

JOINT STIPULATION FOR CLASS ACTION/PAGA SETTLEMENT

Janaira Valenzuela v. Best Express Foods, Inc.

San Joaquin Superior Court Case No. STK-CV-UOE-2021-4131

Julissa Tapia v. Best Express Foods, Inc.

San Joaquin Superior Court Case No. STK-CV-UO-2021-11051

Alondra Gardea v. Best Express Foods, Inc.

Alameda Superior Court Case No. RG21086811

This Joint Stipulation for Class Action & Representative Private Attorney General Act Settlement (“Settlement” or “Agreement”) is entered into by and between Plaintiffs Janaira Valenzuela (“Valenzuela”), Julissa Tapia (“Tapia”), and Alondra Gardea (“Gardea”) (collectively, “Plaintiffs” or “Representative Plaintiffs”), on behalf of themselves, the State of California, all allegedly aggrieved employees, and all similarly situated individuals, and Defendant Best Express Foods, Inc. (“Defendant”). Plaintiffs and Defendant collectively are referred to in this Agreement as the “Parties,” and each as a “Party.”

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Actions” means the lawsuits styled: *Janaira Valenzuela v. Best Express Foods, Inc.*, Case No. STK-CV-UOE-2021-4131, pending in San Joaquin County Superior Court; *Julissa Tapia v. Best Express Foods, Inc.*, Case No. STK-CV-UO-2021-11051, pending in San Joaquin County Superior Court; and *Alondra Gardea v. Best Express Foods, Inc.* Case No. RG21086811, pending in Alameda County Superior Court. These lawsuits are collectively referred to in this Agreement as the “Actions,” and each as an “Action.”
- B. “Agreement” or “Settlement Agreement” shall refer to this document.
- C. “Class” or “Class Member” or “Settlement Class” means all employees of Defendant who were classified as non-exempt and worked within the State of California at any time from January 27, 2017 through February 25, 2023.
- D. “Class Counsel” means Jake D. Finkel – Law Offices of Jake D. Finkel – Counsel for Valenzuela; David Yeremian and Roman Shkodnik – David Yeremian & Associates, Inc. – Counsel for Tapia; and Marco A. Palau, Joseph D. Sutton, and Eric S. Trabucco – Advocates for Worker Rights LLP – Counsel for Gardea.
- E. “Class Counsel Fees and Expenses Payment” means the amount awarded to Class Counsel by the Court to compensate them for their attorneys’ fees and litigation expenses in connection with the Action, including their pre-filing investigation, their commencement of the Action and all related litigation activities, this Settlement, and all post-Settlement compliance procedures.

- F. “Class Member Challenge” or “Challenge” means submission by a Class Member of a challenge to their workweek total.
- G. “Class Notice” means the court-approved document, substantially in the form attached to this Settlement Agreement as Exhibit A, which will be sent to Class Members following preliminary approval of the Settlement Agreement to notify Class Members of the Settlement and explain Class Members’ options.
- H. “Class Notice Packet” means the Class Notice and the Employee Verification Form.
- I. “Class Period” means from January 27, 2017 through February 25, 2023.
- J. “Complaint” means the operative Complaint on file in each of the Actions.
- K. “Court” or “Superior Court” means the California Superior Court in and for the County of San Joaquin, the Honorable Robert T. Waters presiding.
- L. “Data Period” means the period from January 27, 2017 through March 1, 2022.
- M. “Defendant’s Counsel” means Alan S. Levins and Robert M. Geiger of Littler Mendelson, P.C.
- N. “Effective Date” means the date on which the Court’s order granting Final Approval of this Settlement becomes final. Such order becomes final upon any of the following events: (a) if no Class Member files and serves any timely and valid objection to the Settlement, then the date upon which the Court grants Final Approval of the Settlement; (b) if any Class Member files and serves a timely and valid objection but it is subsequently withdrawn, then the date upon which the Court grants Final Approval of the Settlement; or (c) if any Class Member files and serves a valid and timely objection, then the date which is sixty-five (65) days after (i) service of notice of entry of the Final Approval Order and Judgment on the Parties to the Action and all objectors to the Settlement, if any, without appeals or requests for review being taken, or (ii) an order affirming the Final Approval Order and Judgment or denying review after exhaustion of all appellate remedies, if appeals or requests for review have been taken.
- O. “Employer Payroll Contributions” shall mean those payroll taxes and other monetary contributions required by state and federal law to be made by an employer on wage payments, including but not limited to FICA, Medicare, FUTA, and SUTA, and any federal and state unemployment taxes, payable with respect to amounts treated as wages under this Agreement (*i.e.*, the Wage Portion of Class Member Settlement Shares), but not amounts required to be withheld by an employer in satisfaction of an employee’s share of federal and state income and other taxes and FICA or other mandated employee insurance contributions.
- P. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to finally approve and implement the terms of this Agreement.
- Q. “Judgment” means the Order Granting Final Approval of Class Action Settlement and Entering Final Judgment entered by the Court.
- R. “Gross Settlement Amount” or “GSA” means the total non-reversionary sum of

\$1,500,000 for payment of all amounts due in connection with this Settlement, including payment of settlement administration expenses; attorneys' fees to Class Counsel; litigation expenses to Class Counsel; Service Awards, the PAGA Payment, and the individual payments to Class Members as allocated and provided for by the Settlement.

- S. "Net Settlement Amount" means the Gross Settlement Amount, less the following, as approved by the Court: (1) the Representative Service Awards; (2) the Class Counsel Fees and Expenses Payment (which includes all attorneys' fees and litigation expenses incurred to date and to be incurred in documenting the Settlement, securing court approval of the Settlement, attending to the administration of the Settlement, and obtaining dismissal of the Action); (3) the PAGA Payment; and (4) the Settlement Administrator's expenses incurred in administering the Settlement. Any deductions from the forgoing allocations will be retained in the QSF and will be included in the Net Settlement Amount for distribution to the Class, as appropriate. If the Court approves a lesser amount of any of the foregoing amounts, the Net Settlement Amount will increase proportionately. In other words, any reductions from the above-referenced costs will increase the Net Settlement Amount proportionately.
- T. "Notice Packet" means the packet that includes the Class Notice that will be mailed to each Class Member following the Court's Preliminary Approval Order.
- U. "Notice Response Deadline" means the last day by which a Class Member may object to the settlement, or submit a Request for Exclusion. The Notice Response Deadline shall be forty-five (45) calendar days following the Settlement Administrator's mailing of Notice Packets. However, for Class Members whose notice packets are sent to a different address subsequent to the initial mailing, the Notice Response Deadline shall be the earlier of forty-five (45) calendar days from the date of re-sending or the date that is fourteen (14) calendar days before the Final Approval Hearing.
- V. "Objection" means the written statement that a Class Member may submit to the Settlement Administrator in order to object to this Settlement Agreement (as set forth in herein).
- W. "PAGA Aggrieved Employees" is defined as all employees of Defendant who were classified as non-exempt and worked within the State of California at any time from September 15, 2019 through February 25, 2023.
- X. "PAGA Aggrieved Employee Award" means the 25% of the PAGA Payment to be paid to PAGA Aggrieved Employees pursuant to Labor Code § 2699(i).
- Y. "PAGA LWDA Award" means the 75% of the PAGA Payment paid to the LWDA pursuant to Labor Code § 2699(i).
- Z. "PAGA Payment" means the payment in the amount of \$50,000 from the Gross Settlement Amount to be paid to the LWDA (75%, or \$37,500.00) and the PAGA Aggrieved Employees (25%, or \$12,500.00) to settle claims for civil penalties pursuant to PAGA.
- AA. "PAGA Period" means the time period from September 15, 2019 through

February 25, 2023.

