

SETTLEMENT AGREEMENT

This Settlement Agreement (this “Agreement” or “Settlement”) is made by and between plaintiff Ingrid Perez (“Plaintiff”), on behalf of herself as Private Attorney General on behalf of the State of California, and defendant Nutricion Fundamental Inc. (“NFI” or “Defendant”). Plaintiff and Defendant shall collectively be referred to as the Parties, or each respectively, “Party.”

I. DEFINITIONS

In addition to other terms defined in this Settlement, the terms below have the following meaning in this Settlement:

- A. “Action” means the civil action titled, *Ingrid Perez v. Nutricion Fundamental, Inc.*, Los Angeles County Superior Court, Case No.: 21STCV15036.
- B. “Covered Period” means the period from July 28, 2020 through the date on which the Court grants approval of the Settlement.
- C. “Court” shall refer to the Los Angeles County Superior Court.
- D. “Effective Date” shall be the date the Court enters an order approving a joint stipulation of settlement or a motion for approval of the settlement or the Final Date, whichever is sooner.
- E. “Final” means that the Settlement has been approved by the Court and (as applicable) either (1) the deadline for an appeal from the Court’s order passes without a timely appeal filed; or (2) a timely appeal is filed, the California Court of Appeal renders a final judgment affirming the Court’s order without material modification, and the date for review by the California Supreme Court passes without a timely petition for review; (3) a petition for review with the California Supreme Court is filed and either that court denies the petition or renders a final judgment affirming the Superior Court’s order without material modification, and the date for review by the U.S. Supreme Court passes without a timely petition for review; or (4) a petition for review with the U.S. Supreme Court is filed and that court denies the petition or renders a final judgment affirming the Superior Court’s order without material modification.
- F. “FAC” means the operative First Amended PAGA Complaint for Civil Penalties filed by Plaintiff in the Action on or about August 2nd, 2021.
- G. “LWDA” means the California Labor and Workforce Development Agency.
- H. “LWDA Payment” means the payment made from the Net Settlement Amount to the LWDA under the Settlement as its share of the settlement of Plaintiff’s claim for PAGA penalties.

- I. "Net Settlement Amount" means the amount from the Total Settlement Amount that is available for distribution to the Settlement Group Members and the LWDA after deduction for (1) the Representative Plaintiff's Payment, (2) the Plaintiff's Counsel Fees and Expenses Payment, and (3) the Settlement Administrator's fees and expenses.
- J. "PAGA" means the California Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.*
- K. "Plaintiff's Counsel" means Kane Moon, Brett Gunther, and Julie Oh of Moon & Yang, APC.
- L. "Plaintiff's Counsel Fees and Expenses Payment" means the amount awarded to Plaintiff's Counsel by the Court for their attorneys' fees and all out-of-pocket costs and expenses incurred to date in connection with the Action, including their pre-filing investigation, their commencement and prosecution of the Action and all related litigation activities, this Settlement (including documenting the Settlement, securing court approval of the Settlement, attending to the administration of the Settlement, and obtaining dismissal of the Action), and all post-Settlement compliance procedures.
- M. "Representative Plaintiff's Payment" means the payment to be made to Plaintiff Ingrid Perez from the Total Settlement Amount intended to compensate Plaintiff for her initiation and prosecution of the Action and her general release of claims pursuant to this Settlement.
- N. "Settlement Administrator" means ILYM Group, Inc., a third-party PAGA action settlement administrator agreed to by the Parties and approved by the Court for purposes of administering this Settlement.
- O. "Settlement Group Member" means Plaintiff and all current or former non-exempt employees who worked for NFI in the State of California during the Covered Period.
- P. "Settlement Share" means a Settlement Group Member's share of 25% of the Net Settlement Amount. A Settlement Group Member's Settlement Share will be calculated based on the ratio of their pay periods during the Covered Period to the total pay periods of all Settlement Group Members during the Covered Period.
- Q. "Total Settlement Amount" means the total amount that Defendant will be obligated to pay in connection with the Settlement.

