the accuracy of the Settlement Administrator's work. Plaintiff, Class Counsel, Defendants and Defense Counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the Individual Settlement Payments or any other distributions contemplated by this Settlement Agreement.

52. Notice Procedure.

- a. Class Data. The Class Data shall be confidential. The Settlement Administrator shall not provide the Class Data to Class Counsel or Plaintiff or any third party, or use the Class Data for any purpose other than to administer this Settlement Agreement. Defendants shall provide the Settlement Administrator with the Class Data to prepare and mail the Notices to the Settlement Class Members within twenty (20) calendar days after the Preliminary Approval Date.
- b. Notices.
 - i. The Notice that is mailed out to Class Members shall be in a form substantially similar to the form attached as **Exhibit A**. The Notice shall inform Class Members to notify the Settlement Administrator of their current mailing address and the address where their Individual Settlement Payment should be mailed following the Effective Date, if the address is different from the address that the Notice is initially mailed. The Notice shall include the release to be given by each Settlement Class Member in exchange for the Individual Settlement Payment.
 - ii. The Notice shall also provide each Settlement Class Member's number of Workweeks and each Settlement Class Member's estimated Individual Settlement Payment calculated by the Settlement Administrator.
 - iii. The Notice's mailing envelope shall include the following language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE ENTITLED TO MONEY FROM A CLASS ACTION SETTLEMENT AGREEMENT; A PROMPT REPLY IS REQUIRED TO PRESERVE YOUR RIGHTS."
- c. Notice By First Class U.S. Mail. After receiving the Class Data from Defendants as provided herein, the Settlement Administrator shall mail copies of the Notice to all Class Members via First Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member.
- d. Undeliverable Notices. Any Notices returned to the Settlement Administrator as undeliverable on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by lawful use of standard search techniques (e.g., skip trace search), and shall then perform a re-mailing if another mailing address is identified by the

Settlement Administrator. If any Notices sent to Settlement Class Members currently employed by Defendants are returned to the Settlement Administrator as undeliverable and no forwarding address is provided, the Settlement Administrator shall notify Defendants. Defendants will request that the currently employed Settlement Class Member provide an updated address to the Defendants to forward to the Settlement Administrator. Class Members who received a re-mailed Notice shall have their Response Deadline extended fifteen calendar (15) days from the original Response Deadline.

- e. Disputes Regarding Individual Settlement Payments. Settlement Class Members will have the opportunity, should they disagree with the estimated number of Workweeks stated on their Notice, to provide documentation and/or an explanation to show contrary employment dates. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payment under the terms of this Settlement Agreement, and that determination shall be binding upon the Settlement Class Member and the Parties.
- f. Disputes Regarding Administration of Settlement Agreement. Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement Agreement will be resolved by the Court under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.
- g. Requests for Exclusion.
 - i. The Notice shall include an explanation that Class Members who wish to exclude themselves from the Settlement Agreement must submit a written Request for Exclusion to the Settlement Administrator by the Response Deadline. The written Request for Exclusion must: (1) state the case name and number of the Action (*Edwardo Lee v. Del Monaco*, Case No. 19CV34747); (2) clearly state that the Class Member requests to be excluded from the Settlement; (3) contain the name, address, and the last four digits of the Social Security number and/or Employee ID number of the person requesting exclusion; (4) be signed by the Class Member; and (5) be mailed to the Settlement Administrator, postmarked by the Response Deadline at the address specified in the Notice.
 - ii. The Request for Exclusion will not be valid if it is not timely submitted, or if it is not signed by the Class Member, or if it does not contain the name and address of the Class Member. The date of the postmark on the return mailing envelope for the Request for Exclusion shall be the exclusive means used to determine whether the Request for Exclusion was timely submitted. Class Members who fail to submit a valid and timely written Request for Exclusion on or before the Response Deadline shall be Settlement Class Members who are bound by all terms of the Settlement Agreement, and any final judgment entered in this Action.
 - iii. Any Class Member who requests to be excluded from the Settlement Agreement will not be entitled to any recovery under the Settlement Agreement and will not be bound by its terms or have any right to object,

appeal or comment on it. Nothing in this Settlement Agreement can be construed as a waiver of any defense that Defendants or the Released Parties have or could assert against anyone who timely serves a Request for Exclusion.

- iv. No later than five (5) business days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a final list of the Class Members who have timely submitted written Requests for Exclusion.
- v. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit Requests for Exclusion.

h. Objections.