- BB. “PAGA Share” means the amounts to be distributed to each PAGA Aggrieved Employee from the PAGA Aggrieved Employee Award on a pro-rata basis based on the respective number of pay periods worked by each PAGA Aggrieved Employee during the PAGA Period.
- CC. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- DD. “Preliminary Approval” means the Court’s Order granting preliminary approval of the Settlement without material changes, or with material changes to the Settlement to which the Parties agree.
- EE. “Preliminary Approval Date” means the date on which the Court enters an Order granting preliminary approval of the settlement terms set forth in this Settlement Agreement, or such modified terms as may be agreed to by the Parties in order to obtain preliminary approval.
- FF. “Preliminary Approval Hearing” means the hearing held on the Motion for Preliminary Approval of this Settlement.
- GG. “Qualified Settlement Fund” or “QSF” means the interest-bearing bank account established under this Agreement from which all monies payable under this Settlement shall be paid, as set forth herein.
- HH. “Released Claims” means all claims alleged in any Complaint (including any amended Complaint filed prior to final approval) in any of the Actions, or which could have been alleged based on the facts asserted in any such Complaint, whether operative or superseded, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, which occurred during the Class Period. Released Claims also means all claims for civil penalties under PAGA based on the Labor Code violations alleged in any of the Complaints (including any amended Complaint filed prior to final approval) in any of the actions filed by any of the Plaintiffs, or which could have been alleged based on the legal theories, legal authorities, or facts asserted in any such Complaint, whether operative or superseded, and alleged to have occurred during the PAGA Period. The Released Claims include any and all claims, causes of action, damages, wages, premiums, penalties, attorneys’ fees, costs, and any other form of relief or remedy in law, equity, of whatever kind or nature and for any relief whatsoever, including monetary, injunctive, or declaratory relief, whether direct or indirect, whether under federal law or the law of any state, which the Plaintiffs have or any Class Member has against the Released Parties for any acts occurring during the Class Period that relate to the substantive claims described in any of the Complaints, including any amended Complaint.
- II. “Released Parties” means Defendant Best Express Foods, Inc. and any of its past or present affiliated and related entities, and all of its past or present partners, parents, subsidiaries, trustees, affiliates, divisions, insurers, re-insurers, successors and assigns and any of its and their past or present directors, officers, owners,

principals, attorneys, trustees, heirs, administrators, agents, representatives, employees or assigns (whether acting as agents for any other Released Party or in their individual capacities), any employment benefit plan, and such plans' administrators, fiduciaries, trustees, insurers, and re-insurers.

- JJ. "Representative Service Award" means the payments of up to \$7,500 each, in addition to their respective Settlement Shares, made to the Representative Plaintiffs in their capacity as Class Representatives, to compensate them for initiating and pursuing the Action, and undertaking the risk of liability for attorneys' fees and litigation costs in the event they were unsuccessful in the prosecution of the Actions.
- KK. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- LL. "Settlement" means the terms and conditions set forth in this Agreement to resolve the Actions.
- MM. "Settlement Administrator" means the administrator proposed by the Parties, Phoenix Class Action Administration Solutions ("Phoenix"), and appointed by the Court, tasked with administering the Settlement.
- NN. "Settlement Administrator's expenses" means the fees, costs, and expenses relating to the administration of the settlement of these Actions, including without limitation, printing and mailing the Notice Packets, receiving and processing Objections, Requests for Exclusion, calculating and determining payments and percentages, regularly updating counsel on the status of administration, and the accounting and maintenance of the Qualified Settlement Fund.
- OO. "Settlement Share" means the gross amounts to be distributed to each Participating Class Member from the Net Settlement Amount on a pro-rata basis based on the respective number of workweeks worked by each Participating Class Member during the Class Period.

II. RECITALS

- A. **Plaintiffs' Class and Representative Action Complaints.** May 21, 2021, Valenzuela filed a class action Complaint (San Joaquin Superior Court Case No. STK-CV-UOE-2021-4131) on behalf of herself and all others similarly situated, asserting causes of action for (1) Failure to Pay Minimum Wage and Overtime Wages; (2) Failure to Provide Meal Periods; (3) Failure to Provide Rest Periods; (4) Failure to Provide Accurate Wage Statements; (5) Unfair Competition (Business and Professions Code § 17200 et seq.); and (6) Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. (the "Valenzuela Action").

On December 3, 2021, Tapia filed a class action Complaint (San Joaquin Superior Court Case No. STK-CV-UOE-2021-11051) against Defendant alleging causes of action for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal-Period Liability Under Labor Code § 226.7; (4) Rest-Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5; (7) Penalties Pursuant to Labor Code § 203; and (8)

Violation of Business & Professions Code § 17200 et seq. On February 7, 2022, Tapia filed a First Amended Complaint on behalf of herself and others similarly situated, adding a Ninth cause of action under PAGA for civil penalties. (the “Tapia Action”).

On January 27, 2021, Gardea filed a class action Complaint against Defendant (Alameda Superior Court Case No. RG21086811) alleging the following causes of action: (1) Minimum Wages, LC § 1194 & Wage Orders; (2) Overtime Wages, LC § 510 & Wage Orders; (3) Meal Period Violations, Wage Orders & LC §§ 226.7, 512; (4) Rest Break Violations, Wage Orders & LC § 226.7; (5) Waiting Time Penalties, LC § 203; (6) Wage Statement Penalties, Wage Orders & LC § 226; (7) Unfair Competition Law, Bus. & Prof. Code §§ 17200, et seq. (the “Gardea Action”) (the Valenzuela Action, the Tapia Action, and the Gardea Action are referred to collectively herein as the “Actions”). Based on these claims, Plaintiffs seek the recovery of wages, including minimum wages, liquidated damages, overtime premium wages, meal period and rest break premium wages, wage statement penalties, waiting-time penalties, statutory and civil penalties, prejudgment interest, and attorneys’ fees and costs.

In conjunction with this Settlement, the Parties will stipulate to Plaintiff Valenzuela filing a First Amended Complaint, amended in accordance with the terms of this Agreement, which alleges the claims alleged in the Actions and which consolidates the Plaintiff Tapia’s action and adds Plaintiff Gardea as an additional named plaintiffs. The resulting First Amended Complaint will be the operative complaint in the *Valenzuela* Action (the “Operative Complaint”). Upon the filing of the First Amended Complaint in the *Valenzuela* matter, Plaintiff Gardea will request a stay of her respective action (RG21086811) in furtherance of the consolidated global Settlement contemplated by this Agreement, and will request dismissal of such action when this Settlement receives Final Approval. Defendant denies the allegations in the Operative Complaint, or the Complaint filed in any of the Actions, denies any failure to comply with the laws identified therein, and denies any and all liability for the causes of action alleged.

