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KRAFT HEINZ FOODS COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF TULARE

JOSEPH AVALOS, individual, on behalf of the
State of California, as private attorney general,
and on behalf of all aggrieved employees,

Plaintiff,

v.

KRAFT HEINZ FOODS COMPANY (LLC), a
Pennsylvania Limited Liability Corporation; and
DOES 1 to 100, inclusive,

Defendants.

Case No. VCU285653

DAVID C. MATHIAS

**PAGA SETTLEMENT AGREEMENT
AND RELEASE OF CLAIMS**

Date Action Filed: January 15, 2021

1 This Settlement Agreement and Release of Claims (“Agreement”) is between Plaintiff Joseph
2 Avalos (“Plaintiff”), on behalf of himself and other aggrieved employees, and Defendant Kraft
3 Heinz Foods Company (“Defendant”) (collectively, with Plaintiff, the “Parties”). By executing this
4 Agreement, the Parties intend to settle the lawsuit entitled *Joseph Avalos, et al. v. Kraft Heinz Foods*
5 *Company (LLC)*, Case No. 285653, Tulare County Superior Court, filed January 15, 2021 (the
6 “Action”) involving claims brought under the California Labor Code Private Attorneys General Act
7 of 2004 (“PAGA”).

8 **I. DEFINITIONS**

9 1. “**Administration Fees**” refers to the amount to be paid to Simpluris (or any other
10 third-party settlement administrator approved by the Parties (“Settlement Administrator”)) for costs
11 associated with administration of the settlement contemplated by this Agreement, including costs
12 for, among other things, printing, copying, formatting, translation of materials, postage, envelopes,
13 computer searches to locate addresses, calculation of payments to individual class members,
14 calculation of applicable withholdings and taxes (if required by law), costs associated with the
15 process for any uncashed settlement checks, and any other expenses the Settlement Administrator
16 incurs to complete the settlement process according to the terms of this Agreement. The Settlement
17 Administrator will be responsible for establishing a qualified settlement account, and issuing all
18 payments and appropriate tax forms (if required by law). The Parties agree that Administration Fees
19 will not exceed \$2,500, all of which are to be taken from the PAGA Gross Settlement Amount (as
20 defined below).

21 2. “**Aggrieved Employees**” consists of all individuals who previously were employed
22 and terminated by Defendant in a non-exempt position in California during the period from January
23 15, 2020 to March 31, 2021. Defendant estimates that there are approximately 100 “aggrieved
24 employees” who fall within this definition.

25 3. “**Attorneys’ Fees and Costs**” means the amount of money to be paid to Potter Handy
26 LLP (“Plaintiff’s Counsel”) in full satisfaction of all claims Plaintiff may have for reasonable
27 attorneys’ fees, litigation costs, and expenses incurred in the Action. The Attorneys’ Fees and Costs
28

1 to Plaintiff's Counsel will be paid separately in connection with an individual settlement for
2 Plaintiff, and will not be deducted from PAGA Gross Settlement Amount.

3 4. **"Effective Date"** shall be the date on which the settlement is approved and the
4 Court's order approving the settlement ("Judgment") becomes final. For purposes of this
5 Agreement, the Court's Judgment "becomes final" upon the latter of: (i) if no appeal is filed, the
6 expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the
7 Court's Judgment (this time period shall not be less than 60 calendar days after the Court's
8 Judgment is entered); (ii) the date of affirmance of an appeal of the Judgment becomes final; or
9 (iii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any
10 proceeding on review of any court of appeal decision relating to the Judgment. No money will be
11 distributed unless and until the Effective Date occurs.

12 5. **"Individual Settlement Payments to Aggrieved Employees"** means the individual
13 payments that shall be made to each Aggrieved Employee under this Agreement, which in the
14 aggregate shall total 25% of the PAGA Net Settlement Amount (as defined below).

15 6. **"PAGA Gross Settlement Amount"** means Four Thousand Dollars (\$4,000). This
16 amount shall be used to satisfy all liabilities arising from this Agreement, including Individual
17 Settlement Payments to Aggrieved Employees, Administration Fees, and payment to the Labor
18 and Workforce Development Agency ("LWDA"). Defendant shall pay exactly the PAGA Gross
19 Settlement Amount to fulfill all of its obligations under this settlement. The amount of the PAGA
20 Gross Settlement Amount is a material term of this agreement and Defendant shall not be required
21 to pay more than the PAGA Gross Settlement Amount, unless the Parties execute a new written
22 agreement.

