

**CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

This Class Action and PAGA Settlement Agreement and Release of Claims is entered into by and between Plaintiff Edgar Alejandro Silva-Branbila (“Plaintiff”), individually and on behalf of all others similarly situated, and Defendant Barry Callebaut USA, LLC (“Defendant”), and is approved by their respective counsel of record, subject to the terms and conditions hereof and the Court’s approval.

A. Definitions

1. “Action” or “Lawsuit” means and refers to the case entitled *Edgar Alejandro Silva-Branbila v. Barry Callebaut USA, LLC*, pending in the Napa County Superior Court, Case No. 21CV000337.

2. “Aggrieved Employees” refers to all of Defendant’s current and former non-exempt hourly employees in California employed between March 9, 2020 and December 20, 2021 who (1) worked overtime hours and received shift premium pay; or (2) received at least one wage statement; or (3) received meal and/or rest period premium pay under California law during the PAGA Period.

3. “Agreement,” “Settlement Agreement,” “Settlement,” or “Stipulation” shall mean this Class Action and PAGA Settlement Agreement and Release of Claims, including any attached Exhibits.

4. “Class Claims” includes all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities that were asserted in the operative Complaint, or that are based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in the operative Complaint, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law. Class Claims specifically include, without limitation, any and all wage and hour claims for or related to failure to provide accurate itemized wage statements, failure to pay all overtime wages, waiting time penalties, failure to pay meal and rest period premiums at the regular rate of pay, unfair business practices, civil

penalties under PAGA for the underlying Labor Code violations, and any and all penalties, interest and attorneys' fees and costs for such claims (collectively, the "Released Class Claims"). The Released Parties shall be entitled to a Release for claims which occurred during the Class Period.

5. "Class Counsel" refers to Mehrdad Bokhour of Bokhour Law Group, PC and Joshua Falakassa of Falakassa Law, PC.

6. "Class Data" means a complete list that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator and shall include the Settlement Class Members' full names; last known addresses; telephone numbers; Social Security Numbers; and dates of employment and/or number of Workweeks Worked as non-exempt employees of Defendant in California during the Class Period and the PAGA Period for each Settlement Class Member.

7. "Class Period" and "Class Release Period" shall mean December 18, 2019 through December 20, 2021.

8. "Class Representative" or "Plaintiff" means and refers Edgar Alejandro Silva-Branbila.

9. "Complaint" refers to the Complaint filed in the Action entitled *Edgar Alejandro Silva-Branbila v. Barry Callebaut USA, LLC*, pending in the Napa County Superior Court, Case No. 21CV000337.

10. "Court" means the California Superior Court, County of Napa or any Court of competent jurisdiction.

11. "Defendant" means and refers to Barry Callebaut USA, LLC.

12. "Defendant's Counsel" or "Defense Counsel" means and refers to Harry DeCourcy, Esq. and Michael Nelson, Esq. of Littler Mendelson, PC.

13. "Effective Date" means the latest of the following dates: the date sixty-one (61) calendar days after Final Approval, if no motions for reconsideration and no appeals or other efforts to obtain review have been filed; or (ii) if a timely appeal is filed or other effort to obtain review of the Final Approval, the date of final resolution of that appeal (including any requests

1 for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the
2 Settlement.

3 14. “Final” means that the Settlement has been granted “Final Approval” by the
4 Court and the “Effective Date” has occurred.

5 15. “Final Approval” refers to the order of the Court granting final approval of this
6 Settlement Agreement and entering a Judgment approving this Settlement on the same terms
7 provided herein (unless explicitly excepted herein) or as may be modified by subsequent written
8 and executed agreement of the Parties.

9 16. “Final Settlement Class” or “Final Settlement Class Members” means,
10 collectively, all Participating Class Members and all Aggrieved Employees.

11 17. “Individual Settlement Amount” shall have the meaning ascribed to it in
12 Paragraph 49(d) below.

13 18. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph
14 49(c) below.

15 19. “Notice” means the Notice of Settlement of Class and PAGA Action that will be
16 sent to the Settlement Class Members.

17 20. “Notice Response Deadline” is 45 calendar days from the date the Notice is
18 mailed to the Settlement Class Members.

19 21. “Objecting Settlement Class Member” means a Settlement Class Member, other
20 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
21 respect to the Class Claims pursuant to Paragraph 71(a) below.

22 22. “PAGA” shall refer to the California Labor Code Private Attorneys General Act
23 of 2004, California Labor Code Sections 2698, *et seq.*

24 23. “PAGA Claims” shall include any and all claims for civil penalties pursuant to
25 PAGA based on the allegations stated in the PAGA Notices that accrued or arose during the
26 PAGA Period.

27 24. “PAGA Notices” shall refer to the notices sent by Plaintiff, by and through
28 counsel, on or about March 9, 2021, and August 3, 2021, to the California Labor & Workforce

1 Development Agency (“LWDA”) and to Defendant, alleging that Defendant engaged in
2 violations of the California Labor Code and California Wage Orders.

3 25. “PAGA Payment” shall mean a payment of \$10,000 to be paid from the Gross
4 Settlement Amount, with 25% of the payment going to the Aggrieved Employees, and 75% of
5 the payment going to the LWDA. These payments will be made whether or not the Aggrieved
6 Employees opt out of the Settlement since the Aggrieved Employees will not have the ability of
7 opting out of the PAGA portion of the Settlement.

8 26. “PAGA Period” and “PAGA Release Period” shall mean March 9, 2020 through
9 December 20, 2021.

10 27. “Participating Class Member” means any and all Settlement Class Members who
11 do not opt out of the Settlement of the Class Claims by submitting timely and valid Requests for
12 Exclusion and will be mailed an Individual Settlement Amount for their participation in the
13 Settlement.

14 28. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class Members, the
15 Aggrieved Employees, and Defendant, collectively.

