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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE**

JOSHUA TAYLOR AND FRANK
LOMONACO, individually, and on behalf of all
others similarly situated,

Plaintiffs,

v.

U.S. DAIRY SYSTEMS, INC. DBA
AUTOMATED DAIRY SYSTEMS, a
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. VCU286113

CLASS & REPRESENTATIVE ACTION

[Assigned for all purposes to: Hon. Nathan D. Ide, Dept. 2]

**DECLARATION OF JUSTIN F.
MARQUEZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Filed concurrently with: Plaintiffs' Notice of Motion and Motion for Preliminary Approval of Class Action Settlement, Memorandum of Points and Authorities; Declaration of LATLC President Steven Vartazarian; and [Proposed] Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement]

PRELIMINARY APPROVAL HEARING

Date: August 22, 2022

Time: 8:30 a.m.

Dept: 2

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1. I am admitted, in good standing, to practice as an attorney in the State of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Southern, Eastern, and Northern Districts of California. I am a Senior Partner at Wilshire Law Firm, PLC, counsel of record for Plaintiffs Joshua Taylor (“Plaintiff Taylor”) and Frank Lomonaco (“Plaintiff Lomonaco,” and together with Plaintiff Taylor, the “Plaintiffs”). I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them under oath if called as a witness. This Declaration is submitted in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.

2. This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiffs and putative class members worked in California as hourly-paid, non-exempt employees for Defendant during the class period. Defendant operates in the agricultural and dairy industry and is headquartered in Jerome, Idaho with a sizable presence in California with service centers in Escalon, Modesto, and Tulare.

3. Plaintiffs allege that Defendant's payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiffs allege that Defendant failed to pay for all hours worked by not recording the actual start and end times of shifts for each workday. Plaintiffs further allege that Defendant failed to include all remuneration in the employees' overtime rate. Plaintiffs further allege that Defendant failed to provide employees with legally compliant meal and rest periods. Plaintiffs additionally allege that Defendant failed to indemnify its employees for all necessary business expenditures. Based on these allegations, Plaintiffs assert claims against Defendant for failure to pay minimum and straight time wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay all final wages at termination, failure to provide accurate itemized wage statements, failure to indemnify employees for expenditures, unfair business practices, and civil penalties under PAGA.

4. On February 26, 2021, Plaintiff Taylor filed a putative wage-and-hour class action

1 complaint against Defendant for alleged: (1) failure to pay minimum and straight time wages (Cal.
2 Lab. Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Cal. Lab. Code §§
3 1194 and 1198); (3) failure to provide meal periods (Cal. Lab. Code §§ 226.7 and 512); (4) failure
4 to authorize and permit rest periods (Cal. Lab. Code §§ 226.7); (5) failure to timely pay final wages
5 at termination (Cal. Lab. Code §§ 201-203); (6) failure to provide accurate itemized wage
6 statements (Cal. Lab. Code § 226); and (7) unfair business practices (Cal. Bus. & Prof. Code §§
7 17200, *et seq.*). On February 17, 2022, Plaintiff Taylor filed a First Amended Class and
8 Representative Action Complaint adding claims for Defendant's alleged failure to indemnify for
9 necessary business expenses and for civil penalties under PAGA, as well as adding Plaintiff
10 Lomonaco as an additional class representative.

11 DISCOVERY AND INVESTIGATION

12 5. Following the filing of the initial Complaint on February 26, 2021, the Parties
13 exchanged documents and information before mediating this action. Defendant produced a sample
14 of time and pay records for the class members. Defendant also provided documents regarding its
15 wage and hour policies and practices during the class period, and information regarding the total
16 number of current and former employees in its informal discovery responses.

17 6. After reviewing documents regarding Defendant's wage and hour policies and
18 practices, analyzing Defendant's timekeeping and payroll records, Class Counsel was able to
19 evaluate the probability of class certification, success on the merits, and Defendant's maximum
20 monetary exposure for all claims. Class Counsel also investigated the applicable law regarding
21 the claims and defenses asserted in the Litigation. Class Counsel reviewed these records and
22 utilized an expert to prepare a damages analysis prior to mediation.

23 SETTLEMENT NEGOTIATIONS

24 7. On October 20, 2021, the Parties participated in private mediation with experienced
25 class action mediator, Justice Steven M. Vartabedian (Ret.). The mediation was conducted via
26 Zoom. The settlement negotiations were at arm's length and, although conducted in a professional
27 manner, were adversarial. The Parties went into the mediation willing to explore the potential for
28 a settlement of the dispute, but each side was also prepared to litigate their position through trial

1 and appeal if a settlement had not been reached.

2 8. After extensive negotiations and discussions regarding the strengths and
3 weaknesses of Plaintiffs' claims and Defendant's defenses, the Parties were able to reach a
4 resolution, the material terms of which are encompassed within the Settlement Agreement.
5 Attached as **Exhibit 1** is a true and correct copy of the Joint Stipulation Re: Class Settlement
6 ("Settlement" or "Settlement Agreement").

7 9. The settlement includes \$10,000.00 allocated to Plaintiffs' claims under the PAGA,
8 with 75% of which (\$7,500.00) being paid to the Labor and Workforce Development Agency
9 ("LWDA") and 25% (\$2,500.00) being paid to the participating PAGA Members. (Settlement,
10 § XVI.) Class Counsel submitted the proposed settlement to the LWDA before filing the Motion
11 for Preliminary Approval.

12 10. The Settlement provides that Defendant will not oppose a fee application of up to
13 33 1/3% (\$62,500.00) of the Gross Settlement Amount, plus out-of-pocket costs not to exceed
14 \$15,000.00. (Settlement, § XIII.)

15 11. I requested several bids from experienced class action settlement administrators to
16 handle the responsibilities of the Settlement Administrator under this settlement. The Parties
17 accepted the bid of Phoenix Settlement Administrators. In its bid, Phoenix Settlement
18 Administrators agreed to cap its costs at \$5,975.00 if there are 70 class members. The bid also
19 provides that class notice will be provided in English and Spanish. A true and correct copy of the
20 bid is attached hereto as **Exhibit 2**.

21 12. Plaintiffs do not have any interest, financial or otherwise, in the proposed *cy pres*
22 recipient, Los Angeles Trial Lawyers' Charities ("LATLC"), or the third-party administrator,
23 Phoenix Settlement Administrators.

24 13. No one at Wilshire Law Firm, PLC (meaning the law firm itself and anyone
25 employed at the law firm) has any interest, financial or otherwise, in the proposed *cy pres* recipient,
26 LATLC, or the third-party administrator, Phoenix Settlement Administrators.

27 14. Wilshire Law Firm, PLC has no fee-splitting agreement with any other counsel in
28 this case.

1 THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE

2 15. Class Counsel has conducted a thorough investigation into the facts of this case.
3 Based on the foregoing discovery and their own independent investigation and evaluation, Class
4 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
5 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
6 of significant delay, the defenses that could be asserted by Defendant both to certification and on
7 the merits, trial risk, and appellate risk.

8 16. Based on an analysis of the facts and legal contentions in this case, documents and
9 information from Defendant, I evaluated Defendant's maximum exposure. I took into account the
10 risk of not having the claims certified and the risk of not prevailing at trial, even if the claims are
11 certified. After using the data Defendant provided, including a random sampling of timekeeping
12 and payroll records, as well as class member demographics (i.e., the number of class members,
13 workweeks, and average total compensation of the class), with the assistance of a statistics expert,
14 I created a damages model to evaluate the realistic range of potential recovery for the class. The
15 damages model is based on the following benchmarks as from the start of the class period through
16 the date of mediation:

17 Total Class Members: 59
18 Terminated Class Members during 3-year statute: 27
19 Total Workweeks: 3,687
20 PAGA Pay Periods: 1,063
21 Avg. Hourly Rate: \$21.61

22 17. Discovery and investigation revealed that Defendant failed to pay class members
23 for all hours worked, including overtime wages, failed to have a legally compliant written policy
24 providing meal periods and authorizing and permitting rest periods.

25 18. Plaintiffs allege that Defendant failed to pay for all hours worked, including
26 minimum, straight time, and overtime wages. My expert analyzed Defendant's timekeeping and
27 payroll records and found many instances where Defendant failed to pay employees for all hours
28 worked, particularly the time employees spent engaging in work-related duties during meal periods

1 and post-shift. A more conservative estimate was appropriate given the difficulty of proving off-
2 the-clock work violations on a class-wide basis. Assuming that Defendant failed to pay employees
3 for 50 minutes of off-the-clock work per shift, with 85% of that work being paid at the overtime
4 rate, potential liability for this claim is \$550,554.00. Additionally, my expert investigated the issue
5 regarding Defendant's failure to include non-discretionary remuneration in the employees'
6 overtime rate and found that Defendant's exposure for this theory of liability to be \$28,212.00.
7 Because individualized issues can be a significant obstacle to certifying and proving off-the-clock
8 claims, I discounted this figure by 80% to account for the difficulty of prevailing on a motion for
9 class certification and a trial on the merits, yielding a realistic damage estimate of **\$115,753.20**.¹

10 19. With respect to the meal period claim, Plaintiffs allege that Defendant engaged in
11 an improper automatic meal period deduction practice from the start of the class period until
12 approximately July 2020, required Plaintiffs and similarly situated class members to work during
13 their meal periods, and Defendant lacked legally compliant policies and practices providing meal
14 periods for the entirety of the class period. My expert analyzed Defendant's timekeeping records
15 and found that approximately 92.8% of all meal breaks had violations of short, missed, or no meal
16 periods. Potential liability for the meal period claim is \$388,284.00, including interest; however,
17 I discounted this figure by 90% to account for the difficulty of certifying and proving meal period
18 claims, yielding a realistic damage estimate of **\$38,828.40**.

19 20. With respect to the rest period claim, Plaintiffs allege that Defendant required them
20 and similarly situated class members to work in lieu of taking rest periods, and Defendant lacked
21 legally compliant policies and practices authorizing and permitting employees to take rest periods
22 for the entirety of the class period. Assuming a 100% violation rate for the entirety of the class
23 period based on Plaintiffs' and other class members' experience working for Defendant,
24 Defendant's potential liability for the rest period claim is \$414,255.00; however, I discounted this
25

26 ¹ This discount for risk at certification and trial is reasonable because the Judicial Council
27 of California found that only 21.4% of all class actions were certified either as part of a
28 settlement *or* as part of a contested certification motion. *See* Findings of the Study of California
Class Action Litigation, 2000-2006, available at [http:// www.courts.ca.gov/documents/class-
action-lit-study.pdf](http://www.courts.ca.gov/documents/class-action-lit-study.pdf).

1 figure by 90% to account for the difficulty of certifying and proving rest period claims, particularly
2 because rest periods do not have to be recorded, and to account for the possibility of class members
3 voluntarily choosing to forego a rest period, yielding a realistic damage estimate of **\$41,425.50**.

4 21. With respect to the claim for unreimbursed business expenses, Plaintiffs allege that
5 Defendant required them and similarly situated class members to purchase specific work attire
6 (e.g., industrial-level work pants) and work-related tools and equipment. My expert estimated the
7 potential liability for this claim to be worth \$63,150.00; however, I discounted this figure by 80%
8 to account for the difficulty of certifying and proving this claim, yielding a realistic damage
9 estimate of **\$12,630.00**.

10 22. In sum, Plaintiffs' maximum recovery for the unpaid wages based on the failure to
11 pay for all hours worked (minimum, straight time, and overtime wages) and the meal and rest
12 period violations, as well as Defendant's failure to indemnify its employees for necessary business
13 expenses, is \$1,444,455.00, but, **after factoring in the risk and uncertainty of prevailing at**
14 **certification and trial, Plaintiffs' realistic estimated recovery for the non-penalty claims is**
15 **\$208,637.10**.

