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Attorneys for Plaintiffs Smith, Alcala, and Knox and the Class

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

MARGARET MATTHEWS, OKEEM SMITH,
TOMAS VERDUZCO ALCALA, and DARRYL
KNOX, as individuals and on behalf of all others
similarly situated, and as private attorneys general,

Plaintiffs,

vs.

UNITED NATURAL FOODS WEST, INC., a
California corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. S-CV-0046420

**DECLARATION OF SIMON L. YANG IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: December 1, 2022
Time: 8:25 a.m.
Department: 3

Complaint Filed: March 23, 2021

1 I, Simon L. Yang, declare as follows:

2 1. I am an attorney admitted to practice in the State of California and, with the law firm
3 Diversity Law Group, P.C., am counsel of record for Plaintiff, Margaret Matthews. I make this
4 declaration on the basis of my own personal knowledge, except as to those matters stated on information
5 and belief and, as to those matters, I believe them to be true. If called as a witness, I could testify
6 competently as to the facts stated in this declaration.

7 2. On March 23, 2021, Plaintiff Matthews filed the initial class and representative action
8 complaint in this matter. I am informed and believe that on July 7, 2021, Okeem Smith filed a class
9 action complaint in the Superior Court of the County of Riverside, and on July 8, 2021, Smith filed a
10 separate “PAGA-only” complaint in the Superior Court of the County of Riverside. I also am informed
11 and believe that on September 9, 2021, Tomas Verduzco Alcala and Daryl Knox joined Smith as
12 plaintiffs in Smith’s class action lawsuit.

13 3. Plaintiffs and Defendant, United Natural Foods West, Inc., met and conferred about the
14 alleged claims and defenses, including those based on the settlement of a prior class action, *Cortez v.*
15 *United Natural Foods, Inc.*, N.D. Cal. Case No. 5:18-cv-04603, with a release that limited the liability
16 period for some claims. Class Counsel then continued investigating the alleged claims. Class Counsel
17 continued analyzing any defenses raised by Defendant, and the Parties continued to exchange
18 information and documentation pursuant to informal methods to assist them in exploring the possibility
19 of a mediated resolution. Defendant provided the relevant numbers of individuals and workweeks, time
20 clock records, and pay details, for example, among other things. Defendant’s willingness to participate
21 in informal discovery enabled Plaintiffs to evaluate the full scope of Defendant’s potential liability.
22 Ultimately, Plaintiffs and Defendant agreed to schedule a global mediation.

23 4. On April 28, 2022, the Parties attended mediation with Mark S. Rudy, an experienced
24 mediator knowledgeable of both the wage and hour laws and class and representative action claims at
25 issue. With the mediator’s assistance, the Parties ultimately were able to negotiate a global resolution as
26 set forth in the Joint Stipulation of Class Action and PAGA Settlement (the “Agreement”), a true and
27 correct copy of which is attached as **Exhibit 1**. As part of the settlement terms, on or about October 19,
28

2022, the Parties submitted a joint stipulation for leave to file a Second Amended Complaint adding Plaintiffs Smith, Alcala, and Knox and the allegations each Plaintiff alleged in their prior matters.

5. At the time of mediation, Plaintiffs estimated there would be approximately 4,262 Class Members. The Agreement requires Defendant to pay \$2,750,000.00—or approximately \$645.24 gross, on average, per Class Member. Plaintiffs contend that this is a fair and appropriate result for Class Members. Although actual unreimbursed expenses and underpayments of sick pay wages, minimum wages, and overtime wages amounted to comparatively smaller sums, Plaintiffs argued that underpaid wages resulted in Labor Code section 203 penalties of up to 30 days wages. With respect to meal and rest break violations, Plaintiffs contended that Defendant was liable for an additional hour of regular rate wages under Section 226.7.¹ Under PAGA, Plaintiffs contended that Defendant also would be liable for an additional \$50 per pay period under Section 558 and \$100 per pay period under Sections 210 and 2699(f).

6. Defendant contested the merits and denied it was liable at all. Moreover, even if Plaintiffs prevailed on the merits, Defendant contested the extent of liability. For example, with respect to meal and rest break violations, Defendant contended that (i) there were no violations, (ii) if there were, they were individualized issues not amenable to a class or representative proceeding, and (iii) employees in any event were already paid premiums. With respect to liability from underpaid wages, Defendant contended that they would not be subject to Section 203 penalties, based on good faith defenses. Likewise, with respect to PAGA liability, Defendant contended that PAGA penalties would be subject to discretionary reductions.

7. While the Parties disagree on the application of the law to the facts, each Party recognized in negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the Gross Settlement Amount to which the Parties ultimately agreed was reasonable. Ultimately, Plaintiffs argued that a successful representative trial would result in a total potential class recovery of \$28,859,713—which included approximately \$8,809,920 in penalties under Section 203, at least \$2,723,175 in missed meal or rest break premiums under Section 226.7, up to

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 \$5,775,539 in penalties under Section 558, and up to \$11,551,079 in penalties under either Section 210
2 or Section 2699(f). Plaintiffs contend that the Gross Settlement Amount of \$2,750,000.00—or 9.53% of
3 the potential class recovery—is a favorable result for the class. As litigation costs are not expected to
4 exceed \$40,000, it is expected that, on average, each Class Member would be allocated \$354.20 in
5 Settlement Payments and employee shares of PAGA Penalties (*after* all requested payments from the
6 Gross Settlement Amount).²

7 8. Although I am confident that litigation of the claims would result in a classwide judgment
8 against Defendant, I recognize the inherent risks in litigation, including the specific risks that class
9 certification could be denied, liability could not be established at trial, or the applicable law could
10 change. I recognize that the settlement resulting from extensive arm’s length negotiations between the
11 Parties is fair, reasonable, and adequate for each participating Class Member, given the inherent risks of
12 litigation, as well as the potential for appeals and the costs of pursuing litigation.

13 9. I am one of the primary attorneys on this matter. My qualifications are as follows: After
14 completing my undergraduate education at The Wharton School at the University of Pennsylvania in
15 2004 with concentrations in Management and Human Resources, I continued studying labor and
16 employment issues by enrolling in post-graduate education at the School of Labor and Employment
17 Relations at the University of Illinois. I determined before enrolling in law school that I wanted to
18 practice labor and employment law in California. I thus received my J.D. from UCLA School of Law in
19 2008. During law school, I spent the summer of 2006 with the National Labor Relations Board, Region
20 21, and the summer of 2007 with the law firm of Seyfarth Shaw LLP in 2007.