- B. **No Admission.** Defendant denies the allegations in the Actions; denies it has engaged in any wrongdoing; denies that Plaintiffs’ allegations constitute valid claims; denies that a litigation class could properly be certified in the Actions; denies that Plaintiffs’ claims could properly be maintained as a PAGA representative actions; and state it is entering into this Settlement Agreement solely to eliminate the burden, expense, and delay of further litigation, and on the express conditions and agreement with the Plaintiffs that (a) if for any reason the Settlement is not finalized according to the terms of this Agreement, the Settlement and the documents generated as a result of the Settlement shall not be usable for any purpose in the Action, and (b) this Settlement and the documents generated as a result of the Settlement are not admissible or usable in any other civil or administrative proceeding or any arbitration, except to the extent necessary to enforce this Settlement and the orders, judgment and agreements arising from this Settlement.
- C. **Bona Fide Dispute.** The Parties agree a bona fide dispute exists as to whether

any amount of wages and/or penalties are due from Defendant to Plaintiffs, Settlement Class Members, PAGA Aggrieved Employees or to the LWDA.

- D. **Procedural History.** On September 15, 2020, Plaintiff Valenzuela sent a notice pursuant to PAGA to the LWDA and perfected such claims on May 7, 2021 upon the filing of their Complaint. On December 2, 2021, Plaintiff Tapia sent a notice pursuant to PAGA to the LWDA, and perfected such claims on February 3, 2022 upon the filing of their First Amended Complaint.
- E. **Settlement Efforts.** In Fall 2021, the Parties agreed to engage the services of mediator Michael Dickstein in an attempt to resolve this matter informally before expending further time and resources. In January 2022, the Parties filed a stipulation setting out the general framework and information regarding the Parties' anticipated mediation efforts, the Parties exchanged categories of information that they would need to proceed to mediation. Among these documents were Plaintiffs' personnel files, a class list with hiring, rehiring, and termination dates for the Class Members, redacted payroll and timekeeping documents for the Class, and all pertinent versions of Defendant's policy documents. On March 31, 2022, the Parties participated in a virtual mediation presided over by Michael Dickstein. During the mediation, each side, represented by its respective counsel, recognized the substantial risk of continued litigation or an adverse result in the Action, but were ultimately unable to settle the Action. After their failed ADR efforts, the Parties engaged in follow-up discussions about Plaintiffs' damages expert's methodology regarding certain assumptions and calculations, as well as further informal discovery pertaining to Defendant's finances. Once Plaintiffs were able to consult with forensic accountant Ken Creal regarding the financial documents provided by Defendant, Michael Dickstein facilitated additional rounds of questions regarding Plaintiffs' expert's methodology and Defendant's financial situation, and eventually re-initiated informal settlement discussions. Ultimately, on September 2, 2022, Michael Dickstein delivered a successful mediator's proposal that the Parties accepted, resulting in the Settlement described herein. This Agreement constitutes the only agreement between the Parties relating to the Settlement of this Action, and otherwise replaces or supersedes any prior agreements, understandings, or representations relating to the Settlement of this Action.

Based on these Recitals, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

A. Gross Settlement Amount.

1. Subject to the terms and conditions of this Agreement, including but not limited to section III.A.2., *infra*, the Gross Settlement Amount that Defendant is obligated to pay in connection with the Settlement of the Action is one million five-hundred thousand dollars and zero cents (\$1,500,000.00). Payment of this amount, as approved by the Court, will cover all monetary benefits and payments to the Settlement Class and all claims for interest, fees, and costs, and will include: (1) the Representative Service Award; (2) the Class Counsel Fees and Expenses Payment; (3) the

PAGA Payment; and (4) the Settlement Administrator's Fees; and (5) all Settlement Shares paid to Participating Class Members. The Gross Settlement Amount does not include the required Employer Payroll Contributions on the Wage Portion of the Settlement (Class Member Settlement Shares), which Defendants shall pay separately. There shall be no reversion of the Gross Settlement Amount to Defendant.

2. This Agreement is based on Defendant's representation that there were approximately 36,682 pay periods worked by Settlement Class Members during the Data Period. If the number of verified pay periods in the Data Period totals more than 10% of approximate 36,682 pay periods when the class data is finalized for the administrator, then there shall be a corresponding pro-rata increase in the Gross Settlement Amount for amounts over 10% of 36,682.

For example, and to illustrate the intended operation of the preceding paragraph, if the verified pay periods in the Data Period are 44,018 (*i.e.*, 7,336 pay periods (20%) more than the 36,682 pay period approximation), Defendant would have to add \$150,000 to the Gross Settlement Amount.

B. Payments to Plaintiffs, Class Counsel, and Settlement Administrator. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount as follows:

1. **To Plaintiffs:** In addition to their Settlement Share, Representative Plaintiffs will apply to the Superior Court for an award of not more than seven thousand five-hundred dollars (\$7,500.00) each as a Representative Service Award in consideration for initiating and pursuing the Action, undertaking the risk of liability for attorneys' fees, expenses and litigation costs in the event they were unsuccessful in the prosecution of the Action. Defendant agrees to not oppose Plaintiffs' request for a Representative Service Awards of up to \$7,500.00 each. The Settlement Administrator will pay the Representative Service Award, as approved by the Court, out of the Gross Settlement Amount. If the Court approves a Representative Service Award of less than \$7,500.00 each, the remainder will be retained in the Net Settlement Amount. Neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested here and the amount ultimately approved by the Court. Tax deductions and withholdings will not be taken from the Representative Service Award, and a Form 1099 will be issued to each Plaintiff with respect to this payment.
2. **To Class Counsel:** Class Counsel will apply to the Superior Court for an award of (a) attorneys' fees of not more than one-third of the Gross Settlement Amount, or five hundred thousand dollars (\$500,000.00), and (b) litigation costs not to exceed twenty five thousand dollars (\$25,000.00) incurred in this action by Class Counsel. Defendant will not oppose Class Counsel's request for a Class Counsel Fees and Expenses Payment of these amounts. The Settlement Administrator will pay the amount

approved by the Court out of the Gross Settlement Amount. If the Superior Court approves Class Counsel fees and litigation costs of less than the amounts requested herein, the remainder will be retained in the Net Settlement Amount. Tax deductions and withholdings will not be taken from the Class Counsel Fees and Expenses Payment, and a Form 1099 will be issued to Class Counsel. In the event the Court does not approve the entirety of the application for the Class Counsel Fees and Expenses Payment, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested here and the amount ultimately awarded as recoverable attorneys fees' and litigation costs.

3. **To the Settlement Administrator.** The Settlement Administrator will pay to itself out of the Gross Settlement Amount its reasonable fees and expenses as approved by the Superior Court, not to exceed fourteen thousand dollars (\$14,000). If the Court approves Settlement Administration Costs of less than \$14,000 total, the remainder will be retained in the Net Settlement Amount.