16 29. “Preliminary Approval Date” means the date the Court preliminarily approves
17 the Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

18 30. “Preliminary Approval Order” means the judicial Order to be entered by the
19 Court, upon the application or motion of Plaintiff, preliminarily approving this Settlement and
20 providing for the issuance of the Notice of Settlement of Class and PAGA Action, an
21 opportunity to opt out of the Settlement of the Class Claims, an opportunity to submit timely
22 objections to the terms of this Settlement related to the Class Claims, and setting a hearing on
23 the fairness of the terms of Settlement, including approval of attorneys’ fees and costs.
24 Defendant will not object to Plaintiff’s motion for preliminary approval as long as it comports
25 with the terms of this Agreement.

26 31. “QSF” means the Qualified Settlement Fund set up by the Settlement
27 Administrator for the benefit of the Final Settlement Class, and from which the settlement
28 payments shall be made, and which is intended to be a fund that qualifies under Internal

1 Revenue Code Section 468.

2 32. "Release" shall mean the complete release and discharge of the Class Claims by
3 Plaintiff and all of the Participating Class Members and the complete release and discharge of
4 the PAGA Claims by Plaintiff and all of the Aggrieved Employees.

5 33. "Released Parties" shall refer to Defendant (including the Barry Callebaut group
6 companies) and its affiliates, and each of their respective subsidiaries, officers, directors,
7 members, partners, owners, shareholders, employees, former employees, agents, servants,
8 attorneys, assigns, independent contractors, volunteers, predecessors, successors, parent
9 companies and organizations, insurers, and any and all other persons, firms and corporations.

10 34. "Request for Exclusion" shall have the meaning ascribed to it in Paragraph 70(a)
11 below.

12 35. "Service Payment" or "Service Award" means the amount approved by the Court
13 to be paid to the Class Representative in addition to their Individual Settlement Amount as a
14 Participating Class Member.

15 36. "Settlement Administration Costs" means the costs payable from the Gross
16 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
17 but not limited to, printing, distributing, and tracking documents for this Settlement, translating
18 the class notice into Spanish, if necessary, tax reporting, due diligence, reporting and remittance
19 obligations, distributing the Gross Settlement Amount, and providing necessary reports and
20 declarations, as requested by the Parties. The Settlement Administration Costs shall be paid
21 from the Gross Settlement Amount.

22 37. "Settlement Administrator" means and refers to a mutually agreeable settlement
23 administrator agreed to by the Parties, that will provide the Notice to the Settlement Class
24 Members and distribute the settlement amounts as described in this Agreement.

25 38. "Settlement Amount" or "Gross Settlement Amount" shall have the meaning
26 ascribed to it in Paragraph 49(a) below.

27 39. "Settlement Class Member" or "Class Member" refers to individual members of
28 the Settlement Class.

1 40. “Settlement Class” and “Settlement Class Members” refers to all of Defendant’s
2 current and former non-exempt hourly employees in California employed between December
3 18, 2019 and December 20, 2021 who (1) worked overtime hours and received shift premium
4 pay; or (2) received at least one wage statement; or (3) received meal and/or rest period
5 premium pay under California law during the Class Period.

6 41. “Workweeks Worked” for each Settlement Class Member and Aggrieved
7 Employee means any workweek during the Class Period, as applicable, in which the Settlement
8 Class Member and/or Aggrieved Employee performed work for Defendant as a non-exempt
9 employee in California.

10 **B. General Terms**

11 42. On or about March 10, 2021, Plaintiff filed a class action complaint for wage
12 statement violations, failure to pay all overtime wages, waiting time penalties, unfair
13 competition, and PAGA penalties based on the foregoing Labor Code violations.

14 43. Defendant denies Plaintiff’s claims and allegations and contends that the Action
15 is not suitable for class certification and/or representative treatment. Defendant and the
16 Released Parties deny that they have engaged in any unlawful activity, they have failed to
17 comply with the law in any respect, or that they have any liability to anyone under the claims
18 asserted in this Action.

19 44. Class Representative believes he can proceed with his representative and class
20 claims, that the Action is meritorious, and that class certification is appropriate.

21 45. The Parties have conducted a thorough investigation into the facts of the Action.
22 This includes conducting extensive exchange of informal discovery, including Defendant’s
23 written policies and practices and the production of payroll and timekeeping records for
24 Settlement Class Members and Aggrieved Employees. Class Counsel is both knowledgeable
25 about and has done extensive research with respect to the applicable law and potential defenses
26 to the claims of the Settlement Class Members and Aggrieved Employees. Class Counsel has
27 diligently pursued an investigation of the Class Members’ claims against Defendant. Based on
28 the foregoing data and on their own independent investigation and evaluation, Class Counsel is

1 of the opinion that the settlement with Defendant for the consideration and on the terms set forth
2 in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the
3 Settlement Class Members and Aggrieved Employees in light of all known facts and
4 circumstances, including the risk of significant delay and uncertainty associated with litigation,
5 various defenses asserted by Defendant, and numerous potential appellate issues.

6 46. On December 12, 2021, the Parties participated in mediation with Kelly Knight,
7 a highly experienced labor and employment mediator. After a full-day mediation and
8 subsequent negotiations, and the issuance of a mediator's proposal, the Parties reached a
9 settlement.

10 47. The Parties agree that neither the Parties' Settlement, this Agreement, nor the
11 acts to be performed or judgments to be entered pursuant to the terms of the Settlement and
12 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
13 any statute or law or liability on the claims or allegations in the Action.

