

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between the Plaintiff Shawn Fitzpatrick (“Plaintiff”), on his own behalf and on behalf of all members of the PAGA Group, as defined below, on the one hand, and Concord Foods Inc., (“Defendant”) on the other hand (collectively the “Parties”). On or around March 10, 2021, Plaintiff, on behalf of himself and all other Aggrieved Employees submitted his Private Attorney’s General Act (“PAGA”) notice to the Labor and Workforce Development Agency (“LWDA”). On June 7, 2021, Plaintiff filed the instant Representative Action against Concord Foods Inc. (“Defendant” OR “Concord Foods”), in the County of San Bernardino, Case No.: CIVSB2116303, alleging the following violations under PAGA: (1) failure to pay all wages including minimum wages and overtime; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to keep accurate payroll records and provide accurate itemized wage statements; (5) failure to pay wages due upon termination of employment; (6) failure to indemnify for expenditures or losses in discharge of duties, including cell phones and uniforms and (7) waiting time penalties (the “Litigation”). This Stipulation of Resolution resolves all claims that were asserted or could have been asserted against Defendant pertaining to the claims in the Litigation.

I. DEFINITIONS

A. Administrative Costs. All administrative costs of settlement, including cost of notice to the Settlement Group, administration, and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Settlement Agreement.

B. Agreement. The terms “Agreement” or “Settlement Agreement” are used synonymously herein to mean this agreement for purposes of resolution.

C. Plaintiff’s Counsel. The term “Plaintiff’s Counsel” as used herein means: WORK LAWYERS PC, who are (or were at some time) counsel for and acting on behalf of Plaintiff.

D. PAGA Period. The term “PAGA Period” or “Settlement Period” shall refer to the time period from March 10, 2020, to the date of settlement approval.

1 **E. Court.** The term “Court” as used herein means the Superior Court of the State
2 of California for the County of San Bernardino.

3 **F. Date of Approval.** The terms “Date of Approval” or “Approval” as used herein
4 mean the date of the PAGA Settlement Approval Hearing.

5 **G. Defendant.** The term “Defendant” as used herein means: Concord Foods Inc.

6 **H. Litigation.** The term “Litigation” as used herein means, collectively, the claims
7 alleged by Plaintiff in his June 7, 2021, Complaint filed in San Bernardino County Superior
8 Court, Case No.: CIVSB2116308.

9 **I. Plaintiff.** The term “Plaintiff” as used herein means Shawn Fitzpatrick.

10 **J. Net Settlement Amount.** The term “Net Settlement Amount” as used herein
11 means the Settlement Amount minus any award of attorneys’ fees and Litigation costs,
12 Enhancement to Plaintiff, Administrative Costs, and the seventy-five percent (75%) of penalties
13 payable to the LWDA (“LWDA Payment”) pursuant to California’s Private Attorney General
14 Act (“PAGA”), and as provided in Sections XI , X, VI, and VIII(C) respectively.

15 **K. Net Settlement Payments.** The term “Net Settlement Payment(s)” shall include
16 payments made to the Settlement Group as part of the Resolution.

17 **L. LWDA Payment.** The term “LWDA Payment” as used herein means seventy-
18 five percent (75%) of the remainder of the Settlement Amount after the deduction of any award
19 of attorneys’ fees and Litigation costs, Enhancement to Plaintiff, and Administrative Costs. This
20 amount shall be calculated as follows: Settlement Amount minus (Court approved amounts for
21 attorneys’ fees, Litigation costs, and Administrative Costs) times seventy five percent (75%).

22 **M. Resolution.** The term “Resolution” as used herein means this Agreement to
23 resolve the Litigation.

24 **N. Settlement Administrator.** The term “Settlement Administrator” as used herein
25 means Phoenix Settlement Administrators, which will be responsible for the administration of
26 the Settlement Payment, as defined below, and all related matters.

27 **O. Settlement Agreement.** The terms “Settlement Agreement” or “Agreement” are
28 used synonymously herein to mean this Stipulation of Resolution.