C. **PAGA Payment.** Fifty thousand Dollars (\$50,000) of the Gross Settlement Amount is allocated to settle claims for civil penalties under California's Private Attorney General Act, Labor Code sections 2698, *et seq.*, as follows:

1. **PAGA LWDA Award.** Seventy-five percent (75%) of the PAGA Payment, or no less than thirty-seven thousand five hundred dollars (\$37,500.00), shall be paid to the LWDA, as required by Labor Code § 2699(i).
2. **PAGA Aggrieved Employee Award.** Twenty-five percent (25%) of the PAGA Payment, or no less than twelve thousand five hundred dollars (\$12,500.00), shall be paid to PAGA Aggrieved Employees as PAGA Shares, as required by Labor Code § 2699(i).
3. **PAGA Share.** Each PAGA Share will equal the PAGA Aggrieved Employee Award amount times the ratio of (a) the number of pay periods worked by each respective PAGA Aggrieved Employee for Defendant between September 15, 2019 through February 25, 2023 (the "PAGA Period"), and (b) the total number of workweeks worked by all PAGA Aggrieved Employees during the PAGA Period.
4. **Treatment.** Each PAGA Aggrieved Employee's PAGA Share shall be characterized as penalties and reported on an IRS Form 1099.
5. **PAGA Aggrieved Employees May Dispute Their PAGA Workweeks.** Each PAGA Aggrieved Employee will be provided with the Notice Packet that states the total number of workweeks in the PAGA Period, if any, attributable to that PAGA Aggrieved Employee. This total will be based on Defendant's records, and there will be a presumption that Defendant's records are correct, absent evidence produced to the contrary. PAGA

Aggrieved Employees may submit a challenge to workweeks to the Settlement Administrator if they believe that the number of workweeks attributed to them is incorrect. PAGA Aggrieved Employees challenging the number of workweeks attributed to them who are also Class Members shall submit any challenges to the workweeks attributed to them for purposes of the Settlement Share calculation on the same form. If the PAGA Aggrieved Employee does not timely dispute the number of workweeks, then the Settlement Administrator will mail that PAGA Aggrieved Employee their PAGA Share within fourteen (14) days after the Effective Date based on the original data provided by Defendant.

6. **Effect of PAGA Aggrieved Employees Who Request to Be Excluded from the Class Settlement.** A PAGA Aggrieved Employee may not submit a Request for Exclusion from the PAGA Payment. If a PAGA Aggrieved Employee attempts to request Exclusion from the PAGA Payment, their respective workweeks will continue to be included in the calculations of PAGA Shares for all PAGA Aggrieved Employees, and the Settlement Administrator will still send such person their PAGA Share.

D. **Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will allocate Settlement Shares from the Net Settlement Amount to Participating Class Members as follows:

1. **Allocation and Payment of Settlement Shares to Participating Class Members:** The Net Settlement Amount will be allocated and distributed to all participating Class Members based on the proportion of workweeks each participating Class Member worked for Defendant during the Class Period compared to all other participating Class Members. Payments to Participating Class Members will be calculated by assigning a certain dollar value to each workweek the Class Members worked during the Class Period. The dollar value of each workweek will be calculated by dividing the aggregate value of the Net Settlement Amount by the total number of workweeks worked during the Class Period by the Class Members who do not submit valid Requests for Exclusion. Partial weeks will be rounded up to the nearest full week. A Class Member who does not submit a valid and signed Request for Exclusion will receive a Settlement Share determined by multiplying their number of workweeks during the Class Period by the dollar value of each workweek.
2. **Treatment of Settlement Shares.**
 - a. **Non-Wage Portion:** fifty percent (50%) of each Settlement Share will be treated as a payment in settlement of the Participating Class Member's claims for statutory penalties (the "Penalty Portion"). And another twenty-five percent (25%) of each Settlement Share will be treated as a payment in settlement of the Participating Class Member's claims for interest (the "Interest Portion"). Both the Penalty Portion and the Interest Portion (collectively, the "Non-Wage Portion") will be treated separately from the remaining Wage Portion for purposes of

any tax withholding and deductions in accordance with IRS Rev. Ruling 80-364 and PMTA-2009-035, and shall be reported by IRS Form 1099. The Settlement Administrator will issue the appropriate federal and state tax forms

- b. **Wage Portion:** The remaining twenty-five percent (25%) of each Settlement Share (the “Wage Portion”) will be treated as a payment in settlement of the Participating Class Member’s claims for unpaid wages. Accordingly, the Wage Portion shall be subject to all tax withholdings customarily made from employee’s wages and all other authorized and required withholdings and shall be reported by IRS Form W-2. The employees’ share of payroll tax withholdings shall be withheld from each employee’s Settlement Share. The Settlement Administrator will issue the appropriate federal and state tax forms.

3. **Class Members May Dispute Their Allocated Workweeks and Are Not Required to Submit a Claim Form to Receive a Settlement Share.**

Class Members will be provided with a Notice Packet that states the total number of workweeks attributed in the Class Period, if any, to that Class Member by Defendant’s records. There will be a presumption that Defendant’s records are correct, absent evidence produced to the contrary. Class Members may submit an objection to the Settlement Administrator if they believe that the number of workweeks attributed to them is incorrect. Class Members challenging the number of workweeks attributed to them who are also PAGA Aggrieved Employees shall submit any challenges to the workweeks attributed to them for purposes of the PAGA Share calculation on the same form. If the Class Member does not timely dispute the number of workweeks, then the Settlement Administrator will mail that Participating Class Member’s Settlement Share within fourteen (14) days after the Effective Date.

4. **Effect of Class Members Who Request to Be Excluded from the Settlement.** A Class Member who submits a valid and timely Request for Exclusion from the Settlement will not receive a Settlement Share but will still receive a PAGA Share. That Class Member’s workweeks will not be included in the calculations of Settlement Shares for those Class Members who do not request exclusion; and the Settlement Share that otherwise would have been payable to such Class Member will be retained in the Net Settlement Amount for distribution to all other Participating Class Members who do not request to be excluded from the Settlement.

- E. **Appointment of Settlement Administrator.** The Parties will ask the Court to appoint Phoenix Class Action Administration Solutions (“Phoenix”) (<https://www.phoenixclassaction.com/>) as Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator’s duties will include preparing, printing, and mailing to all Class Members the Class Notice Packet; translating the Class Notice Packet from English to Spanish; conducting a National Change of Address search and using

Accurint or another reasonable and cost-effective skip trace methods to locate any Class Member whose Class Notice Packet was returned by the U.S. Postal Service as non-deliverable, and re-mailing the Class Notice Packet to the Class Member's new address; setting up a toll-free telephone number to field calls from Class Members in English and Spanish; receiving and keeping track of any challenges to workweeks or Requests for Exclusion in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of challenges to workweeks or Requests for Exclusions; calculating any and all payroll tax deductions as required by law; calculating Settlement Shares; providing a due diligence declaration for submission to the Superior Court prior to the Final Approval Hearing; issuing the checks to effectuate the payments due under the Settlement; calculating and mailing the PAGA LWDA Award to the LWDA; distributing the Class Counsel Fees and Expenses Payment to Class Counsel; printing and providing Class Members and Plaintiffs with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Superior Court upon completion of the Settlement; providing any funds remaining in the QSF as a result of uncashed checks to the California State Controller in accordance with California Unclaimed Property Law, including the administration of related tax reimbursements; for such other tasks as the Parties mutually agree; and otherwise administering the Settlement pursuant to this Agreement and its agreement with the Defendant. The Settlement Administrator will have the final authority to resolve all disputes concerning the calculation of all Class Member's Settlement and PAGA Shares, and all those requesting exclusion from the Settlement Class, subject to the dollar limitations set forth in this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount. The Parties each represent that they do not have any financial interest in Phoenix, or otherwise have a relationship with Phoenix that could create a conflict of interest.

