

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Andrew J. Rowbotham (SBN 301367)
arowbotham@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355
Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

KETEMA NELSON, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

SANTINI FOODS, INC., a Texas
corporation; and DOES 1 through 100,

Defendants.

CASE NO. RG21090890

*[Case assigned for all purposes to the Hon.
Evelio Grillo, Dept. 21]*

**DECLARATION OF FLETCHER W.
SCHMIDT IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: March 23, 2022
Time: 10:00 a.m.
Dept.: 21

Action Filed: March 4, 2021
Trial Date: None Set

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I, Fletcher W. Schmidt, declare as follows:

1. I am a Partner at the Haines Law Group, APC, and counsel for the named Plaintiff Ketema Nelson (“Plaintiff”) in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I am a 2012 graduate of Loyola Law School, Los Angeles, where I graduated *cum laude* and was awarded membership in the Order of the Coif. Since graduating from law school, I worked as a law clerk for the law firm of Tredway, Lumsdaine & Doyle, where I was part of the defense team for two class actions, including one wage and hour class action in Los Angeles County Superior Court. From August 2013 to March 2016, I worked as an associate attorney at Boren, Osher & Luftman LLP. Since March 2016 I have worked at my current firm, Haines Law Group, APC, where, in 2018, I became a Partner.

3. During my time with Boren, Osher & Luftman LLP and Haines Law Group, APC, my practice has been solely devoted to litigating plaintiff-side wage and hour class actions in California state and federal court. I am currently responsible for managing a caseload of over thirty (30) active wage and hour class actions in which I am integrally involved in all aspects of the litigation.

4. The following is a non-exhaustive list of class action settlements in which I have been named as Class Counsel, and which have been granted final approval:

- *Julio v. Anthony, Inc.*, Case No. CV14-03172 AB (SHx), United States District Court, Central District of California, Honorable Judge Andre Birotte, Jr. presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- *Litt v. Western Stone & Metal Corp.*, Case No. 3:14-cv-02804-PJH, United States District Court, Northern District of California, Honorable Judge Phyllis J. Hamilton presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);

- *Rubalcava v. United Towing and Transport Burbank, et al.*, Case No. BC518468, California Superior Court, County of Los Angeles, Honorable Judge Kenneth Freeman presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015);
- *Rivera Regalado v. Jaguar Farm Labor Contracting*, Case No. CV 130569, California Superior Court, County of San Luis Obispo, Honorable Martin J. Tangeman presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- *Sanchez v. Res-Care, Inc.*, Case No. BC526175, California Superior Court, County of Los Angeles, Honorable John S. Wiley presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015);
- *Rodas v. Gateways Hospital and Mental Health Center*, Case No. BC503179, California Superior Court, County of Los Angeles, Honorable Judge Amy D. Hogue presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- *Shaw v. Conant Auto Retail, San Diego*, Case No. 37-2014-00044052-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge Joan M. Lewis presiding (approving an hourly rate of \$375 for work performed in 2014, 2015, and 2016);
- *Tirado v. Ricon Corp.*, Case No BC537042, California Superior Court, County of Los Angeles, Honorable Judge John Shepard Wiley, Jr. presiding (approving an hourly rate of \$375 for work performed in 2014, 2015, and 2016);
- *Tesla Motors Wage and Hour Litigation*, JCCP 4792, California Superior Court, County of Santa Clara, Honorable Peter H. Kirwan presiding (approving an hourly rate of \$375 for work performed in 2013, 2014, 2015, and 2016);
- *Lopez v. RM HQ LLC, et al.*, Case No. BC525592, California Superior Court, County of Los Angeles, Honorable Elihu M. Berle presiding (approving an hourly rate of \$375

for work performed in 2013, 2014, 2015, and 2016);

- *Horta v. Searles Valley Minerals, Inc.*, Case No. CIVDS 1507615, California Superior Court, County of San Bernardino, Honorable Donald Alvarez presiding (approving an hourly rate of \$375 for work performed in 2015 and 2016);
- *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of California, County of Los Angeles, Honorable Judge Elihu M. Berle presiding (approved at an hourly rate of \$425 for work performed in 2016 and 2017);
- *Khosravi v. Enterprise Rent-A-Car Company of Los Angeles, LLC, et al.*, Case No. 30-2016-00829923-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Judge Thierry Patrick Colaw presiding (approved at an hourly rate of \$425 for work performed in 2016 and 2017);
- *Nieves v. Ta Chen International, Inc.*, Case No. BC609005, Superior Court of California, County of Los Angeles, Honorable Judge Kenneth R. Freeman presiding (approved at an hourly rate of \$425 for work performed in 2016 and 2017);
- *Berkel v. Pride Bakeries, LLC*, Case No. 30-2017-00923148-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Judge William Claster presiding (approved at an hourly rate of \$425 for work performed in 2017 and 2018);
- *Ruvalcaba Quiroz v. Circle M Contractors, Inc.*, Case No. 30-2016-00885065-CU-OE-CXC, Superior Court of California, County of Orange, Honorable William D. Claster presiding (approving an hourly rate of \$425 for work performed in 2016, 2017 and 2018);
- *Armenta, et al., v. California Friends Homes d/b/a Quaker Gardens*, Case No. 30-2016-00883282-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Randall J. Sherman presiding (approving an hourly rate of \$425 for work performed in 2016, 2017 and 2018);
- *Sandra Zinnerman v. Tumbleweed Educational Enterprises, Inc.*, Case No. BC673708, Superior Court of California, County of Los Angeles, Honorable Maren