14 48. Stipulation for Class Certification and Representative Treatment. For settlement
15 purposes only, Defendant will stipulate that the Settlement Class Members described herein
16 who do not Request Exclusion from the Settlement Class may be conditionally certified as a
17 settlement class and that the Aggrieved Employees are appropriate for representative treatment
18 for purposes of settlement only. This stipulation to certification and representative treatment is
19 in no way an admission that class action certification and/or representative treatment is proper
20 and shall not be admissible in this or in any other action except for the sole purposes of
21 enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval,
22 or the Effective Date does not happen, the Parties' stipulation to class certification and
23 representative treatment as part of the Settlement shall become null and void *ab initio* and shall
24 have no bearing on and shall not be admissible in connection with the issue of whether or not
25 class certification and/or representative treatment would be appropriate in a non-settlement
26 context. Plaintiff expressly reserves his rights and declares that he will continue to pursue class
27 certification and representative treatment and a trial should the Court fail to issue Final
28 Approval or the Effective Date does not happen.

1 **C. Terms of Settlement**

2 49. The financial terms of the Settlement are as follows:

3 (a) Gross Settlement Amount: The Parties agree to settle this Action for Three
4 Hundred Fifty Thousand Dollars (\$350,000) (“the Settlement Amount”). The Settlement
5 Amount is the maximum amount that will be paid by Defendant and includes Individual
6 Settlement Amounts inclusive of attorneys’ fees of Class Counsel, costs and expenses, the
7 Service Payment to the Class Representative, all Settlement Administration Costs, and the
8 PAGA Payment. Defendant shall separately pay its share of employer payroll taxes.

9 (b) Net Settlement Amount: The “Net Settlement Amount” is defined as the
10 Settlement Amount less attorneys’ fees and litigation costs of Class Counsel as approved and
11 awarded by the Court, the Service Payment to the Class Representative as approved and
12 awarded by the Court, the Settlement Administration Costs as approved and awarded by the
13 Court, and the PAGA Payment as described in paragraph 43 below. In the event that the Court
14 reduces the attorneys’ fees and litigation costs to Class Counsel or the Service Award,
15 Settlement Administration Costs, or either increases or decreases the amount allocated of the
16 PAGA Payment, the Net Settlement Amount shall be increased or decreased accordingly.

17 (d) Individual Settlement Amounts for the Settlement Class: The Settlement
18 Administrator will use the Class Data provided by Defendant to calculate each Participating
19 Class Member’s and Aggrieved Employee’s Individual Settlement Amounts based on the
20 following formula:

21 i. PAGA Payment: \$10,000 of the Gross Settlement Amount has been
22 designated to the PAGA Claims. Twenty-five percent (25%), or \$2,500, shall be paid out to
23 Aggrieved Employees. Each Aggrieved Employee shall receive a portion of the proportionate to
24 the number of Workweeks Worked by the Aggrieved Employees during the PAGA Period
25 compared to the total number of Workweeks Worked by all Aggrieved Employees during the
26 PAGA Period.

27 ii. Class Amount: The Net Settlement Amount designated to the Class
28 Claims shall be allocated to each Participating Class Member based on his or her proportionate

1 Workweeks Worked during the Class Period compared to the total number of Workweeks
2 Worked by all Participating Class Members during the Class Period. Each Settlement Class
3 Member's respective estimated Workweeks Worked shall be identified in the Notice of
4 Settlement of Class and PAGA Action. If there are any timely submitted Requests for
5 Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement
6 Amounts for each Participating Class Member so that the amount actually distributed to
7 Participating Class Members equals 100% of the Net Settlement Amount allocated toward Class
8 Claims.

9 (e) Allocation of Individual Settlement Amounts: The Individual Settlement
10 Amounts paid to Participating Class Members for Class Claims will be allocated for tax
11 purposes based on the allegations in the Action as follows: twenty (20%) will be allocated as
12 wages subject to withholdings of all applicable local, state, and federal taxes; and eighty (80%)
13 will be allocated as interest and as civil penalties (pursuant to, e.g., California Labor Code
14 sections 203, 226) from which no taxes will be withheld. The Settlement Administrator will
15 issue to each Participating Class Member an Internal Revenue Service Form W-2 and
16 comparable state forms with respect to the wage allocation and a Form 1099 with respect to the
17 civil penalties and interest allocations, if required. Aggrieved Employees shall have their
18 Individual Settlement Amount from the PAGA Payment allocated as one hundred percent
19 (100%) civil penalties for which no taxes will be withheld and for which a Form 1099 will be
20 issued by the Settlement Administrator, if required.

21 (f) Service Payment to Class Representative: The amount awarded to the Class
22 Representative as a Service Payment will be set by the Court in its discretion, not to exceed
23 \$10,000. Defendant agrees not to oppose this request. The Service Payment to the Class
24 Representative will be paid out of the Gross Settlement Amount. The Class Representative will
25 be issued a Form 1099 in connection with this payment. Plaintiff shall be solely and legally
26 responsible to pay any and all applicable taxes on this payment. The Parties agree that any
27 amount awarded by the Court as the Service Payment to Plaintiff less than the requested amount
28 shall not be a basis for Plaintiff or Class Counsel to rescind the Settlement Agreement or

otherwise void the Settlement. Should the Court approve a lesser amount for the Service Payment, the unawarded amount shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. In the event of any appeal of the amount of the Service Award (if any) approved by the Court, if, after the exhaustion of any such appellate review, additional amounts not awarded to Class Representative shall be added to the Net Settlement Amount to be distributed to the Participating Class Members.

(g) Attorneys' Fees and Costs: Defendant agrees to not oppose a request by Class Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of the Gross Settlement Amount, plus reasonable litigation costs not to exceed \$15,000 ("Attorneys' Fees and Cost Award"). For purposes of this Settlement, Defendant agrees not to oppose any contention by Class Counsel that attorneys' fees should be based on the common fund theory. The Attorneys' Fees and Cost Award shall be paid from the Gross Settlement Amount, and except for this award, Defendant shall have no further obligation to pay any attorneys' fees, costs or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the unawarded amount shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. Any Court order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. In the event of any appeal of the amount of the awards of Attorneys' Fees and Costs (if any) approved by the Court, final funding and administration of the portion of the Attorneys' Fees and/or Costs award in dispute will be segregated and stayed pending the exhaustion of appellate review. If, after the exhaustion of any such appellate review, additional amounts not awarded to as Attorneys' Fees and Costs shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of Attorneys' Fees and Costs awarded by the Court. Class Counsel agrees that any allocation of fees between or among Class Counsel and any other attorney representing or claiming to represent the Class Members shall be the sole responsibility of Class Counsel.