F. Procedure for Approving Settlement.

1. Motion for Preliminary Approval.

- a. Only after the Settlement Agreement is signed by Plaintiffs and Defendant, the Parties jointly may file a Motion for Preliminary Approval with the Court for an order granting Preliminary Approval of the Settlement, conditionally certifying the Class, setting a date for the Final Approval Hearing, appointing Plaintiffs as Class Representatives and their counsel of record in the Actions as Class Counsel, and approving the Class Notice.
- b. Plaintiffs will prepare and deliver to Defendant's Counsel seven (7) days prior to the filing of the Motion for Preliminary Approval, all documents necessary for obtaining Preliminary Approval, including:
 - (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2));
 - (ii) a draft proposed Order

Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class Members, and the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- c. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defendant's Counsel will expeditiously work together on behalf of the Parties by meeting in person, by telephone, or by other virtual means, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.
 - d. At the hearing on the Motion for Preliminary Approval, the Parties may jointly appear, support the granting of the motion, and submit an order granting the motion.
 - e. Should the Court decline to preliminarily approve all material aspects of the Settlement, or order material changes to the Settlement to which the Parties do not agree, the Settlement will be null and void and the Parties will have no further obligations under it.
2. Within seven (7) days of the Preliminary Approval Order, Class Counsel will notify the LWDA of the Preliminary Approval Order.
 3. **Notice to Class Members.** After the Court enters its order granting Preliminary Approval of the Settlement, every Class Member will be provided with the Notice Packet (which will include the Class Notice completed to reflect the order granting Preliminary Approval of the Settlement, and a Notice Packet stating the total number of work weeks and pay periods attributed to each Class Member and PAGA Aggrieved Employee, respectively, by Defendant's records) in English and Spanish:
 - a. Within seven (7) calendar days after the Court enters its order granting

Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator Class Member Data, preferably in electronic form, containing each Class Member's name, employee identification number, last known address, and Social Security number, the end date for each Class Member's employment, if any, and the number of workweeks worked by the Class Member for Defendant. If any or all of the Class Members' Data are unavailable to Defendant, Defendant will use best efforts to deduce or reconstruct the Class Members' Data prior to when it must be submitted to the Settlement Administrator.

- b. Within seven (7) days after receiving the Class Members' Data, the Settlement Administrator will mail the Class Notice Packets (in English and Spanish) to all identified Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
- c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than seven (7) days from receipt of the returned packet, search for a more current address for the Class Member using Accurint or other reasonable and cost-effective skip trace methods, and re-mail the Class Notice Packet to the Class Member to any new or more current address or addresses discovered. The Settlement Administrator will use the Class Members' Data and otherwise work with Defendant to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendant's Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties. Class Counsel and Defendant's Counsel will be entitled to receive from the Settlement Administrator any updated address information about a Class Member as the Settlement Administrator obtains such information.
- d. Each week, the Settlement Administrator will provide to Class Counsel and Defendant's Counsel a report showing whether any Class Notice Packets have been returned and re-mailed and the receipt of any requests for exclusion.

- e. Not later than sixteen (16) court days prior to the Final Approval Hearing, the Settlement Administrator will serve on the Parties and file with the Superior Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement, as well as all timely Objections made to the Settlement by Class Members. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.
4. **Class Member Objections to Settlement; Challenges to Number of Workweeks; Requests for Exclusion.**
- a. **Objection to Settlement.** A Class Member who wishes to object to any term of the Settlement must send to the Settlement Administrator a written Objection to the Settlement, via U.S. Mail, postmarked not later than the Notice Response Deadline specified in the Notice Packet. Late post-marks will not be honored. A written Objection must set forth: the objector's full name, address, telephone, signature, a clear reference to the Action, the words "Notice of Objection" or "Formal Objection," a statement of the specific legal and/or factual bases for each objection argument, a list identifying witness(es) the objector may call to testify at the Final Approval hearing; and include true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing. The Objection must also indicate whether the Class Member intends to appear at the Final Approval Hearing, either in person or through counsel, and if through counsel, the Objection must provide the counsel's name and bar number and contact information, including telephone number and e-mail address; the failure to do so will constitute a waiver of the right to appear at the hearing. Class Members who do not file and serve written Objections in the manner and by the deadlines specified in the Class Notice will be deemed to have waived any Objections and will be foreclosed from making any Objections (whether by appeal or otherwise) to the Settlement or other related matters. Class Counsel and/or Defendant's counsel, at Defendant's choice, will file a response to any Objection within seven (7) days prior to the Final Approval Hearing. Plaintiffs agree not to object to the Settlement.
 - b. **Right to Challenge the Number of Workweeks; Resolution.** A Class Member who wishes to dispute the number of workweeks he or she worked in the Class Period may do so by submitting a challenge to the Settlement Administrator by no later than the Notice Response Deadline specified in the Notice Packet. Late post-marks will not be honored. Upon receipt of a challenge to workweeks, the Settlement Administrator shall consult with Class Counsel and Defendant's Counsel regarding the specific contentions made by the Class Member, and shall thereupon determine and resolve the Challenge based on all records and documents provided by Defendant and the Class Member.

There will be a presumption that Defendant's records are correct, absent evidence produced to the contrary. The Settlement Administrator's determination shall be final, binding, and non-appealable and Settlement and PAGA Shares will be calculated according to the Settlement Administrator's determination.

- c. **Request for Exclusion.** A Class Member who wishes to exclude himself from the Class Settlement must send the Settlement Administrator via U.S. Mail a written and signed request to be excluded no later than the Notice Response Deadline specified in the Class Notice. Late post-marks will not be honored. Class Members may object to or request exclusion from the Settlement, but may not do both. Any Class Member who submits a timely and proper Request for Exclusion may not file an Objection to the Settlement or receive a Settlement Share, and shall be deemed to have waived any rights or benefits under the Settlement Agreement, with the sole exception of receipt of the PAGA Share. If a Class Member files both an Objection and a valid and timely Request for Exclusion, the Request for Exclusion will override the objection, and the objection shall therefore be ignored. The Request for Exclusion must contain the name, telephone number, address, last four digits of the social security number, and signature of the Class Member requesting exclusion from the Settlement. If a question is raised about the authenticity of any Request for Exclusion, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Class Member who submits a timely Request for Exclusion will not participate in or be bound by the Class Settlement and the Judgment and will not receive a Settlement Share, but will retain the right, if any, he or she may have to pursue an individual claim against Defendant. Notwithstanding the submission of a timely Request for Exclusion, Class Members will still be bound by the Settlement and release of the PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Requests for exclusion do not apply to the PAGA Claims, and will not be effective to preclude the release of the PAGA Claims. The Settlement Administrator shall have no authority with regard to Requests for Exclusions beyond what is provided in this paragraph and may not make any representations to Class Members as whether their Request for Exclusion has been accepted or rejected without the express consent of the Parties and/or the Court.
- d. **Failure to Timely Request Exclusion.** Class Members who do not submit a timely Request for Exclusion in the manner and by the deadline specified in the Class Notice will automatically be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Superior Court, and by the Judgment, regardless of whether they have objected to the Settlement.