1 E. Nelson presiding (approving an hourly rate of \$425 for work performed in 2016,
2 2017, and 2018);

- 3 • *Tina Arellano v. Williams Sonoma Stores, Inc.*, Case No. BC693760, Los Angeles
4 County Superior Court, Honorable Daniel J. Buckley, presiding;
- 5 • *William Cuellar v. UMA Enterprises, Inc.*, Case No. BC657146, Los Angeles County
6 Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of
7 \$475 for work performed in 2017, 2018 and 2019);
- 8 • *Maria C. Garcia, et al. v. Simplified Labor Staffing Solutions, Inc.*, Case No.
9 BC696898, Los Angeles County Superior Court, Honorable Elihu M. Berle, presiding
10 (approving an hourly rate of \$475 for work performed in 2018 and 2019);
- 11 • *Arturo Delgado v. Spears Manufacturing Co.*, Case No. BC709665, Los Angeles
12 County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly
13 rate of \$595 for work performed in 2018, 2019 and 2020);
- 14 • *Ramon Soto v. L I Metal Systems*, Case No. 37-2017-00009607-CU-OE-CTL, San
15 Diego County Superior Court, Honorable Timothy Taylor, presiding (approving an
16 hourly rate of \$595 for work performed in 2017-2020); and
- 17 • *Michael Fishback v. Paragon Framing, Inc.*, Case No. CIVDS1906610, San
18 Bernardino County Superior Court, Honorable David Cohn, presiding (approving an
19 hourly rate of \$595 for work performed in 2019 and 2020).
- 20 • *Gonzalez v. Precision Hospitality & Development, LLC*, Case No. 30-2020-01127597-
21 CU-OE-CXC, Orange County Superior Court, Honorable Randall J. Sherman,
22 presiding (approving an hourly rate of \$625 for work performed in 2020 and 2021).

23 5. I have also moved to certify and have received an order certifying a class action
24 and/or conditionally certifying a collective action as Class Counsel in the following cases:

- 25 • *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-
26 OE-CXC, California Superior Court, County of Orange, Honorable Judge Gail A.
27 Andler presiding (certifying a class of employees who were misclassified as
28 independent contractors);

- 1 • *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx),
2 United States District Court, Central District of California, Honorable Judge Beverly
3 Reid O’Connell presiding (conditionally certifying an unpaid FLSA overtime wage
4 class);
- 5 • *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United
6 States District Court, Central District of California, Honorable Judge John F. Walter
7 presiding (certifying a rest period violation class and conditionally certifying a FLSA
8 unpaid overtime wage class);
- 9 • *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court,
10 Northern District of California, Honorable Judge Haywood S. Gilliam, Jr. presiding
11 (conditionally certifying an unpaid FLSA overtime wage class);
- 12 • *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United
13 States District Court, Eastern District of California, Honorable Judge Jennifer L.
14 Thurston presiding (conditionally certifying an unpaid FLSA overtime wage class);
- 15 • *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-
16 CXC, California Superior Court, County of Orange, Honorable Judge William Cluster
17 presiding (certifying unpaid overtime wage class and waiting time penalty class);
- 18 • *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-00775372-CU-OE-
19 CXC, California Superior Court, County of Orange, Honorable Judge Glenda Sanders
20 presiding (certifying five separate classes for claims for unpaid wages, unreimbursed
21 expenses, failure to authorize and permit rest periods, and derivative claims);
- 22 • *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx),
23 United States District Court, Central District of California, Honorable Dolly M. Gee
24 presiding (certifying six classes of employees for rest period violations, wage
25 statement violations, meal period violations, and overtime and double-time
26 violations); and
- 27 • *Staublein v. Wells Fargo Bank, National Association*, Case No. CIVDS1712267, San
28 Bernardino Superior Court, Honorable David Cohn presiding (certifying a wage

statement class).

6. In 2018, 2019, and 2020, Thomson Reuters and Los Angeles Magazine recognized me as a Top Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyers. This is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the age of forty in Southern California each year.

7. As counsel for Plaintiff, I have been closely involved in all aspects of this litigation since its inception.

8. Defendant is a California based manufacturer and importer of various milks, syrups, juices, and sauces. Plaintiff, like all other Settlement Class members, was an employee of Defendant and worked in California during the Class Period.

9. Plaintiff alleges that Defendant regularly required employees to work 7-day workweeks without at least one day's rest in each workweek. Plaintiff's analysis of the timekeeping records reveals that approximately 23.4% of the sampled workweeks were 7-day workweeks. Extrapolating this figure out for all workweeks worked in the relevant time period results in approximately 5,262 violations (22,489 workweeks x 0.234). Assuming that Plaintiff could prove at least one substantive violation in each applicable pay period due to the 7-day workweek violations and frequent meal period violations, Defendant's potential exposure for Private Attorneys General Act ("PAGA") civil penalties is \$1,370,700 (13,707 pay periods x \$100.00 "initial" violation rate). Plaintiff discounted Defendant's potential liability by 50% for the risk of manageability issues preventing the case from proceeding on a representative basis, and by an additional 90% to account for the potential for this Court to reduce the civil penalties, for a projected total of \$68,535.

10. Defendant argues that it does not require employees to work 7-day workweeks. Instead, employees are permitted to work extra shifts during the workweek if they so choose. Defendant further contends that these alleged violations do not include a penalty provision, limiting Plaintiff solely to civil penalties under PAGA for any proven violations.

11. Plaintiff alleges that Defendant failed to provide timely 30-minute first meal periods (commencing before the end of the fifth hour of work). Specifically, Plaintiff and other

employees were often required to delay their meal periods such that they were not provided until work was less busy, other employees came back from their breaks, or urgent pallets were unloaded. Plaintiff's analysis of the pre-mediation production revealed 71.8% of the shifts in excess of 6.0 hours reflected either a meal period that was less than 30-minutes (59.2% of shifts) or a meal period that commenced after the fifth hour of work (39.4% of shifts). Plaintiff extrapolated these figures based on 5.8 shifts per average workweek which led to 93,653 first meal period violations (22,489 workweeks x 5.8 shifts x .718). Plaintiff further determined the average rate of pay for employees during the Class Period at \$16.41. Combining these figures, Plaintiff calculated Defendant's meal period exposure as follows: \$1,536,846 (93,653 first meal period violations x \$16.41 average meal premium). Plaintiff discounted Defendant's maximum exposure by 75% for the risk of non-certification and 50% for the risk of being unsuccessful on the merits, to arrive at an estimated exposure of \$192,106.