21 10. Upon graduating from law school in 2008, I practiced labor and employment law at
22 Seyfarth Shaw LLP, a well-regarded labor and employment firm. I was elevated to partner in 2019. My
23 practice focused on wage and hour class, collective, and representative actions, with a particular
24 emphasis on matters involving the Labor Code Private Attorneys General Act of 2004 (“PAGA”).
25 During my time with Seyfarth Shaw LLP, I was a primary attorney on numerous wage and hour class,
26

27 ² The amount paid on average to each Class Member may increase, depending on how many Class
28 Members opt out of the class action settlement. The amount actually paid to any Class Member may
increase or decrease depending on his or her number of relevant pay periods during the Class Period.

collective, and representative actions that resulted in published opinions, including for example, *Ehret v. WinCo Foods, LLC*, 26 Cal. App. 6th 1 (2018) (affirming summary judgment in PAGA action based on absence of meal period violations in light of collectively bargained waiver of meal periods on shifts of not more than six hours), and *Ruelas v. Costco Wholesale Corporation*, 67 F. Supp. 3d 1137 (C.D. Cal. Sept. 8, 2014) (obtaining dismissal of wage statement allegations in PAGA representative action). I was also able to obtain experience litigating representative claims or wage and hour matters through trial and appeal. *E.g.*, *Velazquez v. Costco Wholesale Corporation*, 603 Fed. App'x 584 (9th Cir. Mar. 25, 2015) (reversing award of waiting-time penalties based on lack of evidence supporting any willful failure to pay wages); *Ward v. Costco Wholesale Corporation*, 552 Fed. App'x 631 (9th Cir. Jan. 9, 2014) (affirming bench-trial judgment in favor of defendant against named plaintiff and 18 opt-in plaintiffs in collective action with involving deductions from final paychecks). I also litigated class certification on numerous matters. *E.g.*, *Martinez v. Guess?, Inc.*, Los Angeles Superior Court Case No. BC 498326 (denial of class certification on behalf of retail employees alleging off-the-clock work).

11. Based on my experience in wage and hour class, collective, and representative actions, I have been interviewed and quoted in articles published in the Northern California Record about legislative efforts to reform PAGA. I also have published articles on myriad topics relevant to wage and hour class and representative action litigation, including for example articles on California kin care requirements in *Employee Relations Law Journal* (Vol. 36, No. 2), the extraterritorial application of California employment laws in *The Recorder* (134RD Year No. 28), and California meal and rest break laws in *California Transportation News*, a publication of the California Construction Trucking Association.

12. In 2020 I left Seyfarth Shaw LLP and joined my current firm, Diversity Law Group, P.C., which also focuses primarily on employment law. I have handled a number of wage and hour class and representative actions and continue litigating such matters in numerous Superior Courts and District Courts. From matters with both Seyfarth Shaw LLP and Diversity Law Group, P.C., I have successfully mediated the resolution of dozens of wage and hour class, collective, and representative actions. I have obtained class certification and been appointed class counsel. No court has ever found me to be inadequate class counsel.

13. My co-counsel and I will adequately represent the Class Members in this action.

Plaintiff's Counsel have and will zealously represent Plaintiff and the Class and pursue this lawsuit to its conclusion.

14. Along with the filing of the motion for preliminary approval of the settlement in this matter, I directed my office staff to simultaneously upload a copy of the motion papers to the Labor and Workforce Development Agency (“LWDA”) in compliance with Section 2699(1)(2) and (4). On November 4, 2022, the motion was uploaded to the LWDA. Similarly, upon approval of a settlement in this matter, my regular practice would be to direct my office staff to upload a copy of the Court’s judgment, papers, or other orders awarding civil penalties under PAGA.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4th day of November 2022, at Pasadena, California.


Simon L. Yang

EXHIBIT A

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Attorneys for Plaintiffs Smith, Alcala, and Knox and the Class

[Additional Counsel on Following Page]

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

MARGARET MATTHEWS, OKEEM SMITH,
 TOMAS VERDUZCO ALCALA, and DARRYL
 KNOX, as individuals and on behalf of all others
 similarly situated, and as private attorneys
 general,

Plaintiffs,

vs.

UNITED NATURAL FOODS WEST, INC., a
 California corporation; and DOES 1 through 50,
 inclusive,

Defendants.

Case No. S-CV-0046420

**JOINT STIPULATION OF CLASS ACTION
 AND PAGA SETTLEMENT**

Complaint Filed: March 23, 2021

Trial Date: None Set

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JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

This Joint Stipulation of Class Action and PAGA Settlement is entered into by and between Plaintiffs Margaret Matthews, Okeem Smith, Tomas Verduzco Alcala, and Darryl Knox, on the one hand, and Defendant, United Natural Foods West, Inc., on the other hand.

1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

1.1. Action. “Action” means the civil lawsuit originally entitled *Margaret Matthews v. United Natural Foods West, Inc.*, filed on or about March 23, 2021, in the Superior Court of the State of California for the County of Placer designated as Case No. S-CV-0046420.

1.2. Administrator. “Administrator” means the third-party settlement administrator approved by the Court to administer the settlement.

1.3. Agreement. “Agreement” means this Joint Stipulation of Class Action and PAGA Settlement.

1.4. Class Counsel. “Class Counsel” means Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C. and Aparajit Bhowmik and Kyle R. Nordrehaug of Blumenthal Nordrehaug Bhowmik De Blouw LLP.

1.5. Class Member. “Class Member” means any member of the “Exempt Class” or “Non-Exempt Class.”

1.5.1. Exempt Class. “Exempt Class” means all persons employed by Defendant in the State of California as exempt employees from May 11, 2019, through June 30, 2022 (the “Exempt Class Period”).

1.5.2. Non-Exempt Class. “Non-Exempt Class” means all persons employed by Defendant in the State of California as hourly paid, non-exempt employees and paid sick pay wages during the Sick Pay Period (defined as March 23, 2017 through June 30, 2022), as well as all other persons employed by Defendant in California as hourly-paid, non-exempt employees during the Post-Cortez Period (defined as October 5, 2019 through June 30, 2022).

1 **1.6. Class Notice.** “Class Notice” means the Notice of Class Action Settlement, substantially
2 in the form attached as Exhibit A.

3 **1.7. Court.** “Court” means the Superior Court of California for the County of Placer.

4 **1.8. Defendant.** “Defendant” means United Natural Foods West, Inc.

5 **1.9. Defendant’s Counsel.** “Defendant’s Counsel” means Michael J. Puma, Aimee Mackay,
6 and Anahi Cruz of Morgan, Lewis & Bockius LLP.

7 **1.10. Effective Date.** “Effective Date” means: (a) if no objections to the settlement are filed,
8 the date the Final Approval Order is signed by the Court; (b) if objections to the settlement are filed, the
9 day following the expiration of the time for the filing of an appeal of the Final Approval Order; or (c) if
10 any appeals of the Final Approval Order are filed, the day following the expiration of time to further
11 appeal an order affirming the Final Approval Order.

12 **1.11. Final Approval Order.** “Final Approval Order” means an order granting final approval
13 of a settlement pursuant to this Agreement.

14 **1.12. Gross Settlement Amount.** “Gross Settlement Amount” means the maximum potential
15 settlement amount—inclusive of any Attorneys’ Fees and Costs Award, Class Representative Awards,
16 Administration Costs, LWDA Payment, and allocations for Individual Settlement Payments—that
17 Defendant may be required to pay in connection with a Final Approval Order.

18 **1.12.1. Administration Costs.** “Administration Costs” means a Court approved payment
19 from the Gross Settlement Amount to the Administrator for administering the settlement, which includes
20 but is not limited to printing, distributing, or tracking Class Notices, processing any required tax
21 payments or reporting, providing any required tax forms, distributing payments pursuant to a Final
22 Approval Order, and providing necessary reports or declarations, as requested by the Court or Class
23 Counsel and Defendant’s Counsel.