- e. **Report.** Not later than five (5) days after the deadline to contest the workweeks and request to be excluded from the Settlement, the Settlement Administrator will provide the Parties with a complete and accurate list of all Class Members who have contested the information in their Notice Packet requested to be excluded from the Settlement.
 - f. **Late Submissions.** The Settlement Administrator shall not accept as valid any Request for Exclusion, challenge to workweeks, or Objection postmarked after the Notice Response Deadline specified in the Notice Packet. It shall be presumed that if a Request for Exclusion, challenge to workweeks, or Objection is not postmarked on or before the Notice Response Deadline specified in the Notice Packet, the Class Member did not return it in a timely manner.
 - g. **Defendant's Option to Terminate.** If more than five percent (5%) of the Class Members submit a Request for Exclusion, Defendant, at its sole option, may withdraw from the Settlement and this Agreement is null and void.
5. **No Solicitation of Objection, Appeal, or Election Not to Participate in Settlement.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement.
6. **Additional Briefing and Final Approval.**
- a. Not later than sixteen (16) court days before the Final Approval Hearing, the Parties jointly will file with the Superior Court a motion for final approval of the Settlement and payment of Plaintiffs' Representative Service Awards, Class Counsel's Fees and Expenses Payment, the PAGA Payment, the Settlement Administrator's reasonable fees and expenses, and pursuant to this Settlement.
 - b. Not later than five (5) court days before the Final Approval Hearing, the Parties jointly may file a reply in support of their motion for final approval of the Settlement and payment of the Settlement Administrator's reasonable fees and expenses to the extent that any opposition to the motion is filed; and Plaintiff and Class Counsel may file replies in support of their motions for the Representative Service Award and the Class Counsel Fees and Expenses Payment.
 - c. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement to which the Parties do not agree, then either Party will have the right to void the Settlement; if that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, except that Defendant will pay the Settlement Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the right to void the

Settlement under this paragraph. However, an award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the Representative Service Award or the Class Counsel Fees and Expenses Payment will not constitute a material change to the Settlement within the meaning of this Agreement.

- d. Orders for the preliminary approval of the Settlement, conditional certification of the Settlement Class and final approval of the proposed Settlement, and all actions associated with them, are entered and accepted by the Parties hereto on the condition that they may be vacated at either Party's option if the Settlement Agreement is terminated or material terms as defined herein are disapproved in whole or in part by the Court, or by any appellate court and/or other court of review, in which event the Agreement and the fact that it was entered into shall not be offered, received, or construed as an admission or as evidence for any purpose, including but not limited to an admission by any Party of liability or non-liability or of any misrepresentation or omission in any statement or written document approved or made by any Party, or of the certifiability of a litigation class or the appropriateness of maintaining a PAGA representative action, as further provided in this Settlement Agreement. In the event that: (i) the Court denies, with prejudice, approval of the Settlement, (ii) the Court's approval of the Settlement is overturned on appeal, (iii) the Judgment does not become final, or (iv) this Settlement Agreement is terminated, cancelled, or fails to become effective for any reason, then: (a) the Parties stipulate and agree that at either Party's option the Settlement, this Agreement, the Class Information, the list of Class Members who objected or excluded themselves (or attempted to do so) from the Settlement, and all documents exchanged and filed in connection with the Settlement shall be treated as privileged mediation communications under Evid. Code §§ 1115, *et seq.*; (b) the Settlement shall be without force and effect upon the rights of the Parties hereto, and none of its terms shall be effective or enforceable, with the exception of this Paragraph, which shall remain effective and enforceable; (c) the parties shall be deemed to have reverted nunc pro tunc to their respective status prior to execution of this Agreement, including with respect to any Court-imposed deadlines; (d) all Orders entered in connection with the Settlement, including the certification of the Settlement Class, shall be vacated without prejudice to any party's position on the issue of class certification, the issue of amending the complaint, or any other issue, in the Action or any other action, and the parties shall be restored to their litigation positions existing on the date of execution of this Agreement; and (e) the parties shall proceed in all respects as if the Settlement Agreement and related documentation and orders had not been executed, and without prejudice in any way from the negotiation or fact of the Settlement or the terms of the Settlement Agreement.

The Settlement Agreement, the Settlement, all documents, orders, and evidence relating to the Settlement, the fact of their existence, any of their terms, any press release or other statement or report by the Parties or by others concerning the Settlement Agreement, the Settlement, their existence, or their terms, any negotiations, proceedings, acts performed, or documents executed pursuant to or in furtherance of the Settlement Agreement or the Settlement shall not be admissible in any proceeding, and shall not be offered, received, or construed as evidence of a presumption, concession, or an admission of liability, of the certifiability of a litigation class, or of any misrepresentation or omission in any statement or written document approved or made, or otherwise used by any person for any purpose whatsoever, in any trial of the Action or any other action or proceedings. Plaintiffs, Class Counsel and the Settlement Administrator shall return to counsel for Defendant all copies of Class Information and lists and shall not use or disclose the Class Information or list of Class Members who objected or excluded themselves from the Settlement, or attempted to do so, for any purpose or in any proceeding.

- e. Upon final approval of the Settlement by the Court, the Parties will present to the Court an Order for its approval and entry of Judgment. After entry of the Judgment, the Superior Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (1) enforcing this Agreement, (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under court rules or applicable law.
- 7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the material terms of this Agreement, Plaintiffs, Class Members who did not timely submit an Objection to the Settlement, Defendant, and its respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, and any extraordinary writ, and the Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. This paragraph does not preclude Plaintiffs or Class Counsel from appealing a refusal by the Court to award the full Representative Service Award or the Class Counsel Fees and Expenses Payment sought by them, but not the approval of the Settlement otherwise. If an appeal is taken from the Judgment, the time for consummating the Settlement (including making payments to Class Members under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final, as defined in this Agreement.
- 8. **Vacation, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal or a petition for certiorari, or any

other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material change to the Settlement, as the term “material change” is defined herein, and that court’s decision is not completely reversed and the Judgment approving the material terms of this Settlement is not fully affirmed on review by a higher court, then either Plaintiffs or Defendant will have the right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the Superior Court not later than thirty (30) days after the reviewing court’s decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Superior Court’s award of the Representative Service Awards or the Class Counsel Fees and Expenses Payment will not constitute a vacating, reversal, or material modification of the Judgment within the meaning of this Agreement

9. **Establishing the QSF.** Within seven (7) calendar days after the Effective Date, the Settlement Administrator will establish the QSF in a non-interest-bearing transaction account at an FDIC-insured institution with at least one branch in California.
10. **Funding the QSF.** Within fifteen (15) calendar days after the applicable Effective Date, Defendant shall partially fund the QSF with the first of three five hundred thousand dollar (\$500,000) installments of the Gross Settlement Amount, by wiring said amount to the Settlement Administrator, as well as the entirety of the required Employer Payroll Contributions on the Wage Portion of Class Member Settlement Shares. Defendant shall also provide any tax information that the Settlement Administrator may need to calculate each Participating Class Members’ Settlement Share. The second installment of five hundred thousand dollars (\$500,000) shall be wired to the Settlement Administrator one hundred and eighty (180) days after the date the first installment is wired, and the third and final installment of five hundred thousand dollars (\$500,000) shall be wired to the Settlement Administrator one hundred and eighty (180) days after the date the second installment is wired.
11. **Timing of Settlement Payments.** Within seven (7) calendar days after receiving the final installment of the Gross Settlement Amount from Defendant, the Settlement Administrator will, based on how the Court rules at the Final Approval Hearing, pay the following: to Plaintiffs, the Representative Service Awards; to Class Counsel, the Class Counsel Fees and Expenses Payment; to the Settlement Administrator, its reasonable fees and expenses (not to exceed \$14,000); to the LWDA, the PAGA LWDA Award. Within seven (7) calendar days after receiving the final installment of the Gross Settlement Amount from Defendant, and after making the payments specified above, the Settlement Administrator will, based on how the Court rules at the Final Approval Hearing, calculate and distribute the Net Settlement Amount as follows: to PAGA Aggrieved Employees, their respective PAGA Shares; and to Participating Class

Members, their respective Settlement Shares.