1 **P. Settlement Amount.** The terms “Settlement Amount” and “Gross Settlement
2 Fund” as used herein mean a fund in the sum of two hundred fifteen thousand dollars and zero
3 cents (\$215,000.00) which shall be paid by Defendant, and from which all Net Settlement
4 Payments, Court approved attorneys’ fees and Litigation costs pursuant to Section X,
5 Administrative Costs pursuant to Section VI, enhancement to Plaintiff pursuant to Section XI,
6 and distribution to the LWDA pursuant to Section VIII(c) shall be paid, except as provided
7 herein. This Settlement Amount is based on Defendant’s representation that the total number
8 of Aggrieved Employees is approximately eighty-to (82) individuals. Defendant shall not be
9 required to pay more than the Gross Settlement Fund, as long as the total number of Aggrieved
10 Employees does not increase by more than ten percent (10%) (i.e., if the total number of
11 Aggrieved Employees increases to eleven percent (11%), the Settlement Agreement shall
12 increase proportionately, i.e., by eleven percent of the Gross Settlement Amount), and so forth.

13 **Q. PAGA Group.** The PAGA Group is defined as: All persons within the State of
14 California who are or were employed by Defendant in the State of California as non-exempt
15 hourly employees, and all piece rate employees, at any time within the PAGA Period.

16 **II. BACKGROUND**

17 A. On March 10, 2021, Plaintiff sent a letter to the Labor and Workforce
18 Development Agency (“LWDA”) alleging that Concord Foods Inc. had violated Labor Codes
19 §§201, 202, 203, 204, 206, 210, 226, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2,
20 1197, 11971.1, 1198, 2802, and 2810.5 and Wage Order 1. In the Litigation, the Plaintiff alleges
21 on behalf of himself and all others similarly situated a PAGA claim for penalties pursuant to
22 Labor Code § 2699(f), as a result of Defendant’s California wage and hour policies and
23 practices. Specifically, Plaintiff alleges in his complaint, that Defendant failed to provide meal
24 breaks and failed to authorize and permit legally compliant rest breaks each day. Plaintiff further
25 alleges that minimum and overtime wages were not properly paid and business expenses for
26 uniform maintenance and for using personal cellphones were not properly reimbursed.
27 Moreover, Plaintiff alleges that the aforementioned conduct resulted in the employees receiving
28 inaccurate wage statements and the underpayment of wages to employees upon termination

1 and/or resignation.

2 Following Plaintiff's submission of his letter to the LWDA, counsel for the Parties met
3 and conferred with respect to the potential settlement of the Litigation. Pursuant to these
4 discussions, the Parties agreed to the exchange of informal discovery, and settlement
5 negotiations. The Parties subsequently exchanged informal discovery, including: information
6 and documentation concerning the claims set forth in the Litigation, such as Defendant's
7 employee handbooks and policies and procedures regarding the payment of wages, meal and
8 rest breaks, and time keeping; information regarding the number of putative PAGA Group
9 members and the number of current versus former employees; and the total workweeks and pay
10 periods worked by the PAGA Group. Thereafter, on June 7, 2021, Plaintiff filed his PAGA
11 Complaint.

12 B. Plaintiff and Plaintiff's Counsel have engaged in good faith, arms-length
13 negotiations. On September 28, 2021, the Parties attended mediation with a respected mediator,
14 Hon. Leo Wagner. Although the Parties were not able to come to a resolution at the end of their
15 full day mediation, the mediator remained engaged with the Parties. On October 7, 2021, with
16 the assistance of the mediator, the Parties reached a resolution of this matter, subject to the
17 Approval of the Court, and finalization of a formal Stipulation for Resolution. The Parties have
18 now entered into this Settlement Agreement for submission to the Court for Approval.

19 C. Plaintiff's Counsel has conducted an investigation of the law and facts relating
20 to the claims asserted in the Litigation and has concluded, taking into account the sharply
21 contested issues involved, the expense and time necessary to pursue the Litigation through trial
22 and any appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse
23 outcome, the uncertainties of complex litigation, and the substantial benefits to be received by
24 the Plaintiff and the members of the PAGA Group pursuant to this Agreement, that a settlement
25 with Defendant on the terms and conditions set forth herein is fair, reasonable, adequate, and in
26 the best interests of the PAGA Group. Plaintiff, on his own behalf and as a representative
27 pursuant to PAGA, has agreed to settle the Litigation with Defendant on the terms set forth
28 herein.

