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

MAXIMILLION ARCHULETA, as an
individual and on behalf of other similarly
situated employees,

Plaintiff,

vs.

DAYLIGHT FOODS, INC., a California
corporation and DOES 1-50, inclusive,

Defendant.

Case No. RG21099539

**AMENDED PAGA SETTLEMENT
AGREEMENT**

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9. “Service Award” means the amount to be paid to Plaintiff as payment for his service on behalf of the LWDA and Aggrieved Employees and for a general release of all claims arising out of his employment with Defendant.

10. “Settled Claims” means any and all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged or could reasonably have been alleged to have been violated in the Action with respect to Aggrieved Employees based on the facts alleged in Plaintiff’s Labor and Workforce Development Agency letters and in the Action and operative Complaint filed in the Alameda County Superior Court Case No. RG21099539 during the Settlement Period, including the allegations that Defendant is liable for PAGA civil penalties for unpaid wages for all hours worked, failure to pay overtime compensation, failure to pay minimum wages, failure to provide meal and rest periods and one hours of additional premium pay, failure to provide complete and accurate wage statements and maintain accurate and complete payroll records, failure to timely pay all wages at termination, failure to reimburse for all business-related expenses, failure to provide notice of sick hours, and failure to provide safety devices and safeguards.

11. “Settlement Period” means February 26, 2020 to April 13, 2022.

TERMS

12. Amended PAGA letter and Complaint: Plaintiff will amend his LWDA notice letter and the operative complaint to include a claim for the predicate violation of Labor Code section 432.6.

13. Maximum Settlement Amount. In consideration for Plaintiff's promises and representations described in this Settlement Agreement, and subject to all of the conditions of the Settlement being met, Defendant will pay a maximum amount of Three Hundred Ninety Thousand Dollars (\$390,000) ("Maximum Settlement Amount"), which represents the maximum amount payable in this Settlement by Defendant, and includes attorneys' fees, litigation costs and expenses, consideration for Plaintiff's service on behalf of the LWDA and Aggrieved Employees, Settlement Administration Costs, and payments to Aggrieved Employees and the LWDA for their share of the PAGA Penalties Fund. No portion of the Maximum Settlement Amount will be retained by, or revert to, Defendant.

14. PAGA Penalties Fund. The PAGA Penalties Fund will be paid to Aggrieved Employees and the LWDA in full satisfaction of all claims for PAGA civil penalties under the California Labor

Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in the Action with respect to Aggrieved Employees. Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Penalties Fund will be paid to the LWDA, and the remaining Twenty-Five Percent (25%) will be paid to all Aggrieved Employees according to the following formula:

14(a) Defendant will calculate: (i) the total number of pay periods worked by each Aggrieved Employee during the Settlement Period, and (ii) the total number of pay periods worked by all Aggrieved Employees during the Settlement Period.

14(b) To determine each Aggrieved Employee's payment from the PAGA Penalties Fund, Defendant will use the following formula: Settlement Payment = Twenty-Five Percent (25%) of PAGA Penalties Fund $\times$ [Pay Periods Worked by Individual Aggrieved Employee During the Settlement Period $\div$ Total Pay Periods Worked by All Aggrieved Employees during the Settlement Period].

14(c) The Maximum Settlement Amount was calculated based on Defendant's estimate that Aggrieved Employees worked during a total of Twelve Thousand Four Hundred Thirty-Four (12,434) Pay Periods during the Settlement Period. If the number of Pay Periods is Ten Percent (10%) higher or Thirteen Thousand Six Hundred Seventy-Eight (13,678) Pay Periods, then Defendant shall, in its sole discretion, have the option to either: (i) end the Settlement Period on the date when the Pay Period count totaled Thirteen Thousand Six Hundred Seventy-Eight (13,678); or (ii) permit the PAGA Penalties Fund to be increased proportionally by the pay periods worked in excess of Thirteen Thousand Six Hundred Seventy-Eight (13,678) Pay Periods multiplied by the per Pay Period value.

15. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application or motion by Plaintiff's Counsel for Attorneys' Fees and Costs of not more than One Hundred Thirty Thousand Dollars (\$130,000), plus the reimbursement of all out-of-pocket costs and expenses associated

1 with Plaintiff's Counsel's litigation and settlement of the Action (including expert/consultant fees,
2 investigations costs, etc.), not to exceed Fifteen Thousand Dollars (\$15,000), both of which will be paid
3 from the Maximum Settlement Amount. Any portion of the Attorneys' Fees and Costs not awarded to
4 Plaintiff's Counsel will be added to the PAGA Penalties Fund. Court-awarded attorneys' fees will be
5 divided between Plaintiff's Counsel as follows: Seventy Percent (70%) to Jackson APC and Thirty
6 Percent (30%) to Capstone Law APC.

7 16. Service Award. For a general release of all claims Plaintiff may have against Defendant
8 arising out of his employment, and for his service on behalf of the LWDA and Aggrieved Employees,
9 Defendant agrees not to oppose or impede any application or motion by Plaintiff for a service award of
10 up to Ten Thousand Dollars (\$10,000) ("Service Award"). Upon receipt of the Service Award, Plaintiff
11 will be deemed to have fully released and discharged Defendant from any and all claims, demands,
12 obligations, causes of action, rights, or liabilities of any kind which have been or could have been
13 asserted against Defendant arising out of, or relating to, Plaintiff's employment with Defendant or
14 termination thereof, including but not limited to claims for wages, restitution, penalties, retaliation,
15 defamation, discrimination, harassment or wrongful termination of employment. This release specifically
16 includes any and all claims, demands, obligations and/or causes of action for damages, restitution,
17 penalties, interest, and attorneys' fees and costs (except provided by the Settlement) relating to or in any
18 way connected with the matters referred to herein, whether or not known or suspected to exist, and
19 whether or not specifically or particularly described herein. Specifically, Plaintiff will be deemed to have
20 waived all rights and benefits afforded by California Civil Code Section 1542, which provides:

21 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR**
22 **OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR**
23 **HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF**
24 **KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR**
25 **HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

26 17. Settlement Administration Costs. The Parties will retain CPT Group, Inc. as the third-
27 party settlement administrator ("Settlement Administrator"). The Settlement Administrator will be
28 responsible for establishing a qualified settlement fund ("QSF") and issuing payments and appropriate

1 tax forms to Aggrieved Employees, the LWDA, Plaintiff, and Plaintiff's Counsel. The Settlement
2 Administration Costs will be paid from the Maximum Settlement Amount. Based on the estimate that
3 there are approximately One Thousand, Two Hundred, Seventy-Two (1,272) Aggrieved Employees,
4 Settlement Administration Costs are estimated at Ten Thousand Dollars (\$10,000).

5 18. Court Approval of the Settlement and Distribution of Settlement Payments. The Parties
6 will present this Settlement Agreement to the Court and the LWDA. The Parties will request that the
7 Court issue an order and judgment approving and incorporating by reference the terms and conditions of
8 the Settlement Agreement (the "Order and Judgment").

9 19. List of Aggrieved Employees. Within Fourteen (14) calendar days after entry of the
10 Order and Judgment, Defendant will provide the Settlement Administrator a complete list of all
11 Aggrieved Employees ("Aggrieved Employee List"). The Aggrieved Employee List will be formatted in
12 Microsoft Office Excel and will include each Aggrieved Employees full name; most recent mailing
13 address and telephone number; Social Security number; the respective number of pay periods during
14 which each Aggrieved Employee worked during the Settlement Period; and any other relevant
15 information needed to calculate settlement payments to the extent available from Defendant's records.
16 Because Social Security numbers are included in the list, the Settlement Administrator will maintain the
17 list in confidence, and shall only access and use the list to administer the settlement in conformity with
18 the Court's orders.

19 20. Funding of the Settlement. Within Fourteen (14) calendar days after entry of the Order
20 and Judgment, Defendant will deposit the Maximum Settlement Amount into the QSF to be established
21 by the Settlement Administrator. Within fourteen (14) calendar days of the funding of the Settlement, the
22 Settlement Administrator will issue payments to: (a) Aggrieved Employees; (b) the Labor and
23 Workforce Development Agency; (c) Plaintiff; (d) Plaintiff's Counsel; and (e) itself. The Settlement
24 Administrator, and not Defendant, will issue the appropriate tax forms for all payments issued under this
25 Settlement.