16 23. With respect to Plaintiffs' derivative claims for statutory and civil penalties,
17 Plaintiffs estimated that Defendant's realistic potential liability is **\$50,000.00**. While Defendant's
18 maximum potential liability for waiting time penalties is \$153,899.00 based on approximately 27
19 terminated class members during the 3-year statute, \$103,900.00 for inaccurate wage statements
20 based on approximately 48 class members who worked 1,063 pay periods within the 1-year statute,
21 and \$106,300.00 for PAGA violations based on the Court assessing a \$100 penalty for initial
22 violations for all 1,063 pay periods within the 1-year statute, I believe that it would be unrealistic
23 to expect the Court to award the full \$364,099.00 in penalties given Defendant's defenses, the
24 contested nature of Plaintiffs' claims, and the discretionary nature of penalties. Considering that
25 the underlying claims are realistically estimated to be \$208,637.10, such a disproportionate award
26 would also raise due process concerns. Weighing these factors, and applying a discount to account
27 for the risk and uncertainty of prevailing at trial, I arrived at \$50,000.00 for statutory and civil
28 penalties.

24. Using these estimated figures, Plaintiffs predicted that the realistic maximum recovery for all claims, including penalties, would be \$258,637.10. This means that the \$187,500.00 settlement figure represents 72.5% of the realistic maximum recovery ($\$187,500.00 / \$258,637.10 = 72.5\%$). Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class. Indeed, because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

25. While Plaintiffs are confident in the merits of their claims, a legitimate controversy exists as to each cause of action. Plaintiffs also recognize that proving the amount of wages due to each Class Member would be an expensive, time-consuming, and uncertain proposition.

26. This settlement avoids the risks and the accompanying expense of further litigation. Although the Parties had engaged in a significant amount of investigation, informal discovery and class-wide data analysis, the Parties had not yet completed formal written discovery. Plaintiffs intended to depose corporate officers and managers of Defendant. Moreover, preparation for class certification and a trial remained for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiffs and/or adverse summary judgment ruling. Had the Court certified any claims, Defendant could move to decertify the claims. As a result, the Parties would incur considerably more attorneys' fees and costs through trial.

27. The Net Settlement Amount available for Class Member settlement payments is estimated to be \$81,525, for a class of 59 persons.² **As a result, each Settlement Class Member is eligible to receive an average net benefit of approximately \$1,381.78.**

28. The proposed settlement of \$187,500.00 therefore represents a substantial recovery when compared to Plaintiffs' reasonably forecasted recovery. When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary

² The Net Settlement Amount is: \$187,500.00 minus \$62,500.00 for Class Counsel's attorneys' fees, minus \$15,000.00 for Class Counsel's litigation expenses, minus \$5,975.00 in administration costs, minus \$7,500.00 for the PAGA portion sent to the LWDA, minus \$2,500.00 for payments to the Aggrieved Employees, and minus \$12,500.00 for the service awards for the Plaintiffs.

1 to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement
2 amount of \$187,500.00 is within the “ballpark” of reasonableness, and preliminary settlement
3 approval is appropriate.

4 ENHANCEMENT AWARDS FOR PLAINTIFFS ARE REASONABLE

5 29. Class Counsel represent that Plaintiffs devoted a great deal of time and work
6 assisting counsel in the case, communicated with counsel very frequently to prepare for litigation
7 and to prepare for mediation, and were frequently in contact with Class Counsel during the
8 mediation. Plaintiffs’ requested enhancement awards are reasonable particularly in light of the
9 substantial benefits Plaintiffs generated for all class members.

10 30. Throughout this Litigation, Plaintiffs, who are former employees of Defendant, have
11 cooperated immensely with my office and have taken many actions to protect the interests of the
12 class. Plaintiffs provided valuable information regarding unpaid overtime, meal period, and rest
13 period claims. Plaintiffs also informed my office of developments and information relevant to this
14 action, participated in decisions concerning this action, and made themselves available to answer
15 questions during the mediation. Before we filed this case, Plaintiffs provided my office with
16 several documents regarding the claims alleged in this action. The information and documentation
17 provided by Plaintiffs were instrumental in establishing the wage and hour violations alleged in
18 this action, and the recovery provided for in the Settlement Agreement would have been impossible
19 to obtain without Plaintiffs’ participation.

20 31. At the same time, Plaintiffs faced many risks in adding themselves as the class
21 representatives in this matter. Plaintiffs faced actual risks with their future employment, as putting
22 themselves on public record in an employment lawsuit could also very well affect their likelihood
23 for future employment. Furthermore, as part of this settlement, Plaintiffs are executing a general
24 release of all claims against Defendant.

25 32. In turn, class members will now have the opportunity to participate in a settlement,
26 reimbursing them for alleged wage violations they may have never known about on their own or
27 been willing to pursue on their own. If these class members would have each tried to pursue their
28 legal remedies on their own, that would have resulted in each having to expend a significant amount

1 of their own monetary resources and time, which were obviated by Plaintiffs putting themselves
2 on the line on behalf of these other class members.

3 33. In the final analysis, this class action would not have been possible without the aid
4 of Plaintiffs, who put their own time and effort into this Litigation, sacrificed the value of their
5 own individual claims, and placed themselves at risk for the sake of the class members. The
6 requested enhancement awards for Plaintiffs for their service as the class representatives and for
7 their general release of all individual claims is a relatively small amount of money when the time
8 and effort put into the Litigation are considered and in comparison to enhancements granted in
9 other class actions. The requested incentive award is therefore reasonable to compensate Plaintiffs
10 for their active participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar*
11 *Corporation*, et al., No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class
12 members were misclassified as exempt outside salespersons, I was co-lead Class Counsel and
13 helped negotiate a \$2.5 million class action settlement for 339 class members, and the court
14 approved a \$25,000.00 class representative incentive award for each named plaintiff.

15 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

16 34. The Settlement provides for attorney's fees payable to Class Counsel in an amount
17 up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of \$62,500.00,
18 plus actual costs and expenses not to exceed \$15,000.00. The proposed award of attorneys' fees
19 to Class Counsel in this case can be justified under either method – lodestar or percentage recovery.
20 Class Counsel, however, intend to base the proposed award of fees, costs and expenses on the
21 percentage method as many of the entries in the time records will have to be redacted to preserve
22 attorney-client and attorney work product privileges.

23 35. I am informed and believe that the fee and costs provision is reasonable. The fee
24 percentage requested is less than that charged by my office for most employment cases. My office
25 invested significant time and resources into the case, with payment deferred to the end of the case,
26 and then, of course, contingent on the outcome.

27 36. It is further estimated that my office will need to expend at least another 50 to 100
28 hours to monitor the process leading up to the final approval and payments made to the class. My

1 office also bears the risk of taking whatever actions are necessary if Defendant fails to pay.

2 37. The risk to my office has been very significant, particularly if we would not be
3 successful in pursuing this class action. In that case, we would have been left with no compensation
4 for all the time taken in litigating this case. Indeed, I have taken on a number of class action cases
5 that have resulted in thousands of attorney hours being expended and ultimately having
6 certification denied or the defendant company going bankrupt. The contingent risk in these types
7 of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing
8 on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

9 38. Because most individuals cannot afford to pay for representation in litigation on an
10 hourly basis, Wilshire Law Firm, PLC represents virtually all of its employment law clients on a
11 contingency fee basis. Pursuant to this arrangement, we are not compensated for our time unless
12 we prevail at trial or successfully settle our clients' cases. Because Wilshire Law Firm, PLC is
13 taking the risk that we will not be reimbursed for our time unless our client settles or wins his or
14 her case, we cannot afford to represent an individual employee on a contingency basis if, at the
15 end of our representation, all we are to receive is our regular hourly rate for services. It is essential
16 that we recover more than our regular hourly rate when we win if we are to remain in practice so
17 as to be able to continue representing other individuals in civil rights employment disputes.

18 39. As of the drafting of Plaintiffs' Motion for Preliminary Approval of Class Action
19 Settlement, my office has incurred expenses litigating this action, and we anticipate accruing
20 additional costs up to Final Approval of the Settlement. These expenses were reasonably necessary
21 to the Litigation and were actually incurred by my office. They should be reimbursed in full, up
22 to the maximum amount allowed in the Settlement Agreement.

23 MY EXPERIENCE AND QUALIFICATIONS

24 40. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News & World
25 Report as one of the nation's Best Law Firms in 2022 and is comprised of over 55 attorneys and
26 over 300 employees. Wilshire Law Firm, PLC is actively and continuously practicing in
27 employment litigation, representing employees in both individual and class actions in both state
28 and federal courts throughout California.

1 41. Wilshire Law Firm, PLC is qualified to handle this Litigation because its attorneys
2 are experienced in litigating Labor Code violations in both individual, class action, and
3 representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling,
4 numerous wage and hour class action lawsuits, as well as class actions involving consumer rights
5 and data privacy litigation.

6 42. I graduated from the University of California, Los Angeles's College Honors
7 Program in 2004 with Bachelor of Arts degrees in History and Japanese, *magna cum laude* and *Phi*
8 *Beta Kappa*. As an undergraduate, I also received a scholarship to study abroad for one year at
9 Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in
10 2008.

11 43. My practice is focused on advocating for the rights of consumers and employees in
12 class action litigation and appellate litigation. I am currently the primary attorney in charge of
13 litigating several class action cases in state and federal courts across the United States.

14 44. I have received numerous awards for my legal work. From 2017 to 2020, Super
15 Lawyers selected me as a "Southern California Rising Star," and in 2022, I was selected as a
16 "Southern California Super Lawyer." In 2016 and 2017, the National Trial Lawyers selected me
17 as a "Top 40 Under 40" attorney. I am also rated 10.0 ("Superb") by Avvo.com.

18 45. I am on the California Employment Lawyers Association ("CELA")'s Wage and
19 Hour Committee and Mentor Committee, and I was selected to speak at CELA's 2019 Advanced
20 Wage & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively
21 mentored young attorneys through CELA's mentorship program.

22 46. I am also an active member of the Consumer Attorneys of California ("CAOC"). In
23 2020, I was selected for a position on CAOC's Board of Directors. I am also a member of CAOC's
24 Diversity Committee, and I help assist the CAOC in defeating bills that harm employees. Indeed,
25 I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC, in defeating AB
26 443, which proposed legislation that sought to limit the enforceability of California Labor Code §
27 226.

28 47. As the attorney responsible for day-to-day management of this matter at the

1 Wilshire Law Firm, PLC, I have over eleven years of experience with litigating wage and hour
2 class actions. Over the last eleven years, I have managed and assisted with the litigation and
3 settlement of several wage and hour class actions. In those class actions, I performed similar tasks
4 as those performed in the course of prosecuting this action. My litigation experience includes:

- 5 a. I served as lead or co-lead in negotiating class action settlements worth over \$10
6 million in gross recovery to class members for each year during 2020 and 2021.
- 7 b. To my knowledge, I am the only attorney to appear on each of the following *Top*
8 *Verdict* lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20
9 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- 10 c. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by
11 winning class certification on behalf of hundreds of thousands of consumers for
12 misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct.
13 C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- 14 d. As lead counsel, I prevailed against Bank of America by: winning class certification
15 on behalf of thousands of employees for California Labor Code violations; defeating
16 appellate review of the court's order certifying the class; defeating summary
17 judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.*
18 (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019
19 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2,
20 2018).). The decision certifying the class in *Frausto* is also discussed in *Class*
21 *Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call*
22 *Center Employees for Violation of State Law Wage and Hour Rules*, 35 A.L.R. Fed.
23 3d Art. 8.
- 24 e. I was the primary author of the class certification and expert briefs in *ABM*
25 *Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action
26 for over 40,000 class members for off-the-clock, meal period, split shift, and
27 reimbursement claims. *ABM Industries Overtime Cases* is the first published
28 California appellate authority to hold that an employer's "auto-deduct policy for

meal breaks in light of the recordkeeping requirements for California employers is also an issue amenable to classwide resolution.” (*Id.* at p. 310.)³ Notably, the Court of Appeal also held that expert analysis of timekeeping records can also support the predominance requirement for class certification. (*Id.* at p. 310-11.) In 2021, the case settled for \$140 million, making it one of the largest ever wage and hour class action settlements for hourly-paid employees in California.

f. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims under California’s Private Attorney Generals Act (“PAGA”) cannot be used to calculate the amount in controversy under the Class Action Fairness Act (“CAFA”). This case is cited in several leading treatises such as *Wright & Miller’s Federal Practice & Procedure*, and *Newberg on Class Actions*. In October 2016, the U.S. Supreme Court denied review of a case that primarily concerned *Yocupicio*. That effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus support from a brief authored by Andrew J. Pincus.⁴ Considering that leading Supreme Court practitioners from the class action defense bar were very motivated in undermining *Yocupicio* case, but failed, this demonstrates the national importance of the *Yocupicio* decision.

g. On December 13, 2018, the United States District Court granted final approval of the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in which I served as lead counsel. In doing so, the Court found: “Class Counsel’s declarations show that the attorneys are experienced and successful litigators.” (*Id.* at p. *10.)

h. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a

³ As a California district court observed before the *ABM Industries Overtime* decision, “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE Connectivity Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL 1758048, *7.)