23 7. **"PAGA Net Settlement Amount"** means the amount, as approved by the Court,
24 after Administration Fees are subtracted from the PAGA Gross Settlement Amount.

25 8. **"Settlement Period"** means January 15, 2020 to March 31, 2021.

26 **II. RECITALS AND PROCEDURAL HISTORY**

27 9. **Allegations in the Complaint and Amendment Thereto.** On December 4, 2020,
28 Plaintiff submitted a notice to the LWDA, alleging various violations of the California Labor

Code and seeking civil penalties under PAGA (the “PAGA Notice”). On January 15, 2021, Plaintiff filed the Action in the Superior Court of California, County of Tulare, individually and on behalf of all “aggrieved employees” pursuant to Labor Code §§ 2698 *et seq.*, Case No. VCU285653. The Released Claims detailed herein stem from the allegations in the operative Complaint, as well as the PAGA Notice.

10. **Defendant’s Denials.** Nothing in this Agreement shall constitute an admission on behalf of Defendant of any form of liability or the accuracy of any allegation against it. Defendant denies (1) all the material allegations in the Action; (2) that it violated any applicable laws; and (3) that it is liable for damages, penalties, attorneys’ fees, costs, or any other form of compensation or remedy with respect to the claims asserted in the Action. Nevertheless, without admitting any liability or wrongdoing, Defendant has agreed to settle the Action on the terms set forth in this Agreement to avoid the burden, expense, and uncertainty of litigation. Any statements by Defendant in this Agreement are made for settlement purposes only.

11. **Counsel’s Investigation.** Plaintiff’s Counsel has investigated the facts relating to the claims alleged in the Complaint and also has analyzed all defenses. Plaintiff’s Counsel also engaged in informal discovery and obtained the production of relevant data from Defendant prior to settlement discussions, to allow Plaintiff’s Counsel to further investigate and evaluate the claims and defenses in this Action.

12. **Negotiation of Settlement.** Subsequent to their exchange of data and documents, as well as numerous settlement conference calls to share informal discovery and discuss the allegations in the Complaint, the Parties negotiated this settlement over the course of months and ultimately agreed to settle the claims.

III. TERMS OF THE AGREEMENT

14. **Court Approval of the Settlement.** The Parties will present this Agreement to the Court and will request that the Court issue an order and judgment approving and incorporating by reference the terms and conditions of this Agreement and dismissing the Action with prejudice (the “Judgment”). Plaintiff’s Counsel will be responsible for drafting and filing all documents necessary to obtain the Judgment.

1 15. **Delivery of the List of Aggrieved Employees.** As soon as practicable, but no later
2 than 30 calendar days after the Effective Date, Defendant will provide the Settlement
3 Administrator with a confidential list containing the Aggrieved Employees' names, last known
4 addresses, last known telephone numbers, and social security numbers, which will be used to send
5 the Individual Settlement Payments to Aggrieved Employees. Data provided by Defendant shall
6 be kept confidential by the Settlement Administrator except for purposes of administering the
7 settlement. The Settlement Administrator shall not share any personally-identifying Aggrieved
8 Employee data with Plaintiff's Counsel, but may disclose the number of Aggrieved Employees,
9 and their Individual Settlement Payments (with names redacted).

10 16. **Funding of the Settlement.** Within 30 calendar days after the Effective Date,
11 Defendant will deposit the PAGA Gross Settlement Amount into a Qualified Settlement Account
12 ("QSA") to be established by the Settlement Administrator.