- i. The Notice shall state that Settlement Class Members who wish to object to the Settlement Agreement must mail to the Settlement Administrator a written statement of objection (“Notice of Objection”) by the Response Deadline. The postmark date of the mailing shall be deemed the exclusive means for determining that a Notice of Objection was served timely.
- ii. Settlement Class Members who submit a timely Notice of Objection will have a right to appear at the Final Approval Hearing in order to have their objections heard by the Court. The Notice of Objection must: (1) be signed by the Settlement Class Member; (2) state the case name and number of the Action, the name and address of the Settlement Class Member, and the last four digits of the Settlement Class Member’s Social Security number and/or Employee ID number; (3) contain the basis and/or grounds for the objection; and (4) state whether the Settlement Class Member intends to appear at the Final Approval Hearing.
- iii. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to object to the Settlement Agreement or appeal from the Final Approval Order and Final Judgment.
- iv. Class Members who submit a written Request for Exclusion are not entitled to object to the Settlement Agreement.
- v. The Settlement Administrator shall send all objections to Class Counsel and Defense Counsel. Class Counsel will be responsible for filing the Notices of Objection with the Court in advance of the Final Approval Hearing. Plaintiff and/or Defendants may file oppositions to Notices of Objection no later than five (5) court days prior to the date of the Final Approval Hearing.
- vi. Defendants shall not be responsible for the fees, costs, or expenses incurred by Plaintiff, Class Counsel, or Settlement Class Members arising from or related to any objection to the Settlement Agreement or related to any appeals thereof.

53. Funding and Allocation of the Maximum Settlement Amount. Upon satisfaction of the preconditions described in this Settlement Agreement, and pursuant to the timeline and instructions below, Defendants will deposit the Maximum Settlement Amount into a Qualified Settlement Fund to be established by the Settlement Administrator.
- a. Funding Due Date. No later than twenty (20) calendar days after the Effective Date, Defendants shall provide the Maximum Settlement Amount to the Settlement Administrator to fund the Settlement Agreement.
 - b. Individual Settlement Payments. Individual Settlement Payments shall be paid from the Net Settlement Amount and shall be paid pursuant to the following formula:
 - i. Calculation of Individual Settlement Payments. Using the Class Data, the Settlement Administrator will calculate the total Workweeks for all Settlement Class Members. The respective Workweeks for each Settlement Class Member will be divided by the total Workweeks for all Settlement Class Members, resulting in the Payment Ratio for each individual Settlement Class Member. Each Settlement Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Settlement Class Member's estimated Individual Settlement Payment. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.) on the wages portion of the Individual Settlement Payment. The Individual Settlement Payment checks will include an endorsement confirming that by cashing the check, each Settlement Class Member is releasing the Released Claims.
 - ii. Tax Allocation. The Settlement Administrator will be responsible for issuing to Settlement Class Members an IRS Form W-2 for any amounts deemed "wages" and an IRS Form 1099 for the portions allocated to non-wage amounts, including penalties and interest. For tax purposes, each Individual Settlement Payment shall be allocated as follows: (a) 25% as wages subject to IRS Form W-2 reporting and applicable taxes/withholdings; and (b) 75% as non-wage income, penalties, and interest for which an IRS Form 1099 will be issued.
 - iii. Mailing. Individual Settlement Payments shall be mailed by First Class U.S. Mail to each Settlement Class Member no later than fourteen (14) calendar days after Defendants provide funds to the Settlement Administrator for disbursement under this Settlement Agreement.
 - iv. Uncashed Checks. Any checks issued to Settlement Class Members shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date they are issued. The Settlement Administrator will mail a reminder notice to those Settlement Class Members who have not cashed their checks after one hundred twenty (120) calendar days and will also send a reminder via any available email address or social media for these Settlement Class Members. In the event that an Individual Settlement Payment check has not been cashed within one hundred and eighty (180) calendar days, then such funds, plus any accrued interest, will be tendered to the State Controller's Office Unclaimed Property Fund in the name of Settlement Class Members who did not cash their settlement checks. The Parties

agree that this disposition results in no unpaid residue under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to participating Settlement Class Members, whether or not they all cash their individual settlement payment checks. Therefore, Defendants will not be required to pay any interest set amount. The Settlement Administrator shall prepare a report regarding the extent of unclaimed funds, and the report shall be presented to the Court by Class Counsel.