⁴ <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.

1 reported decision permitting class-wide discovery even though the employer has a
2 lawful policy because “[t]he fact that a company has a policy of not violating the
3 law does not mean that the employees follow it, which is the issue here.” The court
4 also ordered defendant to pay for the cost of *Belaire-West* notice.

- 5 i. In 2013, I represented a whistleblower that reported that his former employer was
6 defrauding the State of California with the help of bribes to public employees. The
7 case, a false claims (*qui tam*) action, resulted in the arrest and criminal prosecution
8 of State of California employees by the California Attorney General’s Office.
- 9 j. In 2013, I was part of a team of attorneys that obtained conditional certification for
10 over 2,000,000 class members in a federal labor law case for misclassification of
11 independent contractors that did crowdsourced work on the Internet, *Otey v.*
12 *CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the
13 following pro-plaintiff reported decisions:

- 14 1) 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding
15 that an unaccepted Rule 68 offer doesn’t moot plaintiff’s claims, and
16 granting plaintiff’s motion to strike defendant’s affirmative defenses
17 based on *Twombly/Iqbal*).
- 18 2) 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order
19 granting conditional collective certification).
- 20 3) 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the
21 magistrate judge’s discovery ruling which held that “evidence of
22 other sources of income is irrelevant to the question of whether a
23 plaintiff is an employee within the meaning of the FLSA”).
- 24 4) 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting
25 broad discovery because “an FLSA plaintiff is entitled to discovery
26 from locations where he never worked if he can provide some
27 evidence to indicate company-wide violations”).

- 28 j. From 2012 to 2013, I was part of a team of attorneys that obtained class certification

1 for over 60,000 class members for off-the-clock claims, *Linares v. Securitas*
2 *Security Services USA, Inc.*, Los Angeles Superior Court No. BC416555. We also
3 successfully opposed subsequent appeals to the California Court of Appeal and
4 California Supreme Court.

5 48. Benjamin H. Haber is a fifth-year Associate Attorney at Wilshire Law Firm, PLC.
6 He was admitted to practice law in the State of California and the Central, Southern, Eastern, and
7 Northern Districts of California. He graduated from the University of California, Los Angeles,
8 with a Bachelor of Arts in Political Science, and received his Juris Doctor from the University of
9 California, Hastings College of the Law in 2016. During law school, he was a member of the
10 executive board for the Hastings Law Journal and a student mediator at the San Francisco Superior
11 Court, Small Claims Division. Since graduating law school, he has focused his legal work
12 primarily on wage and hour class action litigation. His current contingent billing rate for this case
13 is \$650 per hour, which is consistent with his level of experience in the wage and hour arena.

14 49. Arrash T. Fattahi is a second-year Associate Attorney at Wilshire Law Firm, PLC.
15 He was admitted to practice law in the State of California and the Central and Southern Districts
16 of California in January 2021. Arrash graduated from the University of California, Los Angeles,
17 with a Bachelor of Arts in Political Science, *summa cum laude*. He received his Juris Doctor from
18 The George Washington University Law School. During law school, he was a Notes Editor for
19 the Federal Circuit Bar Journal. Since January 2021, his practice has mainly been focused on wage
20 and hour class action litigation. His current contingent billing rate for this case is \$450 per hour.

21 50. My current contingent billing rate of \$850 per hour is consistent with my practice
22 area, lead appellate experience in the Ninth Circuit Court of Appeals, numerous awards received,
23 legal market and accepted hourly rates:

- 24 a. In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town
25 Anymore,” *NATIONAL LAW JOURNAL*, the following hourly billing rates were
26 reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense of
27 wage-and-hour class actions that I opposed when litigating wage-and-hour class
28 actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd

1 Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435,
2 8th Year - \$455. I am a 12th year attorney and Senior Partner, with most of my
3 experience in class action litigation as a primary practice area. Having successfully
4 briefed and argued a published appeal in the Ninth Circuit Court of Appeals
5 involving CAFA and PAGA, having experience certifying large class actions
6 (including *ABM Industries Overtime Cases*, which was decided on appeal), and
7 having received numerous awards for my legal work, my hourly rate should be
8 adjusted upward.

9 b. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court
10 approved my \$800 hourly rate when he granted final approval of the class action
11 settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, No. 30-2019-
12 01066522-CU-OE-CXC.

13 c. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District
14 Court granted final approval of the \$1,600,000 class action settlement in *Carlos*
15 *Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-
16 SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the
17 Court approved my then \$750 hourly rate after finding it was “reasonable, given the
18 qualifications of the attorneys who worked on this matter.” (*Id.* at p. *3.)

19 d. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior
20 Court approved my \$750 hourly rate when he granted final approval of the class
21 action settlement in *Faye Zhang v. Richemont North America, Inc.*, Case No.
22 19STCV32396.

23 I declare under penalty of perjury under the laws of the State of California and the United
24 States that the foregoing is true and correct.

25 Executed on July 29, 2022, at Los Angeles, California.

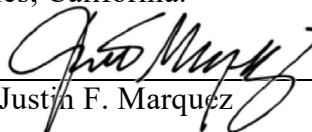
26 
27 Justin F. Marquez
28

Exhibit 1

Justin F. Marquez (SBN 262417)
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Benjamin H. Haber (SBN 315664)
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Arrash T. Fattahi (SBN 333676)
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Facsimile: (916) 742-5488

Attorneys for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

JOSHUA TAYLOR and FRANK LOMONACO,
individually, and on behalf of all others similarly
situated,

Plaintiffs,

v.

U.S. DAIRY SYSTEMS, INC. DBA
AUTOMATED DAIRY SYSTEMS, a
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: VCU286113

CLASS ACTION

[Hon. Nathan D. Ide, Dept. 2]

**JOINT STIPULATION RE: CLASS
SETTLEMENT**

Complaint filed:	February 26, 2021
FAC filed:	February 18, 2022
Trial date:	Not set

1 This Joint Stipulation Re: Class Settlement is made by and between the Named Plaintiffs,
2 JOSHUA TAYLOR and FRANK LOMONACO (“Plaintiffs”), on their own behalf and on behalf
3 of all members of the Settlement Class, as defined below, and Defendant U.S. DAIRY
4 SYSTEMS, INC. DBA AUTOMATED DAIRY SYSTEMS (“Defendant,” and together with
5 Plaintiffs, the “Parties”), in the lawsuit entitled *Joshua Taylor, et al. v. U.S. Dairy Systems, Inc.*
6 *dba Automated Dairy Systems, et al.*, filed in Tulare County Superior Court, Case No.
7 VCU286113. This Joint Stipulation Re: Class Settlement resolves all claims that were asserted
8 or could have been asserted against Defendant pertaining to the claims in the Litigation.

9 **I. DEFINITIONS**

10 **A. Administrative Costs.** All administrative costs of settlement, including cost of
11 notice to the Settlement Class, claims administration, and any fees and costs incurred or charged by
12 the Settlement Administrator in connection with the execution of its duties under this Joint
13 Stipulation Re: Class Settlement.

14 **B. Settlement Agreement.** The terms “Settlement Agreement” or “Agreement” are
15 used synonymously herein to mean this Joint Stipulation Re: Class Settlement.

16 **C. Class Counsel.** The term “Class Counsel” as used herein means: WILSHIRE LAW
17 FIRM, PLC and all the lawyers of the firm acting on behalf of Named Plaintiffs and the Settlement
18 Class. The term Class Counsel shall be used synonymously with the term Plaintiffs’ Counsel.

19 **D. Court.** The term “Court” as used herein means the Superior Court of the State of
20 California for the County of Tulare.

21 **E. Final.** The term “Final” means: (1) the date of final affirmation of the Final Approval
22 Order from any appeal, the expiration of the time for, or the denial of, a petition to review the Final
23 Approval Order, or if review is granted, the date of final affirmation of the Final Approval Order
24 following review pursuant to that grant; or (2) the date of final dismissal of any appeal from the Final
25 Approval Order or the final dismissal of any proceeding to review the Final Approval Order,
26 provided that the Final Approval Order is affirmed and/or not reversed in any part; or (3) if no appeal
27 is filed, the expiration date of the time for the filing or noticing of any appeal from the Court’s Final
28 Approval Order, as determined under Rule 8.104(a)(3) of the California Rules of Court.

1 **F. Date of Final Approval.** The terms “Date of Final Approval” or “Final Approval
2 Order” as used herein mean the final formal judgment entered by the Court at the Final Fairness and
3 Approval Hearing in accordance with the terms herein, approving this Agreement.

4 **G. Defendant.** The term “Defendant” as used herein means U.S. DAIRY SYSTEMS,
5 INC. DBA AUTOMATED DAIRY SYSTEMS.

6 **H. Employer Taxes.** Employer-funded taxes and contributions imposed on the wage
7 portions of the Settlement Payment under the Federal Insurance Contributions Act, the Federal
8 Unemployment Tax Act, and any similar state taxes and contributions required of employers, such
9 as for unemployment insurance.

10 **I. Litigation.** The term “Litigation” as used herein means the action entitled filed in
11 Tulare County Superior Court, Case No. VCU286113.

12 **J. Named Plaintiffs.** The term “Named Plaintiffs” as used herein means Joshua Taylor
13 and Frank Lomonaco.

14 **K. Net Settlement Fund.** The term “Net Settlement Amount” or “Net Settlement Fund”
15 as used herein means the Settlement Amount minus any award of attorneys’ fees and Litigation costs,
16 Administrative Costs, enhancements to the Named Plaintiffs, and penalties recoverable pursuant to
17 California’s Private Attorneys General Act (“PAGA”) (the “PAGA Settlement”), and as provided in
18 Sections VIII, XIII, XIV, XV, and XVI, respectively.

19 **L. Participating Class Members.** The term “Participating Class Members” as used
20 herein means all Class Members who do not submit a valid and timely request to exclude themselves
21 from this Settlement.

22 **M. Participating PAGA Members.** The term “Participating PAGA Members” means
23 all Participating Class Members who worked for Defendant from February 26, 2020 through
24 December 20, 2021, or the date when the Court grants preliminary approval of the settlement,
25 whichever is earlier.

26 **N. Net Settlement Payments.** The term “Net Settlement Payment(s)” shall include
27 payments made to the Settlement Class as part of the Settlement, including wages, penalties and
28 interest.

1 **O. Settlement.** The term “Settlement” as used herein means this Agreement to resolve
2 the Litigation.

3 **P. Settlement Administrator.** The term “Settlement Administrator” as used herein
4 means Phoenix Settlement Administrators, which will be responsible for the administration of the
5 Settlement Amount, as defined below, and all related matters.

6 **Q. Settlement Amount.** The term “Settlement Amount” as used herein means the sum
7 of One Hundred and Eighty-Seven Thousand and Five Hundred Dollars and Zero Cents
8 (\$187,500.00). This is the gross amount Defendant can be required to pay under this Settlement
9 Agreement. The Settlement Amount includes: (1) the Net Settlement Payments to be paid to
10 Participating Class Members; (2) Court-approved attorneys’ fees and Litigation costs pursuant to
11 Section XIII; (3) enhancements to the Named Plaintiffs, as approved by the Court; (4) the
12 Administrative Costs, as approved by the Court; (5) the PAGA Settlement to the California Labor &
13 Workforce Development Agency (“LWDA”) and to Participating PAGA Members, as approved by
14 the Court; (6) any statutory penalties; and (7) interest.

15 **R. Settlement Class.** For settlement purposes only, the Parties agree to the certification
16 of a class pursuant to California *Code of Civil Procedure* § 382 defined as:

17 All persons who worked for any Defendant in California as an hourly-paid or
18 non-exempt employee during the Settlement Period (together, collectively
19 referred to as the "Class Members").

20 **S. Settlement Period.** The term “Settlement Period” as used herein means the
21 period from February 26, 2017 through December 20, 2021, or the date when the Court grants
22 preliminary approval of the settlement, whichever is earlier.