24 **1.12.2. Attorneys’ Fees and Costs Award.** “Attorneys’ Fees and Costs Award” means a
25 Court approved payment from the Gross Settlement Amount for Class Counsel’s attorneys’ fees and
26 costs associated with the litigation and resolution of the Action (excluding third-party Administration
27 Costs).
28

1 **1.12.3. Class Representative Awards.** “Class Representative Awards” means a Court
2 approved payment from the Gross Settlement Amount to Plaintiffs in recognition of their efforts and
3 work in prosecuting the Action on behalf of Class Members and in consideration of Plaintiffs’ additional
4 general releases of claims inapplicable to Settlement Class Members.

5 **1.13. Individual Settlement Payment.** “Individual Settlement Payment” means a Class
6 Member’s potential payment from the settlement, which may include an Individual Class Payment and
7 Individual PAGA Payment.

8 **1.13.1. Individual Class Payment.** “Individual Class Payment” means a Settlement
9 Class Member’s potential payment from the Net Settlement Amount.

10 **1.13.2. Individual PAGA Payment.** “Individual PAGA Payment” means a PAGA
11 Employee’s payment from the PAGA Penalty Fund.

12 **1.14. LWDA Payment.** “LWDA Payment” means a Court approved payment to the Labor &
13 Workforce Development Agency (“LWDA”) of 75% of the PAGA Penalty Fund.

14 **1.15. Net Settlement Amount.** “Net Settlement Amount” means the remainder of the Gross
15 Settlement Amount after Court approved deductions for the Attorneys’ Fees and Costs Award, Class
16 Representative Awards, and Administration Costs.

17 **1.16. PAGA Employee.** “PAGA Employee” means all Class Members who were employed by
18 Defendant in the State of California from March 23, 2020, through June 30, 2022 (the “PAGA Period”).

19 **1.17. PAGA Penalty Fund.** “PAGA Penalty Fund” means the portion of the settlement
20 allocated to PAGA penalties.

21 **1.18. Parties.** “Parties” means Plaintiffs and Defendant.

22 **1.19. Plaintiffs.** “Plaintiffs” means Margaret Matthews, Okeem Smith, Tomas Verduzco
23 Alcala, and Darryl Knox.

24 **1.20. Preliminary Approval Order.** “Preliminary Approval Order” means an order granting
25 preliminary approval of a settlement pursuant to this Agreement.

26 **1.21. Released Party.** “Released Party” means Defendant its current and former officers,
27 directors, shareholders, employees and agents (in their individual and representative capacities), and its
28 divisions, parent, affiliated, predecessor, successor, subsidiary and other related companies.

1 **1.22. Settlement Class Members.** “Settlement Class Members” means Class Members who do
2 not exclude themselves from the class action settlement by complying with the procedures set forth in
3 the Class Notice to opt out of the class action settlement.

4 **2. RECITALS**

5 **2.1. Initiation of Action.** On or about March 23, 2021, Plaintiff Matthews filed the original
6 complaint initiating the Action on behalf of a putative class of current and former non-exempt
7 employees of Defendants in the State of California. In the operative Second Amended Complaint,
8 Plaintiffs Smith, Alcalá, and Knox join Plaintiff Matthews in pursuing class action and representative
9 action claims under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) for
10 (i) unreimbursed expenses, (ii) underpaid sick pay wages, (iii) unpaid wages and overtime, (iv) failure to
11 provide meal and rest periods, (v) underpayment of the additional hour of regular rate wages for meal
12 and rest period premiums, (vi) untimely payment of wages, and (vii) noncompliant wage statements.

13 **2.2. Class Counsel’s Investigation.** Throughout the litigation, Plaintiffs and Defendant have
14 met and conferred about the alleged claims and defenses, including those based on the settlement of a
15 prior class action, *Cortez v. United Natural Foods, Inc.*, N.D. Cal. Case No. 5:18-cv-04603. The Parties
16 continued to exchange information and documentation pursuant to informal methods to assist the Parties
17 in exploring the possibility of a mediated resolution.

18 **2.3. Mediation and Settlement.** On April 28, 2022, the Parties attended a mediation with
19 Mark S. Rudy, an experienced mediator knowledgeable of both the wage and hour laws and class and
20 representative action claims at issue in the Action. With the mediator’s assistance and based upon the
21 mediator’s proposal, the Parties were able to agree to settlement terms, which were negotiated in light of
22 all known facts and circumstances—including the uncertainty associated with litigation, the risks of
23 significant delay, and numerous potential appellate issues—and which was reached after extensive arm’s
24 length negotiations both during and in the weeks leading up to the mediation.

25 **2.4. No Admission of Liability.** Defendant and the Released Parties deny and continue to
26 deny all of the allegations made by Plaintiff in the Action. Although Defendant and the Released Parties
27 deny and continue to deny all of the allegations made by Plaintiff in the Action, Defendant and Released
28 Parties—without admitting or conceding any liability or wrongdoing whatsoever—have agreed to settle

the Action on the terms and conditions set forth in this Agreement for the sole purpose of avoiding the burden, expense, and uncertainty of continuing the Action.

2.5. Class Counsel's Evaluation. Based on Class Counsel's ongoing investigation and evaluation, Class Counsel is of the opinion that the terms set forth in this Agreement are fair, reasonable, adequate, and in the best interests of Class Members.

2.6. Class Counsel's Warranty as to Representation: Class Counsel Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C. and Aparajit Bhowmik and Kyle R. Nordrehaug of Blumenthal Nordrehaug Bhowmik De Blouw LLP hereby represent and warrant that they, and they alone, represent Plaintiffs Margaret Matthews, Okeem Smith, Tomas Verduzco Alcala, and Darryl Knox. Plaintiffs and Class Counsel represent and warrant that they have no knowledge of any other firms who may purport to be entitled to fees in this Action.

2.7. Certification of Settlement Class. This Agreement is contingent upon the approval and certification by the Court of a class for purposes of settlement. The Parties agree to cooperate and take all steps necessary and appropriate to effectuate all aspects of this Agreement and to obtain a Preliminary Approval Order and then Final Approval Order.

3. NOTICE TO CLASS MEMBERS

3.1. Administrator. Plaintiff and Class Counsel shall request that the Court appoint Phoenix Settlement Administrators as the Administrator for purposes of sending notice of the settlement to Class Members.

3.2. Class Data for Administrator. Within 14 days of the Preliminary Approval Order, Defendant shall provide to the Administrator each Class Member's last known mailing address, as well as data sufficient for the Administrator to perform all necessary responsibilities pursuant to this Agreement.

3.3. Mailing of Notice. Within 10 days of receipt of the Class Data, the Administrator shall send Class Notice to each Class Member via First Class U.S. Mail, using the last known mailing address for each Class Member, based on class data provided by Defendant. Any Class Notice returned to the Administrator as undeliverable shall be sent promptly via First Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Administrator shall promptly attempt

1 to determine the correct address using a single skip-trace search and shall then promptly send a single
2 re-mailing. This shall be the sole means of notice to Class Members.

3 **3.4. Proof of Mailing.** The Administrator shall provide Class Counsel and Defendant's
4 Counsel a declaration of due diligence and proof of mailing with regard to mailing of Class Notice.