- c. Class Representative Service Award (“Service Award”). Defendants agree not to oppose or object to a Class Representative Service Award in an amount not to exceed \$10,000 in exchange for Class Representative’s general release of claims, including the Released Claims, and for his time, effort and risk in bringing and prosecuting this matter. The Service Award shall be in addition to the Class Representative’s Individual Settlement Payment as a Settlement Class Member.
 - i. The Settlement Administrator shall pay the Service Award to Class Representative from the Maximum Settlement Amount within fourteen (14) calendar days after Defendants fund the Maximum Settlement Amount. Any portion of the requested Service Award that is not awarded to the Class Representative shall become part of the Net Settlement Amount.
 - ii. The Settlement Administrator shall issue an IRS Form 1099 - MISC to the Class Representative for the Service Award. The Class Representative shall be solely and legally responsible to pay any and all applicable taxes on the Service Award and shall hold harmless Defendants and the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Service Award.
 - iii. If the Court reduces or does not approve the requested Service Award, Plaintiff shall not have the right to revoke the Settlement Agreement, which shall remain binding.
- d. Class Counsel Award.
 - i. Plaintiff will seek, and Defendant will not oppose, an application for an award of attorneys’ fees not to exceed 35% of the Maximum Settlement Amount, and reimbursement of actual costs and expenses as supported by declaration not to exceed \$25,000. The Court-approved amount for the Class Counsel Award will be issued out of the Maximum Settlement Amount.
 - ii. Class Counsel, Plaintiff and the Settlement Class Members will not apply to the Court for any additional payment of attorneys’ fees and costs, or for an increase in the Maximum Settlement Amount other than the modification clause in Section 43 herein. The Parties agree that, over and above the Court-approved Class Counsel Award, each of the Parties, including all Settlement Class Members, shall bear their own fees and costs, including, but not limited to, those related to the investigation, filing, or prosecution of the Action; the negotiation, execution, or implementation of this Settlement Agreement; and/or the

process of obtaining, administering, or challenging a Preliminary Approval Order and/or Final Approval Order.

- iii. Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Settlement Agreement.
- iv. The Settlement Administrator shall pay the Class Counsel Award to Class Counsel from the Maximum Settlement Amount within fourteen (14) calendar days after Defendants fund the Maximum Settlement Amount.
- v. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the Class Counsel Award. The Settlement Administrator shall issue an IRS Form 1099 - MISC to Class Counsel for the payment.
- vi. In the event that the Court reduces or does not approve the requested Class Counsel Award, Plaintiff and Class Counsel shall not have the right to modify or revoke the Settlement Agreement, although Plaintiff shall retain the right to appeal any reduction to the Class Counsel Award.
- vii. With respect to the Class Counsel Award to Class Counsel, the Settlement Administrator may purchase an annuity to utilize United States Treasuries and bonds or other attorney fee deferral vehicles, for Class Counsel. Any additional expenses for the purchase of an annuity by the Settlement Administrator shall be paid separately by Class Counsel and shall not be included within the Settlement Administration Costs. Defendants and Defendants' counsel shall not be liable for any expenses associated with the purchase of an annuity by the Settlement Administrator.

e. PAGA Penalties. The amount of \$50,000 shall be allocated from the Maximum Settlement Amount for the release of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Penalties, or \$37,500, to the California Labor and Workforce Development Agency (the "LWDA Payment") within fourteen (14) calendar days after Defendants fund the Maximum Settlement Amount. Twenty-five (25%) of the PAGA Penalties, or \$12,500, will remain part of the Net Settlement Amount and distributed to Settlement Class Members as described in this Settlement Agreement. Plaintiff will take all actions required by California Labor Code section 2699(l).

f. Settlement Administrator Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement Agreement from the Maximum Settlement Amount. Based upon estimates received, the Settlement Administrator Costs shall not exceed \$15,000. The Settlement Administrator shall be paid the Settlement Administrator Costs within fourteen (14) calendar days after Defendants fund the Maximum Settlement Amount.

54. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, the execution of necessary

documents and to take such other action as may be reasonably necessary to implement the terms of this Settlement Agreement. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendants and Defense Counsel, take all necessary steps to secure the Court's Preliminary and Final Approval of this Settlement Agreement. The Parties also agree to cooperate in the Settlement Administration process. The Parties each represent 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.

55. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the Court to request the preliminary approval of the Settlement Agreement, and the setting of a date for a Final Approval Hearing. The Preliminary Approval Order shall provide for the Notice to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval Hearing, Plaintiff shall submit this Settlement Agreement and the proposed Notice. Plaintiff shall provide drafts of all papers filed in support of preliminary approval to Defense Counsel at least five (5) business days before filing the documents.
56. Final Approval Motion. After the expiration of the Response Deadline, Plaintiff shall file with the Court a motion for final approval of the Settlement, requesting final approval of the Settlement Agreement and a determination of the amounts payable for the Service Award, the Class Counsel Award, the PAGA Penalties, and the Settlement Administration Costs. Plaintiff shall provide drafts of these papers to Defense Counsel at least five (5) business days before filing the documents.
 - a. Declaration by Settlement Administrator. The Settlement Administrator shall submit a declaration in support of Plaintiff's motion for final approval of this Settlement Agreement detailing the number of Notices mailed and re-mailed to Class Members, the number of undeliverable Notices, the number of Requests for Exclusion received, the number of Notices of Objections received, the number of Workweek disputes received, the amount of the average Individual Settlement Payment, the Settlement Administration Costs, and any other information as the Parties mutually agree on, or that the Court orders the Settlement Administrator to provide.
 - b. Final Approval Order and Judgment. The Parties shall present a proposed Final Approval Order to the Court for its approval, and Judgment thereon consistent with the terms and conditions of this Settlement Agreement.
57. Review of Motions for Preliminary and Final Approval. Class Counsel will provide an opportunity for Defense Counsel to review the Motions for Preliminary and Final Approval prior to filing with the Court. The Parties and their counsel will cooperate and use their best efforts to effect the Court's approval of the Motions for Preliminary and Final Approval of the Settlement Agreement, and entry of Judgment.
58. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement Agreement, pending the Final Approval Hearing to be conducted by the Court, and that the time within which to bring this action to trial under California Code of Civil Procedure Section 583.310 shall be extended from the date the Memorandum of Agreement was signed by all parties on July 28, 2020, until the Agreement is revoked and the stay is lifted.
59. Nullification of Settlement Agreement. In the event that the Court does not grant final approval, or the Court does not enter a final judgment as provided herein, or the Settlement Agreement does not become final for any other reason, this Settlement Agreement shall be null

and void and any order or judgment entered by the Court in furtherance of this Settlement Agreement shall be treated as void from the beginning. In such a case, the entire Maximum Settlement Amount shall be returned to Defendants; the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that any costs already incurred by the Settlement Administrator shall be paid by equal apportionment among the Parties (except as provided in Section 58; and this Agreement and its terms, and the communications, negotiations, and settlement discussions related to the Action, shall be inadmissible and treated as confidential to the fullest extent allowed by law. In the event an appeal is filed from the Court's final judgment, or any other appellate review is sought, administration of the Settlement Agreement shall be stayed pending final resolution of the appeal or other appellate review, but any fees incurred by the Settlement Administrator prior to being notified of the filing of an appeal from the Court's Final Judgment, or any other appellate review, shall be paid to the Settlement Administrator within thirty (30) days of said notification.

60. Defendants' Option To Terminate Settlement. If the number of Class Members who submitted timely and valid written requests for exclusion from the Settlement is at least ten percent (10%) of all Class Members, Defendants shall have, in its sole discretion, the option to terminate this Settlement and its stipulation to class certification before the Final Approval Hearing. If Defendants exercise the option to terminate this Settlement, Defendants shall: (a) provide written notice by certified mail to Edwin Aiwasian at 410 West Arden Avenue, Suite 203, Glendale, California 91203 prior to the Final Approval Hearing and no later than seven (7) calendar days after receiving notice from the Settlement Administrator of the number of Class Members who have submitted timely and valid requests for exclusion; (b) pay all Settlement Administration Costs incurred up to the date or as a result of the termination; and (c) the Parties shall proceed in all respects as if this Agreement had not been executed.
61. No Effect on Employee Benefits. Amounts paid to the Plaintiff or other Settlement Class Members pursuant to this Settlement Agreement shall not be deemed pensionable earnings or have any effect on the eligibility for, or calculation of, any employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the Plaintiff or Settlement Class Members.
62. Exhibits and Headings. The terms of this Settlement Agreement include the terms set forth in the attached Exhibits. The descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for ease of reference only and do not constitute a part of this Settlement Agreement.
63. Amendment or Modification. With Court approval, this Settlement Agreement may be amended or modified only by a written instrument that is signed by counsel for all Parties or their successors-in-interest, and signed by the Parties or their successors-in-interest.
64. Entire Settlement Agreement. This Settlement Agreement and its exhibits constitute the entire Settlement Agreement among the Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its exhibits other than the representations, warranties and covenants contained and memorialized in the Settlement Agreement and its exhibits.
65. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate actions needed by this Settlement Agreement to effectuate its terms. The person signing this Settlement Agreement on behalf of Defendants represent and warrant that he or she is authorized to sign this Settlement Agreement on behalf of Defendants. Plaintiff represents that he is authorized to sign this Settlement Agreement and that he has not assigned, transferred, or encumbered any claim, or part of a claim, demand,

cause of action or any rights herein released and discharged or covered by this Settlement Agreement to any third-party.