26 21. Settlement Payments to Aggrieved Employees. The Settlement Administrator will issue
27 each Aggrieved Employee one check for his or her share of the PAGA Penalties Fund along with an
28 explanatory letter, attached as **Exhibit 1**, which will be mutually approved by the parties. Prior to

1 mailing, the Settlement Administrator will perform a search based on the National Change of Address
2 Database for information to update and correct for any known or identifiable address changes. Any
3 checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via
4 regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is
5 provided, the Settlement Administrator will promptly attempt to determine the correct address using a
6 skip-trace, or other search using the name, address or Social Security number of the Aggrieved
7 Employee involved, and will then perform a single re-mailing. Checks will remain negotiable for 120
8 days. Those funds represented by un-cashed checks which remain outstanding 120 days after the mailing
9 of the Settlement checks by the Settlement Administrator will be tendered to the LWDA. All settlement
10 payments to Aggrieved Employees will be treated as miscellaneous income for which a 1099 will be
11 issued.

12 22. PAGA Released/Settled Claims. Upon entry of the Order and Judgment, Plaintiff and
13 the LWDA will be forever barred from pursuing against Released Parties any and all Settled Claims
14 during the Settlement Period. Other than Plaintiff's general release, this Settlement does not release any
15 individual wage and hour claims on behalf of the Aggrieved Employees.

16 23. No Right to Exclusion or Objections by Representative Action Members. Because this
17 settlement resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a
18 Private Attorney General of, and for, the State of California and the LWDA, the Parties agree that no
19 Aggrieved Employee has the right to exclude himself or herself from the Settlement. Aggrieved
20 Employees will be bound by the terms of the Settlement Agreement, upon its approval by the Court,
21 regardless of whether he or she cashes any payment received as a result of this Settlement. The Parties
22 also agree that no Aggrieved Employee has the right to object to the terms of the Settlement Agreement.

23 24. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as referenced
24 herein will not be utilized to calculate any additional benefits under any benefit plans to which any
25 Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans,
26 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit
27 plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights,
28 contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

1 The payments made under the terms of this Settlement Agreement shall not be applied retroactively,
2 currently, or on a going-forward basis, as salary, earnings, wages, or any other form of compensation for
3 the purposes of any of Defendant's benefit plans, policies, or bonus programs. Defendant retains the
4 right, if necessary, to modify the language of their benefit plans, policies, and bonus programs to effect
5 this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for
6 "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by
7 applicable plans, policies, and bonus programs for purposes of eligibility, vesting, benefit accrual, or any
8 other purpose, and that additional contributions or benefits are not required by this Settlement
9 Agreement.

10 25. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
11 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
12 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
13 action or right herein released and discharged.

14 26. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve
15 the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then
16 this Settlement Agreement, and any documents generated to bring it into effect, will be null and void,
17 and the Parties will be returned to their original respective positions.

18 27. Dismissal. This Settlement Agreement is expressly conditioned upon the Court entering
19 the Order and Judgment which dismisses the Action in its entirety.

20 28. Tax Consequences. Plaintiff and Aggrieved Employees will be solely responsible for
21 correctly characterizing any compensation received under the settlement on his/her personal income tax
22 returns for tax purposes, and paying all appropriate taxes due for any and all amounts paid to them under
23 the settlement. Plaintiff, Defendant, Plaintiffs' Counsel, and Defendant's Counsel make no
24 representations or warranties with respect to tax consequences of any payment under this Settlement
25 Agreement, do not intend anything contained in this Settlement Agreement to constitute advice
26 regarding taxes or taxability, nor shall anything in this Settlement Agreement be relied upon as such.

27 29. Judgment and Continued Jurisdiction. After entry of the Order and Judgment, the Court
28 will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement

1 of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters
2 as may be appropriate under court rules or as set forth in this Settlement.

3 30. Entire Agreement. This Settlement Agreement constitutes the entirety of the Parties'
4 settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding
5 on the Parties. The Parties each acknowledge and represent that no promise or representation not
6 contained in this Settlement Agreement has been made to them, and acknowledge and represent that this
7 Settlement Agreement contains the entire understanding between them.

8 31. Amendment or Modification. This Settlement Agreement may be amended or modified
9 only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all
10 Parties, subject to approval by the Court.

11 32. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
12 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
13 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
14 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
15 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each
16 other and use their best efforts to affect the implementation of the Settlement. If the Parties are unable to
17 reach agreement on the form or content of any document needed to implement the Settlement, or on any
18 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties
19 may seek the assistance of the Court to resolve such disagreement.

