

## **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding ("MOU") is entered into in *Abraham Peralta v. Johnson Diversified, Inc.*, Los Angeles County Superior Court Case Number 21STCV24182 (the "Action") by and between plaintiff Abraham Peralta ("Plaintiff"), on the one hand; and Defendant Johnson Diversified, Inc. ("Defendant") as well as Linda Johnson—Defendant's Guarantor ("Guarantor"), on the other hand; for the purpose of memorializing their agreement to the principal terms of a settlement of this action. Plaintiff and Defendant shall collectively be referred to herein as the "Parties".

1. This MOU shall become binding and enforceable upon its execution by Plaintiff, and Defendant and Guarantor. The Parties agree that even if no formal settlement document is signed, they intend this MOU to be enforceable by motion under California Code of Civil Procedure section 664.6. Further, the Parties intend this MOU to be enforceable, notwithstanding the confidentiality provisions of California Evidence Code section 1119, *et seq.* (if applicable). The Court shall retain continuing jurisdiction over the MOU and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this MOU (even if no formal settlement document is signed), and to adjudicate any claimed breaches of this MOU. The Court may award reasonable attorneys' fees and costs to the prevailing party in any motion or action taken and based on an alleged violation of any material term of the MOU.
2. The Parties also pledge their good faith and fair dealing in providing assent to a final settlement agreement.
3. The settlement class herein consists of all persons currently or formerly employed by Defendant as non-exempt, hourly-paid employees from June 30, 2017 through preliminary approval ("Class Period") in the State of California ("Class Members"). It shall be an opt-out class. Aggrieved Employees shall be defined as all non-exempt, hourly-paid employees of Defendant who worked from April 19, 2020 through the end of the Class Period ("PAGA Period") in California ("Aggrieved Employees").
4. The Parties stipulate to class certification for purposes of settlement only. If the Court does not grant Preliminary and Final Approval of the Class Action Settlement, the parties will not stipulate to Class Certification.
5. The settlement will be on a common fund basis. There will be no claim form or claims process. There will be no reversion to Defendant. Class Members will be mailed their share of the settlement funds as long as they have a verifiable mailing address and do not opt out of the settlement.
6. Defendant shall pay upon court approval of the settlement a Gross Fund Value ("GFV") of \$1,375,000 in settlement of this matter, including the class and representative allegations made in the Class Action. The GFV herein includes the individual settlement payments to Class Members, individual PAGA payments to Aggrieved Employees, settlement administration fees and costs, Plaintiff's incentive and/or enhancement, payment to the

government of its share under the Labor Code Private Attorneys' General Act of 2004 ("PAGA, codified at Labor Code section 2698, *et seq.*), and attorneys' fees and costs. It shall expressly exclude the employer's share of taxes, which will be paid separate and apart from the GFV.

7. Plaintiff's counsel shall be responsible for drafting a long form settlement agreement.
8. On or before September 14, 2023, Defendant shall commence making installment payments towards the GFV of \$1,375,000 unless the same is escalated as set forth in paragraph 24 herein (and in such event, the escalated gross settlement amount shall be paid over a two and one-half year period in proportionally increased installment payments) to the Settlement Administrator. Defendant shall pay the \$1,375,000.00 as follows:
  - a. No later than September 14, 2023, Defendant shall make its first installment payment of \$375,000 (the "First Installment Payment") to the Settlement Administrator in addition to the employer's share of payroll taxes for the First Installment Payment as required by law, for distribution in accordance with the parties' agreement and the Court's orders.
  - b. No later than June 14, 2024, Defendant shall make the second installment payment of \$500,000 (the "Second Installment Payment") to the Settlement Administrator in addition to the employer's share of payroll taxes for the Second Installment Payment as required by law, for distribution in accordance with the parties' agreement and the Court's orders.
  - c. No later than March 14, 2025, Defendant shall make the third and final installment payment of \$500,000 (the "Third Installment Payment") to the Settlement Administrator in addition to the employer's share of payroll taxes for the Third Installment Payment as required by law, for distribution in accordance with the parties' agreement and the Court's orders.
  - d. If the Settlement is not finally approved by the Court, said installment deposits shall revert back, without interest, to Defendant.
9. Defendant and Guarantor, both of whom are signatories to this agreement, agree and stipulate that all obligations of Defendant to make the three installment payments and corresponding employer's share of payroll taxes detailed herein as well as all obligations of Defendant under this agreement are personally guaranteed by the Guarantor.
10. In the event that Defendant fails to make any installment payment or corresponding employer's share of payroll taxes, Class Counsel shall provide notice of failure to make payment to Defendant's Counsel of record via email at [Katherine.denbleyker@lewisbrisbois.com](mailto:Katherine.denbleyker@lewisbrisbois.com) and U.S. mail to Lewis Brisbois Brisgaard & Smith LLP, 633 W. 5<sup>th</sup> Street, Suite 4000, Los Angeles, California 90071 and provide Defendant 7 calendar days to provide any missed payment to the Settlement Administrator in full including any applicable employer's taxes owed. If Defendant fails to make the payment within 7 calendar days of Class Counsel's notice, then Defendant and Guarantor shall jointly and severally be liable for paying the entire GFV plus all applicable employer's taxes less any sums already paid within 30 days of Class Counsel's notice of failure to make payment. Acceptance of a late payment by Class Counsel and/or the Settlement

Administrator shall not constitute a waiver, nor should it in any way prejudice any party's rights to receive and demand timely payments thereafter.