12. Defendant contends that it has always provided employees with legally compliant first meal periods and that any meal periods that did not meet that standard were solely the result of employee choice (not Defendant's policy/practice). Defendant further argues that under *Brinker* it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken – which Defendant contends it has always done. Finally, Defendant contends that Plaintiff's meal period claim is not suited for class certification as individual inquiries would be required to assess which employees received non-compliant meal periods, how many meal periods were non-compliant, and the reasons why a particular individual recorded a non-compliant meal period on a particular shift, particularly so in light of Plaintiff's challenges to the validity of the timekeeping records. Defendant also produced a copy of its "Missed or Late Rest Break and/or Meal Period Form" which was available for employees to submit in instances that they were not able to take a meal period.

13. As a result of these alleged substantive violations, Plaintiff contends that Defendant is liable for derivative wage statement violations, waiting time liability for its failure to pay employees all final wages upon separation of employment, and civil penalties under PAGA.

1 14. According to the data produced by Defendant, there were 13,707 wage statements
2 issued to approximately 328 employees during the time period applicable to wage statement
3 penalties (1 year prior to the filing of the complaint to the present). Defendant's potential exposure
4 for wage statement penalties, cognizant of the \$4,000 per employee cap designated in Labor Code
5 § 226(e)(1), is therefore \$1,312,000 (328 employees x \$4,000 maximum penalty). Plaintiff
6 discounted Defendant's potential liability by 75% for a risk of non-certification, and by an
7 additional 50% for the risk of losing on the merits or failing to prove violations were 'knowing
8 and intentional,' for a projected total of \$164,000.

9 15. There are approximately 210 employees who separated their employment with
10 Defendant during the time period applicable to waiting time penalties (3 years prior to the filing
11 of the complaint to the present). Defendant's potential exposure for waiting time penalties is
12 therefore \$827,064 (210 former employees x 16.41 average hourly rate x 8 hours per workday x
13 30 days of waiting time penalty). Plaintiff discounted Defendant's potential liability by 75% for
14 a risk of non-certification, and by an additional 50% for the risk of losing on the merits or failing
15 to establish wilfulness, for a projected total of \$103,383.

16 16. Defendant argues that the alleged wage statement violations were not "knowing
17 and intentional," and that Plaintiff could not show he "suffer[ed] injury," as required by Labor
18 Code § 226(e) for imposition of penalties. Defendant contends that any alleged failure to pay meal
19 period premiums cannot support a derivative claim for wage statement or waiting time penalties.
20 Defendant further contends that, even if meal period violations could support waiting time
21 penalties, Defendant possesses strong, good faith defense to Plaintiff's underlying claims,
22 precluding recovery of waiting time penalties (which are only available for the "willful" failure
23 to pay wages).

24 17. Since Plaintiff's PAGA claim is derivative of the underlying claims, Defendant
25 asserts that the PAGA claim will fail with those claims. Defendant also maintains that given its
26 good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA
27 penalties if it were to find Defendant liable for any of Plaintiff's claims.

1 18. Plaintiff's complaint also asserts that Defendant miscalculated the regular rate of
2 pay for overtime purposes by failing to include the value of certain bonuses in the regular rate,
3 and that Defendant failed to provide second meal periods and third rest periods to employees who
4 worked shifts in excess of 10.0 hours. Prior to mediation, Defendant produced information to
5 corroborate the wholly discretionary nature of Defendant's bonuses. Plaintiff reviewed this
6 information and ultimately determined it was unlikely he would be able to prove these bonuses
7 were non-discretionary in nature. Plaintiff therefore placed a nominal value on this claim at
8 mediation. Additionally, after interviewing Plaintiff and reviewing the putative class member
9 timesheets produced in furtherance of mediation, Plaintiff determined that putative class members
10 generally worked shifts under 10.0 hours during the Class Period. Defendant also produced
11 numerous meal period waivers signed by putative class members. These facts led Plaintiff to
12 conclude that the second meal period and third rest period claim were not viable on a classwide
13 basis.

14 19. Taking Defendant's defenses into account and using the reduced figures for each
15 of the claims described above, Plaintiff predicts that a realistic classwide recovery would be
16 approximately \$528,024. This Settlement provides a recovery to the Settlement Class of
17 \$440,000, which is approximately 83.33% of Plaintiff's projected potential recovery, while
18 avoiding the further expense and serious risk of proceeding towards class certification and trial.

19 20. Defendant previously settled a similar wage and hour class action titled, *Catalina*
20 *Hernandez, et al. v. Santini Foods, Inc.*, Alameda County Superior Court Case No. RG17878049
21 (final approval granted on February 21, 2020). The release in the *Hernandez* lawsuit encompasses
22 alleged violations between October 6, 2013, and October 14, 2018. The Class Period in this
23 Settlement therefore begins on October 15, 2018.

24 21. In connection with mediation but prior to formal discovery, Defendant provided
25 Plaintiff with timekeeping and payroll records for 10% of the employees who worked during the
26 Class Period. Plaintiff then conducted an analysis of this data and created a comprehensive
27 damages model to calculate the likely exposure that Defendant faced on each claim for the entire
28 Class Period.

1 22. On December 7, 2021, the Parties participated in a mediation with Francis
2 “Tripper” Ortman, a respected wage and hour class action mediator in California. During
3 mediation, the Parties exchanged divergent views on Defendant’s liability and exposure
4 valuations, debated their legal positions, and shared their arguments regarding the likelihood of
5 certification of Plaintiff’s claims. As a result of a mediator’s proposal from Mr. Ortman, the
6 Parties were able to reach a classwide settlement which, over the following months, was
7 memorialized the terms into the Stipulation of Settlement (“Settlement Agreement”). A true and
8 correct copy of the Settlement Agreement and the proposed Notice Packet (which is comprised
9 of the Notice of Class Action Settlement (“Class Notice”) and Notice of Settlement Award
10 (“Dispute Form”)) are attached hereto as **Exhibits 1 and 2**, respectively.

11 23. Should the Court preliminarily approve this settlement, Defendant will pay a
12 Maximum Settlement Amount of \$440,000.00. Defendant’s records as of the date of mediation
13 indicate that there are approximately 515 potential Settlement Class members who worked during
14 the Class Period. Based on the records provided for mediation purposes, there are approximately
15 18,042 workweeks worked as of November 2021. Based on the proposed allocations of the Net
16 Settlement Amount, Settlement Class members will receive average payments of approximately
17 \$440.84. The highest potential Individual Settlement Payment that a Settlement Class member
18 could receive is estimated to be approximately \$2,176.96 (if the Settlement Class member worked
19 every pay period during the Class Period).