1 (h) Settlement Administration Costs: The fees and other charges of the Settlement
2 Administrator will be paid from the Gross Settlement Amount, not to exceed \$7,500 subject to
3 Court approval, unless approved by all Parties and the Court.

4 (i) Tax Liability: Class Counsel, Defendant and Defendant's Counsel make no
5 representations as to the tax treatment or legal effect of the Individual Settlement Amounts
6 called for hereunder, and Plaintiff and the Settlement Class Members are not relying on any
7 statement or representation by Class Counsel, Defendant, or Defendant's Counsel in this regard.
8 Plaintiff and the Final Settlement Class understand and agree that they will be solely responsible
9 for the payment of any taxes and penalties assessed on their respective Individual Settlement
10 Amounts described herein. Income tax withholding will also be made pursuant to applicable
11 federal, state and/or local withholding codes or regulations. Forms W-2 and/or Forms 1099 will
12 be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the
13 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
14 thereunder, or other applicable tax law, are changed after the date of this Agreement, the
15 processes set forth in this Section may be modified in a manner to bring Defendant into
16 compliance with any such changes.

17 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT
18 (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH
19 PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN
20 "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF
21 THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE
22 BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER
23 ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
24 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
25 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
26 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
27 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
28 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX

1 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
2 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
3 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
4 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
5 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
6 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
7 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
8 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
9 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
10 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
11 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
12 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

13 50. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
14 no circumstances will any portion of the Settlement Amount revert to Defendant. Settlement
15 Class Members will not have to make a claim in order to receive an Individual Settlement
16 Amount. Distributions, in the form of Individual Settlement Amounts, will be made directly to
17 each Participating Class Member. The Settlement Administrator shall be responsible for
18 accurately and timely reporting any remittance obligations with respect to unclaimed funds as a
19 result of a Participating Class Member not cashing an Individual Settlement Amount by the
20 check cashing deadline, as set forth herein.

21 51. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
22 adequate, and will so represent same to the Court.

23 **D. Release by Plaintiff and the Final Settlement Class**

24 52. Upon the Effective Date of this Settlement, Plaintiff and each Participating Class
25 Member, for themselves and for their respective spouses, domestic partners, marital community,
26 children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors,
27 administrators, trustees, conservators, guardians, assigns, and representatives (collectively,
28 "Releasing Parties"), will forever completely release and discharge the Released Parties from

1 the Release for the Class Period with respect to the Class Claims. Each Participating Class
2 Member and/or Aggrieved Employee will be deemed to have made the foregoing Release as if
3 by manually signing it.

4 53. Upon the Effective Date of this Settlement, Plaintiff, the LWDA, and each
5 Aggrieved Employee, for themselves and the Releasing Parties will forever completely release
6 and discharge the Released Parties from the Release for the PAGA Period with respect to the
7 PAGA Claims regardless of whether any Aggrieved Employee submitted a Request for
8 Exclusion. Each Aggrieved Employee and the LWDA will be deemed to have made the
9 foregoing Release as if by manually signing it.

10 54. Plaintiff and Defendant intend that the Settlement described in this Agreement
11 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
12 arbitration, demand, or other action of any kind, by each and all of the Participating Class
13 Members to obtain a recovery based on, arising out of, and/or related to any and all of the
14 Release with respect to the Class Claims. The Settlement Class Members shall be so notified in
15 the Notice. This paragraph does not apply to any Settlement Class Member who timely and
16 validly opts out of the Settlement.

17 55. Plaintiff and Defendant intend that the Settlement described in this Agreement
18 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
19 arbitration, demand, or other action of any kind, by each and all of the Aggrieved Employees
20 and the LWDA to obtain a recovery based on, arising out of, and/or related to any and all of the
21 Release with respect to the PAGA Claims. The Aggrieved Employees and the LWDA shall be
22 so notified in the Notice.

23 56. Upon the Effective Date of this Settlement, in consideration for the Service
24 Payment, and except as otherwise stated in Paragraph 56(c), Plaintiff hereby fully and finally
25 releases and discharges the Released Parties from any and all of the Class Claims and PAGA
26 Claims, and from any and all claims, charges, complaints, liens, demands, causes of action,
27 obligations, damages and liabilities, known or unknown, suspected or unsuspected, that Plaintiff
28 had, now has, or may hereafter claim to have against the Released Parties arising out of, or

1 relating in any way to, the Plaintiff's hiring by, employment with, separation of employment
2 with, or otherwise relating to the Released Parties (collectively "Plaintiff's Released Claims"),
3 arising or accruing through the Class Period and PAGA Period. The Plaintiff's Released
4 Claims include all individual wage and hour claims, including claims arising from or dependent
5 on the California Labor Code; the Wage Orders of the California Industrial Welfare
6 Commission; California Business and Professions Code § 17200 et seq.; and the Fair Labor
7 Standards Act, 29 U.S.C. § 201 et seq.

8 (a) To effect a full and complete general release as described above, and
9 except as otherwise stated in Paragraph 56(c), Plaintiff expressly waives and relinquishes all
10 rights and benefits of section 1542 of the Civil Code of the State of California, and does so
11 understanding and acknowledging the significance and consequence of specifically waiving
12 section 1542. Section 1542 of the Civil Code of the State of California states as follows:

13 **A general release does not extend to claims that the**
14 **creditor or releasing party does not know or suspect to**
15 **exist in his or her favor at the time of executing the**
16 **release and that, if known by him or her, would have**
17 **materially affected his or her settlement with the**
18 **debtor or released party.**

19 (b) Thus, except as otherwise stated in Paragraph 56(c), notwithstanding the
20 provisions of section 1542, and to implement a full and complete release and discharge of the
21 Released Parties, Plaintiff expressly acknowledges this Settlement Agreement is intended to
22 include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist
23 in Plaintiff's favor at the time of signing this Settlement Agreement, and that this Settlement
24 Agreement contemplates the extinguishment of any such claims.