23 **II. BACKGROUND**

24 **A.** In the Litigation, the Named Plaintiffs allege, *inter alia*, on behalf of themselves and
25 all others similarly situated, that Defendant violated California state wage and hour laws, the
26 California *Business and Professions Code* Section 17200, *et seq.*, and the PAGA, as a result of
27 Defendant’s California wage and hour policies and practices. Specifically, Named Plaintiffs allege
28 that Defendant failed to pay its employees at or above the applicable minimum wage rates, failed to

1 provide regular, overtime, and double time pay, failed to provide meal breaks (including first and
2 second meal breaks), failed to authorize and permit legally compliant rest breaks each day based on
3 the hours worked by each employee, and failed to provide reimbursements for all necessary business-
4 related expenses incurred by the class members. Named Plaintiffs further alleged that the
5 aforementioned resulted in the employees receiving inaccurate wage statements, and the
6 underpayment of wages to employees upon termination and/or resignation.

7 Class Counsel conducted informal discovery concerning the claims set forth in the Litigation,
8 such as a sample of class member timekeeping and payroll records, Defendant's policies and
9 procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of
10 wage statements, and providing all wages at separation, as well as information regarding the number
11 of putative class members and the mix of current versus former employees, the wage rates in effect,
12 and the amount of meal and rest period premium wages paid to class members.

13 **B.** Named Plaintiffs and Class Counsel have engaged in good faith, arms-length
14 negotiations with Defendant concerning possible settlement of the claims asserted in the Litigation.
15 The Parties participated in a full day of mediation before the Honorable Steven M. Vartabedian, a
16 well-respected wage and hour class action mediator, that resulted in a tentative settlement of the
17 Litigation, subject to the approval of the Court, and finalization of a formal Joint Stipulation Re:
18 Class Settlement. The Parties have engaged in extensive negotiations about the terms and conditions
19 of the Settlement at the mediation and subsequent thereto. The Parties have now formalized the
20 Settlement Agreement for submission to the Court for Preliminary and Final Approval.

21 **C.** Class Counsel has conducted an investigation of the law and facts relating to the
22 claims asserted in the Litigation and has concluded, taking into account the sharply contested issues
23 involved, the defenses asserted by Defendant, the expense and time necessary to pursue the Litigation
24 through trial and any appeals, the risks and costs of further prosecution of the Litigation, the risk of
25 an adverse outcome, the uncertainties of complex litigation, and the substantial benefits to be
26 received by the Named Plaintiffs and the members of the Settlement Class pursuant to this
27 Agreement, that a settlement with Defendant on the terms and conditions set forth herein is fair,
28 reasonable, adequate, and in the best interests of the Settlement Class. Named Plaintiffs, on their

own behalf and on behalf of the Settlement Class, have agreed to settle the Litigation with Defendant on the terms set forth herein.

D. Defendant has concluded that, because of the substantial expense of defending against the Litigation, the length of time necessary to resolve the issues presented herein, the inconvenience involved, and the concomitant disruption to its business operations, it is in Defendant's best interests to accept the terms of this Agreement. Defendant denies each of the allegations and claims asserted against them in the Litigation. However, Defendant nevertheless desires to settle the Litigation for the purpose of avoiding the burden, expense and uncertainty of continuing litigation and for the purpose of putting to rest the controversies engendered by the Litigation.

E. This Agreement is intended to and does effectuate the full, final and complete settlement of all allegations and claims that were asserted, or could have been asserted, in the Litigation by Named Plaintiffs and members of the Settlement Class as set forth in Section II(A).

III. JURISDICTION

The Court has jurisdiction over the Parties and the subject matter of this Litigation. The Litigation includes claims that, while Defendant denies them in their entirety, would, if proven, authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted Final Approval of the Settlement and after the Court has ordered the entry of Judgment, pursuant to California *Code of Civil Procedure* Section 664.6 the Court shall retain jurisdiction of this action solely for the purpose of interpreting, implementing, and enforcing this Settlement consistent with the terms set forth herein.

IV. STIPULATION OF CLASS CERTIFICATION

The Parties stipulate to the certification of this Settlement Class for purposes of Settlement only. This Stipulation is contingent upon the Preliminary and Final Approval and certification of the Settlement Class only for purposes of Settlement. Should the Settlement not become final, for whatever reason, the fact that the Parties were willing to stipulate provisionally to class certification as part of the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of whether a class should be certified in a non-settlement context in the Litigation. Defendant expressly reserves the right to oppose class certification and/or proactively move to deny

certification should this Settlement be modified or reversed on appeal or otherwise not become final.

V. MOTION FOR PRELIMINARY APPROVAL

Named Plaintiffs will bring a motion before the Court for an order preliminarily approving the Settlement including the Notice of Class Action and Proposed Settlement, and Workweek Dispute Form, which are attached hereto as **Exhibits “A” and “B,”** respectively, and including certification of the Settlement Class for settlement purposes only.

The date that the Court grants Preliminary Approval of this Agreement will be the “Preliminary Approval Date.” Class Counsel will prepare the Motion for Preliminary Approval and will provide Defendant’s counsel the opportunity to review it and provide input before it is filed. On the same date on which it is filed with the Court, Class Counsel shall concurrently submit the Motion for Preliminary Approval to the LWDA in compliance with Labor Code § 2698, *et seq.*, the PAGA.

VI. STATEMENT OF NO ADMISSION

A. Defendant denies liability to Named Plaintiffs and to the Settlement Class upon any claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims made against them in the Litigation.

B. Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Agreement or the Settlement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative, or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used and filed in any proceeding before the

1 Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement
2 or any orders or judgments of the Court entered in connection with implementation of the Settlement.

3 C. None of the documents produced or created by Named Plaintiffs or the Settlement
4 Class in connection with the claims procedures or claims settlement procedures constitute, and they
5 are not intended to constitute, an admission by Defendant of any violation of any federal, state, or
6 local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or
7 in equity.

8 D. The Parties agree that class certification pursuant to California *Code of Civil*
9 *Procedure* Section 382 under the terms of this Agreement is for settlement purposes only. Nothing
10 in this Agreement will be construed as an admission or acknowledgement of any kind that any class
11 should be certified or given collective treatment in the Litigation or in any other action or proceeding.
12 Further, neither this Agreement nor the Court's actions with regard to this Agreement will be
13 admissible in any court or other tribunal regarding the propriety of class certification or collective
14 treatment. In the event that this Agreement is not approved by the Court or any appellate court, is
15 terminated, or otherwise fails to be enforceable, Named Plaintiffs will not be deemed to have waived,
16 limited, or affected in any way any claims, rights, or remedies in the Litigation, and Defendant will
17 not be deemed to have waived, limited, or affected in any way any of their objections or defenses in
18 the Litigation.

19 **VII. WAIVER, RELEASE AND CONFIDENTIALITY**

20 **A. Release as to All Settlement Class Members.**

21 As of the date on which Defendant fully funds the settlement, Named Plaintiffs and all
22 members of the Settlement Class, except those that make a valid and timely request to be excluded
23 from the Settlement Class and Settlement, waive, release, discharge, and promise never to assert in
24 any forum any and all wage-related claims that were alleged in the Litigation or which could have
25 been alleged in the Litigation based on the facts asserted in the Litigation arising during the
26 Settlement Period against Defendant, and its divisions, affiliates, predecessors, successors,
27 shareholders, officers, directors, employees, agents, trustees, representatives, administrators,
28 fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers,

1 and related corporations, including the following claims: (1) all claims alleged in the operative
2 complaint, under any legal theory of liability, for the failure to pay all wages of any kind, including
3 any minimum or straight time wages, owed pursuant to California Labor Code §§ 204, 218, 510,
4 1194, 1194.2, and 1197, the California Industrial Welfare Commission (“IWC”) Wage Orders, or
5 any comparable federal statute under any theory of liability; (2) all claims alleged in the operative
6 complaint, under any legal theory of liability, for the failure to pay overtime or double time wages
7 owed pursuant to California Labor Code §§ 204, 510, 1194, and 1198, the IWC Wage Orders, or any
8 comparable federal statute under any theory of liability; (3) all claims alleged in the operative
9 complaint, under any legal theory of liability, for the failure to provide meal periods pursuant to
10 California Labor Code §§ 226.7 and 512, and the IWC Wage Orders; (4) all claims alleged in the
11 operative complaint, under any legal theory of liability, for the failure to provide rest periods pursuant
12 to California Labor Code § 226.7 and 512, and the IWC Wage Orders; (5) all claims alleged in the
13 operative complaint, under any legal theory of liability, for any penalties of any kind arising from
14 an alleged failure to pay final wages or other amounts allegedly owed to Class Members pursuant
15 to California Labor Code §§ 201-203, as well as California Labor Code §§ 218.5, 218.6, and 1194;
16 (6) all claims alleged in the operative complaint, under any legal theory of liability, for any penalties
17 of any kind arising from an alleged wage statement violation pursuant to California Labor Code §§
18 226 and 1174.5; (7) all claims alleged in the operative complaint, under any legal theory of liability,
19 for failure to indemnify employees for expenditures pursuant to California Labor Code § 2802; (8)
20 all claims alleged in the operative complaint, under any legal theory of liability, for violation of
21 Business & Professions Code §§ 17200, *et seq.*; (9) all claims alleged in the operative complaint and
22 Plaintiffs’ PAGA letters, under any legal theory of liability, for penalties pursuant to the PAGA
23 (Labor Code §§ 2698, *et seq.*), including, but not limited to, California Labor Code §§ 210, 226.3,
24 1174.5, and 1197.1; and (10) all claims alleged in the operative complaint, under any legal theory of
25 liability, for any penalties or any another amounts that could be potentially owed to Class Members
26 during the Settlement Period, including penalties owed pursuant to California Labor Code §§ 210,
27 226.3, 558, and 1197.1.

28 ///

B. General Release by Named Plaintiffs Only.

In addition to the release made in Section VII(A), Named Plaintiffs make the additional following general release of all claims, known or unknown. Named Plaintiffs release Defendant, and each of its respective subsidiaries, affiliates, predecessors or successors in interest, officers, directors, shareholders, employees, attorneys, agents, assigns, insurers, and re-insurers of any of them, from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with Named Plaintiffs' employment with Defendant as well as any and all acts or omissions by or on the part of Defendant. (The release set forth in this Paragraph B shall be referred to hereinafter as the "General Release.")

With respect to the General Release, Named Plaintiffs stipulate and agrees that, upon the Date of Final Approval, Named Plaintiffs shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

"SECTION 1542. [CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE.] A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

Accordingly, if the facts relating in any manner to this Settlement are found hereafter to be other than or different from the facts now believed to be true, the release of claims contained herein shall be effective as to all unknown claims.

VIII. SETTLEMENT ADMINISTRATOR

Named Plaintiffs and Defendant, through their respective counsel, have selected Phoenix Settlement Administrators as the Settlement Administrator to administer the Settlement, which

includes, but is not limited to, distributing and responding to inquiries about Notice of Class Action and Proposed Settlement and Workweek Dispute Form, determining the validity of any disputes and opt-outs, calculating all amounts to be paid from the Net Settlement Amount, and maintaining a website with information about the Settlement. The Settlement Administrator shall update the website to include any changes of the location or date of the Final Approval Hearing and the final judgment. Charges and expenses of the Settlement Administrator, estimated to be no more \$10,000.00, will be paid from the Settlement Amount. Any charges and expenses of the Settlement Administrator greater than the allocated \$10,000.00 will come from the Settlement Amount. If the actual Settlement Administrator fees are less than the Parties' estimation, the difference between the actual and estimated Settlement Administrator fees will revert to the participating Settlement Class members. The Parties agree that this Agreement may be provided to the Settlement Administrator to effectuate its implementation of the settlement procedures herein.

IX. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS

A. Notice.

Named Plaintiffs and Defendant, through their respective attorneys, have jointly prepared a Notice of Class Action and Proposed Settlement (the "Notice") and a Workweek Dispute Form, which in substance will be provided to the members of the Settlement Class as follows:

B. Class Data.

As soon as practicable following Preliminary Approval of the Settlement, but no later than thirty (30) calendar days after the Court's Preliminary Approval order, Defendant will provide to the Settlement Administrator the following information about each Settlement Class member ("Class List"): (1) name; (2) last known home address; (3) number of workweeks as a class member during the Settlement Period or the dates of employment for each Settlement Class member; and (4) Social Security number. Defendant further agrees to consult with the Settlement Administrator prior to the production date to ensure that the format will be acceptable to the Settlement Administrator. Plaintiffs' Counsel shall also receive a redacted Class List that shall only disclose an identification number attributed to each class member and the number of workweeks each class member worked during the Settlement Period.