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

9 E. This Agreement is intended to and does effectuate the full, final and complete
10 resolution of all allegations and claims that were asserted, or could have been asserted, in the
11 Litigation by Plaintiff.

12 **III. JURISDICTION**

13 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
14 Litigation includes claims that, while Defendant denies them in their entirety, would, if proven,
15 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
16 Approval of the resolution, pursuant to California Code of Civil Procedure Section 664.6 the
17 Court shall retain jurisdiction of this action solely for the purpose of interpreting, implementing,
18 and enforcing this Resolution consistent with the terms set forth herein, and the Parties and their
19 counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and
20 enforcing this Agreement and all orders and judgments entered in connection therewith.

21 **IV. STATEMENT OF NO ADMISSION**

22 A. Defendant denies liability to Plaintiff and to the PAGA Group upon any claim or
23 cause of action. This Agreement does not constitute, and is not intended to constitute, an
24 admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims
25 made against it in the Litigation.

26 B. Nothing in this Agreement, nor any action taken in implementation thereof, nor
27 any statements, discussions or communications, nor any materials prepared, exchanged, issued
28 or used during the course of the negotiations leading to this Agreement or the Resolution, is

1 intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be
2 used or be admissible in any way in this case or any other judicial, arbitral, administrative,
3 investigative or other forum or proceeding as evidence of any violation of any federal, state, or
4 local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law
5 or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement,
6 directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or
7 other forum or proceeding, as purported evidence of any violation of any federal, state, or local
8 law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in
9 equity, or for any other purpose. This paragraph does not prohibit Plaintiff from sharing this
10 Agreement with the LWDA. Notwithstanding the foregoing, this Agreement may be used in any
11 proceeding before the Court that has as its purpose the interpretation, implementation, or
12 enforcement of this Agreement or any orders or judgments of the Court entered in connection
13 with the Resolution.

14 **C.** None of the documents produced or created by Plaintiff or the PAGA Group in
15 connection with this settlement constitute, and they are not intended to constitute, an admission
16 by Defendant of any violation of any federal, state, or local law, statute, ordinance, regulation,
17 rule or executive order, or any obligation or duty at law or in equity.

18 **D.** Nothing in this Agreement will be construed as an admission or
19 acknowledgement of any kind that any group should or would be given collective treatment in
20 the Litigation or in any other action or proceeding. Further, neither this Agreement nor the
21 Court's actions with regard to this Agreement will be admissible in any court or other tribunal
22 regarding the propriety of collective treatment. In the event that this Agreement is not approved
23 by the Judge or any appellate court, is terminated, or otherwise fails to be enforceable, Plaintiff
24 will not be deemed to have waived, limited or affected in any way any claims, rights or remedies
25 in the Litigation, and Defendant will not be deemed to have waived, limited, or affected in any
26 way any of their objections or defenses in the Litigation.

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1 **V. RELEASE, DISMISSAL, AND CONFIDENTIALITY**

2 **A. Release as to All PAGA Group Members**

3 Upon Approval by the Court of this Settlement, Plaintiff and each member of the PAGA
4 Group, will release, to the full extent permitted by law, any and all claims and causes of action,
5 , against Defendant, Defendant's parents, subsidiaries, their insurers, employees and all agents
6 thereof, related to or arising out of the causes of action, allegations, facts and theories contained
7 in the PAGA Notice submitted to the LWDA on Plaintiff's behalf and the causes of action,
8 allegations, facts and theories asserted in the Litigation for civil penalties under the Private
9 Attorney General Act of 2004 Cal. Lab. Code § 2698 based upon the facts alleged: failure to
10 provide meal and rest breaks; unpaid wages, including minimum wages, regular wages,
11 overtime and double time wages; any and all theories for or related to "off the clock" work;
12 wage statement violations; reimbursement of necessary business expenditures for uniform
13 maintenance and using personal cellphones, and separation pay violations. This release extends
14 only to the penalties available through PAGA and does not release any individual claims.