5 **4. CLASS MEMBERS' RESPONSE OPTIONS**

6 **4.1. Consideration Period.** Class Members shall be provided 45 days after the postmark date
7 of the initial mailing of Class Notice to exercise any rights to opt out of the settlement. Except as
8 provided herein, no Class Member responses that are postmarked more than 45 days after the initial
9 mailing of Class Notice shall be considered. The Parties shall do nothing to encourage or solicit Class
10 Members to opt out of or object to the settlement. Settlement Class Members also shall be given the
11 opportunity to dispute their respective numbers of workweeks worked within 45 days after the postmark
12 date of the initial mailing of Class Notice.

13 **4.2. Objection Right and Effect.** Settlement Class Members shall be given the opportunity to
14 object to the terms of the class action settlement. Settlement Class Members may object to the class
15 action settlement by mailing to the Administrator an objection within 45 days after the postmark date of
16 the initial mailing of Class Notice, which describes the objection and states any intention to appear at the
17 final approval hearing. Alternatively, Settlement Class Members may appear at the final approval
18 hearing to object to the settlement. Any Settlement Class Member who does not comply with the
19 objection procedures in the Class Notice shall be deemed to have waived any objections and shall be
20 foreclosed from making any objection, whether by appeal or otherwise, to the settlement. Settlement
21 Class Members who object to the settlement pursuant to the terms of the Class Notice shall remain
22 subject to being bound by the release provisions in this Agreement pursuant to a Final Approval Order
23 and shall remain eligible to receive an Individual Class Payment. Class Members do not have the right to
24 object to the terms of the PAGA settlement.

25 **4.3. Opt-Out Right and Effect.** Class Members shall be given the opportunity to opt out of
26 the settlement. Class Members may opt out of the settlement by mailing to the Administrator a Request
27 for Exclusion, which expresses their desire to be excluded from the Settlement Class. Any Request for
28 Exclusion that does not comply with the procedures in the Class Notice shall be deemed void and

1 ineffective. Class Members who opt out of the settlement pursuant to the terms of the Class Notice shall
2 not receive any Individual Class Payments, shall not be bound by the class action release provisions in
3 this Agreement pursuant to a Final Approval Order, and shall not be permitted to object to the settlement
4 or appeal. If a Class Member submits both a Request for Exclusion and an objection, the Administrator
5 shall attempt to determine whether the Class Member would like to withdraw either the Request for
6 Exclusion or the objection. If the Class Member does not withdraw a Request for Exclusion, or if the
7 Administrator cannot contact the Class Member who submits both a Request for Exclusion and an
8 objection, the Request for Exclusion shall be deemed valid and shall be deemed to invalidate the
9 objection. Class Members do not have the right to opt out of the PAGA settlement.

10 **4.4. Objection Response.** The Administrator must provide a copy of any objection received
11 to Class Counsel and Defendant's Counsel upon receipt. Either of the Parties may file a response to any
12 written objection no later than five court days before the final approval hearing.

13 **4.5. Proof of Class Members' Responses.** As soon as practicable after the end of the
14 consideration period, the Administrator shall provide a declaration attesting to (by number of relevant
15 individuals), its mailing of Class Notice, its inability to deliver Class Notice due to invalid addresses,
16 and its receipt of valid Requests for Exclusion or objections. The Administrator shall prepare any
17 supplemental declarations regarding the administration of the settlement, as necessary or as jointly
18 requested by the Parties or the Court.

19 **4.6. Right of Withdrawal.** If more than 5% of Class Members timely and validly opt out of
20 the class action settlement and Defendant pays all incurred Administrator expenses, Defendant has the
21 right, in its sole and exclusive discretion, to terminate and withdraw from the settlement. Defendant
22 must make exercise its right to withdraw within five days of being notified by the Administrator that
23 more than 10% of Class Members have timely and validly opted out of the class action settlement.

24 **5. SETTLEMENT PROCEEDS**

25 **5.1. Gross Settlement Amount.** Defendant agrees to pay a non-reversionary Gross
26 Settlement Amount of \$2,750,000.00. The Gross Settlement Amount was negotiated based on
27 Defendant's certification that the number of workweeks for Non-Exempt Class Members from October
28 5, 2019, through February 26, 2022, was 143,325 workweeks, which extrapolates to 163,636 workweeks

through June 30, 2022. To the extent that the actual number of workweeks for Non-Exempt Class Members from October 5, 2019, through June 30, 2022, exceeds 163,636 by more than 10.0% (i.e., 180,000 or more), Defendant shall determine whether (i) the Gross Settlement Amount shall increase on a pro rata basis equal to the percentage increase exceeding 10.0% (e.g., if the actual number were 12.5% greater than 163,636, then the Gross Settlement Amount would be increased by 2.5%), or (ii) the releases of claims pursuant to this Agreement shall run through the date on which the total number of Non-Exempt Class Member workweeks would exceed 163,636 by more than 10.0%. Under no other circumstances will Defendant's payment exceed the Gross Settlement Amount, except that Defendant will make additional payments to the Administrator representing its share of any employer payroll taxes to be paid in connection with the Settlement (e.g., FICA, FUTA, payroll taxes, or any similar tax or charge).

5.1.1. Attorneys' Fees and Costs. Class Counsel intends to request—and Defendant agrees not to oppose—that the Court approve an Attorneys' Fees and Costs Award in an amount not to exceed (a) 33⅓% of the Gross Settlement Amount (or \$916,666.67) and (b) litigation costs. The total attorneys' fees awarded shall be allocated 75% to Diversity Law Group, P.C. and 25% to Blumenthal Nordrehaug Bhowmik De Blouw LLP.

5.1.2. Class Representative Awards. Class Counsel intends to request—and Defendant agrees not to oppose—that the Court approve Class Representative Awards not to exceed \$10,000.00 per Plaintiff. Any Class Representative Award is supplemental to Plaintiffs' Individual Settlement Payments.

5.1.3. Administration Costs. Class Counsel intends to request—and Defendant agrees not to oppose—that the Court approve Administration Costs of up to \$37,500.00. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize Administration Costs.

5.1.4. PAGA Penalty Fund and LWDA Payment. The Parties allocate \$275,000.00 from the Gross Settlement Amount to the PAGA Penalty Fund, which shall be distributed pursuant to statute with 75% of the PAGA Penalty Fund payable as an LWDA Payment. The remaining 25% of the PAGA Penalty Fund is to be distributed to PAGA Employees as Individual PAGA Payments.

1 **5.1.5. Differences in Requested and Approved Payments.** If the Court does not
2 approve the requested amounts for the Attorneys' Fees and Costs Award, Class Representative Awards,
3 or Administration Costs, any requested but unapproved amounts shall be allocated to the Net Settlement
4 Amount. If the Court does not approve the requested amount for the PAGA Penalty Fund, any difference
5 in the requested and approved amount shall either be allocated to the Net Settlement Amount or from the
6 Gross Settlement Amount.

7 **5.2. Net Settlement Amount.** After deducting the approved Attorneys' Fees and Costs
8 Award, Class Representative Awards, Administration Costs, and PAGA Penalty Fund from the Gross
9 Settlement Amount, the Net Settlement Amount shall be allocated entirely to Settlement Class Members
10 and PAGA Employees.