C. Notice Mailing.

The Settlement Administrator shall run all the addresses provided through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information, and shall mail the Notice and Workweek Dispute Form to the members of the Settlement Class via first-class regular U.S. Mail using the most current mailing address information available, within ten (10) calendar days of the receipt of the Class List from Defendant. The Notice shall provide the members of the Settlement Class forty-five (45) days' notice of all applicable dates and deadlines.

The Notice will also include information regarding the nature of the Litigation; a summary of the terms of the Settlement; the definition of the Settlement Class; a statement that the Court has preliminarily approved the Settlement; the nature and scope of the claims being released; the procedure and time period for objecting to the Settlement, the date and location of the Final Approval Hearing; information regarding the opt-out procedure; Defendant's calculation of the number of Eligible Workweeks that each Settlement Class member has worked as an employee in California at any time during the Settlement Period, and the estimated potential recovery for the proposed Settlement Class Member. The Notice shall enclose the Workweek Dispute Form for Settlement Class members.

For each Settlement Class member, the Workweek Dispute Form will identify the number of Eligible Workweeks that he or she was employed and inform the employee of his or her right to dispute this number by completing and returning the form within forty-five (45) days of the postmark date of the Workweek Dispute Form. A Settlement Class member's receipt of his or her share of the Net Settlement Payments is not conditional on the submission of the Workweek Dispute Form. Absent the receipt of a Workweek Dispute Form the number of workweeks identified in the Workweek Dispute Form shall be deemed accurate. The settlement of any disputes concerning the number of Eligible Workweeks is discussed in Section X, below.

D. Returned Notices.

If a Notice is returned from the initial notice mailing, the Settlement Administrator will

perform a skip trace in an attempt to locate a more current address. If the Settlement Administrator is successful in locating a new address, it will re-mail the Notice to the Settlement Class member. Further, any Notices returned with a forwarding address to the Settlement Administrator, as non-deliverable before the deadline date, shall be sent to the forwarding address affixed thereto. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Settlement Class member for whom a Class Notice is returned by 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 Settlement Class members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Notice shall be re-mailed to the original address. If the Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing. Settlement Class members who receive a re-mailed Notice will have fifteen (15) additional days to submit an Opt-Out Form or objection to the settlement (i.e., 60 calendar days from first mailing) irrespective of when the first mailing was returned as undeliverable as long as the return mailing is received within the initial forty-five (45) day Response Deadline.

E. Deficiency Notice.

Should any member of the Settlement Class timely submit a Workweek Dispute Form with a deficiency, the Settlement Administrator shall, within five (5) calendar days of receipt by the Settlement Administrator of each timely submitted Workweek Dispute Form, send a deficiency notice. The deficiency notice will provide the member of the Settlement Class no more than fourteen (14) days from the mailing of the deficiency notice to postmark a written response to cure all deficiencies. The failure of a member of Settlement Class to timely submit a Workweek Dispute or timely respond to a notice of deficiency shall invalidate the dispute unless all Parties' counsel agree to allow the dispute.

F. Settlement Administrator's Declaration.

No later than twenty-five (25) days before the Final Approval Hearing, the Settlement Administrator shall provide counsel for Defendant and Class Counsel with a declaration attesting to the completion of the Notice process, including the number of attempts to obtain valid mailing

addresses for and re-sending of any returned Notices, as well as the number of valid Workweek Dispute Forms, opt-outs and deficiencies that the Settlement Administrator received.

G. Objections.

1. Timing. The objection must be submitted to the Settlement Administrator by mail, postmarked by the Response Deadline.

2. Format. Any Objections must state: (a) the case name (e.g., *Joshua Taylor and Frank Lomonaco, et al. v. U.S. Dairy Systems, Inc. dba Automated Dairy Systems*) and case number (VCU286113); (b) the objecting person's or his or her attorney's full name, address, and telephone number; (c) the words "Notice of Objection" or "Formal Objection;" (d) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval Hearing; (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing; and (g) state whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class.

3. Notice of Intent to Appear. Settlement Class members who timely submit valid objections to the Settlement may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel.

4. Effect of Objection. If a Settlement Class member objects to the Settlement, the Settlement Class member will remain a member of the Settlement Class and if the Court approves this Agreement, the Settlement Class member will be bound by the terms of the Settlement and Final Approval Order in the same way and to the same extent as a Settlement Class member who does not object. The date of mailing of the Notice to the objecting Settlement Class member shall be conclusively determined according to the records of the Settlement Administrator. The Court retains final authority with respect to the consideration and admissibility of any Settlement Class member objections. Any Settlement Class member who submits an objection may also participate in the settlement.

H. Opportunity to be Excluded and Defendant's Opt-Out Threshold.

In order for any Settlement Class member to validly exclude himself or herself from the

1 Settlement Class and the Settlement (i.e., to validly opt out), a written request for exclusion (“Request
2 to be Excluded”) must be signed by the Settlement Class member or his or her authorized
3 representative and must be sent to the Settlement Administrator, postmarked by no later than forty-
4 five (45) days after the date the Settlement Administrator initially mails the Notice to the Settlement
5 Class members. The Notice shall contain instructions on how to opt out.

6 **1. Effect of Opt-Out.** The date of the initial mailing of the Notice, and the date the
7 signed Request to be Excluded was postmarked, shall be conclusively determined according to the
8 records of the Settlement Administrator. Any Settlement Class member who timely and validly
9 submits a Request to be Excluded from the Settlement Class and the Settlement will not be entitled
10 to any portion of the Net Settlement Payments, will not be bound by the terms and conditions of the
11 Settlement, and will not have any right to object, appeal, or comment thereon.

12 **2. Failure to Opt-Out.** Any member of the Settlement Class who does not timely
13 file and mail a Request to be Excluded from the Settlement Class will be deemed included in the
14 Settlement Class in accordance with this Settlement.

15 **3. Tolerance of Opt-Outs.** In the event that ten percent (10%) or more of the Class
16 Members exercise their right to exclude themselves and opt out of the Settlement and Settlement
17 Agreement, Defendant retains the exclusive right, but not the obligation, to withdraw from and
18 terminate the Settlement and the Settlement Agreement and return all Parties back to their same
19 position before the Settlement was reached and the Settlement Agreement was entered into. In the
20 event that Defendant exercises such rights under this paragraph, Named Plaintiffs and Defendant
21 shall resume the Litigation through and until there is a final settlement of the Litigation. Defendant
22 must notify Class Counsel and the Court of such a decision to withdraw and terminate the Settlement
23 no later than five (5) days prior to the date of the Final Approval Hearing. In the event of Defendant’s
24 withdrawal, no party may use the fact that the Parties agreed to the Settlement for any reason, and
25 Defendant shall pay all administration expenses incurred through the date of its termination of the
26 Settlement.

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I. Cooperation.

The Parties and their respective counsel agree not to encourage members of the Settlement Class to refrain from participating in the Settlement, to opt out of the Settlement, or to object to the Settlement, directly or indirectly, through any means. However, if a Settlement Class member contacts Class Counsel, Class Counsel may discuss the terms of the Settlement and the Settlement Class member's options.

X. DISPUTES PROCEDURE

If the member of the Settlement Class disputes the number of Eligible Workweeks set forth in the Workweek Dispute Form, such person must follow the directions in the Workweek Dispute Form and in the Notice, including preparing a statement setting forth the number of Eligible Workweeks that such person believes in good faith is correct, and stating that the member of the Settlement Class authorizes the Settlement Administrator to review the Settlement Class member's personnel file and leave management records to determine such information, and attaching any relevant documentation in support thereof. Documentary evidence and paystubs are helpful to substantiate such person's dispute claim, but it is not required. The member of the Settlement Class must mail the signed and completed statement no later than forty-five (45) days after the date of the mailing of the Workweek Dispute Form, or the number of Eligible Workweeks set forth in the Notice and Workweek Dispute Form will govern the Net Settlement Payment to the member of the Settlement Class.

Upon timely receipt of any such challenge, the Settlement Administrator, in consultation with Class Counsel and counsel for Defendant, will review the pertinent payroll records showing the dates the Settlement Class member was employed and the pertinent leave(s) taken, which records Defendant agrees to make available to the Settlement Administrator and Class Counsel.

After consulting with Class Counsel and counsel for Defendant, the Settlement Administrator shall compute the number of Eligible Workweeks to be used in computing the Settlement Class member's pro rata share of the Net Settlement Amount. In the event there is a disparity between the dates a Settlement Class member claims he or she worked during the Settlement Period and the dates indicated by Defendant's records, Defendant's records will control unless inconsistent with paycheck

1 stub(s) (or bona fide copies thereof) provided by the Settlement Class member, in which case the
2 paycheck stub(s) will control. The Parties shall file with the Court all disputes submitted, and the
3 resolution of those disputes. The Court shall have the right to review any decision made by the
4 Settlement Administrator regarding a claim dispute.

5 **XI. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

6 **A. Distribution Formula.**

7 Subject to the Court finally approving the Settlement, the Settlement Administrator shall
8 distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and
9 Judgment. The maximum amount Defendant can be required to pay under this Settlement for any
10 purpose is the Settlement Amount. The Settlement Administrator shall keep Defendant's Counsel
11 and Class Counsel apprised of all distributions from the Settlement Amount. The Settlement
12 Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person
13 shall have any claim against Defendant, Defendant's Counsel, Plaintiffs, Class Counsel, or the
14 Settlement Administrator based on the distributions and payments made in accordance with this
15 Agreement.

16 The Settlement Administrator will calculate the total number of workweeks for all Class
17 Members who were employed by Defendant during the Settlement Class Period ("Total
18 Workweeks"). The value of each Workweek shall be determined by the Settlement Administrator by
19 dividing the Net Settlement Fund (not including the amount the Court approves in PAGA penalties)
20 by the total number of Workweeks available to the Class Members who do not opt out in accordance
21 with Section IX(H) above during the Settlement Class Period ("Workweek Point Value").

22 An "Individual Settlement Payment" for each Class Member will then be determined by
23 multiplying a Class Member's workweeks worked during the Class Period ("Eligible Workweeks")
24 by the Workweek Point Value. The Individual Settlement Payment will be reduced by any required
25 legal deductions, for each participating Class Member.

26 Members of the Settlement Class not opting out will receive a lump sum payment as good
27 and valuable consideration for the waiver and release of claims set forth in Section VII(A), above,
28 in an amount determined by the Settlement Administrator in accordance with the provisions of this

1 Agreement.

2 As to distribution of PAGA penalties, the Settlement Administrator will calculate the total
3 number of workweeks for all Participating PAGA Members who were employed by Defendant
4 during the PAGA Period ("Total PAGA Workweeks"). The value of each PAGA Workweek shall
5 be determined by the Settlement Administrator by dividing 25% of the total amount the Court
6 approves in PAGA penalties by the total number of PAGA Workweeks available to Participating
7 PAGA Members ("PAGA Workweek Point Value"). Each payment to Participating PAGA
8 Members shall be treated as 100% penalties.

9 **B. Funding of Settlement.**

10 Within twenty-one (21) calendar days following the date on which the Court grants Final
11 Approval of the Settlement and a determination of the pro-rata share of the settlement amount to
12 which each member of the Settlement Class is entitled, Defendant will deposit the Settlement
13 Amount and the Employer Taxes into an interest-bearing trust account (established by the Settlement
14 Administrator) for the benefit of the participating Settlement Class members and Class Counsel,
15 through the Settlement Administrator. At no time prior to Final Approval of the Settlement shall
16 Defendant be required to escrow any portion of the Settlement Amount.

17 **C. Time for Distribution and *Cy Pres*.**

18 **1. Distribution.**

19 The Settlement Administrator shall cause the Settlement Amount (inclusive of the Net
20 Settlement Amount, the Court approved attorney's fees and Litigation costs, Court approved
21 enhancements to Named Plaintiffs, and PAGA Settlement) and the Employer Taxes to be mailed
22 within twenty-one (21) calendar days following the Date of Final Approval. At no time will
23 Defendant be required to escrow any portion of the Settlement Amount.