66. Binding on Successors and Assigns. The provisions of this Settlement Agreement shall run in perpetuity. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties.
67. California Law Governs. All terms of this Settlement Agreement and its exhibits, and any disputes arising hereunder shall be governed by and interpreted according to the laws of the State of California.
68. Counterparts. This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Settlement Agreement shall exchange among themselves copies or originals of the signed counterparts.
69. This Settlement Agreement Is Fair, Adequate and Reasonable. The Parties believe that this Settlement Agreement is a fair, adequate and reasonable Settlement Agreement of this Action and have arrived at this Settlement Agreement after extensive arm's-length negotiations, taking into account all relevant factors, present and potential. The Parties further agree that this Settlement Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or their counsel participated in the drafting of this Settlement Agreement.
70. Jurisdiction of the Court. The Parties agree that, pursuant to California Code of Civil Procedure Section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection to it, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement Agreement and all orders and judgments entered in connection to it.
71. Publicity. Plaintiff and Class Counsel agree not to disclose or publicize the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except as may be strictly required to effectuate the terms of the Settlement. For the avoidance of doubt, this section includes Plaintiff and Class Counsel's agreement not to issue press releases, communicate with, or respond to any media or publication entities, publish information in manner or form, whether printed or electronic, on any medium or otherwise communicate, whether by print, video, recording or any other medium, with any person or entity concerning the Settlement, including the facts of the Settlement, its terms or contents and the negotiations underlying the Settlement, except as shall be contractually required to effectuate the terms of the Settlement. However, Class Counsel may disclose the name of the Parties in this action, the venue/case number, and settlement details available in the public record, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions.
72. Waiver of Certain Appeals. Except as provided herein, the Parties agree to waive all appeals from the Court's final approval of the Settlement Agreement, unless the Court modifies the Settlement Agreement.
73. Denial of Liability. The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendants. The Settlement and any related statements, discussions, communications, or materials cannot be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state,

or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

74. Notice of Settlement Agreement to LWDA. Plaintiff shall provide notice of this Settlement Agreement to the Labor Workforce Development Agency ("LWDA") as required by Labor Code Section 2699(1)(2).

IN WITNESS WHEREOF, this Joint Stipulation of Class Action and PAGA Settlement Agreement and Release of Claims is voluntarily executed by the Parties and their attorneys as of the dates noted.

IT IS SO AGREED:

Dated: 11/12/2021

Electronically Signed 2021-11-12 20:52:33 UTC - 172.58.36.136
Edwardo Lee
Name/Signt sec38a1-330c-4055-9a0c-ada015371e1

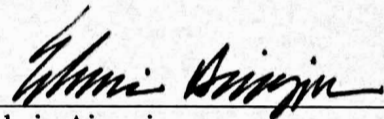
Edwardo Lee, Plaintiff

Dated: 11/29/2021


Nora McCarthy
As authorized agent for Defendants Del Monaco Foods, Inc. and Del Monaco Specialty Foods, Inc.

APPROVED AS TO FORM ONLY:

Dated: 11/12/2021


Edwin Aiwazian
Attorneys for Plaintiff and Proposed Class Counsel

Dated: December 2, 2021


Michael J. Nader
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART
Attorney for Defendants

43968033.6

EXHIBIT 1

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

Edwardo Lee v. Del Monaco Foods, Inc., et al.
Superior Court of California for the County of Santa Clara, Case No. 19CV347471

**THIS IS A COURT-AUTHORIZED NOTICE.
IT IS NOT A SOLICITATION.
PLEASE READ THIS NOTICE CAREFULLY.**

You have received this Notice because Defendants' records indicate that you may be eligible to take part in the class action settlement reach in the above-referenced case.

You do not need to take any action to receive a settlement payment.

This Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the settlement, object to the settlement, and/or dispute the number of Workweeks that you are credited with, if you so choose.

GENERAL INFORMATION

1. Why did I get this notice?

A class and representative action settlement has been reached between Plaintiff Edwardo Lee ("Plaintiff") and Defendants Del Monaco Foods, Inc. and Del Monaco Specialty Foods, Inc. ("Defendants") (Plaintiff and Defendants are collectively referred to as the "Parties") in the case entitled, *Edwardo Lee v. Del Monaco Foods, Inc., et al.*, Santa Clara Superior Court, Case No. 19CV347471 ("Action"), which may affect your legal rights. On **[Preliminary Approval Date]**, the Court granted preliminary approval of the settlement and scheduled a hearing on **[date]** at **[time]** ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

The Settlement is on behalf of a proposed class defined as follows:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the Class Period ("Class"). Members of this class are defined as "Class Members."

You received this notice because Defendants' records show that you worked for one of the Defendants as an hourly-paid or non-exempt employee at any time during the period from May 3, 2015 until **[Preliminary Approval Date]** ("Class Period"), and thus that you are a Class Member. This notice explains the Action, the settlement, your legal rights, the benefits available for you, your eligibility for benefits, and how you obtain them.