11 **5.3. Individual Settlement Payments.** Individual Settlement Payments shall be distributed to
12 PAGA Employees and Settlement Class Members, without the need to submit a claim form. The
13 Administrator shall calculate the amounts of payments described below. Defendant's employee data will
14 be presumed to be correct, unless a particular Class Member proves otherwise to the Administrator by
15 credible evidence. All pay period disputes will be resolved and decided by the Administrator and the
16 Administrator's decision on all pay period disputes will be final and non-appealable.

17 **5.3.1. Individual PAGA Payments.** The 25% portion of the PAGA Penalty Fund to be
18 distributed to PAGA Employees shall be allocated pro rata based on the number of workweeks each
19 PAGA Employee worked during the PAGA Period. Individual PAGA Payments shall be subject to IRS
20 Form 1099 reporting.

21 **5.3.2. Individual Class Payments for the Exempt Class.** 5.0% of the Net Settlement
22 Amount shall be allocated to Settlement Class Members who are members of the Exempt Class as
23 Individual Class Payments. Each Settlement Class Member who is a member of the Exempt Class shall
24 be allocated an equal share of this allocation to the Exempt Class. These Individual Class Payments shall
25 be subject to IRS Form 1099 reporting.

26 **5.3.3. Individual Class Payments for Other Class Members.** 95.0% of the Net
27 Settlement Amount shall be allocated to Settlement Class Members who are members of the Non-
28 Exempt Class as Individual Class Payments. Each Settlement Class Member who is a member of the

1 Non-Exempt Class shall be allocated pro rata based on the total number of workweeks the Settlement
2 Class Member (i) worked during the Post-Cortez Period and/or (ii) was paid sick pay wages during the
3 Sick Pay Period. 20% of these Individual Class Payments shall be allocated to wages and subject to IRS
4 Form W-2 reporting; the remainder of these Individual Class Payments shall be subject to IRS Form
5 1099 reporting.

6 **5.4. No Tax Advice or Liability.** The Administrator shall issue an IRS Form 1099 to
7 Plaintiffs for any Class Representative Awards, to Class Counsel for any Attorneys' Fees and Costs
8 Award, to the LWDA for any LWDA Payment, and to the Administrator for any Administration Costs.
9 The Parties have had an opportunity to consult with independent tax counsel. The Parties are not giving
10 any tax advice in connection with the settlement or any payments to be made pursuant to the Agreement.
11 The Parties do not intend anything contained in this Agreement to constitute legal advice regarding the
12 taxability of any amount paid hereunder, nor shall anything in this Agreement be relied upon as such. By
13 participating in the settlement, each Class Member shall agree to be solely and legally responsible for
14 paying any applicable taxes on their respective Individual Settlement Payments and shall indemnify and
15 hold harmless the Parties from any claim or liability for taxes, penalties, or interest arising as a result of
16 the payments.

17 **5.5. Funding and Distribution.** Within 20 business days after the Effective Date, Defendant
18 shall deposit the Gross Settlement Amount with the Administrator. By 10 days after receiving the
19 deposit, the Administrator shall distribute all amounts to be paid pursuant to the Final Approval Order.
20 Upon completion of administration of the settlement, the Administrator shall provide written
21 certification of such completion to Class Counsel and Defendant's Counsel.

22 **5.6. Effect of Payments.** All Individual Settlement Payments to Class Members shall be
23 deemed to be paid in the year in which such payments actually are mailed to the Class Member. It is
24 expressly understood and agreed that the receipt of such Individual Settlement Payments shall not entitle
25 any Class Member to additional compensation or benefits under any company bonus, contest, or other
26 compensation or benefit plan or agreement in place during the period covered by the Agreement, nor
27 will it entitle any individual to any increased retirement, 401K benefits or matching benefits, or deferred
28 compensation benefits. It is the intent of this Settlement that the individual settlement awards provided

for in this Settlement are the sole payments to be made by Defendant to the Class Members, and that the Class Members are not entitled to any new or additional compensation or benefits as a result of having received the individual settlement awards (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Agreement).

5.7. Undeliverable or Uncashed Checks. All uncashed or undeliverable settlement checks will expire 180 days after the postmarked date of their initial mailing. After 180 days, the sum value of all expired checks will be tallied by the Administrator. The Administrator shall direct the principal for any expired checks in accordance with the Final Approval Order. The Parties shall request that the Court order that the principal for any expired checks escheat to the State of California's Unclaimed Property Fund in the name of the intended recipient.

6. RELEASES

6.1. Releases by Settlement Class Members of the Exempt Class. By operation of the entry of the Final Approval Order, and except as to such rights or claims as may be created by this Agreement, Settlement Class Members who are members of the Exempt Class shall fully release Defendant and each Released Party from any and all claims during the Exempt Class Period based on Labor Code section 2802 as alleged in the Action or that could have been alleged based on the facts pleaded in the Action.

6.2. Releases by Other Settlement Class Members. By operation of the entry of the Final Approval Order, and except as to such rights or claims as may be created by this Agreement, Settlement Class Members who are members of the Non-Exempt Class shall fully release Defendant and each Released Party from any and all claims during the Post-Cortez Period that were alleged in the Action or that could have been alleged based on the facts pleaded in the Action, including: (1) unreimbursed business expenses under Labor Code § 2802; (2) unpaid sick pay wages, including under Labor Code §§ 201-204, 233, and 246; (3) unpaid minimum wages, including under Labor Code §§ 1194, 1197, and 1197.1; (4) unpaid overtime, including under Labor Code §§ 510, 558, 1174, and 1198; (5) meal period violations under Labor Code §§ 226.7 and 512; (6) rest period violations under Labor Code §§ 226.7 and 512; (7) inaccurate itemized wage statements in violation of Labor Code § 226; (8) unfair competition in violation of Business and Professions Code §§ 17200 et seq. based on the alleged Labor

Code violations; and (9) all liquidated damages, other damages, penalties, interest, and other amounts recoverable under said causes of action under California and federal law.

6.3. Releases by Aggrieved Employees. By operation of the entry of the Final Approval Order, and except as to such rights or claims as may be created by this Agreement, all PAGA Employees and the LWDA fully release Defendant and each Released Party from any and all claims during the PAGA Period for civil penalties that were alleged in the Action or that could have been alleged based on the facts pleaded in the Action and LWDA Notice(s), including, but not limited to, violations of Labor Code §§ 201-204, 226, 226.3, 233, 246, 510, 512, 558, 1174, 1194, 1194.1, 1198.

6.4. Additional Release by Plaintiffs. In addition to the above releases applicable to Plaintiffs as Settlement Class Members and PAGA Employees, Plaintiffs also generally release all claims, known or unknown, in favor of each Released Party, including a waiver of Civil Code section 1542. Plaintiffs expressly waive all rights provided by Civil Code section 1542 that Plaintiffs may have against each Released Party. Civil Code section 1542 states:

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.

Plaintiffs acknowledge that they have read the entirety of the Agreement, including the above language from the Civil Code, and that they fully understand both the Agreement and Civil Code section 1542. By executing this Agreement, Plaintiffs expressly waive any benefits and rights granted pursuant to Civil Code section 1542.

7. COURT APPROVAL

7.1. Preliminary Approval. Plaintiffs shall submit a motion seeking a Preliminary Approval Order, which would, among other things: (i) preliminarily approve the proposed settlement according to the terms of this Agreement; (ii) set a date for a final approval hearing; and (iii) provide for Class Notice to be sent to Class Members as specified herein. At least ten (10) days prior to submitting any Preliminary Approval Motion to the Court, Plaintiffs will provide a draft to Defendant for its review.