12. No Settlement Class Member shall have any claim against Plaintiffs, Class Counsel, Defendant, or the Settlement Administrator based on distributions made substantially in accordance with this Settlement Agreement and/or orders of the Court. No Settlement Class Member shall have any claim against any Released Party or its counsel relating to distributions made under this Settlement.
13. **Uncashed Settlement Share Checks.** A Class Member and/or PAGA Aggrieved Employee must cash his or her Class Settlement Share and/or PAGA Settlement Share checks within one-hundred and eighty (180) calendar days after it is mailed to the Class Member. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Class or PAGA Aggrieved Employee at the correct address. If any Class Member's or PAGA Aggrieved Employee's checks are not cashed within one-hundred and twenty (120) days after the last mailing, the Settlement Administrator will send the Class Member or PAGA Aggrieved Employee a letter or postcard informing them that unless the checks are cashed in the next sixty (60) days, they will expire and become non-negotiable, and offering to replace the checks if they were lost or misplaced but not cashed. If one or more Members fail to cash the check for their Shares within 180 days after they are mailed to their last known address, they will be submitted to the State of California's Unclaimed Property Fund.

G. Release and Waiver of Claims.

1. **Plaintiffs.** In consideration of their Settlement Shares, their PAGA Shares, and the other relevant terms and conditions of the Settlement, Plaintiffs hereby provides a general release of claims for themselves, their spouses, heirs, successors and assigns and forever releases, remises, and discharges any and all claims, charges, complaints, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, arising from the beginning of time through the date the Superior Court grants Preliminary Approval, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statutes, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendant or the renumeration for, or termination of, such employment against Defendant and the Released Parties, their related persons and entities, including but not limited to those raised in the Action; those released by Class Members as set forth below; and those arising from or related to their employment with Defendant (the "Plaintiffs' Released Claims"). Plaintiffs' Released Claims include all claims, whether known or unknown. Thus, even if Plaintiffs discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of

Plaintiffs' Released Claims, those claims will remain released and forever barred. This release includes, without limiting the generality of the foregoing: any and all claims, demands, causes of actions, obligations, charges, liabilities, attorneys' fees, costs, actual, compensatory and punitive damages, and all claims for any other type of relief relating to, arising out of, or based upon: all claims of harassment, discrimination, and/or retaliation in violation of local, state or federal law; all claims for failure to engage in the interactive process and/or to provide reasonable accommodation; all claims of violation of employment; all claims based on tort and/or breach of contract, whether written or oral, express or implied, and any covenant of good faith and fair dealing; all claims for misrepresentation, fraud, fraudulent inducement, detrimental reliance, and other similar claims; all claims for unpaid commissions, wages, or other benefits, including minimum wage, overtime, double time, vacation, associated penalties and/or premiums; any claim for unlawful or unfair business practices; all claims for emotional distress; any and all claims which were or could have been asserted by Plaintiffs and all claims generally relating to Plaintiffs including any alleged violation of any federal, state or other governmental statute, regulation, ordinance, or executive order, including without limitation:

- (a) The Civil Rights Act of 1866, 1964, and 1991, as amended;
- (b) 42 U.S.C. § 1981;
- (c) The California Fair Employment and Housing Act;
- (d) Section 503 of the Rehabilitation Act of 1973;
- (e) The Fair Labor Standards Act (including Equal Pay Act);
- (f) The California and United States Constitutions;
- (g) The California Labor Code;
- (h) The California Business and Professions Code;
- (i) The California Government Code;
- (j) The Employee Retirement & Income Security Act, as amended;
- (k) The California Family Rights Act;
- (l) The Americans With Disabilities Act;
- (m) The Family Medical Leave Act;
- (n) The California Pregnancy Discrimination Act;
- (o) The California Wage Orders;
- (p) The National Labor Relations Act;
- (q) The Immigration Relations and Control Act;
- (r) The California Occupational Safety and Health Act, or the Federal equivalent:
- (s) The Worker Adjustment and Retraining Notification Act;
- (t) The Age Discrimination in Employment Act of 1967, as amended;
- (u) The Older Workers' Benefit Protection Act;
- (v) The California Whistleblower Protection Act;
- (w) The Fair Credit Reporting Act;
- (x) The California Consumer Credit Reporting Agencies Act;

- (y) The California Investigative Consumer Reporting Agencies Act;
and
- (z) The Families First Coronavirus Response Act and similar local, state, and federal laws.

Therefore, because Plaintiffs are granting a general release, they expressly waive and relinquish the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which 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.

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiffs expressly acknowledge this Agreement is intended to include in its effect, without limitation, all claims Plaintiffs do not know or suspect to exist in Plaintiffs' favor at the time of signing this Agreement, and that this Agreement contemplates the extinguishment of any such claims. Plaintiffs warrant Plaintiffs have read this Agreement, including this waiver of California Civil Code section 1542, and that Plaintiffs have consulted with or had the opportunity to consult with counsel of Plaintiffs' choosing about this Agreement and specifically about the waiver of section 1542, and that Plaintiffs understand this Agreement and the section 1542 waiver, and so Plaintiffs freely and knowingly enters into this Agreement. Plaintiffs further acknowledge that Plaintiffs later may discover facts different from or in addition to those Plaintiffs now know or believe to be true regarding the matters released or described in this Agreement, and even so Plaintiffs agree that the releases and agreements contained in this Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiffs expressly assume any and all risk of any mistake in connection with the true facts involved in the matters, disputes, or controversies released or described in this Agreement or with regard to any facts now unknown to Plaintiffs relating thereto.

2. **Class Members.** In consideration of the Settlement, each Class Member who does not timely request to be excluded from the Settlement (or "Participating Class Member") releases the Released Parties from all claims alleged in any Complaint (including any amended Complaint filed

prior to final approval) in any of the Actions, or which could have been alleged based on the facts asserted in any such Complaint, whether operative or superseded, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, which occurred during the Class Period.

Released Claims also includes all claims for civil penalties under PAGA based on the Labor Code violations alleged in any of the Complaints (including any amended Complaint filed prior to final approval) in any of the actions filed by any of the Plaintiffs, or which could have been alleged based on the legal theories, legal authorities, or facts asserted in any such Complaint, whether operative or superseded, and alleged to have occurred during the PAGA Period. The Released Claims include any and all claims, causes of action, damages, wages, premiums, penalties, attorneys' fees, costs, and any other form of relief or remedy in law, equity, of whatever kind or nature and for any relief whatsoever, including monetary, injunctive, or declaratory relief, whether direct or indirect, whether under federal law or the law of any state, which the Plaintiffs have or any Class Member has against the Released Parties for any acts occurring during the Class Period that relate to the substantive claims described in any of the Complaints, including any amended Complaint;

Any claims for injunctive relief, declaratory relief, restitution, or fraudulent business practices alleged or which could have been alleged under the facts, allegations and/or claims pleaded in the complaints filed as part of the Action; and

Any and all other claims under California or federal law that were or could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Action (collectively referred to as the "Released Claims").