24 **2. Uncashed Checks.**

25 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
26 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace
27 search and, if another address is identified, shall mail the check to the newly identified address. Any
28 settlement checks remaining uncashed after one hundred and eighty (180) days shall be deemed

1 unpaid residue pursuant Code of Civil Procedure Section 384(a). In accordance with Code of Civil
2 Procedure Section 384, the Parties shall follow the procedure set for in (1) – (5) below in regard to
3 unpaid residue:

- 4 (1) Unpaid residue (uncashed or returned checks) will be paid, *with any interest*
5 *generated in the account established by the Settlement Administrator*, to the Los
6 Angeles Trial Lawyers' Charities, 2708 Wilshire Boulevard, Suite 391, Santa
7 Monica, CA 90403;
- 8 (2) The attorneys for the Parties shall file, with the Motion for Final Approval, a
9 stand-alone Stipulation to Amend Judgment and Proposed Stipulated Amended
10 Judgment (Section 384) memorializing the Parties' agreement to amend the
11 judgment to adopt the administrator's determination of amount of unpaid residue,
12 plus any interest generated in the interest-bearing account from the date of entry
13 of the initial judgment, to be paid to the *cy pres*;
- 14 (3) The Parties shall attach to the Stipulation a [Proposed] Stipulated Amended
15 Judgment form with a signature line for the court and blanks for the amount of
16 residue plus interest, if any, to be added to the judgment and the total amount of
17 the amended judgment;
- 18 (4) Along with the Final Report, the administrator shall file, with the court, a
19 photocopy of the attorneys' Stipulation to Amend Judgment along with a
20 [Proposed] Stipulated Amended Judgment form with the amount of residue plus
21 interest to be added to the judgment and the total amount of the judgment, plus
22 interest, filled in;
- 23 (5) The court signs and enters the Stipulated Amended Judgment;
- 24 (6) Defendant will not be required to pay any additional funds associated with the
25 residue, as the interest included with the residue (as mentioned above) is limited
26 to the interest earned in the account established by the Settlement Administrator.

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XII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN

The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy, or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant, policies or bonus programs. Any payments made under the terms of this Settlement shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of Defendant's benefit plan, policy or bonus program. Defendant retain the right to modify the language of their benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement.

XIII. CLASS COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS

Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall not seek or receive an amount in excess of \$62,500.00, which represents one-third of the Settlement Amount for all past and future attorneys' fees necessary to prosecute, settle and administer the Litigation and this Settlement. Additionally, Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall not seek or receive an amount in excess of \$15,000.00, which represents all past and future Litigation costs and expenses necessary to prosecute, settle and administer the Litigation and this Settlement. Any attorneys' fees or Litigation costs awarded to Class Counsel by the Court as part of the Settlement Amount shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount. The "future" aspect of these amounts include, without limitation, all time and expenses expended by Class Counsel in defending the Settlement and securing preliminary and Final Approval (including any appeals therein). There will be no additional charge of any kind to either the members of the Settlement Class or request for additional consideration from Defendant for such work. This amount shall include all attorneys' fees, Litigation costs, and expenses for which Named Plaintiffs and Class Counsel could claim under

any legal theory whatsoever. Within twenty-one (21) calendar days following the Date of Final Approval, the Settlement Administrator shall disburse payment from the Settlement Amount for the amount of attorneys' fees and Litigation costs approved by the Court to Class Counsel. Should the Court approve a lesser percentage or amount of fees and/or Litigation costs than the amount that Class Counsel ultimately seeks, then any such unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the participating Settlement Class Members on a pro-rata basis.

XIV. ENHANCEMENTS TO NAMED PLAINTIFFS

Defendant shall not oppose an application by Named Plaintiffs, and Joshua Taylor and Frank Lomonaco shall not seek or receive amounts in excess of \$7,500.00 and \$5,000.00, respectively, for their participation in and assistance with the Litigation (*i.e.*, class representative enhancement / service award). Any enhancements awarded to Named Plaintiffs by the Court as part of the Settlement Amount shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount, and shall be reported on IRS Form 1099. If the Court approves enhancements of less than \$7,500.00 and \$5,000.00 to Named Plaintiffs, then the unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the participating Settlement Class Members on a pro-rata basis.

XV. TAXATION AND ALLOCATION

The Parties agree that all employment taxes and other legally required withholdings will be withheld from payments to the members of the Settlement Class and Named Plaintiffs based on the Parties stipulated allocation of the Net Settlement Amount as provided for in this Section.

In Defendant's sole discretion, and to which Named Plaintiffs and Class Counsel do not object, the amount of federal income tax withholding will be based upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to applicable state and/or local withholding codes or regulations.

For withholding tax characterization purposes and payment of taxes, the Net Settlement Amount shall be deemed and is allocated by the Parties as follows ("Net Settlement Allocation"):

- (1) 33% as wages; and
- (2) 67% as penalties and interest.

Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement, by the Settlement Administrator. If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendant into compliance with any such changes.

Finally, any and all Employer Taxes which Defendant normally would be responsible for paying based on the Net Settlement Payments made to the individual Class Members will be paid by Defendant in addition to and not as a deduction from the Settlement Amount based on the stipulated Net Settlement Allocation.

XVI. PRIVATE ATTORNEYS GENERAL ACT ALLOCATION

In order to implement the terms of this Settlement and to settle claims alleged under the PAGA, California *Labor Code* section 2698, *et seq.*, the Parties agree to allocate \$10,000.00 from the Settlement Amount as penalties authorized by the PAGA. Seventy-five percent (75%) of this amount will be paid to the LWDA and twenty-five percent (25%) of this amount will be distributed to the participating Class Members, through the Settlement Administrator and at no additional cost to Defendant. Within twenty-one (21) calendar days following the Date of Final Approval, the Settlement Administrator shall disburse the PAGA Settlement to the LWDA and will provide notice to the LWDA of the fact that the Settlement has been approved by the Court along with a copy of the Settlement Agreement and the Court order confirming the approval of the Settlement through the appropriate LWDA/California Department of Industrial Relations ("DIR") website.

XVII. COURT APPROVAL

This Agreement and the Settlement is contingent upon Final Approval by the Court and the entry of judgment. Named Plaintiffs and Defendant agree to take all steps as may be reasonably necessary to secure both Preliminary Approval and Final Approval of the Settlement, to the extent not inconsistent with the terms of this Agreement, and will not take any action adverse to each other in obtaining court approval, and, if necessary, appellate approval, of the Settlement in all respects.

1 Named Plaintiffs and Defendant expressly agree that they will not file any objection to the terms of
2 the Settlement or assist or encourage any person or entity to file any such objection.

3 In the event it becomes impossible to secure approval of the Settlement, the Parties shall be
4 restored to their respective positions in the Litigation, as of the date of the hearing on the Motion for
5 Preliminary Approval, except as otherwise provided in Section XVIII, below.

6 **XVIII. MISCELLANEOUS PROVISIONS**

7 **A. Stay of Litigation.**

8 Named Plaintiffs and Defendant agree to the stay of all discovery in the Litigation, pending
9 Final Approval of the Settlement by the Court.

10 **B. Interpretation of the Agreement.**

11 This Agreement constitutes the entire agreement between Named Plaintiffs and Defendant.
12 Except as expressly provided herein, this Agreement has not been executed in reliance upon any
13 other written or oral representations or terms, and no such extrinsic oral or written representations or
14 terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree
15 that this Agreement is to be construed according to its terms and may not be varied or contradicted
16 by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State
17 of California, both in its procedural and substantive aspects, without regard to its conflict of laws
18 provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will
19 be resolved solely and exclusively in the Superior Court of the State of California for the County of
20 Tulare, and Named Plaintiffs and Defendant hereby consent to the personal jurisdiction of the Court
21 over them solely in connection therewith. Named Plaintiffs, on their own behalf and on behalf of
22 the Settlement Class, and Defendant participated in the negotiation and drafting of this Agreement
23 and had available to them the advice and assistance of independent counsel. As such, neither Named
24 Plaintiffs nor Defendant may claim that any ambiguity in this Agreement should be construed against
25 the other.

26 The terms and conditions of this Agreement constitute the exclusive and final understanding
27 and expression of all agreements between Named Plaintiffs and Defendant with respect to the
28

1 Settlement of the Litigation. The Agreement may be modified only by a writing signed by the
2 original signatories and approved by the Court.

3 **C. Further Cooperation.**

4 Named Plaintiffs and Defendant and their respective attorneys shall proceed diligently to
5 prepare and execute all documents, to seek the necessary approvals from the Court, and to do all
6 things reasonably necessary or convenient to consummate the Agreement as expeditiously as
7 possible.

8 **D. Confidentiality of Documents.**

9 After the expiration of any appeals period, Named Plaintiffs, the Settlement Administrator,
10 and Class Counsel shall maintain the confidentiality of all documents, deposition transcripts,
11 declarations and other information obtained in the lawsuit, unless necessary for appeal or such
12 documents are ordered to be disclosed by the Court or by a subpoena.

13 **E. Counterparts.**

14 The Agreement may be executed in one or more actual or non-original counterparts, all of
15 which will be considered one and the same instrument and all of which will be considered duplicate
16 originals.

17 **F. Authority.**

18 Each individual signing below warrants that he or she has the authority to execute this
19 Agreement on behalf of the party for whom or which that individual signs.

20 **G. No Third-Party Beneficiaries.**

21 Named Plaintiffs, members of the Settlement Class, and Defendant are direct beneficiaries of
22 this Agreement, but there are no third-party beneficiaries.

23 **H. Modification.**

24 This Agreement may not be changed, altered, or modified, except in a writing signed by the
25 Parties, and approved by the Court. Notwithstanding the forgoing, the Parties agree that any dates
26 contained in this Agreement may be modified by agreement of the Parties in writing without Court
27 approval if the Parties agree and cause exists for such modification. This Agreement may not be
28 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

1 In addition to the above, this Agreement may be modified based on the final size of the
2 Settlement Class. Defendant's best estimate for the number of workweeks worked by the members
3 of the Settlement Class between the period of February 26, 2017 to September 15, 2021 is 3,611. If
4 the number of workweeks for this time period is determined to be more than 20% higher than this
5 estimate (i.e., 4,334 or more workweeks), the Settlement Amount shall be increased by the average
6 gross payout to the Class Members based on the 3,611 workweeks. For example, if there are 20%
7 more workweeks than the initial figure of 3,611 workweeks during the time period stated above (in
8 this Paragraph), then Defendant will increase the Settlement Amount by 20%. The Settlement
9 Amount will not be reduced due to Defendant's estimate.

10 **I. Deadlines Falling on Weekends or Holidays.**

11 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or
12 legal holiday, that deadline shall be continued until the following business day.

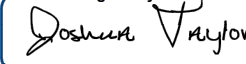
13 **J. Severability.**

14 In the event that any one or more of the provisions contained in this Agreement shall for any
15 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
16 unenforceability shall in no way effect any other provision if Defendant's Counsel and Class
17 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if
18 such invalid, illegal, or unenforceable provision had never been included in this Agreement.
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1 APPROVED AS TO FORM AND CONTENT:

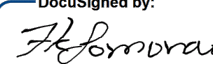
2 Date: 2/18/2022, 2022

JOSHUA TAYLOR, on behalf of himself and all
others similarly situated

3
4 By: 
5 JOSHUA TAYLOR, *Plaintiff*

6 Date: 2/18/2022, 2022

FRANK LOMONACO, on behalf of himself and
all others similarly situated

7
8 By: 
9 FRANK LOMONACO, *Plaintiff*

10
11
12
13
14 Date: March 10th, 2022

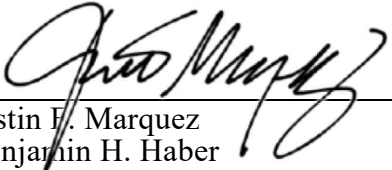
U.S. DAIRY SYSTEMS, INC. DBA
AUTOMATED DAIRY SYSTEMS

15
16 By: 
17 Name: Josiah Higley
18 Position: CEO
19 For U.S. DAIRY SYSTEMS, INC. DBA
20 AUTOMATED DAIRY SYSTEMS,
21 *Defendant*

22 APPROVED AS TO FORM:

23 Date: February 18, 2022

WILSHIRE LAW FIRM

24 By: 
25 Justin F. Marquez
26 Benjamin H. Haber
27 Arrash T. Fattahi

*Attorneys for Plaintiffs Joshua Taylor and Frank
Lomonaco*

Date: March 11th, 2022

MEDINA McKELVEY LLP

By: 

Brandon R. McKelvey

Timothy B. Nelson

Douglas R. Leach

Attorneys for Defendant U.S. Dairy Systems, Inc.

dba Automated Dairy Systems

WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010-1137

Exhibit A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE

Joshua Taylor/Frank Lomonaco v. U.S. Dairy Systems, Inc. dba Automated Dairy Systems
Case No. VCU286113

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX -

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT.