7.2. Final Approval. Not later than 16 court days before the date set by the Court for a final approval hearing, or such other time as the Court requires, Plaintiffs shall submit a motion seeking a

Final Approval Order, which would, among other things: (i) approve the settlement, (ii) deem the terms to be fair, reasonable, and adequate, (iii) approve the releases, (iv) direct that the settlement's terms and provisions be carried out; (v) enter final judgment; and (vi) retain jurisdiction to oversee administration and enforcement of the terms of this Agreement and the Court's orders. At least ten (10) days prior to submitting any Final Approval Motion to the Court, Plaintiffs will provide a draft to Defendant for its review.

7.3. Effect of Failure to Obtain Final Approval. In the event the Court effects a material change or fails to enter a Final Approval Order in accordance with this Agreement, or such Final Approval Order is vacated, then this entire Agreement shall be void and unenforceable, subject to the Parties' agreement to the contrary, and Plaintiffs and Defendant shall each be responsible for 50% of the costs of administration incurred. The Action shall proceed as if no settlement has been attempted, subject to the Parties' agreement to the contrary, and this Agreement and any documents in furtherance of this Agreement shall be admissible in any future proceedings in this Action or any other action.

8. MISCELLANEOUS

8.1. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement. The signatories represent that they are fully authorized to enter into this Agreement and are fully authorized to bind the Parties to all terms stated herein.

8.1.1. Counterparts and Signatures. This Agreement may be executed in counterparts, and when all signatories have signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one signed Agreement, which shall be binding upon and effective as to all Parties. Any party may sign and deliver this Agreement by signing electronically via DocuSign or by signing on the designated signature block and transmitting that signature page via e-mail to counsel for the other party. All such signatures shall be deemed original signatures and shall be binding.

8.1.2. Waivers, Modifications, Etc. to Be in Writing. No waiver, modification, or amendment of the terms of this Agreement, whether purportedly made before or after the Court's

1 approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all
2 Parties and then only to the extent set forth in such written waiver, modification, or amendment, subject
3 to any required Court approval. Any failure by any Party to insist upon the strict performance by the
4 other Party of any of the provisions of this Agreement shall not be deemed a waiver of future
5 performance of the same provisions or of any of the other provisions of this Agreement, and such Party,
6 notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of
7 any and all of the provisions of this Agreement.

8 **8.1.3. Construction.** The determination of the terms and conditions of this Agreement
9 has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this
10 Agreement, and the terms and conditions of this Agreement are not intended to be, and shall not be,
11 construed against any party by virtue of draftsmanship. The captions of paragraphs of this Agreement
12 have been inserted for convenience of reference only and shall have no effect upon the construction or
13 interpretation of any part of this Agreement.

14 **8.1.4. Invalidity of Any Provision.** Before declaring any provision of this Agreement
15 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible so as to
16 render all provisions of this Agreement valid and enforceable.

17 **8.2. Further Acts and Cooperation Between the Parties.** The Parties shall cooperate and
18 use their best efforts to obtain the Court's approval of this Agreement and its terms. Each of the Parties,
19 upon the request of another, agrees to perform such further acts and to execute and deliver such other
20 documents as are reasonably necessary to carry out the provisions of this Agreement.

21 **8.3. Continuing Jurisdiction.** The Court shall retain jurisdiction over the implementation of
22 this Agreement as well as any and all matters arising out of, or related to, the implementation of this
23 Agreement and of the settlement contemplated thereby.

24 **8.4. Disputes.** If the Parties have a dispute with regard to the language of this Agreement,
25 they agree to engage mediator Mark S. Rudy to mediate any such dispute. The Parties will split the costs
26 of the mediator, and the Parties will bear their own fees and costs.

27 **8.5. Governing Law and Enforcement Actions.** All terms of this Agreement shall be
28 governed by and interpreted according to the laws of the State of California.

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Dated: October ²¹ __, 2022

PLAINTIFF

DocuSigned by:
Margaret Josephine Matthews
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Margaret Matthews

PLAINTIFF

Dated: October __, 2022

Okeem Smith

PLAINTIFF

Dated: October __, 2022

Tomas Verduzco Alcala

PLAINTIFF

Dated: October __, 2022

Darryl Knox

**COUNSEL FOR PLAINTIFF AND CLASS
(As to Form Only)**

Dated: October ¹⁹ __, 2022

DocuSigned by:
Larry W. Lee
5589343CDA2D4A2...
Larry W. Lee
Simon L. Yang
DIVERSITY LAW GROUP, P.C.

**COUNSEL FOR PLAINTIFFS AND CLASS
(As to Form Only)**

Dated: October __, 2022

Aparajit Bhowmik
BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

DEFENDANT

Dated: October __, 2022

_____, Title
United Natural Foods West, Inc.

PLAINTIFF

Dated: October __, 2022

Margaret Matthews**PLAINTIFF**Dated: October ¹⁹ __, 2022

Okeem smith (Oct 19, 2022 19:37 PDT)
Okeem Smith**PLAINTIFF**Dated: October ¹⁹ __, 2022*Tomas Verduzco Alcala*

Tomas Verduzco Alcala (Oct 19, 2022 18:37 PDT)
Tomas Verduzco Alcala**PLAINTIFF**Dated: October ^{8DARRY118} __, 2022

Darryl Knox (Oct 19, 2022 16:22 PDT)
Darryl Knox**COUNSEL FOR PLAINTIFF AND CLASS
(As to Form Only)**

Dated: October __, 2022

Larry W. Lee
Simon L. Yang
DIVERSITY LAW GROUP, P.C.**COUNSEL FOR PLAINTIFFS AND CLASS
(As to Form Only)**

Dated: October __, 2022

Kyle Nordrehaug
BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP**DEFENDANT**

Dated: October __, 2022

, Title
United Natural Foods West, Inc.

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PLAINTIFF

Dated: October __, 2022

Margaret Matthews

PLAINTIFF

Dated: October __, 2022

Okeem Smith

PLAINTIFF

Dated: October __, 2022

Tomas Verduzco Alcala

PLAINTIFF

Dated: October __, 2022

Darryl Knox

**COUNSEL FOR PLAINTIFF AND CLASS
(As to Form Only)**

Dated: October __, 2022

Larry W. Lee
Simon L. Yang
DIVERSITY LAW GROUP, P.C.

**COUNSEL FOR PLAINTIFFS AND CLASS
(As to Form Only)**

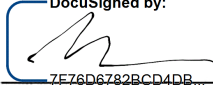
Dated: October 19, 2022



Kyle Nordrehaug
BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

DEFENDANT

Dated: October 24, 2022

DocuSigned by:

7F76D6782BCD4DB...

Andre LaMere, Sr. VP, Employment Law, Deputy General Counsel
United Natural Foods West, Inc.

COUNSEL FOR DEFENDANT
(As to Form Only)

Dated: October 24, 2022



Michael J. Puma
Aimee Mackay
Anahi Cruz
MORGAN, LEWIS & BOCKIUS LLP

EXHIBIT 1

This notice is being sent pursuant to court order. This is not a solicitation from a lawyer.