20 24. Plaintiff will apply for an enhancement payment in the total amount of \$5,000.00
21 for his service to the Settlement Class and his general release of all claims (known or
22 unknown) against Defendant. Plaintiff’s Enhancement Payment is intended to recognize the
23 significant benefits conferred upon the Settlement Class due to the time and effort that Plaintiff
24 expended on their behalf, including providing factual information and documents to attorneys at
25 my firm, identifying potential witnesses who also worked under the same compensation system
26 and experienced the same alleged Labor Code violations, and participating in meetings with
27 attorneys at my firm to discuss the claims and theories at issue in the litigation. Plaintiff’s
28 Enhancement Payment is also requested due to the significant risks that Plaintiff undertook by

1 agreeing to serve as the named plaintiff in this case, as well as the fact that Plaintiff agreed to a
2 general release of all claims subject to a waiver of California Civil Code § 1542.

3 25. My firm will also apply for an attorneys' fee award of \$146,666.67 (one-third of
4 the Maximum Settlement Amount) and up to \$20,000.00 in verified costs. My firm incurred
5 substantial attorneys' fees conducting the pre-filing investigation, analyzing Plaintiff's claims,
6 conducting legal research and analysis into those claims, reviewing data and documents produced
7 by Defendant, building a comprehensive damages model, preparing for and attending mediation,
8 negotiating and preparing the long-form Settlement Agreement, preparing this motion for
9 preliminary approval, and otherwise litigating the case. My firm will also expend future attorney
10 time in attending the hearing on this Motion, overseeing the Notice process and fielding questions
11 from Settlement Class members, drafting the Final Approval Motion along with supporting
12 documents, and attending the final approval hearing, among other tasks.

13 26. On February 24, 2022, Plaintiff provided notice of the proposed Settlement, as
14 well as copies of the Motion and supporting papers, to the Labor & Workforce Development
15 Agency ("LWDA"). A true and correct copy of the LWDA's Submission Confirmation is attached
16 hereto as **Exhibit 3**.

17 27. Plaintiff proposes that the Settlement be administered by ILYM Group, Inc., an
18 experienced class action settlement administrator. I confirm that I am not affiliated with the
19 proposed settlement administrator, ILYM Group, Inc.

20 I declare under penalty of perjury under the laws of California and the United States that
21 the foregoing is true and correct. Executed on February 24, 2022, at El Segundo, California.

22
23 
24 Fletcher W. Schmidt

EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Ketema Nelson (“Plaintiff” or “Class Representative”), individually and on behalf of all members of the Settlement Class (defined below), on the one hand, and Defendant Santini Foods, Inc. (“Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Fletcher W. Schmidt, Andrew J. Rowbotham of Haines Law Group, APC (collectively, “Class Counsel”). Defendant is represented by Noah Levin of Pacific Employment Law (“Defense Counsel”).

On March 4, 2021, Plaintiff filed a class action complaint against Defendant in Alameda County Superior Court titled *Ketema Nelson v. Santini Foods, Inc.*, Case No. RG21090890 (the “Action”). Plaintiff’s complaint asserted the following causes of action against Defendant: (1) failure to pay all overtime wages (Labor Code §§ 204, 510, 558, 1194, 1198); (2) meal period violations (Labor Code §§ 226.7, 512, 558); (3) wage statement violations (Labor Code § 226 *et seq.*); (4) waiting time penalties (Labor Code §§ 201-203); and (5) unfair competition (Bus & Prof Code § 17200 *et seq.*). On May 10, 2021, Plaintiff amended the complaint to add a cause of action for civil penalties under the Private Attorneys General Act (“PAGA”) (Labor Code § 2698 *et seq.*). On July 6, 2021, Plaintiff amended his complaint again to add factual allegations related to Defendant’s alleged failure to provide second meal periods and third rest periods for shifts more than 10.0 hours in addition to a corresponding cause of action for rest period violations (Labor Code §§ 226.7, 516, 558).

Given the uncertainty of litigation, and without Defendant making any admission as to the merits of any of the claims asserted, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class and PAGA Members Defined.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All current and former non-exempt employees of Defendant in California who worked at any time between October 15, 2018, and the date of preliminary approval of the settlement, or February 5, 2022, whichever is sooner (the “Class Period”), and who did not sign a separation agreement during the Class Period.

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Code of Civil Procedure § 382. If for any reason the Court does not approve this Settlement Agreement or the Settlement Agreement is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties will revert to the respective positions they held prior to entering into the Settlement Agreement. Should the Court not approve the Settlement, the Parties agree to attend mediation again in an effort to reach a settlement that will be approved.

Additionally, for the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate that the PAGA Members will be defined as:

All current and former non-exempt employees of Defendant in California who worked at any time between March 4, 2020, and the date of preliminary approval of the settlement, or February 5, 2022, whichever is sooner (the "PAGA Period").

2. **Release by Settlement Class Members, PAGA Members, and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who opt out of the Settlement) will release and discharge Defendant, its past and present officers, directors, shareholders, managers, employees, agents, principals, spouses, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys (collectively "Defendant's Releasees") as follows:

- A. All members of the Settlement Class who do not opt-out will fully and finally release and discharge Defendant and Defendant's Releasees from all claims, demands, rights, liabilities and causes of action that were pled in the operative complaint in the Action, or which could have been pled in the operative complaint in the Action based on the factual allegations therein, that arose during the Class Period (collectively, the "Class Released Claims"). This release will apply to claims arising during the Class Period and become effective upon the date that Defendant deposits the entire Maximum Settlement Amount with the Settlement Administrator.
- B. PAGA Members, regardless of whether they opt-out of the Settlement, will fully and finally release and discharge Defendant and Defendant's Releasees from all PAGA claims that are based on the Labor Code violations pled in the operative complaint in the Action or Plaintiff's letters to the LWDA dated March 4, 2021 and July 21, 2021, or which could have been pled in the operative complaint in the Action based on the factual allegations therein, that arose during the PAGA Period (collectively, the "PAGA Released Claims"). This release will apply to claims arising during the PAGA Period and become effective upon the date that Defendant deposits the entire Maximum Settlement Amount with the Settlement Administrator.
- C. Considering Plaintiff's Class Representative Enhancement Payment, Plaintiff also agrees to release, as an individual and in addition to the released claims described in Paragraph 2.A. and 2.B., above, all claims, whether known or unknown, under federal law or state law against Defendant and Defendant's Releasees. The Parties understand and agree that Plaintiff is not, by way of this release, releasing any workers' compensation claims nor any other claims which cannot be released as a matter of law. Notwithstanding the foregoing, Plaintiff understands that this release includes unknown claims, and that Plaintiff is, as a result, waiving all rights and benefits afforded by California Civil Code § 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her

favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

- D. The “Effective Date” of the Settlement will be later of the following: (a) if no timely objections are filed or if all objections are withdrawn, the date upon which the Court enters Final Approval; (b) if an objection is filed and not withdrawn, the date for filing an appeal and no such appeal being filed; (c) if any timely appeals are filed, the date of the resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the settlement; (d) the date that Defendant deposits the entire Maximum Settlement Amount with the Settlement Administrator.
3. **Maximum Settlement Amount.** As consideration, Defendant agrees to pay a “Maximum Settlement Amount” of \$440,000.00 in full and complete settlement of the Action, as follows:
- A. The Parties have agreed to engage ILYM Settlement Administrators as the “Settlement Administrator” to administer this Settlement.
- B. Defendant will pay the Maximum Settlement Amount no later than 65 days after entry by the Court of an Order granting final approval to the Settlement, assuming no appeals or objections to the Settlement are filed. Should an appeal or objection be filed, payment will be due no later than 65 days after the appeal or objection are resolved in favor of enforcing the Settlement.
- C. This is a non-reversionary settlement. The Maximum Settlement Amount includes:
- (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Settlement Administrator associated with the administration of the Settlement, which are anticipated to be no greater than \$11,300.00;
 - (3) Up to \$5,000.00 for Plaintiff’s Class Representative Enhancement Payment in recognition for Plaintiff’s contributions to the Action and Plaintiff’s service to the Settlement Class;
 - (4) Up to one-third (1/3) of the Maximum Settlement Amount in Class Counsel’s attorneys’ fees (currently estimated at \$146,666.67), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than \$20,000.00; and
 - (5) \$40,000.00 of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or \$30,000.00, will be payable to the Labor & Workforce Development Agency (“LWDA”), and the remaining 25%, or \$10,000.00, will be payable to the PAGA Members as the “PAGA Amount,” as described below.

- D. Defendant will not oppose the reasonableness of these requests. Any reduction by the Court of these requests will revert to the Settlement Class Members who do not opt-out.
 - E. **Escalator Clause.** Defendant represents that there are an estimated 18,042 workweeks worked by the Settlement Class members as of November 12, 2021. If the number of total workweeks worked by Settlement Class Members during the Class Period as reported to the Settlement Administrator following preliminary approval is more than 10% greater than this figure (i.e., if there are 19,847 or more total workweeks), Defendant may elect to either: (1) increase the Maximum Settlement Amount on a proportional basis (i.e., if there was 15% increase in workweeks, Defendant would increase the Maximum Settlement Amount by 15%) or (2) cut off the Class Period and PAGA Period as of the date that there are 19,846 total workweeks worked.
 - F. **Right to Revoke.** Defendant represents there are approximately 515 individuals who worked for Defendant in California through December 7, 2021. Should more than 5% of Settlement Class Members elect to opt-out of the Settlement (i.e., if 26 or more individuals opt out), Defendant has the right to void the Settlement and pay any administration costs incurred up to that point.
 - G. **Employer Payroll Taxes.** The Maximum Settlement Amount does not include the employer's share of payroll taxes on any amounts designated as wages, which Defendant will pay separate and apart from, and in addition to, the Maximum Settlement Amount.
4. **Payments to the Settlement Class.** Settlement Class Members are not required to submit a claim form to receive a payment ("Individual Settlement Payment") from the Settlement. Individual Settlement Payments will be determined and paid as follows:
- A. The Settlement Administrator will first deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, the Class Representative Enhancement Payment, the Settlement Administrator's fees and expenses for administration, and the amount of PAGA civil penalties designated as payable to the LWDA. The remaining amount will be known as the "Net Settlement Amount."
 - B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Individual Settlement Payment based on the following formula:
 - i. PAGA Amount: The \$10,000.00 payable to PAGA Members as PAGA civil penalties will be designated as the "PAGA Amount." Each employee who was employed by Defendant in California any time between March 4, 2020, and the date of preliminary approval of the settlement, or February 5, 2022, whichever is sooner, will receive a portion of the PAGA Amount

proportionate to the number of workweeks that he or she worked during the aforementioned time period.

- ii. Wage Statement Amount: Ten percent (10%) of the Net Settlement Amount will be designated as the “Wage Statement Amount.” Each employee who was employed by Defendant in California any time between March 4, 2020, and the date of preliminary approval of the settlement, or February 5, 2022, whichever is sooner, will receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
 - iii. Waiting Time Amount: Ten percent (10%) of the Net Settlement Amount will be designated as the “Waiting Time Amount.” The Waiting Time Amount will be distributed in equal shares to each participating Settlement Class Member who separated their employment with Defendant on or after October 15, 2018.
 - iv. The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member’s total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class Members during the Class Period.
- C. Within 10 business days following the funding of the Maximum Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate each Settlement Class member’s Individual Settlement Payment and will prepare and mail Individual Settlement Payments to Settlement Class Members.
- D. Each Settlement Payment will be allocated as 10% wages and 90% penalties and interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class Members an IRS Form W-2 (for amounts paid as wages) and an IRS Form 1099 (for amounts paid as penalties and interest). Settlement Class Members will be responsible for all employee-side taxes due on Individual Settlement Payments.
- E. Defendant will fully discharge its obligations to those Settlement Class Members to whom Defendant will pay a Settlement Amount through the mailing of a settlement check, regardless of whether Settlement Class Members received and/or negotiated the check. Any check that is not negotiated within 180 days of mailing to a Settlement Class member will be distributed by the Settlement Administrator to the cy pres, Legal Aid at Work (EIN 94-2783401), a 501(c)(3) organization dedicated to providing legal services to the indigent population in and around Alameda County.