2. What is this Action about?

On May 3, 2019, Plaintiff Edwardo Lee commenced a putative class action lawsuit by filing the Class Action Complaint for Damages in the Santa Clara Superior Court, Case No. 19CV347471. On November 17, 2020, Plaintiff provided written notice by certified mail ("PAGA Letter") to the California Labor and Workforce Development Agency ("LWDA") of his intent to assert claims under the California Labor Code § 2698, *et seq.* (California Labor Code Private Attorneys General Act of 2004) ("PAGA") and the basis for those claims. On November 12, 2019, Plaintiff filed a First Amended Class Action Complaint for Damages. On March 1, 2021, Plaintiff filed a Second Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, *Et Seq.* (the "Operative Complaint"). Plaintiff alleges that Defendants violated sections of the California Labor Code and the California Business and Professions Code. Specifically, Plaintiff alleges that Defendants failed to pay all minimum and overtime wages due, failed to provide

compliant meal and rest breaks, failed to pay all due final wages upon termination, failed to provide compliant wage statements, failed to keep requisite payroll records, failed to reimburse for all business expenses, and thereby engaged in unfair business practices and conduct that gives rise to penalties under PAGA. Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, restitution, penalties, interest, and attorneys' fees and costs.

Defendants deny the allegations in the Action and the PAGA Letter and contend that it complied with the law.

The Parties participated in mediation with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into the Joint Stipulation of Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement").

3. Why is this a class action?

In a class action, one or more people called Class Representatives (in this case the Plaintiff), sues on behalf of people who appear to have similar claims, in this case the "Class Members" defined above. One court resolves the issues for all Class Members in one lawsuit, except for those who exclude themselves from the Class. The Action is before the Superior Court of California for Santa Clara County (the "Court").

4. How do I know if I am part of the Settlement?

If you are included in the definition of a Class Member, then you can participate in the Settlement.

5. Who is Class Counsel?

The Court has appointed Class Counsel listed below to represent your interests in this case:

Edwin Aiwazian
Arby Aiwazian
Joanna Ghosh
Lawyers for Justice, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020 / Fax: (818) 265-1021

6. What is the settlement amount and how will the Individual Settlement Payment be calculated?

The Settlement provides that Defendants will pay the amount of seven hundred thousand dollars (\$700,000.00) (the "Maximum Settlement Amount"). The "Net Settlement Amount" is the portion of the Maximum Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion ("Settlement Class Members"). The Net Settlement Amount is the Maximum Settlement Amount less the following amounts (which are subject to Court approval):

- A. **Class Counsel Award to Class Counsel:** Not to exceed thirty-five percent (35%) of the Maximum Settlement Amount;
- B. **Litigation Costs/Expenses to Class Counsel:** Not to exceed twenty-five thousand dollars (\$25,000.00);
- C. **Service Award to the Class Representative:** Not to exceed ten thousand dollars (\$10,000.00);
- D. **Settlement Administration Costs:** Not to exceed fifteen thousand dollars (\$15,000.00);
- E. **PAGA Penalties:** Fifty thousand dollars (\$50,000.00), of which seventy-five percent (75%), or thirty-seven thousand five hundred dollars (\$37,500.00) shall be paid to the LWDA, and the remaining twenty-five percent (25%), or twelve thousand five hundred dollars (\$12,500), will remain part of the Net Settlement Amount and distributed to Settlement Class Members.

The portion of the Net Settlement Amount that you are eligible to receive (“Individual Settlement Payment”) will be determined on a *pro rata* basis, based on the number workweeks you worked in California as a Class Member during the Class Period (“Workweeks”). More specifically, “Workweek” means a consecutive seven (7) day period starting on and including Monday through and including Sunday during which time the Class Data reflects that you (a Class Member) worked any amount of time, and does not include weeks when you (a Class Member) were on paid-time-off, a leave of absence, jury duty, or the like for the entire 7-day period. Each Class Member is credited with at least one (1) Workweek.

Your Individual Settlement Payment will be apportioned as twenty-five percent (25%) for wages and seventy-five percent (75%) for non-wage income, penalties, and interest. Each Individual Settlement Payment will be subject to reduction for any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.) on the wages portion of the Individual Settlement Payment and will be reported on a W-2 Form. Employer-side payroll taxes will be paid separately and in addition to the Maximum Settlement Amount by Defendants. The penalties and interest portions of each Individual Settlement Payment will not be subject to any withholdings and will be reported on an IRS Form 1099.

7. How much will my Individual Settlement Payment be?

You worked [] Workweeks during to your employment with the Defendants during the Class Period. Your estimated Individual Settlement Payment is [\$]. The amount of your Individual Settlement Payment may change depending on the number of timely and valid Requests for Exclusion are submitted in the Settlement, if any. This amount is only an estimate. The actual Individual Settlement Payment you receive may be slightly more or less than the estimated amount shown.