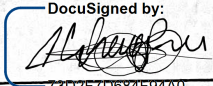
11. Plaintiff will request that the Court approve an award of attorneys' fees in an amount not to exceed 35% of the GFV, as the same may be escalated pursuant to this MOU, actual costs not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00), and an Incentive Award to Plaintiff of Seven Thousand and Five Hundred Dollars (\$7,500.00). The Parties also agree that \$50,000 of the GFV will be allocated to the PAGA cause of action, seventy-five percent (75%) of which will be paid to the Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%) of which will be paid to Aggrieved Employees. Defendant, will not oppose the reasonableness of any of these requests. Any reduction by the Court of these requests will revert to the Class Members who do not opt out.
12. Payment will be made to Class Members based on the number of Workweeks worked by Class Members for Defendant during the Class Period and to Aggrieved Employees based on the number of Workweeks worked by Aggrieved Employees during the PAGA Period. For purposes of payment, Workweeks worked shall be defined using hire dates, re-hire dates (as applicable), and termination dates (as applicable).
13. The Parties agree that the settlement administrator will administer this settlement, and will issue to Class Members a form W-2 for all amounts paid as wages under this settlement, which shall be 20% of the GFV, making all deductions and withholdings required under law, and a Form 1099 for all amounts paid as penalties and interest, which shall be 80% of the GFV.
14. Defendant will pay the employer's share of payroll taxes as required by law separate and apart from the GFV. Any Incentive Award approved by the Court, as well as payment of PAGA penalties, will result in the issuance of a Form 1099 to Plaintiff as a class representative, who shall assume full responsibility and liability for the payment of taxes due on such award.
15. The Parties agree to an opt-out period of forty-five (45) calendar days for Class Members. Aggrieved Employees cannot opt out of the settlement of the PAGA cause of action.
16. Class Members, except those who opt out, will release all claims, rights, demands, damages, liabilities, and causes of action, in law or in equity, arising at any time during the Class Period for the claims brought by Plaintiff in the Action, or that could have been brought by Plaintiff against Defendant in the Action, except for any claim(s) for civil penalties under PAGA. As to claims for civil penalties under PAGA brought in the Action and alleged in the Notice filed with the LWDA on April 19, 2021 by Plaintiff, those are released only by Aggrieved Employees and the LWDA (to the extent permitted by law) and only for claims arising during the PAGA Period. There shall be no opt out rights from the PAGA release. These releases expressly exclude all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, and workers' compensation.

17. The incentive payment to Plaintiff is expressly contingent upon Plaintiff's execution of a general release, including a Civil Code section 1542 waiver.
18. The Parties, and each of them, waive any and all claims for fees, costs, indemnity or contribution against Plaintiff, any Class Member, Plaintiff's Counsel in the Action, Defendant, or Defendant's Counsel in the Action other than as provided herein.
19. The parties to this MOU pledge their good faith and fair dealing in supporting the approval of this settlement by the Court and shall not encourage or solicit Class Members to opt out or object to the settlement.
20. Neither this MOU, nor the final form of the settlement, shall constitute an admission on behalf of Defendant of any form of liability or the accuracy of any allegation made by Plaintiff or their counsel. Payment of wages does not extend or alter the Class Member-claimants' period of employment for any purpose.
21. The parties to this MOU agree that it reflects their good faith compromise of the claims raised in this Class Action, based upon the assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.
22. The parties to this MOU are represented by competent counsel, and they have had an opportunity consult with counsel prior its execution.
23. Participating Class Members (*i.e.*, Class Members who do not opt out) and Aggrieved Employees will receive payment checks that shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Thereafter, checks for such payments shall be canceled and funds associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil Procedure section 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure section 384, shall be transmitted to Legal Aid at Work for use in Los Angeles County. The Settlement Administrator shall prepare a report regarding the distribution plan pursuant to Code of Civil Procedure section 384 and the report shall be presented to the Court by Class Counsel along with a proposed amended judgment that is consistent with the provisions of Code of Civil Procedure section 384.
24. Defendant represent that there are no more than 32,510 Workweeks worked by Class Members during the Class Period. In the event the number of Workweeks worked increases by more than 10%, or 3,251 Workweeks worked (*i.e.*, collectively more than 35,761 workweeks), then the GFV shall be increased proportionally by the Workweeks worked in the Class Period in excess of 35,761 Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the GFV by 32,510 Workweeks. The Parties agree that the Workweek Value amounts to and the settlement amounts to \$42.29 per Workweek (\$1,375,000 / 32,510 Workweeks). Thus, for example, should there be 37,000 Workweeks worked by Class Members in the Class Period, then

the GFV shall be increased by \$52,397.31. ((37,000 Workweeks – 35,761 Workweeks) x \$42.29 per Workweek.)

**ACCEPTED AND AGREED:**

**For Plaintiff Abraham Peralta**

Signature:  73D2F7D684F94A0...

Date: 4/18/2023

**For Defendant Johnson Diversified, Inc.**

Signature: Linda L. Johnson

By: Linda L. Johnson

Its: President

Date: 2/27/2023

**For Linda Johnson, Guarantor for Defendant Johnson Diversified, Inc.**

Signature: Linda L. Johnson

Date: 2/27/2023