25 (c) Notwithstanding the scope of Plaintiff's Released Claims described in
26 Paragraph 56 above, Plaintiff's individual non-wage-and-hour claims are expressly excluded
27 from Plaintiff's Released Claims, including claims for disability discrimination under FEHA;
28

1 failure to provide reasonable accommodation; failure to engage and prevent, retaliation for
2 requesting reasonable accommodation; (5) wrongful termination in violation of Labor Code
3 sections 1102.5 and 6310; unfair Competition.

4 57. Class Representative, on behalf of himself and the Participating Settlement Class
5 Members, acknowledge and agree that the claims for unpaid wages, meal and rest period
6 violations, and untimely payment of wages in the Action, are disputed, and that the payments
7 set forth herein constitute payment of all sums allegedly due to them. Class Representative, on
8 behalf of himself and the Participating Settlement Class Members, acknowledge and agree that
9 California Labor Code Section 206.5 is not applicable to the Parties hereto. Section 206.5
10 provides in pertinent part as follows:

11 An employer shall not require the execution of any release of any claim or right
12 on account of wages due, or to become due, or made as an advance on wages to
13 be earned, unless payment of those wages has been made.

14 **F. Interim Stay of Proceedings**

15 58. Pending completion of all of the prerequisites necessary to effectuate this
16 Settlement, including remanding this Action to state court and amending the operative
17 Complaint, the Parties agree, subject to Court approval, to a stay of all proceedings in the
18 Action except such as are necessary to effectuate the Settlement, including amending the
19 operative complaint.

20 **G. Notice Process**

21 59. Appointment of Settlement Administrator. The Parties have agreed to the
22 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
23 including translating the Notice to Spanish, mailing the Notice, using standard devices to obtain
24 forwarding addresses, independently reviewing and verifying documentation associated with
25 any claims or opt-out requests, resolving any disputes regarding the calculation or application of
26 the formula for determining the Individual Settlement Amounts, drafting and mailing the
27 settlement checks to Final Settlement Class Members, issuing W-2 and 1099 Tax Forms,
28 reporting to taxing authorities, due diligence, reporting and remittance obligations, and

1 performing such other tasks as set forth herein or as the Parties mutually agree or that the Court
2 orders. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Final
3 Settlement Class Members, and Class Counsel any W-2, 1099, or other Tax Forms as may be
4 required by law for all amounts paid pursuant to this Agreement. The Settlement Administrator
5 shall also be responsible for setting up all necessary tax accounts and forwarding all payroll
6 taxes and penalties to the appropriate government authorities.

7 60. Disputes Regarding Settlement Administration. Any and all disputes relating to
8 administration of the Settlement by the Settlement Administrator (except for disputes regarding
9 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
10 over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify
11 the Court that all payments and obligations contemplated by this Settlement Agreement have
12 been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will
13 confer in good faith to resolve the dispute without the necessity of Court intervention.

14 61. Class Data. Within ten (10) business days after entry of the Preliminary
15 Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The
16 Settlement Administrator will run a check of the Class Members' addresses against those on file
17 with the U.S. Postal Service's National Change of Address List. The Class Data provided to the
18 Settlement Administrator will not be provided to Class Counsel and it will remain confidential,
19 it shall be used solely to administer the Settlement, and it will not be used or disclosed to
20 anyone, except as required by applicable tax authorities, pursuant to Defendant's express
21 written consent, or by order of the Court.

22 62. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
23 Administrator to the Settlement Class Members, by first class mail within seven (7) business
24 days following the Settlement Administrator's receipt of the Class Data. The Settlement
25 Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses
26 of Settlement Class Members if any envelopes are returned undeliverable.

27 63. Returned Notices. The Settlement Administrator will take steps to ensure that the
28 Notice is correctly mailed to all Settlement Class Members, including utilization of the National

1 Change of Address Database maintained by the United States Postal Service to review the
2 accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any
3 Settlement Class Member for whom an updated address is located within ten (10) calendar days
4 following both the Settlement Administrator learning of the failed mailing and its receipt of the
5 updated address. The Notice shall be identical to the original Notice, except that it shall notify
6 the Settlement Class Member that the exclusion (opt-out) request or objection must be returned
7 by the later of the Notice Response Deadline or fifteen (15) days after the remailing of the
8 Notice.

9 64. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
10 if an envelope has not been returned within thirty (30) days of the mailing that the Settlement
11 Class Member received the Notice.

12 65. Disputes Regarding Class Data. Settlement Class Members are deemed to
13 participate in the Settlement, unless they submit a timely and valid Request for Exclusion. The
14 Notice will inform Settlement Class Members of his/her estimated number of Workweeks
15 Worked during the Class Period. Settlement Class Members may dispute their Workweeks
16 Worked if they feel their estimated Workweeks Worked is not accurate by timely submitting
17 evidence to the Settlement Administrator. Absent evidence rebutting Defendant's records,
18 Defendant's records will be presumed determinative. However, if a Settlement Class Member
19 produces evidence to the contrary, Defendant will evaluate the evidence submitted by the Class
20 Member and the Settlement Administrator will make the final decision as to the number of
21 eligible Workweeks Worked that should be applied and/or the Individual Settlement Amount to
22 which the Settlement Class Member may be entitled. Settlement Class Members will have until
23 the Notice Response Deadline to dispute Workweeks Worked, object or opt out, unless
24 extended by the Court. In the event that the Settlement Administrator increases the number of
25 Workweeks Worked for any Settlement Class Member, then the Settlement Administrator will
26 recalculate the Participating Class Members' Individual Settlement Amounts; however, in no
27 event will Defendant be required to increase the Gross Settlement Amount.
28