Your estimated Individual Settlement Payment was determined based on Defendants’ record of your employment during the relevant Class Period.

8. What can I do if I think that the calculation of my Workweeks is wrong?

If you dispute the accuracy of the calculation of the number of Workweeks that you worked during the Class Period, you must contact the Settlement Administrator, by mail, and provide the following: (1) the case name and number of the Action (*Edwardo Lee v. Del Monaco Foods, Inc., et al.*, Case No. 19CV34747); (2) your name, address, and the last four (4) digits of your Social Security number and/or Employee ID number; (3) the number of Workweeks you contend is the correct number to be credited to you; and (4) any documentation you have supporting your challenge of the calculation, and supporting your calculation. Submission of this information and documents must be postmarked **on or before [Response Deadline]**, at the address listed below.

All disputes regarding your Workweeks will be resolved and decided by the Settlement Administrator, and the Settlement Administrator’s decision on all disputes will be final. The Settlement Administrator’s contact information is listed below:

[Settlement Administrator]

[Address]

HOW CAN I GET A PAYMENT?

9. How do I get my Individual Settlement Payment?

You do not need to do anything to get your Individual Settlement Payment after the Court approves the Settlement. You must notify the Settlement Administrator of any change or correction in your contact information. **It is your responsibility to keep the Settlement Administrator informed of any change in your address.**

10. What am I giving up to get an Individual Settlement Payment?

Unless you elect to exclude yourself from the Settlement, you will be bound by all terms of the Settlement and any judgement that may be entered by the Court based thereon and remain a Settlement Class Member for the settlement, which means that you will not be able to sue or be part of any other lawsuit against the “Released Parties” for any of the “Released Claims” in this Action. Specifically, you will be giving up or “releasing” the “Released Claims” described below:

“Released Claims” by Settlement Class Members means all claims, causes of action, and factual or legal theories alleged in the Action and the PAGA Letter, or reasonably could have been alleged based on the facts and legal theories alleged in Action and the PAGA Letter, including all of the following legal claims: (i) any and all claims for unpaid wages, including claims for minimum, overtime, and double-time wages, the alleged failure to pay for all time worked, the alleged failure to pay for all hours worked at correct rates, including overtime at the correct regular rates to include the use of commissions, non-discretionary bonuses, and other performance pay; (ii) any and all claims for meal period violations, including claims for late, short, interrupted and/or missed meal periods and/or the failure to pay premium wages, including premiums at the proper rates, and the alleged failure to properly record meal breaks; (iii) any and all claims for rest break violations, including claims for late, short, interrupted and/or missed rest breaks and/or the failure to pay premium wages, including premiums at the proper rates; (iv) any and all claims for unreimbursed expenses, including, but not limited to, expenses incurred for all costs incurred to comply with Defendants’ dress code, the costs of necessary personal protective equipment (including insulated pants, thick gloves, and thick socks), the costs of the use of personal cell phones for business related purposes, and mileage; (v) any and all claims for improper or inaccurate itemized wage statements, including any alleged violations of California Labor Code sections 226(a)(1)-(9), and including claims for injuries suffered therefrom; (vi) any and all claims for waiting time penalties under California Labor Code section 203 based on the facts, claims, causes of action, or legal theories alleged in the Complaint; (vii) any and all claims regarding the alleged failure to maintain required records in violation of California Labor Code §§ 226, 1174 and the applicable IWC Wage Order; (viii) and any and all claims under the California Business & Professions Code (including section 17200 et seq.) premised on the facts, claims, or legal theories described herein or in the Action; (ix) any other claims and penalties under the wage and hour laws pleaded in the Complaint, including penalties for alleged violations of Sections 551 and 552 of the California Labor Code; (x) any and all damages, penalties, interest and other amounts recoverable under California and federal law, including the California Labor Code, as to the facts and theories alleged in the Complaint; and (xi) all claims for civil penalties under the PAGA alleged in the Complaint and the PAGA Letter, including alleged violations of Sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the applicable IWC Wage Order (collectively, the “Released Claims.”) The period of the release shall extend to the limits of the Class Period.