15 **B. Publicity**

16 Plaintiff and his counsel agree that they have not and will not publish the Resolution.
17 Plaintiff's counsel shall not issue any press releases or press statements regarding the Settlement,
18 identify Defendant or their counsel by name in any media including Plaintiff's Counsel's
19 website, or have any communications with the press or media about the Lawsuit or the
20 Settlement. However, nothing in the provision shall be construed from as preventing the Parties
21 from taking following actions: (a) Plaintiff's counsel shall be allowed to refer to the Litigation
22 and Resolution in other litigations to support their adequacy as attorneys for a putative class or
23 to justify an award of attorney's fees; (b) the Parties shall have the right to disclose the
24 Resolution as may be required under federal or state tax and/or securities laws or under
25 Generally Accepted Accounting Principles; (c) the Parties shall have the right to disclose the
26 Resolution to third parties without identifying the case name, case number, or names of any of
27 the Parties or Released Entities; (d) the Parties may refer to the Resolution, describe its terms,
28 and file the settlement agreement with the Court, the California LWDA, and the Settlement

1 Administrator in connection with any proceedings which are reasonably necessary to obtain
2 Approval of the Settlement; and (e) the Parties or their representatives may communicate with
3 accountants or legal advisors regarding the Resolution. Except for the previously listed
4 exceptions, in response to any inquiries about the Lawsuit, the Parties may state that “the matter
5 has been resolved.”

6 **VI. SETTLEMENT ADMINISTRATOR**

7 Plaintiff and Defendant, through their respective counsel, have selected Phoenix
8 Settlement Administrators as the Settlement Administrator to administer the Resolution, which
9 includes but is not limited to distributing and responding to inquiries about the Notice of
10 Resolution and calculating all amounts to be paid from the Net Settlement Fund. Charges and
11 expenses of the Settlement Administrator, estimated to be Five Thousand Dollars (\$5, 000.00),
12 will be paid from the Settlement Amount. The expenses of the Settlement Administrator are not
13 to exceed Twenty Thousand Dollars (\$20,000.00). Any charges and expenses of the Settlement
14 Administrator greater than the allocated Five Thousand Dollars (\$5, 000.00) will come from the
15 Settlement Amount. If the actual Settlement Administrator fees are less than the Parties’
16 estimation, the difference between the actual and estimated Settlement Administrator fees will
17 be included in the Net Settlement Amount.

18 **VII. NOTICE**

19 Plaintiff and Defendant, through their respective attorneys, have jointly prepared a Notice
20 of Resolution (the “Notice”), in the form attached hereto as Exhibit “A” which in substance will
21 be provided to the members of the PAGA Group as follows:

22 As soon as practicable following Approval of the Resolution, but no later than thirty (30)
23 calendar days after the Court’s Approval, Defendant will provide to the Settlement
24 Administrator the following information about each PAGA Group member: (1) name; (2) last
25 known home address; (3) number of pay periods as a PAGA Group member during the PAGA
26 period; and (4) social security number (“PAGA List”).

27 The Settlement Administrator shall run all the addresses provided through the United
28 States Postal Service NCOA database (which provides updated addresses for any individual who

has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information. Within thirty (30) calendar days after the Settlement Administrator's receipt of the PAGA List, the Settlement Administrator will mail the Notice of Resolution together with a settlement payment to all PAGA Group members by first-class United States mail, postage prepaid, with directions to the Postmaster to forward the Notice and return all undeliverable Notices to the Settlement Administrator. For each Notice of PAGA Settlement and settlement payment that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by performing an additional skip trace and shall re-mail the Notice and settlement check no later than ten (10) days following receipt of the undeliverable Notice. The Notice will be provided in both English and Spanish.

VIII. COMPUTATION AND DISTRIBUTION OF PAYMENTS

A. Distribution Formula

Members of the PAGA Group will receive a lump sum payment as good and valuable consideration for the waiver and release of claims set forth in Section V(A), above, in an amount determined by the Settlement Administrator in accordance with the provisions of this Agreement.