13 17. **Settlement Payments.** Within 15 calendar days of the funding of the QSA, the
14 Settlement Administrator shall issue the following payments from the QSA: (a) the Individual
15 Settlement Payments to Aggrieved Employees (including Plaintiff); (b) the LWDA PAGA
16 Payment (as defined below) to the LWDA; and (c) the Administration Fees to itself. The
17 Settlement Administrator, and not Defendant, will issue appropriate tax forms for all payments
18 issued under this Settlement, if and as required by law as determined by the Settlement
19 Administrator. Because the payments made under this Agreement will be made with respect to
20 only the PAGA claims for all Aggrieved Employees, this Agreement is not subject to the rules
21 governing the settlement of class or collective actions. Accordingly, the settlement payments shall
22 be distributed without a claims process or an opportunity to object or opt out.

23 18. **Calculation of Individual Settlement Payments to Aggrieved Employees.** The
24 PAGA Net Settlement Amount will be distributed as follows:

25 a. 75% of the PAGA Net Settlement Amount shall be paid to the LWDA (the
26 "LWDA PAGA Payment"); and

27 b. The remaining 25% of the PAGA Net Settlement Amount (the "Aggrieved
28 Employee Settlement Amount") shall be distributed to all Aggrieved Employees, with each

1 Aggrieved Employee receiving an equal Individual Settlement Payment. The Aggrieved
2 Employee Settlement Amount will be divided by the total number Aggrieved Employees.

3 19. **Distribution of Individual Settlement Payments to Aggrieved Employees.** The
4 Settlement Administrator will issue to each Aggrieved Employee a check in the amount of his or
5 her Individual Settlement Payment, along with an explanatory letter in the form attached hereto as
6 Exhibit A, within the time parameters set forth in paragraph 17 above. Checks shall remain
7 negotiable for 180 days. Any checks returned as non-deliverable on or before the check cashing
8 deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed
9 thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt
10 to determine the correct address using a skip-trace, or other search using the name, address, or
11 Social Security number of the Aggrieved Employee, and will then perform a single re-mailing.
12 Funds contained in the settlement checks that are returned as undeliverable and in settlement
13 checks uncashed for more than 180 days after issuance will be tendered to the California State
14 Controller's Office - Unclaimed Property Fund, to be held in the name of the Aggrieved
15 Employee. All settlement payments to Aggrieved Employees will be treated as miscellaneous
16 income for which an IRS Form 1099 will be issued to the extent required by law.

17 20. **Attorneys' Fees and Costs.** As referenced above, the amount of attorneys' fees and
18 costs to Plaintiff's Counsel will be paid separately in connection with an individual settlement for
19 Plaintiff, and will not be deducted from PAGA Gross Settlement Amount. Defendant shall have
20 no liability for any other attorneys' fees or costs, including in connection with the settlement of
21 PAGA claims herein.

22 21. **Release of PAGA Claims.** Upon Court approval of the Settlement and subject to
23 Defendant's full payment of the PAGA Gross Settlement Amount, Plaintiff and Aggrieved
24 Employees will fully and finally release and discharge Defendant and its former, present and
25 future owners, parents, and subsidiaries, and all of their current, former and future officers,
26 directors, members, managers, employees, consultants, partners, shareholders, joint venturers,
27 agents, successors, assigns, accountants, insurers, or legal representatives ("Released Parties"),
28 from all PAGA claims by the Aggrieved Employees alleged in the operative Complaint, or which

could have been alleged based on the facts set forth in the Complaint, during the Settlement Period. The release shall be limited to the Settlement Period, for claims related to failure to pay all wages due at the time of termination (California Labor Code §§ 201-203) and failure to pay final wages in a format that can be turned into cash on demand (California Labor Code § 212). The release excludes claims for wrongful termination, unemployment insurance, disability, and workers' compensation, and claims outside of the Settlement Period for the Aggrieved Employees.

22. **Additional Release of Wage and Hour Claims by Plaintiff.** In addition to the release given by each Aggrieved Employee, Plaintiff fully releases and discharges the Released Parties from any and all claims, demands, obligations, causes of action, rights, or liabilities related in any way to his employment by Defendant, known or unknown, arising out of any acts or omissions by Defendant or any of the Released Parties. This additional release has been agreed to and finalized through a separate individual settlement agreement between Plaintiff and Defendant.

The execution of an individual settlement agreement for Plaintiff is a material term of this Agreement. In other words, if Plaintiff does not fully execute the separate individual settlement agreement, Defendant shall not be required to fund the PAGA Gross Settlement Amount or be bound by the terms of this Agreement.