- F. Neither Plaintiff nor Defendant will bear any liability for lost, stolen, undelivered or misdelivered checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of up to one-third of the Maximum Settlement Amount, which is currently estimated to be \$146,666.67. Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed \$20,000.00 from the Maximum Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed, and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award approved by the Court.

6. **Class Representative Enhancement Payment.** Defendant will not object to a request for Class Representative Enhancement Payment of \$5,000.00 for Plaintiff's time and risk in prosecuting this case and Plaintiff's service to the Settlement Class. This award will be in addition to Plaintiff's Individual Settlement Payment as a Settlement Class Member and will be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant will not object to the appointment of ILYM Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiff seeking approval to pay up to \$11,300.00 for the administration services from the Maximum Settlement Amount. The Settlement Administrator will be responsible for sending notices to the Settlement Class Members, for calculating Individual Settlement Payments, and for preparing all checks and mailings. The Settlement Administrator will be authorized to pay itself from the Maximum Settlement Amount only after Individual Settlement Payments have been mailed to all Settlement Class Members.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff will apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing Paul K. Haines, Fletcher W. Schmidt, and Andrew J. Rowbotham of Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiff Ketema Nelson as Class Representative for the Settlement Class;
- D. Approving ILYM Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;

- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Settlement Payment), and which counsel for all Parties will mutually agree upon before submitting to the Court, and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class will be notified as follows:

- A. Within 10 business days after the Court signs an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the names, addresses, phone numbers, social security numbers, and workweek information for all Settlement Class and PAGA Members, to the extent all such information is available.
- B. Within 10 business days from receipt of this information, the Settlement Administrator will (i) run the names of all Settlement Class Members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class Members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Payment for each Settlement Class member; and (iv) mail a Notice Packet (in English and Spanish) to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline will be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within 5 business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator will resend the Notice Packet to the Settlement Class member immediately, and in any event within 5 business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address will be presumed to be the best mailing address for each Settlement Class member. Settlement Class Members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator will have an additional 14 calendar days after the Response Deadline to opt-out, object, or dispute their Settlement Payment. Notice Packets that are re-mailed will inform the recipient of this adjusted deadline.
- D. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within 60 calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).

- i. The Notice Packet will state that Settlement Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Class Member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion will be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal, or comment thereon.
 - ii. PAGA Members may not opt-out of the release of PAGA claims (as described in Paragraph 2.B.) and will thus receive payment for their share of the PAGA Amount even if they request exclusion from the class and do not receive a class portion of their Individual Settlement Payment.
 - iii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt-out of the Settlement Class or encourage any Settlement Class member to appeal from the final judgment. Defendant agrees not to obtain waivers or *Pick Up Stix* agreements from the Class Members during the Settlement approval process and will work in good faith to reach an agreement approved by the Court. Defendant further agrees that it will not oppose Plaintiff's motion for preliminary approval or motion for final approval.
- E. Objections. Members of the Settlement Class who do not opt-out may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who will serve all objections as received on Class Counsel and Defendant's counsel, as well as file all such objections with the Court) within the Response Deadline. Any such written objections must contain the Settlement Class Member's name, address, and last four digits of his or her social security number and must state the legal and factual bases for objection. The Settlement Class member must also sign the objection. Defendant's counsel and Class Counsel will file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any objection must be postmarked no later than the Response Deadline. Any Settlement Class member who wishes to may appear in person or through their own counsel and raise an objection at the

Final Approval Hearing. Settlement Class Members need not submit written objections to be heard by the Court at the Final Approval Hearing.

- F. Notice of Individual Settlement Payment / Disputes. Each Notice Packet mailed to a Settlement Class member will disclose the amount of the Settlement Class member's estimated Individual Settlement Payment as well as all the information that was used to calculate the Individual Settlement Payment. Settlement Class Members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Settlement Payment, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator, and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator will determine the eligibility for, and the amounts of, any Individual Settlement Payment under the terms of this Settlement Agreement. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the dispute to the Court for a final determination.
- G. Defendant understands its legal obligation not to retaliate against the Settlement Class Members for their participation and/or election to participate in the benefits to be afforded any of them by the Settlement and/or the Action.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff will apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Enhancement Payment, settlement administration costs, and payment to the LWDA for its share of civil penalties under PAGA; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement will operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation.

12. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

13. **Confidentiality.** The Parties and their counsel will keep the Settlement, the Settlement-related documents, and their Settlement negotiations confidential, and will not disclose that

information to any third party through the date of preliminary approval. Thereafter, the Parties agree to make no comments to the media or otherwise publicize the terms of the Settlement.

14. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement will be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Plaintiff: Fletcher W. Schmidt of Haines Law Group, APC
2155 Campus Drive, Suite 180, El Segundo, CA 90265
fschmidt@haineslawgroup.com

if to Defendant: Noah Levin of Pacific Employment Law
260 California Street, Suite 500, San Francisco, CA 94111
noah@pacificemploymentlaw.com

15. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

16. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all said counterparts taken together will be deemed to constitute the same instrument.

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

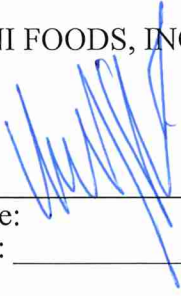
18. **Continuing Jurisdiction.** The Parties stipulate that, pursuant to California Code of Civil Procedure § 664.6, the Alameda County Superior Court will retain jurisdiction over the Parties to enforce this Settlement Agreement until full performance of the terms of the settlement has been completed.

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SIGNATURES BEGIN ON FOLLOWING PAGE

DATED: 2/10/2022

SANTINI FOODS, INC.

By: 

Name:

Title:

Vikram Chaudhary - President

DATED:

PLAINTIFF KETEMA NELSON

By: _____

Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: February 10, 2022

PACIFIC EMPLOYMENT LAW

By: 

Noah Levin

Attorneys for Defendant

DATED:

HAINES LAW GROUP, APC

By: _____

Fletcher W. Schmidt

Attorneys for Plaintiff

DATED:

SANTINI FOODS, INC.