The lump sum payment to each member of the PAGA Group will be determined by dividing the Net Settlement Amount by the total number of pay periods worked by all members of the PAGA Group during the Settlement Period (the "Pay Period Amount") and then multiplying the Pay Period Amount by the number of pay periods worked by the individual PAGA member.

B. Funding of Resolution

The funding of the Settlement Amount will be completed at one time with funds provided to and escrowed by the Settlement Administrator. The funds used for the Settlement Amount shall be paid to the Claims Administrator by Defendant within thirty (30) calendar days of its receipt of a notice of entry of the Court's Approval order.

If a PAGA Group member is deceased at the time of distribution, the Settlement

1 Administrator shall distribute the deceased PAGA Group member's Net Settlement Payment to
2 the deceased PAGA Group member's legal heir(s). In the event of a dispute as to the legal heir(s),
3 the Settlement Administrator shall notify the executor of the deceased PAGA Group member's
4 estate and attempt to place the deceased PAGA Group member's payment in escrow or similar
5 disposition such that any competing heirs may take whatever action they wish to resolve ultimate
6 disposition of such money and the Settlement Administrator and the Parties hereto may disclaim
7 any further interest in or obligation in relation to such money.

8 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
9 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip
10 trace search and, if another address is identified, shall mail the check to the newly identified
11 address. If the Settlement Administrator is unable to obtain a valid mailing address through this
12 process, the monies represented by the check shall be turned over according to the below
13 procedures.

14 Settlement checks will specifically indicate that they are void if not negotiated within
15 one hundred eighty (180) days of their issuance. Any settlement checks that remain uncashed
16 one hundred eighty (180) or more calendar days after issuance by the Settlement Administrator
17 shall be voided. The Settlement Administrator will remit the entire amount of each PAGA Group
18 member's uncashed Net Settlement Payment to the Department of Industrial Relations Unpaid
19 Wage Fund (Cal. Lab. Code §§ 96.6. and 96.7) in the name of the PAGA Group member to
20 whom the uncashed Net Settlement Payment check was addressed.

21 **C. Time for Distribution of the Attorney Fees, Costs, and LWDA Payment**

22 The Settlement Administrator shall cause the Court approved attorney's fees and
23 Litigation costs and LWDA Payment to be paid at the same time and manner as the Settlement
24 Payments to the PAGA Group.

25 **IX. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

26 The amounts paid under this Agreement do not represent a modification of any
27 previously credited hours of service under any employee benefit plan, policy or bonus program
28 sponsored by Defendant. Such amounts will not form the basis for additional contributions to,

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

X. PLAINTIFF'S COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS

Defendant shall not oppose an application by Plaintiff's Counsel for, and Plaintiff's Counsel shall not seek or receive an amount in excess of seventy-one thousand six hundred sixty-six dollars (\$71, 666.00) which represents one third (33 1/3%) of the Settlement Amount for all past and future attorneys' fees necessary to prosecute, settle and administer the Litigation and this Resolution. Additionally, Defendant shall not oppose an application by Plaintiff's Counsel for, and Plaintiff's Counsel shall not seek or receive an amount in excess of, twenty thousand dollars (\$20,000.00), which represents all past and future Litigation costs and expenses necessary to prosecute, settle and administer the Litigation and this Resolution. Any attorneys' fees or Litigation costs awarded to Plaintiff's Counsel by the Court shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount. This amount shall include all attorneys' fees, Litigation costs and expenses for which Plaintiff and Plaintiff's Counsel could claim under any legal theory whatsoever. Should the Court approve a lesser percentage or amount of fees and/or Litigation costs than the amount that Plaintiff's Counsel ultimately seeks, then the unapproved portion or portions shall revert to the Net Settlement Amount.

XI. ENHANCEMENT TO PLAINTIFF

Defendant shall not oppose an application by Plaintiff, and Plaintiff shall not seek or

1 receive an amount in excess of five thousand dollars (\$5, 000.00) for his participation in and
2 assistance with the Litigation. Any enhancement awarded to Plaintiff by the Court shall be
3 deducted from the Settlement Amount for the purpose of determining the Net Settlement
4 Amount, and shall be reported on IRS Form 1099. If the Court approves an enhancement of less
5 than five thousand dollars (\$5, 000.00) to Plaintiff or does not approve any enhancement, then
6 the unapproved portion or portions shall revert into the Net Settlement Amount.