1 66. Declaration of Due Diligence. The Settlement Administrator shall provide
2 counsel for the Parties, at least twenty-five (25) days prior to the final approval hearing, a
3 declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

4 67. Settlement Class Members' Rights. Each Settlement Class Member will be fully
5 advised of the Settlement, the ability to object to the provisions of the Settlement related to the
6 Class Claims, and the ability to opt-out or request exclusion from the Class Claims provisions of
7 the Settlement. Settlement Class Members will have until the Notice Response Deadline to
8 object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
9 Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what
10 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
11 request of Class Counsel or Defense Counsel. The Notice will inform the Settlement Class
12 Members of the Court-established deadlines for filing objections or requesting exclusion from
13 the Class Claims provisions of the Settlement in accordance with the following guidelines:

14 (a) Requests for Exclusion from Participating Settlement Class. Any
15 Settlement Class Member, other than Plaintiff, may request to be excluded from the
16 Participating Settlement Class by submitting a "Request for Exclusion" to the Settlement
17 Administrator, postmarked on or before the Notice Response Deadline. The Request for
18 Exclusion should state:

19 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS
20 IN THE SILVA V. BARRY CALLEBAUT LAWSUIT. I
21 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE
22 SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY
23 FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS
24 LAWSUIT."

25 Any Request for Exclusion must include the full name, address, telephone number, last
26 four digits of the social security number or date of birth, and signature of the Settlement Class
27 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
28 Settlement Administrator at the specified address. Any such Request must be made in
accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if

1 postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing.
2 Any Settlement Class Member who timely requests exclusion in compliance with these
3 requirements: (i) will not have any rights under this Agreement with respect to the Class
4 Claims, including the right to object, appeal, or comment on the Settlement; (ii) will not be
5 entitled to receive any payments under this Agreement with respect to Class Claims; and (iii)
6 will not be bound by this Agreement, or the Judgment with respect to the Class Claims.

7 (b) Binding Effect on Final Settlement Class Members. Except for those
8 Settlement Class Members who exclude themselves in compliance with the procedures set forth
9 above, all Settlement Class Members will: (i) be deemed to be Final Settlement Class Members
10 for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
11 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
12 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
13 reasonableness, and adequacy of the Settlement.

14 (c) Objections to Settlement of Class Claims. Any Settlement Class Member,
15 other than Plaintiff, may object to the terms of this Agreement with respect to the Class Claims
16 and may appear at the Final Approval Hearing and object whether or not they have filed a
17 written objection as outlined herein. To object, a Settlement Class Member shall inform the
18 Settlement Administrator, in writing, of his or her objection, which shall be postmarked by the
19 Notice Response Deadline at the address set forth in the Notice. Such objection shall include the
20 full name, address, telephone number, last four digits of the social security number or date of
21 birth, signature of the Objecting Settlement Class Member, and the basis for the objection,
22 including any legal support and each specific reason in support of the objection, as well as any
23 documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is
24 represented by counsel, the name and address of his or her counsel. If any Objecting Settlement
25 Class Member wishes to speak at the Final Approval Hearing with respect to the Class Claims,
26 that Objecting Settlement Class Member's written submission should include a request to be
27 heard, and the Court will determine whether Objecting Settlement Class Members will be
28 permitted to speak. The Settlement Administrator shall provide objections, if any, to Class

Counsel and Defense Counsel within three (3) days of receipt, and the Settlement Administrator shall attach the same to its declaration of due diligence submitted to the Court prior to the Final Approval Hearing. Any Participating Class Member who files an objection remains eligible to receive an Individual Settlement Amount from the Settlement. Plaintiff and Defendant shall not be responsible for any fees, costs, or expenses incurred by any Class Member and/or his or her separately retained counsel related to any objections to the Settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment under Code of Civil Procedure § 663. Settlement Class Members and Aggrieved Employees may not object to or opt-out of the Settlement with respect to the PAGA Claims.

(d) Failure to Object. Any Settlement Class Member who desires to object with respect to the Class Claims but fails to timely submit a written objection or appear at the final approval hearing to request to be heard waives any right to object and will be foreclosed from making any objection to this Settlement. Any Settlement Class Member who does not timely and properly become a party of record by intervening or filing a motion to vacate the judgment waives any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion under California Code of Civil Procedure section 473, and extraordinary writs.

(e) Responses to Objections. Counsel for the Parties may file a response to any objections submitted by Objecting Settlement Class Members.

68. Funding of the Settlement Amount. Defendant shall make a one-time deposit into the QSF of the Gross Settlement Amount, as described in Paragraph 50(a) that is necessary to make all payments required under this Settlement, within seven (7) business days after the Effective Date.

69. Distribution of Funds. No later than seven (7) calendar days after deposit of the payment into the QSF, the Settlement Administrator will mail the payments to the Final Settlement Class Members, the payment for the Attorneys' Fees and Costs to Class Counsel,

any Service Payment to the Class Representative, the PAGA Payment to the LWDA, and will pay itself the Settlement Administration Costs.

70. Deadline for Cashing Settlement Checks. Final Settlement Class Members shall have 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. If any Final Settlement Class Member's check is not cashed within that period, the check will be void and a stop-payment will be issued with any fees from the stop-payment paid from the QSF. All unclaimed funds (less stop-payment fees) shall be paid to the State of California's Unclaimed Property Fund in the name of the Participating Class Member. The Release of the Class Claims will be binding upon all Final Settlement Class Members regardless of whether they cash their checks within the 180-day period. In the event that any settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual. If a new address is located by these means, the Administrator will have ten (10) business days to re-issue the check and will notify Defense Counsel and Class Counsel that a re-issued check has been sent. Neither Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Final Settlement Class Member notifies the Settlement Administrator that he or she believes that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement check.