NOTICE OF CLASS ACTION SETTLEMENT

Margaret Matthews et al. v. United Natural Foods West, Inc.

Superior Court of the State of California for the County of Placer Case No. S-CV-0046420

If you were employed by United Natural Foods West, Inc. in California either (i) as an exempt employee from May 11, 2019, through June 30, 2022; or (ii) as an hourly paid, non-exempt employee and paid sick pay wages from March 23, 2017 through June 30, 2022, or as an hourly-paid, non-exempt employee from October 5, 2019 through June 30, 2022, then you could receive a payment from a class action settlement.

Read this notice carefully, as your legal rights could be affected whether you act or not.

The Superior Court of the State of California for the County of Placer (the “Court”) has preliminarily approved a Settlement that could affect your rights. The proposed Settlement resolves a class action and representative action under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) filed by Plaintiffs Margaret Matthews, Okeem Smith, Tomas Verduzco Alcala, and Darryl Knox against Defendant, United Natural Foods West, Inc., which has been designated Case No. S-CV-0046420 (the “Action”).

- The Action alleges claims for (i) unreimbursed expenses, (ii) underpaid sick pay wages, (iii) unpaid wages and overtime, (iv) failure to provide meal and rest periods, (v) underpayment of the additional hour of regular rate wages for meal and rest period premiums, (vi) untimely payment of wages, and (vii) noncompliant wage statements. On that basis, the Action pursues class action and PAGA claims.
- Defendant denies Plaintiffs’ allegations and maintains it has fully complied with the law. By agreeing to the Settlement, Defendant in no way admits any violation of law or any liability whatsoever to Plaintiff or others and expressly denies all such liability. Both Plaintiff and Defendant have agreed to the Settlement in light of all known facts and circumstances—including the uncertainty associated with litigation.
- This class action is separate from a prior class action, *Cortez v. United Natural Foods, Inc.*, N.D. Cal. Case No. 5:18-cv-04603. If the Court grants final approval of the class action settlement, it would provide cash payments to Class Members, based on the number of relevant weeks that they worked from May 11, 2019, through June 30, 2022 (the “Exempt Class Period”), from March 23, 2017, through June 30, 2022 (the “Sick Pay Period”), from October 5, 2019, through June 30, 2022 (the “Post-Cortez Period”), and from March 23, 2020, through June 30, 2022 (the “PAGA Period”).
- Based on Defendant’s records, you worked XXX relevant Class Period weeks and XXX relevant PAGA Period weeks, and an *estimate* of the amount that could be allocated to you is \$XXX. Whether you receive a payment depends on whether the Court grants final approval of the class action settlement and approves the PAGA settlement, and the amount you ultimately receive depends on the terms the Court finally approves and whether you have opted out of the class action settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION SETTLEMENT:	
DO NOTHING	You do not have to do anything. If you do nothing and the Court grants final approval of the class action settlement, you will remain eligible to automatically receive an Individual Class Payment and will be bound by the class action release provisions of the Settlement.
OPT OUT	You may opt out of the class action settlement by submitting a Request for Exclusion. If you opt out, you may not object to the class action settlement, will not be eligible to receive an Individual Class Payment, and will not be bound by the class action release provisions of the Settlement.
OBJECT	You may object to the class action settlement by submitting a written objection. If you object and the Court grants final approval of the class action settlement despite your objection, you will remain eligible to automatically receive an Individual Class Payment and will be bound by the class action release provisions of the settlement.

NOTICE OF CLASS ACTION SETTLEMENT

Questions? Please contact the Administrator at (xxx) xxx-xxxx.

**THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION FROM THE COURT
AS TO THE MERITS OF THE CLAIMS.**

1. Why Did I Receive This Notice?

You are receiving this Notice of Class Action Settlement (the “Notice”) because Defendant’s records show that you were employed by Defendant in California either (i) as an exempt employee from May 11, 2019, through June 30, 2022; or (ii) as an hourly paid, non-exempt employee and paid sick pay wages from March 23, 2017 through June 30, 2022, or as an hourly-paid, non-exempt employee from October 5, 2019 through June 30, 2022. As a Class Member, you may be entitled to share in the funds to be made available for the class action settlement. As a PAGA Employee, you may be entitled to share in the funds to be made available for the PAGA settlement.

Because the Settlement preliminarily approved by the Court would affect Settlement Class Members’ legal rights, the Court ordered that this Notice be sent to you. This Notice provides a brief description of the Action, informs you of the settlement terms preliminarily approved by the Court, and advises you of your legal rights with respect to the Settlement. If the Court finally approves the Settlement, the Settlement will fully resolve the Action, and your legal rights may be affected by the Settlement.

The Court has preliminary approved Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C. and Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel. Based on their investigation and evaluation, they are of the opinion that the terms of Settlement are fair, reasonable, adequate, and in the best interests of Class Members. The terms of the Settlement are set forth in detail in the Joint Stipulation of Class Action and PAGA Settlement (“Agreement”). You may obtain a copy of the Agreement from Phoenix Settlement Administrators, a neutral third-party appointed by the Court to administer the settlement (the “Administrator”).

2. What Is the Action About?

On March 23, 2021, and on behalf of a putative class of current and former employees and as a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Plaintiff Matthews initiated this wage-and-hour lawsuit. In the operative Second Amended Complaint, Plaintiffs Smith, Alcala, and Knox join Plaintiff Matthews in pursuing class and representative action claims for (i) unreimbursed expenses, (ii) underpaid sick pay wages, (iii) unpaid wages and overtime, (iv) failure to provide meal and rest periods, (v) underpayment of the additional hour of regular rate wages for meal and rest period premiums, (vi) untimely payment of wages, and (vii) noncompliant wage statements.

Defendant denied and continues to deny (i) all of the allegations made by Plaintiff, (ii) that it violated any applicable laws, or (iii) that it is liable or owes damages, penalties, or other compensation or remedies to anyone with respect to the alleged facts or claims asserted in the Action. Nonetheless, without admitting or conceding any liability or wrongdoing whatsoever, Defendant has agreed to settle the Action, to avoid the burden, expense, and uncertainty of continuing the Action.

3. What Are the Payments Under the Settlement?

Defendant agrees to pay a Gross Settlement Amount of \$2,750,000.00, which is inclusive of any Administration Costs, Attorneys’ Fees and Costs Award, Class Representative Awards, PAGA Penalty Funds, and Individual Settlement Payments awarded by the Court. The Court may approve payment of (i) Administration Costs to the Administrator for administering the settlement (e.g., printing, distributing, or tracking Notices, distributing payments, etc.); (ii) an Attorneys’ Fees and Costs Award to Class Counsel for litigation and resolution of the Action; (iii) Class Representative Awards to Plaintiffs both for their efforts in prosecuting the Action for Class Members and for Plaintiffs’ additional general release of claims inapplicable to Class Members; and (iv) a PAGA Penalty Fund. The remaining amount would be the Net Settlement Amount.

Individual Settlement Payments: Individual Class Payments shall be distributed to Settlement Class Members and Individual PAGA Payments shall be distributed to PAGA Employees, respectively, without the need to

submit a claim form. Allocations for amounts payable to Settlement Class Members and PAGA Employees will be based on the number of relevant weeks they received as reflected in Defendant's records.