7 **XII. TAXATION AND ALLOCATION**

8 For withholding tax characterization purposes and payment of taxes, the Net Settlement
9 Amount shall be deemed and is allocated by the Parties as follows (“Net Settlement
10 Allocation”): one hundred percent (100%) as penalties.

11 All PAGA Group members who cash their settlement check may receive an IRS Form
12 1099 for their portion of the settlement, if deemed required by the Settlement Administrator (in
13 compliance with IRS guidelines).

14 **XIII. COURT APPROVAL**

15 This Agreement is subject to and conditioned upon obtaining Court approval under
16 Labor Code Section 2699.

17 A. Within thirty (30) days of execution of this Settlement Agreement, Plaintiff's
18 Counsel shall prepare and file a motion for Court approval of the Agreement. Defendant and
19 Defense Counsel shall cooperate in preparing the motion and supply evidence necessary for
20 obtaining Court approval. Plaintiff's lawyer will submit a draft motion to Defendant's lawyer
21 72 hours before the motion is filed and allow Defendant's lawyer an opportunity to review and
22 comment on the draft before it is filed. Upon Court Approval, a Judgment in substantially the
23 form attached hereto as Exhibit A shall be submitted to the Court for entry. The Court shall
24 maintain jurisdiction over this matter pursuant to California Code of Civil Procedure section
25 664.6 as necessary to enforce the terms of the Agreement.

26 B. If the Court does not issue an order approving the Agreement under the specific
27 terms requested, the Parties agree to meet and confer to address the Court's concerns in good
28 faith and determine whether resolution of the claims encompassed by the Agreement can be

1 obtained in a manner consistent with the Court's concerns.

2 C. The Parties expressly acknowledge that the Court's approval of this
3 Agreement is a condition precedent to any payments described in this Agreement.

4 D. If the Court does not grant approval of the Agreement, or if the Court's final
5 approval of the Agreement is reversed or materially modified on appellate review, then the
6 Agreement will become null and void. A modification of amounts payable as Plaintiff's
7 Counsel's PAGA Attorneys' Fees and Costs and/or Plaintiff's Enhancement Award shall not be
8 deemed a material modification of the Agreement.

9 E. Within five (5) business days after the submission of this Agreement to the Court for
10 approval, Plaintiff's counsel shall submit the Agreement to the LWDA through its online
11 procedures, and shall provide Defense Counsel with a copy of the LWDA's acknowledgement
12 of receipt of this Agreement.

13 **XIV. APPRIASAL AND CERTIFICATION BY THE SETTLEMENT**

14 **ADMINISTRATOR.**

15 The Settlement Administrator shall keep Plaintiff's Counsel and Defendants' Counsel
16 apprised of all distributions from the Settlement Amount. Upon completion of administration
17 of the Settlement, the Settlement Administrator shall provide written certification of such
18 completion to Plaintiff's Counsel and Defendant's Counsel. The Settlement Administrator shall
19 also provide Defendant with a final accounting, including the names of payees and Net
20 Settlement Payments.

21 **XV. MISCELLANEOUS PROVISIONS**

22 **A. Stay of Litigation**

23 Plaintiff and Defendant agree to the stay of all discovery in the Litigation, pending
24 Approval of the Resolution by the Court.