By: _____
Name: _____
Title: _____

DATED: Feb 10, 2022

PLAINTIFF KETEMA NELSON

By: 
[K.Nelson \(Feb 10, 2022 11:25 PST\)](#)
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED:

PACIFIC EMPLOYMENT LAW

By: _____
Noah Levin
Attorneys for Defendant

DATED: February 10, 2022

HAINES LAW GROUP, APC

By: 
Fletcher W. Schmidt
Attorneys for Plaintiff

EXHIBIT 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

KETEMA NELSON, as an individual and on behalf of
all others similarly situated,

Plaintiff,

vs.

SANTINI FOODS, INC., a Texas Corporation; and
DOES 1 through 100,

Defendants.

Case No. RG21090890

NOTICE OF CLASS ACTION SETTLEMENT

To: All current and former non-exempt employees of Santini Foods, Inc. ("Santini") in California who worked at any time between October 15, 2018, and February 5, 2022 (the "Class Period"), and who did not sign a separation agreement during the Class Period.

**PLEASE READ THIS NOTICE CAREFULLY
THIS NOTICE IS BEING PROVIDED TO YOU IN ENGLISH AND SPANISH
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

You may be entitled to money from this Settlement. Santini's records show that you were employed by Santini as a non-exempt employee in California between October 15, 2018, and February 5, 2022, and that you did not sign a separation agreement during that time period. The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment. Notice of the final judgment will be posted online at <<ADMIN WEBSITE URL>>.

What is this case about?

Plaintiff Ketema Nelson ("Plaintiff") brought this lawsuit against Santini, asserting claims on behalf of all Settlement Class Members. Plaintiff is known as the "Class Representative," and his attorneys, who also represent the interests of all Settlement Class Members, are known as "Class Counsel."

In the Lawsuit, Plaintiff alleged that Santini: (1) failed to pay all overtime wages; (2) failed to provide all meal periods; (3) failed to authorize and permit all rest periods; (4) failed to maintain accurate records and issue accurate, itemized wage statements; (5) failed to pay all final wages at termination; (6) engaged in unfair business practices; and (7) is liable for civil penalties under the Private Attorneys General Act (Labor Code section 2698) ("PAGA").

Santini denies that it has done anything wrong. Santini denies that it owes Settlement Class Members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Santini, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with business operations, the parties concluded that it is in Santini's best interests and the interests of Settlement Class Members to settle the Lawsuit on the terms summarized in this Notice. After Santini provided relevant information to Class Counsel, the Settlement was reached after mediation and negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Santini, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by Santini, your decision about whether to participate in the Settlement will not affect your employment. California law and Santini's policy strictly prohibit unlawful retaliation. Santini will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class Member because of his or her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff / Settlement Class Members:	Attorneys for Santini:
HAINES LAW GROUP, APC Paul K. Haines (SBN 248226) phaines@haineslawgroup.com Fletcher W. Schmidt (SBN 286462) fschmidt@haineslawgroup.com Andrew J. Rowbotham (SBN 301367) arowbotham@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	PACIFIC EMPLOYMENT LAW LLP Noah Levin (SBN 263069) noah@pacificemploymentlaw.com Maureen K. Bogue (SBN 194755) maureen@pacificemploymentlaw.com 260 California Street, Suite 500 San Francisco, California 94111 Tel: (415) 985-7300 Fax: (415) 985-7301 pacificemploymentlaw.com

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class – for settlement purposes only – of all current and former non-exempt employees of Santini in California who worked at any time during the Class Period, and who did not sign a separation agreement during the Class Period. Settlement Class Members who do not submit a valid and timely Request for Exclusion from the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Santini, as described below in the “Release” section.

Santini agreed to pay \$440,000.00 (the “Maximum Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class Members, attorneys’ fees and expenses, settlement administration costs, payment to the California Labor and Workforce Development Agency (“LWDA”) for its share of PAGA civil penalties, and the Class Representative Enhancement Payment. Santini will fund the Maximum Settlement Amount no later than 65 days after the final approval of the settlement (assuming no objections or appeals).

The following deductions from the Maximum Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved ILYM Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and who will perform other duties relating to the Settlement. The Court has approved setting aside up to \$11,300.00 from the Maximum Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Maximum Settlement Amount. Settlement Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Maximum Settlement Fund (which is currently estimated to be \$146,666.67) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through

Settlement finalization. Class Counsel also will ask for reimbursement of up to \$20,000.00 for verified costs which were incurred by Class Counsel in connection with the Lawsuit.

Class Representative Enhancement Payment. Class Counsel will ask the Court to award \$5,000.00 to Plaintiff as a Class Representative Enhancement Payment. This is meant to compensate Plaintiff for his service and extra work provided on behalf of the Settlement Class Members.

PAGA Payment to the State of California. The parties have agreed to allocate \$40,000.00 of the Maximum Settlement Amount as PAGA civil penalties. Per Labor Code section 2699(i), 75% of such penalties (\$30,000.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$10,000.00) will be payable to the individuals with PAGA standing (“aggrieved employees”) as part of the Net Settlement Amount.

Calculation of Settlement Class Members’ Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class Members who do not submit a valid and timely Request for Exclusion (described below). The Net Settlement Amount will be divided as follows:

- (i) PAGA Amount: The \$10,000.00 payable to PAGA Members as PAGA civil penalties will be designated as the “PAGA Amount.” Each employee who was employed by Santini in California any time between March 4, 2020, and February 5, 2022, will receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
- (ii) Wage Statement Amount: Ten percent (10%) of the Net Settlement Amount will be designated as the “Wage Statement Amount.” Each employee who was employed by Santini in California any time between March 4, 2020, and February 5, 2022, will receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
- (iii) Waiting Time Amount: Ten percent (10%) of the Net Settlement Amount will be designated as the “Waiting Time Amount.” The Waiting Time Amount will be distributed in equal shares to each participating Settlement Class Member who separated their employment with Santini on or after October 15, 2018
- (iv) The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member’s total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class Members during the Class Period.