71. No person shall have any claim against Defendant (or its designee), Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on mailings, distributions, payments or reports made in accordance with or pursuant to this Agreement. This provision does not, however, prevent a Party from seeking enforcement of this Agreement.

72. Without prejudice to any other remedies, the Settlement Administrator shall agree to be responsible for any breach of its obligations (whether committed by the Settlement

Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from and against all liabilities, claims, causes of action, costs and expenses (including legal fees and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

H. Duties of the Parties Prior to the Court's Approval

73. Upon execution of this Agreement and the preparation and approval of the Notice, the Parties will stipulate to the filing of an amended Complaint, Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

(a) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate as to the Class Members and a hearing on Attorneys' Fees, Costs and the Service Payment;

(b) Approving as to form and content the proposed Notice;

(c) Directing the mailing of the Notice by first class mail to the Settlement Class Members;

(d) Preliminarily approving this Settlement; and

(e) Preliminarily certifying the class for purposes of this Settlement.

74. Reallocation of Settlement Proceeds. In the event the Court fails, on its first hearing, to approve this Agreement because the amount of the PAGA Payment is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within this Agreement, in order to try to achieve Final Approval of the Agreement upon any subsequent Court hearings.

I. Duties of the Parties Following Court's Final Approval

75. In connection with the Final Approval Hearing provided for in this Settlement Agreement, Class Counsel shall submit a proposed Final Approval Order and Judgment:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and

reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the Settlement; and

(c) Entering judgment approving Settlement, thereby permanently barring all Participating Class Members from prosecuting any Class Claims covered by the Release against any of the Released Parties and permanently barring all Aggrieved Employees and the LWDA from prosecuting any PAGA Claims covered by the Release against any of the Released Parties.

J. Voiding the Agreement

76. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Settlement Agreement which effects a fundamental change of the Settlement (unless explicitly excepted herein), the entire Settlement Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

77. If fifteen percent (15%) or more of the Settlement Class Members timely submit Requests for Exclusion, Defendant shall have the option of terminating or modifying this Agreement without prejudice to its pre-settlement positions and defenses in the Action. If Defendant exercises such option, under this paragraph it shall be relieved of any obligation to pay the Settlement Amount or any other obligations from the Settlement by giving notice to Plaintiff's Counsel and the Settlement Administrator within ten (10) days of the Notice Response Deadline. If Defendant exercises its option under this paragraph, Defendant shall be solely responsible for all Settlement Administration Costs incurred.

78. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

79. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Plaintiff and Defendant.

K. Other Terms

80. Full and Complete Defense. This Agreement may be pleaded by any Released

1 Party as a full and complete defense to and may be used as the basis for an injunction against,
2 any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted,
3 asserting any claims covered by the Release.

4 81. Waiver. The waiver by one Party of any breach of this Agreement by another
5 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

6 82. No Publicity. Communications regarding this Settlement prior to the Final
7 Approval Date shall be limited to Court-Approved Notices in the Action. After the Final
8 Approval Date, Class Counsel and the Class Representative agree that they will not make any
9 direct or indirect comment or publication of the Settlement or of Defendant in terms of
10 affirmative or responsive media statements/comments, press releases or conferences, website
11 postings or content, social media postings or content, other Internet postings or content,
12 subscribed email messages, newsletters, disseminated updates, mass mailings, or any other
13 comment or publication to the press, media, or public at large. Nothing herein shall be construed
14 to prevent Class Counsel from the public filing of motions or other case materials in the Action
15 related to seeking and obtaining Court approval of this Settlement and the related awards of
16 attorneys' fees and costs, or to respond to communications from Settlement Class Members or
17 their representatives about this Settlement, or to prevent the Parties or their representatives from
18 communicating with financial or legal advisors regarding the Settlement. In response to any
19 media inquiry, Class Counsel may state only that the Action has been settled on terms mutually
20 agreeable to the Parties. Except as explicitly provided for in this paragraph, Class Counsel shall
21 not discuss, promote, and/or advertise the fact and/or terms of the Settlement and Class Counsel
22 will strictly maintain the confidentiality of the fact and/or terms of the Settlement except as to
23 enforce this Settlement Agreement or communicate with Settlement Class members or their
24 representatives after preliminary approval.

25 83. Parties' Authority. The signatories hereto represent that they are fully authorized
26 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
27 hereof.

28 84. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to

1 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
2 such documents and to take such other action as may reasonably be necessary to implement the
3 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
4 best efforts, including all efforts contemplated by this Settlement Agreement and any other
5 efforts that may become necessary by order of the Court, or otherwise, to effectuate this
6 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
7 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
8 Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary
9 and final approval of the settlement, and the final entry of judgment.

10 85. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
11 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
12 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
13 cause of action or rights released and discharged by this Settlement Agreement.

14 86. No Admission. Defendant denies any and all liability to Plaintiff and/or any
15 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
16 that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and
17 compromise the matters at issue in the operative Complaint to avoid further substantial expense
18 and the inconvenience and distraction of protracted and burdensome litigation. Defendant also
19 has taken into account the uncertainty and risks inherent in litigation, and without conceding
20 any infirmity in the defenses that it has asserted or could assert against Plaintiff, has determined
21 that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the
22 terms and conditions set forth in this Agreement.

23 87. Inadmissibility of Agreement. Whether or not the Court issues the Final
24 Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement,
25 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing
26 on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has
27 entered into this Settlement Agreement with the intention of avoiding further disputes and
28 litigation with the attendant inconvenience and expenses. This Settlement Agreement is a

1 settlement document, and it, along with all related documents such as the notices, and motions
2 for preliminary and final approval, shall, pursuant to California Evidence Code section 1152
3 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an
4 action or proceeding to approve the settlement, and/or interpret or enforce this Settlement
5 Agreement. The stipulation for class certification as part of this Settlement Agreement is for
6 settlement purposes only and if, for any reason the settlement is not approved, the stipulation
7 will be of no force or effect.