25 **B. Interpretation of the Agreement**

26 This Agreement constitutes the entire agreement between Plaintiff and Defendant.
27 Except as expressly provided herein, this Agreement has not been executed in reliance upon any
28 other written or oral representations or terms, and no such extrinsic oral or written

1 representations or terms shall modify, vary or contradict its terms. In entering into this
2 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
3 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
4 enforced under the laws of the State of California, both in its procedural and substantive aspects,
5 without regard to its conflict of law provisions. Any claim arising out of or relating to the
6 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
7 Court of the State of California for the County of San Bernardino. The foregoing is only limited
8 to disputes concerning this Agreement and in no way limits or negates the enforceability and
9 effect of the underlying arbitration agreements signed by employees of Defendant, specifically
10 including but not limited to Plaintiff, obligating them to arbitrate any and all claims on an
11 individual (and not on a class, collective, or representative) basis. Plaintiff, on his own behalf
12 and on behalf of the PAGA Group, and Defendant participated in the negotiation and drafting
13 of this Agreement and had available to them the advice and assistance of independent counsel.
14 As such, neither Plaintiff nor Defendant may claim that any ambiguity in this Agreement should
15 be construed against the other.

16 The terms and conditions of this Agreement constitute the exclusive and final
17 understanding and expression of all agreements between Plaintiff and Defendant with respect to
18 the Resolution of the Litigation. The Agreement may be modified only by a writing signed by
19 counsel for all Parties or their successors-in-interest.

20 **C. Further Cooperation**

21 Plaintiff and Defendant and their respective attorneys shall proceed diligently to prepare
22 and execute all documents, to seek Approval from the Court, and to do all things reasonably
23 necessary or convenient to consummate the Agreement as expeditiously as possible.

24 **D. Confidentiality of Documents**

25 Plaintiff, the Settlement Administrator, and Plaintiff's Counsel shall maintain the
26 confidentiality of all documents, deposition transcripts, declarations and other information
27 obtained in the lawsuit, unless necessary for appeal or such documents are ordered to be
28 disclosed by the Judge or by a subpoena. This section does not prohibit Plaintiff's counsel from

1 filing any and all required documents in relation to seeking approval of this Settlement.

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3 **E. Counterparts**

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

7 **F. Authority**

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

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

11 Plaintiff, members of the PAGA Group, Defendant and Released Entities are direct
12 beneficiaries of this Agreement, but there are no third-party beneficiaries.

13 **H. Force Majeure**

14 The failure of any party to perform any of its obligations hereunder shall not subject such
15 party to any liability or remedy for damages, or otherwise, where such failure is occasioned in
16 whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions,
17 floods, wars, interruptions or delays in transportation, power outages, labor disputes or
18 shortages, shortages of material or supplies, governmental laws, restrictions, rules or
19 regulations, sabotage, terrorist acts, acts or failures to act of any third parties, or any other similar
20 or different circumstances or causes beyond the reasonable control of such party.

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

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

24 **J. Severability**

25 In the event that any one or more of the provisions contained in this Agreement shall for
26 any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
27 unenforceability shall in no way effect any other provision if Defense Counsel and Plaintiff's
28 Counsel, on behalf of the Parties and the PAGA Group, mutually elect in writing to proceed as

1 if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

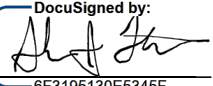
2 **K. Defendant's Fees and Costs**

3 All of Defendant's own legal fees, costs and expenses incurred in this Action shall be
4 borne by Defendant.

5
6 APPROVED AS TO CONTENT

7 PLAINTIFF

8
9 DATE: February____, 2022
10 3/10/2022

DocuSigned by:

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Shawn Fitzpatrick

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12
13 DEFENDANT

14
15 DATE: February____, 2022

16 By: _____

17 For: Concord Foods Inc.
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K. Defendant's Fees and Costs

All of Defendant's own legal fees, costs and expenses incurred in this Action shall be borne by Defendant.

APPROVED AS TO CONTENT

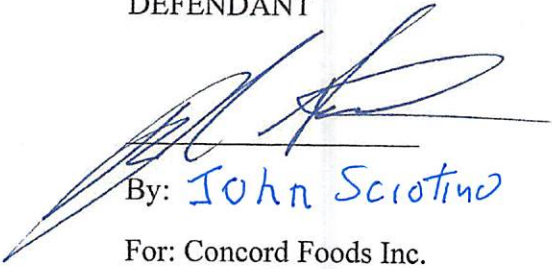
PLAINTIFF

DATE: February____, 2022

Shawn Fitzpatrick

DEFENDANT

DATE: March 17, 2022


By: John Sciotino
For: Concord Foods Inc.