“Released Parties” means Defendants and their past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

RIGHTS AND OPTIONS AS A CLASS MEMBER

11. How can I exclude myself from the Settlement?

If you want to exclude yourself from the Settlement and not receive any payments as a result of the Settlement, then you must submit a formal request to be excluded from the Settlement (“Request for Exclusion”) in conformity with the requirements described here. **If you exclude yourself, you will not receive an Individual Settlement payment.**

To exclude yourself from the Settlement, you must submit a written Request for Exclusion to the Settlement Administrator. A Request for Exclusion must: (1) state the case name and number of the Action (*Edwardo Lee v. Del Monaco Foods, Inc., et al.*, Case No. 19CV34747); (2) clearly state that you request to be excluded from the Settlement; (3) contain your name, address, and the last four (4) digits of your Social Security number and/or Employee ID number; (4) be signed by you; and (5) be mailed to the Settlement Administrator, postmarked by [Response Deadline], at the address specified in Section 8 above. Requests for Exclusion which are postmarked after the Response Deadline will not be accepted.

12. If I don't exclude myself, can I sue Defendants for the same thing later?

No. Unless you timely submit a Request for Exclusion, you give up the right to sue Defendants and the Released Parties for the Released Claims. If you have a pending lawsuit involving the Released Claims, speak to your lawyer immediately.

13. How can I object to the Settlement?

If you are a Settlement Class Member (i.e., you have not submitted a written Request for Exclusion), you can object to the Settlement and give your reasons to the Court for why you think the Court should not approve it. Settlement Class Members who wish to object to the Settlement Agreement must mail a written statement of objection ("Notice of Objection") to the Settlement Administrator, postmarked by [Response Deadline], at the address specified in Section 8 above. The Notice of Objection must: (1) be signed by you; (2) state the case name and number of the Action (*Edwardo Lee v. Del Monaco Foods, Inc., et al.*, Case No. 19CV34747), your name, address, and the last four (4) digits of your Social Security number and/or Employee ID number; (3) contain the basis and/or grounds for the objection; and (4) state whether you intend to appear at the Final Approval Hearing. You may also appear at the Final Approval Hearing on [DATE] at [TIME] if you wish to make an objection, even if you do not submit a written Notice of Objection.

14. What is the difference between objecting and being excluded?

Objecting is telling the Court that you do not like something about the Settlement. You may only object if you remain a Settlement Class Member. Excluding yourself is telling the Court that you do not want to be a Settlement Class Member. If you submit a Request for Exclusion, you cannot object to the Settlement Agreement.

Any Class Member who requests to be excluded from the Settlement will not be entitled to any recovery under the Settlement Agreement and will not be bound by its terms or have any right to object, appeal, or comment on it.

FINAL APPROVAL HEARING

15. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Final Approval Hearing at [] a.m./p.m. on [], 2022, in Department 1 of the Superior Court of California for the County of Santa Clara, located at the Downtown Superior Courthouse, 191 North First Street, San Jose, California 95113, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve and award the Class Counsel Award to Class Counsel, the Class Representative Service Award to Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear remotely if you wish to.

Please note, due to COVID-19, there are limitations on personal appearances and telephonic appearances are an option. You can find information regarding the Court's most current COVID-19 guidelines online at: https://www.sccscourt.org/general_info/news_media/covid19.shtml.

16. How will I learn if the Settlement is approved?

A notice of final judgment will be posted on the Settlement Administrator website located at [www. \[REDACTED\] .com](http://www. [REDACTED] .com).

17. What happens if I do nothing at all?

If you do nothing, you will receive your share of the Net Settlement Amount, you will be bound by the terms of the Settlement as approved by the Court, and you will release the Released Claims described in Section 10 above.

GETTING MORE INFORMATION

18. Who may I contact if I have questions about the Settlement?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you may review the Settlement Agreement and other papers which are on file with the Court.

You may view the Settlement Agreement and other court records in the Action online by entering the Case Number “19CV347471” on the Court’s website (<https://portal.scsccourt.org/search>) under the Case Number Search tab. Please note, some documents are now available at no cost but the Court may charge fees to access documents in the future.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR DEFENDANTS’ MANAGERS, SUPERVISORS, OR THEIR ATTORNEYS FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: [REDACTED], OR YOU MAY ALSO CONTACT CLASS COUNSEL.

ADDITIONAL IMPORTANT INFORMATION

19. The Defendants support the Settlement, and will not retaliate in any manner whatsoever against any Class Member, whether they choose to stay in the Class as a Settlement Class Member and receive an Individual Settlement Payment, or request to be excluded from the Settlement, or object to the Settlement.

20. It is your responsibility to ensure that the Settlement Administrator has your current mailing address and telephone number on file, as this will be the address to which your Individual Settlement Payment installments will be sent.

21. Individual Settlement Payment checks must be cashed soon after receipt. If the Settlement is approved, you will be mailed your Individual Settlement Payment check. The check will remain valid and negotiable for one hundred eighty (180) days after the date it is issued. If you do not cash the check sent for your Individual Settlement Payment within one hundred eighty (180) days, these funds will be sent to the California State Controller and held by the State Controller’s Office Unclaimed Property Fund on your behalf.