H. **Miscellaneous Terms.**

1. **Confirmatory Discovery.** Defendant agrees to provide Class Counsel with additional discovery, to update and confirm the class list(s), payroll data, and crew list(s), and to provide whatever additional discovery may be required by the court or necessary to facilitate court approval of the Settlement. Effort will be made to facilitate the efficient and cost-effective transfer of such discovery.
2. **Stipulation for Class Certification.** Plaintiff shall move for, and Defendant will not oppose, certification of the Class as defined herein, including all Class Members for purposes of settlement only, and for appointment of Named Plaintiffs as Class Representative, and Marco A. Palau, Joseph D. Sutton, and Eric S. Trabucco of Advocates for Worker Rights, LLP as Class Counsel. If, however, the Settlement does not become final for any reason, the Parties' Settlement Agreement, including this Stipulation for Class Certification, shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, whether class certification would be appropriate in any

other context in this litigation.

3. **Dismissal of Action with Prejudice.** Upon entry of the Superior Court's Order granting Final Approval of the Settlement, and following 180 days after the effective date of the Settlement, the Plaintiff shall dismiss the Action with prejudice within thirty (30) days of receiving confirmation from the Settlement Administrator that all payments required pursuant to this Agreement have been made.
4. **No Admission of Liability.** The Parties enter into this Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, violation of any federal, state, or local law; violation of any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breach of any contract; violation or breach of any duty; any misrepresentation or deception; or any other unlawful conduct with respect to its employees or any other person or entity. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violation(s) or failure(s) to comply with any applicable law. Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved.
5. **References.** Defendant agrees that any request for information or a reference related to Plaintiffs' employment with Defendant will be responded to with only the release Plaintiffs' dates of employment, position(s) held, and most recent rate of pay.
6. **Publicity.** The Parties agree that Plaintiffs and Plaintiffs' Counsel will not communicate the fact of, or the terms of, this Settlement to members of the press, including to Verdicts and Settlements. The Parties and their respective counsel also agree not to publish the fact of, or terms of, this Settlement or any related information on their website, for advertising purposes and/or in publication materials generally available to the public.
7. **Revocation Period.** Plaintiffs understands that, after executing this Agreement, they have the right to revoke it within seven (7) days after execution. Plaintiffs understands that this Agreement will not become effective and enforceable unless and until the 7 day revocation period has expired. The release provided for in this Agreement by Plaintiffs shall become effective and enforceable as of the Effective Date of this Agreement, provided that the Effective Date of this Agreement occurs after the 7 day revocation period has expired.
8. **Enforcement.** The Parties agree that the San Joaquin County Superior Court shall have continuing jurisdiction to enforce the terms of this Agreement pursuant to California Civil Procedure Code section 664.6. In the event that a motion to enforce this Agreement is required to be filed to

a Party's failure to comply with the terms herein, the prevailing party shall be awarded reasonable attorney's fees and costs.

9. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this or other than the representations, warranties, covenants, and inducements expressly stated in this Agreement.
10. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Superior Court, and in all cases all such documents, supplemental provisions and assistance of the Superior Court will be consistent with this Agreement.
11. **Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, including outstanding written discovery, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Superior Court.
12. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
13. **Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of each of the Parties.
14. **No Prior Assignment.** Plaintiffs hereby represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
15. **Applicable Law.** All terms and conditions of this Agreement will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

16. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
17. **Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arm's length negotiations, taking into account all relevant factors, current and potential. In addition, Mediator Michael Dickstein may, at his discretion, execute a declaration supporting the Settlement and the reasonableness of this Settlement, and the Superior Court may, in its discretion, contact Mr. Dickstein to discuss the Settlement and whether or not the Settlement is fair and reasonable.
18. **No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes.
19. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
20. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by U.S. Mail, addressed as follows:

CLASS COUNSEL

Marco A. Palau
Joseph D. Sutton
Eric S. Trabucco
Advocates for Worker Rights LLP
212 9th Street, Suite 314
Oakland, CA 94607
Tel: (510) 269-4200 / Fax: (408) 657-4684

Jake D. Finkel
Law Offices of Jake D. Finkel
3470 Wilshire Blvd., Suite 830
Los Angeles, CA 90010

Tel: (213) 787-7411 / Fax: (323) 916-0521

David Yeremian
Roman Shkodnik
David Yeremian & Associates, Inc.
2540 Foothill Blvd, Suite 201
La Crescenta, CA 91214
Tel: (818) 230-8380 / Fax: (818) 230-0308

DEFENDANT'S COUNSEL

Alan S. Levins
Robert M. Geiger
Little Mendelson, P.C.
333 Bush Street, 34th Floor
San Francisco, CA 94104
Tel: (415) 433-1940 / Fax: (415) 399-8490

21. **Spanish Translation.** Class Counsel represent that they have translated this Agreement and the Class Notice Packet into Spanish and made that translation available to Plaintiffs before they execute this Agreement.
22. **Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Superior Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provisions shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
23. **Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be accepted if the original signature is provided within seven days. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties hereby execute this Agreement.

Dated: June ^{Jun 29, 2023}____, 2023

By Janaira Valenzuela
Janaira Valenzuela

Dated: June ____, 2023

By _____
Julissa Tapia

Dated: June ____, 2023

By _____
Alondra Gardea

Best Express Foods, Inc.

Dated: June ____, 2023

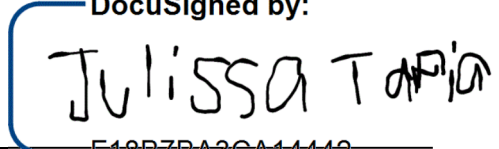
By: _____

Print Name: _____

Dated: June ___, 2023

By _____
Janaira Valenzuela

Dated: June 29, 2023

By _____
DocuSigned by:

F18B7BA3CA14442...
Julissa Tapia

Dated: June ___, 2023

By _____
Alondra Gardea

Best Express Foods, Inc.

Dated: June ___, 2023

By: _____

Print Name: _____

Dated: June ___, 2023

By _____
Janaira Valenzuela

Dated: June ___, 2023

By _____
Julissa Tapia

07/18/2023

Dated: June ___, 2023

By Alondra Gardea
Alondra Gardea

Best Express Foods, Inc.

Dated: June ___, 2023

By: _____

Print Name: _____

Dated: July __, 2023

By _____
Janaira Valenzuela

Dated: July __, 2023

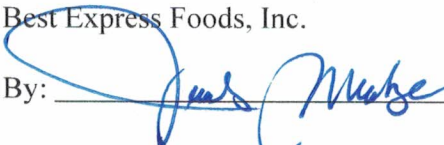
By _____
Julissa Tapia

Dated: July __, 2023

By _____
Alondra Gardea

Dated: July ^{18th} __, 2023

Best Express Foods, Inc.

By: _____


Print Name: Jesus mendora