Individual Settlement Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members who did not submit a valid and timely Request for Exclusion. Each participating Settlement Class Member who receives an Individual Settlement Payment must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to participating Settlement Class Members whose checks are not cashed within 180 days after mailing will be distributed to Legal Aid at Work, to provide legal services to the indigent population in and around Alameda County. Legal Aid at Work is a 501 (c)(3) nonprofit recognized by the IRS (Tax ID Number: 94-2783401).

Allocation and Taxes. Each Individual Settlement Payment will be allocated as 90% penalties and interest and 10% wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class Members an IRS Form 1099 (for amounts paid as penalties and interest) and IRS Form W2 (for amounts paid as wages). Amounts paid to PAGA Members for their share of civil penalties under PAGA will be allocated as 100% penalties. The Settlement Administrator will issue PAGA Members an IRS Form 1099 for these payments. The Settlement Administrator will be responsible for calculating and withholding all employee-share employment taxes and other legally required withholdings from each Individual Settlement Payment.

Release. If the Court approves the Settlement, each Settlement Class Member who has not submitted a timely and valid Request for Exclusion will fully release and discharge Santini, its past and present officers, directors, shareholders, managers, employees, agents, principals, spouses, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys (collectively the “Released Parties”) from all claims, demands, rights, liabilities and causes of action that were pled in the operative complaint in the class and representative action titled *Ketema Nelson v. Santini Foods, Inc.*, Alameda County Superior Court Case No. RG21090890 (the “Lawsuit”), or which could have been pled in the operative complaint in the Lawsuit based on the factual allegations therein, that arose during the Class Period (collectively, the “Class Released Claims”). This release will apply to claims arising during the Class Period and become effective upon the date that Santini deposits the entire Maximum Settlement Amount with the Settlement Administrator.

PAGA Members, regardless of whether they opt-out of the Settlement, will fully and finally release and discharge Santini and the Released Parties from all PAGA claims that are based on the Labor Code violations pled in the operative complaint in the Lawsuit or Plaintiff’s letters to the LWDA dated March 4, 2021 and July 21, 2021, or which could have been pled in the operative complaint in the Lawsuit based on the factual allegations therein, that arose during the PAGA Period (collectively, the “PAGA Released Claims”). This release will apply to claims arising during the PAGA Period and become effective upon the date that Santini deposits the entire Maximum Settlement Amount with the Settlement Administrator.

Conditions of Settlement. The Settlement is conditioned upon the occurrence of all of the following events: (a) if no timely objections are filed or if all objections are withdrawn, the date upon which the Court enters Final Approval; (b) if an objection is filed and not withdrawn, the date for filing an appeal and no such appeal being filed; (c) if any timely appeals are filed, the date of the resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the settlement; (d) the date that Santini deposits the entire Maximum Settlement Amount with the Settlement Administrator (the “Effective Date”).

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your Individual Settlement Payment, which has been calculated for you based on the formula set forth above, as stated in the accompanying Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of workweeks that you worked during the Class Period and PAGA Period as well as whether you are entitled to a share of the Wage Statement and/or Waiting Time Amount. The information contained in Santini’s records regarding this information, along with your estimated Individual Settlement Payment, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class Members. Should a consensus not be reached, any outstanding disputes will be submitted to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written “Request for Exclusion from the Class Action Settlement” letter or card postmarked no later than **<<RESPONSE DEADLINE>>**, with your name, address, telephone number, last four digits of your social security number, and your signature. The Request for Exclusion must state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *NELSON v. SANTINI FOODS, INC.* LAWSUIT FILED IN THE ALAMEDA COUNTY SUPERIOR COURT, CASE NO. RG21090890. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator at <<ADMINISTRATOR CONTACT INFO>>. Any person who submits a timely Request for Exclusion from the Settlement will, upon receipt by the Settlement Administrator, no longer be a Settlement Class Member, will be barred from participating in any portion of the Settlement, and will receive no benefits from the Settlement. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator. Your written objection should include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. All objections or other correspondence must state the name and number of the case, which is *Ketema Nelson v. Santini Foods, Inc., et al.*, Alameda County Superior Court, Case No. RG21090890. Objections in writing must be postmarked on or before <<RESPONSE DEADLINE>>.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department 21 of the Alameda County Superior Court, located at 1221 Oak Street, Oakland, California 94612. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing if you wish to appear in person. You have the right to appear either in person or through your own attorney at this hearing, whether or not you submit a written objection. If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department 21 of the Alameda County Superior Court, located at 1221 Oak Street, Oakland, California 94612. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, the Enhancement Payment to the Class Representative, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. **You are not required to attend the Final Approval Hearing.**

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Clerk's Office at the Alameda County Courthouse, located at 1221 Oak Street, Oakland, CA 94612, during regular business hours. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, SANTINI, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>.

NOTICE OF SETTLEMENT AWARD

KETEMA NELSON v. SANTINI FOODS, INC., et al.
ALAMEDA COUNTY SUPERIOR COURT, CASE NO. RG21090890

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the information listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City State Zip Code

(III) Information Used to Calculate Your Individual Settlement Payment:

According to Santini's records:

- (a) You worked _____ workweeks for Santini in California between October 15, 2018, and February 5, 2022;
- (b) There were _____ total workweeks worked by employees of Santini in California between October 15, 2018, and February 5, 2022;
- (c) You worked _____ workweeks for Santini in California between March 4, 2020, and February 5, 2022;
- (d) There were _____ total workweeks worked by employees of Santini in California between March 4, 2020, and February 5, 2022; and
- (e) You <<DID/DID NOT>> separate your employment with Santini on or after October 15, 2018.

Based on the above, your Individual Settlement Payment is estimated to be \$ _____ and your PAGA Amount is estimated to be \$ _____.

(IV) If you disagree with items (a) - (e) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from Santini's records, those records will control unless you are able to provide documentation that establishes that Santini's records are mistaken. If there is a dispute about whether Santini's information or yours is accurate, and the dispute cannot be resolved informally, the Parties and the Settlement Administrator will resolve the dispute as described in the Class Notice that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

Signature: _____ Date: _____

EXHIBIT 3