23. **No Credit Toward Benefit Plan.** Payments to Aggrieved Employees, including Plaintiff, as referenced herein will not be utilized to calculate any additional benefits under any benefit plans to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) or 403(b) plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Agreement will not affect any rights, contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

24. **Circular 230 Disclaimer.** Each Party to this Settlement Agreement acknowledges and agrees that (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys or other advisors, is or was intended to be, nor will any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as

1 amended); (2) each Party (a) has relied exclusively upon his, her or its own, independent legal and
2 tax counsel for advice (including tax advice) in connection with this agreement, (b) has not
3 entered into this Agreement based upon the recommendation of any other Party or any attorney or
4 advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by
5 any attorney or advisor to any other Party to avoid any tax penalty that may be imposed on the
6 Party; and (3) no attorney or advisor to any other Party has imposed any limitation that protects
7 the confidentiality of any such attorney's or advisor's tax strategies (regardless of whether such
8 limitation is legally binding) upon disclosure by the Party of the tax treatment or tax structure of
9 any transaction, including any transaction contemplated by this Agreement.

10 25. **No Prior Assignment.** Plaintiff represents and warrants that he has not assigned or
11 transferred any portion of any claims, demands, obligations, causes of action, rights, or liabilities
12 that, but for such assignment or transfer, would be released under this Agreement.

13 26. **Nullification of Settlement Agreement.** Unless otherwise noted herein, if (i) the
14 Court does not approve the settlement as provided or (ii) the Effective Date does not occur for any
15 other reason, then this Agreement, the Memorandum of Understanding, and any documents
16 generated to bring it into effect will be null and void, and the Parties will be returned to their
17 original, respective positions.

18 27. **No Publicity; Confidentiality.** No party hereto (including the Parties' attorneys)
19 shall publicize this settlement, this Agreement, any terms of this Agreement (including, but not
20 limited to, the PAGA Gross Settlement Amount), or any information about the negotiations
21 leading to the execution of this Agreement. This includes, but not limited to, communications
22 through any social media, unless so ordered by the Court. Nothing herein limits or purports to
23 limit Plaintiff's Counsel's ability or right to respond to Aggrieved Employee inquiries about this
24 Settlement or to submit this Settlement to the LWDA and the Court for the purpose of obtaining
25 approval of the Settlement and in compliance with the requirements of PAGA.

26 28. **Continued Jurisdiction.** After entry of the Judgment, the Court shall retain, and
27 will have continuing, jurisdiction solely for purposes of addressing: (i) the interpretation and
28 enforcement of the terms of this Agreement; (ii) settlement administration matters; and (iii) such

1 matters as may be appropriate under court rules or as set forth in this Agreement, as permitted by
2 Code of Civil Procedure section 664.6 and any other applicable law.

3 29. **Entire Agreement.** This Agreement constitutes the entirety of the Parties'
4 settlement terms. No other prior or contemporaneous written or oral agreements may be deemed
5 binding on the Parties.

6 30. **Amendment or Modification.** This Agreement may be amended or modified only
7 by a written instrument, signed by both Parties, their successors-in-interest, or their counsel.

8 31. **Authorization to Enter into a Settlement Agreement.** Counsel for all Parties
9 warrant and represent they are expressly authorized by the Parties whom they represent to
10 negotiate this Agreement and to take all appropriate action required or permitted to be taken by
11 such Parties pursuant to this Agreement. The Parties and their counsel will cooperate with each
12 other and use their best efforts to effect the implementation of the settlement.

13 32. **Binding on Successors and Assigns.** This Agreement will be binding upon, and
14 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

15 33. **Governing Law.** All terms of this Agreement shall be governed by, and interpreted
16 according to, the laws of the State of California.

17 34. **Execution and Counterparts.** This Agreement is subject only to the execution of
18 all Parties. However, the Agreement may be executed in one or more counterparts. All executed
19 counterparts and each of them, including fax and scanned copies of the signature page, will be
20 deemed to be one and the same instrument.

21 35. **Invalidity of any Provision.** Before declaring any provision of this Settlement
22 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
23 extent possible consistent with applicable precedents so as to define all provisions of this
24 Settlement Agreement valid and enforceable.