The PAGA Penalty Fund will be \$275,000.00, and pursuant to statute, 75% of the PAGA Penalty Fund (or \$206,250.00) would constitute the LWDA Payment, and 25% of the PAGA Penalty Fund shall be payable to PAGA Employees based on the number of weeks worked by the PAGA Member as a percentage of the weeks worked by all PAGA Employees during the PAGA Period.

5.0% of the Net Settlement Amount is to be allocated to Settlement Class Members who are members of the Exempt Class as Individual Class Payments. Each Settlement Class Member who is a member of the Exempt Class will be allocated an equal share of this allocation to the Exempt Class. These Individual Class Payments shall be subject to IRS Form 1099 reporting.

The remainder of the Net Settlement Amount is to be allocated to Settlement Class Members who are members of the Non-Exempt Class as Individual Class Payments. Each Settlement Class Member who is a member of the Non-Exempt Class shall be allocated pro rata based on the total number of workweeks the Settlement Class Member (i) worked during the Post-Cortez Period and/or (ii) was paid sick pay wages during the Sick Pay Period. 20% of these Individual Class Payments shall be allocated to wages and subject to IRS Form W-2 reporting; the remainder of these Individual Class Payments shall be subject to IRS Form 1099 reporting.

Through this settlement, each Settlement Class Member and PAGA Employee shall agree to be solely and legally responsible for paying all other applicable taxes on their respective Individual Class Payments and Individual PAGA Payments and shall indemnify and hold harmless the Parties from any claim or liability for taxes, penalties, or interest arising as a result of the payments.

All uncashed or undeliverable settlement checks will expire 180 days after the postmarked date of their initial mailing. After 180 days, the sum value of all expired checks will be tallied by the Administrator. The Administrator shall direct the principal for any expired checks in accordance with the Final Approval Order. The Parties shall request that the Court order that the principal for any expired checks escheat to the State of California's Unclaimed Property Fund in the name of the Class Member.

Attorneys' Fees and Costs Award: You do not need to individually pay any portion of Class Counsel's attorneys' fees and costs. Any payments for those attorneys' fees and costs will be determined by the Court. Class Counsel intends to request that the Court approve an Attorneys' Fees and Costs Award in the amount of (a) 33⅓% of the Gross Settlement Amount (or \$916,666.67) and (b) litigation costs, which will not exceed \$40,000.00.

Class Representative Award: Any Class Representative Award is to be determined by the Court and would be supplemental to Plaintiffs' Individual Class Payment and Individual PAGA Payment. Class Counsel intends to request that the Court approve a Class Representative Award of \$10,000.00 for each Plaintiff's efforts in prosecuting the Action for Class Members and for each Plaintiff's additional general release of claims inapplicable to Class Members.

Administration Costs: Class Counsel intends to request that the Court approve Administration Costs of up to \$37,500.00, payable to the Administrator for administering the settlement, including, but not limited to, printing, distributing, or tracking Notices, providing any required tax forms, processing any required tax payments, or reporting, and calculating and distributing all payments under the Settlement.

All Payments Subject to Court Approval: The above payments will be made if and only if the Court concludes the settlement is reasonable, fair, and adequate for the Class. The Court may adjust the amounts of certain payments.

4. What Do I Release Under the Settlement?

If the Court grants final approval of the class action settlement and concludes it is reasonable, fair, and adequate for Class Members, Settlement Class Members would release Defendant, its current and former officers, directors, shareholders, employees and agents (in their individual and representative capacities), and its divisions, parent, affiliated, predecessor, successor, subsidiary and other related companies (a "Released Party") from certain claims. Settlement Class Members who are members of the Exempt Class release only claims during the Exempt Class Period based on Labor Code section 2802 as alleged in the Action or that could have been alleged based on

the facts pleaded in the Action. Other Settlement Class Members release Defendant and each Released Party from claims during the Sick Pay Period and the Post-Cortez Period that were alleged in the Action or that could have been alleged based on the facts pleaded in the Action.

This means that, if you do not timely and formally exclude yourself from the class action settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

Upon approval, all PAGA Employees and the California Labor & Workforce Development Agency fully release Defendant and each Released Party from any and all claims during the PAGA Period for civil penalties that were alleged in the Action or that could have been alleged based on the facts pleaded in the Action.

5. How Do I Object to the Class Action Settlement?

If you want to participate in the Settlement, you do not have to do anything and do not have to appear at the final approval hearing before the Court. You will automatically receive your Individual Class Payment and Individual PAGA Payment if the Court grants final approval of the class action settlement and approves the PAGA settlement.

If you want to object to the class action settlement, you may appear at the final approval hearing to object to the class action settlement. Alternatively, you must take the steps below:

- (1) You must mail a written statement to the Administrator listed below.
- (2) The written statement must include: your name, address, last four digits of your Social Security number, and the basis for your objection.
- (3) If you object, you may but are not required to appear at the final approval hearing either in person or through counsel, paid for at your own expense.
- (4) The written statement must be postmarked by **[45 calendar days after the initial mailing of Notice]**.

If you object, you will remain bound by the class action settlement if finally approved and bound by the PAGA settlement if approved. If you do not want to be bound by the class action settlement if finally approved, you must opt out of the class action settlement. Regardless of whether you object to the class action settlement, you will be bound by the PAGA settlement if approved.

6. How Do I Opt Out of the Class Action Settlement?

If you do not want to participate in the class action settlement, you may opt out of the class action settlement. If you opt out of the class action settlement, you may not object to the class action settlement, will not receive any Individual Class Payment, and will not be bound by the class action release provisions of the Settlement.

In order to opt out, you MUST express your desire to be excluded from the class action settlement by mailing to the Administrator a "Request for Exclusion," which must state "Request for Exclusion," include your name, current address, current telephone number, and last four digits of your Social Security Number. Any such Request for Exclusion must be postmarked by **[45 calendar days after the initial mailing of Notice]**.

Any Request for Exclusion that does not include all required information or that is not submitted on a timely basis will be deemed null, void, and ineffective. A Request for Exclusion shall be deemed to be submitted as of the postmarked date. If you submit both a Request for Exclusion and an objection, your Request for Exclusion will be valid and be deemed to invalidate the objection.

7. Where Can I Get Additional Information?

This Notice summarizes the Settlement. For more information, you may contact the Administrator. Contact information for the Administrator and Class Counsel are as follows:

NOTICE OF CLASS ACTION SETTLEMENT

Questions? Please contact the Administrator at (xxx) xxx-xxxx.

Administrator: xxx xxx xxx, California xxx Telephone: (xxx) xxx-xxxx	Class Counsel: DIVERSITY LAW GROUP, P.C. Larry W. Lee (lwlee@diversitylaw.com) Simon L. Yang (sly@diversitylaw.com) 515 S. Figueroa St., Suite 1250 Los Angeles, California 90071 Telephone: (213) 488-6555	BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP Kyle R. Nordrehaug (kyle@bamlawca.com) Aparajit Bhowmik (aj@bamlawca.com) 2255 Calle Clara La Jolla, California 92037 Telephone: (858) 551-1223
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PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THE SETTLEMENT

NOTICE OF CLASS ACTION SETTLEMENT

Questions? Please contact the Administrator at (xxx) xxx-xxxx.