8 88. Notices. Unless otherwise specifically provided herein, all notices, demands or
9 other communications given hereunder shall be in writing and shall be deemed to have been
10 duly given as of the third business day after mailing by United States registered or certified
11 mail, return receipt requested, addressed:

12 To the Settlement Class Members and Aggrieved Employees:

13 Mehرداد Bokhour
14 *mehرداد@bokhourlaw.com*
15 1901 Avenue of the Stars, Suite 450
16 Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

17 Joshua Falakassa
18 *josh@falakassalaw.com*
19 1901 Avenue of the Stars, Suite 450
20 Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (888) 505-0868

21 To Defendant:

22 Harry DeCourcy
23 *hdecourcy@littler.com*
24 Michael Nelson
25 *mwnelson@littler.com*
26 1255 Treat Blvd., Suite 600
27 Walnut Creek, California 94597
28 Tel: (925) 949-2381; Fax: (925) 955-1609

1 89. Construction. The Parties hereto agree that the terms and conditions of this
2 Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the
3 Parties and that this Settlement Agreement shall not be construed in favor of or against any
4 Party by reason of the extent to which any Party or her or its counsel participated in the drafting
5 of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and
6 statutory rule of construction that ambiguities should be construed against the drafter of an
7 agreement and further agree, covenant, and represent that the language in all parts of this
8 Agreement shall be in all cases construed as a whole, according to its fair meaning.

9 90. Captions and Interpretations. Paragraph titles or captions contained herein are
10 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
11 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
12 Settlement Agreement is contractual and not merely a recital.

13 91. Modification. This Settlement Agreement may not be changed, altered, or
14 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
15 Settlement Agreement may not be discharged except by performance in accordance with its
16 terms or by a writing signed by all of the Parties hereto.

17 92. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
18 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
19 provide written notice to the other Party and allow an opportunity to cure the alleged
20 deficiencies, and Plaintiff and Defendant agree to seek the help of the mediator identified in this
21 Agreement to resolve any dispute they are unable to resolve informally. During this period, the
22 Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any legal
23 action or other proceeding instituted by any person or entity other than Plaintiff or Defendant.

24 93. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment
25 pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure Section
26 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action over all
27 Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations of this
28 Agreement.

4 95. Choice of Law. This Settlement Agreement shall be governed by and construed,
5 enforced and administered in accordance with the laws of the State of California, without regard
6 to its conflicts-of-law rules.

7 96. Integration Clause. This Settlement Agreement contains the entire agreement
8 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
9 or contemporaneous agreements, understandings, representations, and statements, whether oral
10 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
11 hereunder may be waived except in writing.

12 97. Binding on Assigns. This Settlement Agreement shall be binding upon and inure
13 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
14 successors, and assigns.

15 98. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
16 because the members of the Settlement Class are numerous, it is impossible or impractical to
17 have each Final Class Member execute this Settlement Agreement. The Notice will advise all
18 Settlement Class Members of the binding nature of the releases provided herein and such shall
19 have the same force and effect as if this Settlement Agreement were executed by each Final
20 Settlement Class Member.

21 99. Counterparts. This Settlement Agreement may be executed in counterparts, and
22 when each Party has signed and delivered at least one such counterpart, each counterpart shall
23 be deemed an original, and, when taken together with other signed counterparts, shall constitute
24 one fully signed Settlement Agreement, which shall be binding upon and effective as to all
25 Parties. Electronic signatures shall have the same force and effect as an original.

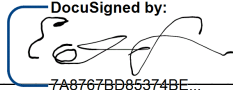
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APPROVAL AND EXECUTION BY PARTIES:

CLASS REPRESENTATIVE:

7/5/2022

Dated: June __, 2022

DocuSigned by:


Edgar Alejandro Silva-Branbila

DEFENDANT:

Barry Callebaut USA, LLC

Dated: June __, 2022

By: Philipp Muheim
Title: Regional Legal Counsel Americas

By: Angie Kipper
Title: VP Human Resources

1 **APPROVED AS TO FORM:**

2 **CLASS COUNSEL:**

3 7/5/2022

4 Dated: June __, 2022

FALAKASSA LAW, PC

DocuSigned by:

Joshua Falakassa

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Joshua Falakassa

Attorneys for Plaintiff and the Class

7 7/5/2022

8 Dated: June __, 2022

BOKHOUR LAW GROUP, P.C.

DocuSigned by:

Mehrdad Bokhour

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Mehrdad Bokhour

Attorneys for Plaintiff and the Class

12 **DEFENDANT'S COUNSEL:**

LITTLER MENDELSON, P.C.

14 Dated: June __, 2022

Harry DeCourcy

Michael Nelson

Attorneys for Defendant, Barry Callebaut USA, LLC

APPROVAL AND EXECUTION BY PARTIES:

CLASS REPRESENTATIVE:

Dated: June __, 2022

Edgar Alejandro Silva-Branbila

DEFENDANT:

Barry Callebaut USA, LLC

Dated: June __, 2022

Philipp Muheim

By: Philipp Muheim

Title: Regional Legal Counsel Americas

Angie Kipper

By: Angie Kipper

Title: VP Human Resources

1 **APPROVED AS TO FORM:**

2 **CLASS COUNSEL:**

3 Dated: June __, 2022

FALAKASSA LAW, PC

4
5
6 _____
Joshua Falakassa
Attorneys for Plaintiff and the Class

7
8 Dated: June __, 2022

BOKHOUR LAW GROUP, P.C.

9
10 _____
Mehrdad Bokhour
Attorneys for Plaintiff and the Class

11
12 **DEFENDANT'S COUNSEL:**

13 **LITTLER MENDELSON, P.C.**

14 Dated: June __, 2022

15
16 July 7, 2022

17 _____
Harry DeCourcy
Michael Nelson
Attorneys for Defendant, Barry Callebaut USA, LLC