**U.S DAIRY SYSTEMS, INC. DBA AUTOMATED DAIRY SYSTEMS WILL NOT RETALIATE
AGAINST YOU FOR PARTICIPATING IN THIS SETTLEMENT.**

THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.

A California court authorized this notice. This is not a solicitation from a lawyer.

YOU ARE HEREBY NOTIFIED that a proposed settlement (“the Settlement”) of the above-captioned class action (“the Action”) filed in the Tulare County Superior Court has been reached by U.S Dairy Systems, Inc. dba Automated Dairy Systems (“ADS”) and Joshua Taylor and Frank Lomonaco (“Plaintiffs”), individuals, on behalf of themselves and all others similarly situated, and has been granted Preliminary Approval by the Court supervising the Action. The Tulare County Superior Court has ordered that this Class Notice be sent to you because you may be a Settlement Class member. The purpose of this Class Notice is to inform you of the Settlement of this class action and your legal rights under the Settlement as follows:

- ADS has agreed to settle a lawsuit brought on behalf of all persons who worked for ADS in California as an hourly-paid or non-exempt employee during the period from February 26, 2017 through December 20, 2021 (the “Settlement Period”) (hereafter, “Settlement Class”).
- The proposed Settlement resolves all alleged claims regarding the following wage and hour policies and/or practices of ADS: minimum wage, straight time wage, overtime and/or double time wage, failure to pay for all hours worked, meal and rest breaks and any premiums thereon, wage statement violations, waiting time penalties, failure to indemnify for expenditures, and other penalties of any kind arising from an alleged failure to pay wages. Finally, the settlement resolves claims for unfair competition and penalties under California’s Private Attorneys General Act (“PAGA”) arising out of the alleged wage and hour policies and practices of ADS. The settlement avoids costs and risks to you from continuing the lawsuit, pays money to employees, and releases ADS from liability for these claims.
- The parties in the lawsuit disagree on whether ADS is liable for the allegations raised in this case and how much money could have been won if the employees won at trial.
- **Your legal rights may be affected. Read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Get a Payment	If you are a member of the Settlement Class, you will automatically receive a payment if you do not exclude yourself. If you accept a payment and do not exclude yourself you will give up certain rights as set forth on page 4 below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below.
Exclude Yourself	Get no payment. Send a letter to the Settlement Administrator as provided below. This is the only option that allows you to bring your own claim against ADS about the legal claims in this case. The Settlement will bind all Settlement Class Members who do not request exclusion.
Object	Write to the Court about why you do not like the settlement. Directions are provided below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of a class on whose behalf this lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

Plaintiffs filed this lawsuit in Tulare County Superior Court on behalf of the Settlement Class. The lawsuit alleges that members of the Settlement Class were not paid all minimum, straight time, and overtime wages, were not paid for or properly provided meal and rest breaks, were not paid all wages due at termination and/or resignation, were not issued accurate wage statements, were not provided reimbursements for all necessary business-related expenses, and were subjected to unfair competition. The lawsuit seeks recovery of wages, restitution, statutory and civil penalties, interest, and attorneys' fees and costs.

ADS denies any liability or wrongdoing of any kind associated with the claims alleged in the lawsuit. ADS contends, among other things, that they complied at all times with the California Labor Code, the California Business and Professions Code, and all other applicable law. ADS further denies that the lawsuit is appropriate for class treatment for any purpose other than settling this lawsuit.

The Court has made no ruling and will make no ruling on the merits of the Litigation and its allegations and claims.

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did **not** decide in favor of the Plaintiffs or ADS. Plaintiffs think they would have prevailed on their claims at a trial. ADS does not think that Plaintiffs would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the costs, risks, and uncertainty of a trial, and the class members will get compensation. Plaintiffs and Plaintiffs' attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all class members.

B. Who is in the Class?

The Settlement Class consists of all persons who worked for ADS in California as an hourly-paid or non-exempt employee during the Settlement Period.

C. What does the Settlement provide?

1. Settlement Amount.

ADS will pay a total of One Hundred and Eighty-Seven Thousand and Five Hundred Dollars and Zero Cents (\$187,500.00) (the “Settlement Amount”) to settle the lawsuit.

The following sums will be paid from the Settlement Amount: all Net Settlement Payments (inclusive of all employment taxes and all other legally required withholdings that would otherwise be due from the individual class members) to the Settlement Class, Attorneys’ Fees (not to exceed 33 ⅓ % of the Settlement Amount, or \$62,500.00), Litigation Expenses not to exceed \$15,000.00, Settlement Administrative Costs estimated in an amount not to exceed \$10,000.00, the PAGA Settlement Payment in the amount of \$10,000.00, and enhancement payments to the Named Plaintiffs not to exceed \$7,500.00 and \$5,000.00, respectively. Any and all Employer Taxes which ADS normally would be responsible for paying on the Net Settlement Payments made to individual Class Members will be paid by ADS separate and apart from the Settlement Amount.

The funds used for the Settlement Amount shall be paid to the Settlement Administrator. The Settlement Administrator shall disburse the Court-approved enhancements to the Named Plaintiffs, Court-approved Attorneys’ Fees and Litigation Expenses, Settlement Administration Costs, and the PAGA Settlement Payment at the same time and manner as the Net Settlement Payments to the Settlement Class members.

2. Net Settlement Amount.

“Net Settlement Amount” means the Settlement Amount minus the Attorneys’ Fees, Litigation Expenses, Settlement Administrative Costs, the portion of the PAGA Settlement payment payable to the Labor & Workforce Development Agency (“LWDA”), and the enhancement payments to the Named Plaintiffs.

3. Your Individual Payment Amount.

The Claims Administrator will calculate the total number of workweeks for all Class Members who were employed by Defendant ADS during the Settlement Period (“Total Workweeks”). The value of each Workweek shall be determined by the Claims Administrator by dividing the Net Settlement Amount by the total number of Workweeks available to the Class Members who do not “opt out” (as defined on pages 5-6 below) during the Settlement Period (“Workweek Point Value”).

An “Individual Settlement Payment” for each Class Member will then be determined by multiplying a Class Member’s workweeks (“Eligible Workweeks”) by the Workweek Point Value. The Individual Settlement Payment will be reduced by any required legal deductions, for each participating Class Member.

4. Tax Matters.

The Settlement Administrator will distribute IRS Forms W-2 and 1099 (and the equivalent California forms) to Settlement Class members reflecting the payments each Settlement Class member receives under

the Settlement. For tax purposes, Net Settlement Payments will be allocated as follows: 33% as wages and 67% as penalties and interest. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code and the California Franchise Tax Board.

Interest and penalties paid under this Settlement shall not be subject to federal, state and local payroll withholding taxes. The Settlement Administrator shall issue an IRS form 1099 for payments of interest and penalties. The usual and customary deductions will be taken out of the amounts attributable to unpaid wages. Settlement Class members should consult with their tax advisors concerning the tax consequences of the payment they receive under the Settlement.

D. What are you giving up to get a payment and stay in the Class?

As of the date on which Defendant fully funds the settlement, Named Plaintiffs and all members of the Settlement Class, except those that make a valid and timely request to be excluded from the Settlement Class and Settlement, waive, release, discharge, and promise never to assert in any forum any and all wage-related claims that were alleged in the Litigation or which could have been alleged in the Litigation based on the facts asserted in the Litigation arising during the Settlement Period against Defendant, and its divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, and related corporations, including the following claims: (1) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to pay all wages of any kind, including any minimum or straight time wages, owed pursuant to California Labor Code §§ 204, 218, 510, 1194, 1194.2, and 1197, the California Industrial Welfare Commission (“IWC”) Wage Orders, or any comparable federal statute under any theory of liability; (2) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to pay overtime or double time wages owed pursuant to California Labor Code §§ 204, 510, 1194, and 1198, the IWC Wage Orders, or any comparable federal statute under any theory of liability; (3) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to provide meal periods pursuant to California Labor Code §§ 226.7 and 512, and the IWC Wage Orders; (4) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to provide rest periods pursuant to California Labor Code §§ 226.7 and 512, and the IWC Wage Orders; (5) all claims alleged in the operative complaint, under any legal theory of liability, for any penalties of any kind arising from an alleged failure to pay final wages or other amounts allegedly owed to Class Members pursuant to California Labor Code §§ 201-203, as well as California Labor Code §§ 218.5, 218.6, and 1194; (6) all claims alleged in the operative complaint, under any legal theory of liability, for any penalties of any kind arising from an alleged wage statement violation pursuant to California Labor Code §§ 226 and 1174.5; (7) all claims alleged in the operative complaint, under any legal theory of liability, for failure to indemnify employees for expenditures pursuant to California Labor Code § 2802; (8) all claims alleged in the operative complaint, under any legal theory of liability, for violation of Business & Professions Code § 17200, *et seq.*; (9) all claims alleged in the operative complaint and Plaintiffs’ PAGA letters, under any legal theory of liability, for penalties pursuant to the PAGA (Labor Code §§ 2698, *et seq.*) including, but not limited to, California Labor Code §§ 210, 226.3, 1174.5, and 1197.1; and (10) all claims alleged in the operative complaint, under any legal theory of liability, for any penalties or any another amounts that could be potentially owed to Class Members during the Settlement Period, including penalties owed pursuant to California Labor Code §§ 210, 226.3, 558, and 1197.1.

THE FINAL APPROVAL HEARING

The Court will conduct a Final Approval Hearing regarding the proposed settlement (the “Final Approval Hearing”) on , 2022/2023, at 221 South Mooney Blvd., Visalia, CA 93291, in Department 2 of

the Tulare County Superior Court. The Court will determine: (i) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class members; (ii) whether the Settlement Class members should be bound by the terms of the settlement; (iii) the amount of the attorneys' fees and costs to Plaintiffs' counsel; and (iv) the amount that should be awarded to the Plaintiffs as enhancement payments. At the Final Approval Hearing, the Court will hear all objections, as well as arguments for and against the proposed Settlement. You are permitted to provide an objection at the Final Approval Hearing, in the first instance, even if you did not provide a written objection beforehand. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

The Final Approval Hearing may be continued without further notice to the Class. You may contact Plaintiffs' counsel, listed in this Notice, to inquire into the date and time of the Final Approval Hearing.

Condition of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – GET A PAYMENT**

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS AND WISH TO RECEIVE YOUR SHARE OF THE SETTLEMENT, THEN YOU DO NOT HAVE TO DO ANYTHING AND YOU WILL AUTOMATICALLY RECEIVE A SETTLEMENT PAYMENT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE.

The average potential recovery for each proposed Settlement Class Member is \$.

The estimated amount of your Settlement Payment is set forth on the Workweek Dispute Form which accompanies this Notice.

The amount of the Settlement Payment paid to each Settlement Class member is based upon the number of workweeks you worked between February 26, 2017 through December 20, 2021. The number of workweeks applicable to your claim is also set forth on the accompanying Workweek Dispute Form. If you believe that the number of workweeks stated is incorrect, you may dispute the number of workweeks by following the instructions on the Workweek Dispute Form. If you believe that the number of workweeks stated is correct, you do not have to do anything.

The Settlement Payment you will receive will be a full and final settlement of your released claims described in Section D above.

- **OPTION 2 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself ("opt out") from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will **not** be bound by a judgment in this case and you will have the right to file your own lawsuit against ADS, subject to time limits called Statute of Limitations and other potential defenses that ADS may assert, and to pursue your own claims in a separate suit.

You can opt out of the Settlement Class by completing the form on **Page 8** of this Notice and mailing it by First Class U.S. Mail or equivalent to the Settlement Administrator at the following address: Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. To be valid, your request for exclusion must be postmarked no later than [45 days after mailing].