25 36. **Construction and Interpretation.** Headings and paragraph titles are inserted as a
26 matter of convenience and for reference, and in no way define, limit, extend or describe the scope
27 of this Agreement or any of its provisions. Each term of the Agreement is contractual.
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1 37. **Waiver.** No waiver of any condition or covenant contained in this Agreement or
2 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
3 constitute a further waiver by such party of the same or any other condition, covenant, right or
4 remedy.

5 38. **Enforcement Action.** In the event that one or more of the Parties institutes any
6 legal action or other proceeding against any other Party or Parties to enforce the provisions of this
7 Agreement or to declare rights and/or obligations under this Agreement, the successful Party will
8 be entitled to recover from the unsuccessful Party reasonable attorneys' fees and costs, including
9 expert witness fees incurred in connection with any enforcement action.

10 39. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms
11 and conditions of this Agreement. Accordingly, this Agreement will not be construed more
12 strictly against one party merely by virtue of the fact that it may have been prepared by counsel for
13 one of the Parties, it being recognized that, because of the arm's-length negotiations between the
14 Parties, all Parties have contributed to the preparation of this Agreement.

15 40. **Representation by Counsel.** The Parties acknowledge that they have been
16 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
17 and that this Agreement has been executed with the consent and advice of counsel, and reviewed
18 in full.

19 41. **Cooperation and Execution of Necessary Documents; Stipulation/Motion for**
20 **Court Approval.** All Parties will cooperate in good faith and execute all documents to the extent
21 reasonably necessary to effectuate the terms of this Agreement. Plaintiff's Counsel shall prepare
22 and file a joint stipulation for Court approval of the Settlement (or a motion if required by the
23 Court) as soon as practicable. Plaintiff's Counsel shall submit the stipulation/motion to
24 Defendant's counsel for approval a reasonable time prior to filing.

25 42. **Binding Agreement.** The Parties warrant that they understand and have full
26 authority to enter into this settlement, and further intended that this Agreement will be fully
27 enforceable and binding on all Parties, and agree that it will be admissible and subject to
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disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

43. **Compliance with PAGA's Procedural Requirements.** Plaintiff agrees that Plaintiff's Counsel will notify the LWDA of the Settlement at the same time this Settlement is submitted to the Court for approval, and perform any and all statutory tasks as required by law necessary to effectuate consummation and approval of this Settlement.

44. **Representation Regarding the Number of Aggrieved Employees.** Defendant has represented that, during the Settlement Period, there were approximately 100 Aggrieved Employees in a non-exempt position in California who were terminated from their employment with Defendant, and thus fit within Plaintiff's alleged definition of Aggrieved Employees in the Complaint.

SO AGREED:

Dated:

12/24/2021

Plaintiff Joseph Avalos



Joseph Avalos

Dated:

Defendant Kraft Heinz Foods Company

By: _____,
its _____

APPROVED AS TO FORM, AND AGREED TO AS APPLICABLE:

Dated:

POTTER HANDY LLP

James Treglio
Counsel for Plaintiff

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Dated:

SEYFARTH SHAW LLP

Michael Afar
Counsel for Defendant

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EXHIBIT A

Date

NOTICE OF SETTLEMENT
Tulare County Superior Court, Case No. 285653
Case Name: *Joseph Avalos, et al. v. Kraft Heinz Foods Company*

«FirstName» «LastName»
«Address1» «Address2»
«City» «State» «Zip»

Kraft Heinz Foods Company has entered into a compromise and settlement with the State of California in connection with claims brought under the Private Attorneys General Act. As part of this compromise and settlement, the Court has ordered the enclosed settlement check be sent to you.

The settlement check shall remain valid for 180 calendar days. Checks remaining un-cashed for more than 180 days after issuance will become void and the outstanding balance will be tendered to the California State Controller's Office - Unclaimed Property Fund, to be held in your name.

If you have additional questions, you may contact [administrator phone number].

This document was signed by:

Joseph Avalos



Vinesign

Date 12/24/2021 10:49 PM UTC

Phone (559) 280-2196

IP Address 73.66.155.129

Confirmation 3A53F0BA9CC83C7A721F960A0201B269
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