20 33. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
21 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

22 34. California Law Governs. All terms of this Settlement Agreement will be governed by
23 and interpreted according to the laws of the State of California.

24 35. Execution and Counterparts. This Settlement Agreement is subject only to the execution
25 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
26 executed counterparts and each of them, including electronic signatures (e.g., DocuSign), facsimiles, and
27 scanned copies of the signature pages, will be deemed to be one and the same instrument.

28 36. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this

1 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
2 Settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that
3 they are each represented by competent counsel and that they have had an opportunity to consult with
4 their counsel regarding the fairness and reasonableness of this Settlement.

5 37. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that
6 Plaintiff may appeal any reduction to the Attorneys' Fees and Costs below the amount they request from
7 the Court, and either party may appeal any court order that materially alters the Settlement's terms.

8 38. Invalidity of Any Provision. Before declaring any provision of this Settlement
9 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
10 possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement
11 valid and enforceable.

12 39. Captions. The captions and section numbers in this Settlement Agreement are inserted
13 for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
14 provisions of this Settlement Agreement.

15 40. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement
16 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
17 constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

18 41. Enforcement Action. In the event that one or more of the Parties institutes any legal
19 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
20 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
21 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including
22 expert witness fees incurred in connection with any enforcement actions.

23 42. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
24 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
25 more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for
26 one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties,
27 all Parties have contributed to the preparation of this Settlement Agreement.

28 43. Representation By Counsel. The Parties acknowledge that they have been represented

1 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
2 that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed
3 in full.

4 44. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
5 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
6 Settlement Agreement.

7 45. Binding Agreement. The Parties warrant that they understand and have full authority to
8 enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and
9 binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to
10 enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply
11 under federal or state law.

12 46. Denial of Liability. The Parties expressly recognize that the making of this agreement
13 does not in any way constitute an admission or concession of wrongdoing on the part of Defendant.
14 Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements,
15 discussions or communications, nor any materials prepared, exchanged, issued or used during the
16 pendency of the Action, is intended by the Parties to, nor will any of the foregoing constitute, be
17 introduced, be used or be admissible in any way in any other judicial, arbitral, administrative,
18 investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law,
19 statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.
20 Notwithstanding the foregoing, this agreement may be used in any proceeding in the Court that has as its
21 purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments
22 of the Court entered into in connection therewith.

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25 **THIS SECTION LEFT BLANK**
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READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 10/14/2022

DocuSigned by:

May Archuleta

AB26B9B041DF4A2... Archuleta

DEFENDANT

Dated: October 13, 2022

Chris Vlahopoulos
Chris Vlahopoulos
Daylight Foods, Inc.

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: October 14, 2022

Raul Perez

Raul Perez

JACKSON APC

Dated: October 21, 2022

Armond M. Jackson

Armond M. Jackson

LEWIS BRISBOIS BISGAARD & SMITH, LLP

Dated: October 14, 2022

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Sumy

Exhibit 1

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Payment From *Archuleta v. Daylight Foods, Inc.*, No. RG21099539 (Alameda County Superior Court)

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Archuleta v. Daylight Foods, Inc.*, No. RG21099539 (Alameda County Superior Court) (the "Action").

The Action was filed against Defendant Daylight Foods, Inc. ("Defendant") pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called "PAGA"). The Action was brought by a former employee of Defendant on behalf of the State of California and all allegedly "aggrieved employees" of Defendant. You have been identified as one of the employees on whose behalf the case was brought.

The Plaintiff in the Action claimed that Defendant owed civil penalties recoverable under PAGA for alleged violations of the California Labor Code and California Wage Orders. Defendant denies that it violated the Labor Code or California Wage Orders. Moreover, in agreeing to this settlement, Defendant does not admit that it is liable in any way for any penalties.

The Court has not ruled on the merits of the Action but it has approved the settlement of PAGA civil penalties, of which 75% will be paid to the California Labor and Workforce Development Agency, and the remaining 25% will be paid to aggrieved employees. Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties.

Aggrieved employees, other than Plaintiff, will not be deemed to have released any individual wage and hour claims based on alleged violations of the Labor Code or of a California Wage Order, for which they have a private right of action, by virtue of the Settlement.

You are not a party to this lawsuit, but you and the government will be bound by the settlement in this matter as to civil penalties. If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter).

Very Truly Yours,

[Administrator]