- **OPTION 3 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Approval Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing to object, regardless of whether you provided a written objection beforehand, either in person or through an attorney at your own expense.

Any written objection may be mailed to the Settlement Administrator at [Address] by [45 days after mailing].

The contact information for Plaintiffs' counsel and Defendant's counsel is provided below solely for your informational purposes. Written objections should only be sent to the Settlement Administrator at the address provided above, not to Plaintiffs' counsel or Defendant's counsel.

PLAINTIFFS'/CLASS COUNSEL

Justin F. Marquez, Esq.
justin@wilshirelawfirm.com
Benjamin H. Haber, Esq.
benjamin@wilshirelawfirm.com
Arrash T. Fattahi, Esq.
afattahi@wilshirelawfirm.com
WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

**U.S. DAIRY SYSTEMS, INC. DBA
AUTOMATED DAIRY SYSTEMS' COUNSEL**

Brandon R. McKelvey, Esq. (SBN 217002)
brandon@medinamckelvey.com
Timothy B. Nelson, Esq. (SBN 235279)
tim@medinamckelvey.com
Douglas R. Leach, Esq. (SBN 325955)
doug@medinamckelvey.com
MEDINA MCKELVEY LLP
925 Highland Pointe Drive, Suite 300
Roseville, California 95678
Telephone: (916) 960-2211
Facsimile: (916) 742-5488

CHANGE OF ADDRESS

If you move after receiving this Notice, if it was misaddressed, or if for any reason you want your Settlement Award or future correspondence concerning this Action to be sent to a different address, you must supply your preferred address to the Settlement Administrator at:

Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you may review the detailed "Joint Stipulation Re: Class Settlement" which is available for viewing online, along with other court records regarding this case, on the following website:

URL: [Insert website provided by Settlement Administrator]

The pleadings and other records in the lawsuit are also available on the website.

Alternatively, you may also obtain information about this matter through the Tulare County Superior Court's website, by going to the following webpage: <https://efiling.tulare.courts.ca.gov/?q=node/349> and entering "VCU286113" for the case number.

ANY INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO PLAINTIFFS' COUNSEL LISTED ABOVE OR TO THE SETTLEMENT ADMINISTRATOR, Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92867, (800) 523-5773. Please refer to the *Joshua Taylor/Frank Lomonaco v. U.S. Dairy Systems, Inc. dba Automated Dairy Systems* Class Action Settlement.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS

**[COMPLETE THIS FORM *ONLY IF YOU CHOOSE TO*
NOT PARTICIPATE IN THIS SETTLEMENT AND
CHOOSE *NOT* TO RECEIVE A SETTLEMENT SHARE]**

OPT-OUT FORM

Joshua Taylor/Frank Lomonaco v. U.S. Dairy Systems, Inc. dba Automated Dairy Systems
TULARE COUNTY SUPERIOR COURT CASE NUMBER VCU286113

INSTRUCTIONS: TO OPT-OUT OF THE SETTLEMENT, YOU MUST COMPLETE, SIGN AND MAIL THIS FORM BY FIRST CLASS U.S. MAIL OR EQUIVALENT, POSTAGE PAID, POSTMARKED ON OR BEFORE **[+45 DAYS FROM MAILING]**, ADDRESSED TO:

Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863

Please fill in all of the following information (type or print):

NAME (First, Middle, Last): _____
STREET ADDRESS: _____
CITY, STATE, ZIP CODE: _____
TELEPHONE NUMBERS: Home: _____ Work: _____

**IT IS STRONGLY RECOMMENDED THAT YOU RETAIN PROOF OF MAILING
THIS FORM POSTMARKED ON OR BEFORE **[DATE]**.**

I **[insert your name]** wish to be excluded from the Settlement Class in the case of *Joshua Taylor/Frank Lomonaco v. U.S. Dairy Systems, Inc. dba Automated Dairy Systems*, Tulare County Superior Court Case Number VCU286113.

I understand I will not receive money from the proposed class action settlement.

I further verify that the following is true: My name, address and other contact information are accurately set forth above. I received and had the opportunity to read the Notice of Proposed Class Action Settlement that were sent to me along with this Opt-Out Form. I understand that by signing this side of the form, I voluntarily choose to exclude myself from the proposed settlement of this class action. **I understand that by excluding myself, I may not accept any money allocated for me in the proposed settlement and may not object to the settlement.** On the other hand, I also understand that if I wish to assert any claims related to those set forth in this lawsuit in my individual capacity, I shall have to do so separately. I understand that any such claims are subject to strict time limits, known as statutes of limitations, which restrict the time within which I may file any such action. I understand that I should consult with an attorney at my own expense if I wish to obtain advice regarding my rights with respect to this settlement or my choice to opt out of the settlement. U.S. Dairy Systems, Inc. dba Automated Dairy Systems has not encouraged me to opt out, and I choose to opt out of my own free will.

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

Signed: _____

Date: _____

Print Name: _____

Last four digits of Social Security Number _____

Exhibit B

CLASS WORKWEEK DISPUTE FORM

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF TULARE

Joshua Taylor/Frank Lomonaco v. U.S. Dairy Systems, Inc. dba Automated Dairy Systems
Case No. VCU286113

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX -

INSTRUCTIONS

IF YOU WERE EMPLOYED BY U.S DAIRY SYSTEMS, INC. DBA AUTOMATED DAIRY SYSTEMS (“ADS”) IN CALIFORNIA AS AN HOURLY-PAID OR NON-EXEMPT EMPLOYEE BETWEEN FEBRUARY 26, 2017 AND DECEMBER 20, 2021, THEN YOU ARE A SETTLEMENT CLASS MEMBER.

The amount of your estimated Settlement Payment is based upon the Eligible Workweeks you worked for ADS in California from February 26, 2017 to December 20, 2021.

“Eligible Workweeks” are defined as any week in which you worked at least one (1) day during the calendar week. The number of Eligible Workweeks applicable to your claim is set forth in Section I below. If you believe that the number of workweeks stated is incorrect, you may dispute the number of workweeks by submitting this completed Workweek Dispute Form with any supporting documents on or before [45 days after initial mailing]. Documentary evidence may be helpful to substantiate your dispute claim, but it is not required. **If you believe that the number of workweeks stated below is correct, you do not have to do anything.**

If you have moved or may move in the future, you must immediately send your new address to the Settlement Administrator at P.O. Box 7208, Orange, CA 92863; otherwise, your individual settlement payment may not reach you. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your settlement payment.

I. YOUR COMPENSABLE WORKWEEKS

You worked as an hourly-paid or non-exempt employee for U.S. Dairy Systems, Inc. dba Automated Dairy Systems in California, which qualifies you as a Settlement Class Member, and your total number of Eligible Workweeks in this position are: <<NUMBER OF WORKWEEKS>> .

II. YOUR ESTIMATED SETTLEMENT PAYMENT

Based upon the number of workweeks stated above, your estimated pre-tax Settlement Payment is <<INSERT>>.

III. CHALLENGE TO WORKWEEKS

If you wish to dispute the Eligible Workweeks data listed, you must postmark your dispute and provide all supporting information and/or documentation, if any, to the Settlement Administrator by **<<NOTICE PERIOD DEADLINE>>**.

Check the box below ONLY if you wish to dispute the data listed in Section I:

☐ I wish to dispute the number of Eligible Workweeks listed in Section I. I believe the correct amount of my workweeks is _____. I understand that, by submitting this dispute, I hereby authorize the Settlement Administrator to review ADS' records and make a determination as to the validity of my dispute based upon ADS' records as well as the records and information that I submit to the Settlement Administrator.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the information I provided in this Workweek Dispute Form is true and correct.

Dated: _____

Signature: _____

Print or Type Name: _____

MAIL TO:

**JOSHUA TAYLOR/FRANK LOMONACO V. U.S. DAIRY SYSTEMS, INC. DBA
AUTOMATED DAIRY SYSTEMS
CLASS ACTION SETTLEMENT**

c/o

**[Insert]
address**

**IF YOU ARE CONTESTING THE AMOUNT OF YOUR ELIGIBLE WORKWEEKS, YOU MUST
SIGN, POSTMARK, AND RETURN THIS FORM TO THE SETTLEMENT ADMINISTRATOR ON
OR BEFORE «OPT-OUT DEADLINE».**

Exhibit 2



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS

Class Members	70
Opt Out Rate	1%
Opt Outs Received	1
Total Class Claimants	69
Subtotal Admin Only	\$5,975.00

WILL NOT EXCEED \$5,975.00

For 70 Class Members

November 2, 2021

Case: Taylor v. U.S. Dairy Systems Opt-Out wLanguage

Phoenix Contact: Jodey Lawrence
Contact Number: 949.566.1455
Email: Jodey@phoenixclassaction.com

Requesting Attorney: Justin Marquez
Firm: Wilshire Law Firm, PLC
Contact Number: (213) 381-9988, Ext. 345
Email: justin@wilshirelawfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly.

Estimate is based on 70 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	2	\$200.00
Programming Database & Setup	\$100.00	2	\$200.00
Toll Free Call Setup	\$148.57	1	\$148.57
Call Center & Long Distance	\$2.50	7	\$17.50
NCOA (USPS)	\$0.30	70	\$21.00
Total			\$587.07

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Translation / Website

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Data Merge & Duplication Scrub	\$0.15	70	\$10.50
Notice Packet & Opt-Out Form	\$1.50	70	\$105.00
Estimated Postage (up to 2 oz.)*	\$0.70	70	\$49.00
Language Translation	\$950.00	1	\$950.00
Website	\$200.00	1	\$200.00
Total			\$1,514.50

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



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CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$50.00	2	\$100.00
Skip Tracing Undeliverables	\$2.00	14	\$28.00
Remail Notice Packets	\$2.00	14	\$28.00
Estimated Postage	\$0.70	14	\$9.80
Programming Undeliverables	\$50.00	2	\$100.00
Total			\$265.80

Database Programming / Processing Opt-Outs, Deficiencies or Disputes			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$100.00	2	\$200.00
Non Opt-Out Processing	\$150.00	1	\$150.00
Case Associate	\$50.00	3	\$150.00
Opt-Outs/Deficiency/Dispute Letters	\$8.50	2	\$14.88
Case Manager	\$85.00	3	\$255.00
Total			\$769.88

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$125.00	2	\$250.00
Disbursement Review	\$125.00	1	\$125.00
Programming Manager	\$95.00	2	\$190.00
QSF Bank Account & EIN	\$75.00	3	\$225.00
Check Run Setup & Printing	\$100.00	2	\$200.00
Mail Class Checks, W2 and 1099 *	\$1.50	69	\$103.95
Estimated Postage Checks, W2 and 1099	\$0.56	69	\$38.81
Total			\$1,132.76

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$100.00	2	\$200.00
Remail Undeliverable Checks (Postage Included)	\$1.50	20	\$30.00
Case Associate	\$55.00	2	\$110.00
Reconcile Uncashed Checks	\$85.00	2	\$170.00
Conclusion Reports	\$100.00	2	\$200.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$100.00	1	\$100.00
IRS & QSF Annual Tax Reporting * (State Tax Reporting Included)	\$725.00	1	\$725.00
Total			\$1,705.00

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total:	\$5,975.00
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PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

Taylor, et al. v. U.S. Dairy Systems, Inc. dba Automated Dairy Systems, et al.
VCU286113

I, Ashley Narinyans, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is anarinyans@wilshirelawfirm.com.

On July 29, 2022, I served the foregoing **DECLARATION OF JUSTIN F. MARQUEZ IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Brandon R. McKelvey (SBN 217002)
brandon@medinamckelvey.com
 Timothy B. Nelson (SBN 235279)
tim@medinamckelvey.com
 Douglas R. Leach (SBN 325955)
doug@medinamckelvey.com
 Samantha Shapiro
samantha@medinamckelvey.com
MEDINA McKELVEY LLP
 925 Highland Pointe Drive, Suite 300
 Roseville, California 95678
 Telephone: (916) 960-2211
 Facsimile: (916) 742-5488
 Facsimile: (916) 742-5488

Attorneys for Defendant U.S. Dairy Systems, Inc. dba Automated Dairy Systems

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

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

Executed on **July 29, 2022**, at Los Angeles, California.

Ashley Narinyans
Type or Print Name

Signature