II. RECITALS

- A. On April 16, 2021, Plaintiff served a letter on the LWDA and NFI pursuant to California Labor Code section 2699.3, notifying the LWDA of alleged violations by NFI of California Labor Code sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198 and applicable Wage Orders with

respect to non-exempt employees employed by NFI in California. The LWDA declined to investigate the alleged violations.

- B. On or about April 27, 2021, Plaintiff commenced the Action. On August 2, 2021, Plaintiff filed the operative FAC asserting a claim for civil penalties under PAGA based on allegations that, with respect to non-exempt employees employed by NFI in California, NFI failed to: (1) pay employees for all hours worked, including all minimum wages, straight time wages, and overtime wages, (2) authorize and permit timely duty-free meal periods, (3) authorize and permit timely duty-free rest breaks, (4) maintain accurate records of the hours NFI's employees worked, (5) willfully failed to pay former employees all meal period, rest period, minimum wages, straight time wages, and overtime wages due within the time period specified by California law following separation, (6) failed to maintain accurate records of the hours employees worked, and (7) failed to provide employees with accurate, itemized wage statements containing all the information required by the California Labor Coe and IWC Wage Orders.
- C. On May 5, 2022, the Parties participated in a mediation presided over by neutral Steven Rottman, Esq. During the mediation, the Parties, each represented by its respective counsel, recognized the substantial risk of an adverse result in the Action and agreed to a full and complete resolution of the Action, and all other matters covered by this Agreement, on the terms set forth in this Agreement. Any agreements, understandings, or representations between the Parties about settlement of the Action at the mediation, or before or after the mediation, have now been replaced and superseded by this Agreement.
- D. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended to be or will be construed as an admission by Defendant that Plaintiff's claims in the Action have merit or that they have any liability to Plaintiff or the Settlement Group Members, or as an admission by Plaintiff that Defendant's defenses in the Action have merit. On the contrary, Defendant denies all of Plaintiff's material allegations and maintains that bears no liability to Plaintiff or any Settlement Group Member.

Based on these Recitals, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Total Settlement Amount.** Subject to the Court's Final approval of the Settlement, the Total Settlement Amount that Defendant will be obligated to pay in connection with the Settlement is Two Hundred and Fifty Thousand Dollars and Zero Cents (\$250,000.00). The Total Settlement Amount will cover (i) all Settlement Shares to Settlement Group Members, (ii) the LWDA Payment, (iii) the Representative Plaintiff's Payment, (iv) the Plaintiff's Counsel Fees and Expenses Payment, and (v) the Settlement Administrator's fees and expenses.

- B. **Payment of the Representative Plaintiff's Payments.** The Representative Plaintiff's Payment will be paid in a lump sum, without payroll tax deductions and withholding, and Plaintiff will be issued a Form 1099 with respect to the payment.
- C. **Payment of Net Settlement Amount.** The Net Settlement Amount will be paid as follows:
1. 25% of the Net Settlement Amount will be paid to Settlement Group Members as their Settlement Shares.
 2. 75% of the Net Settlement Amount will be paid to the LWDA as its LWDA Payment.
- D. **Calculation of Settlement Shares.** For purposes of calculating a Settlement Group Member's Settlement Share, each Settlement Group Member will receive an amount that bears the same ratio to his or her pay periods during the Covered Period to the total pay periods of all Settlement Group Members during the Covered Period.
- E. **Payments.**
1. Within fifteen (15) days after the Court's order approving the Settlement becomes Final:
 - a. NFI will provide to the Settlement Administrator the names, last known mailing addresses and telephone numbers (if readily available), Social Security numbers, and total pay periods worked by all Settlement Group Members during the Covered Period (the "Settlement Group Member Information").
 - b. The Settlement Administrator will provide Defendant with wire-transfer information.
 2. Within thirty (30) days after the Court's order approving the Settlement becomes Final, and presuming the Settlement Administrator has provided Defendant, through its counsel of record, with the wire-transfer information, Defendant will wire-transfer the Total Settlement Amount to the Settlement Administrator.
 3. Within fifteen (15) days after the Settlement Administrator receives the Total Settlement Amount from Defendant, the Settlement Administrator will pay the Settlement Shares, the LWDA Payment, the Representative Plaintiff's Payment, the Plaintiff's Counsel Fees and Expenses Payment, and the Settlement Administrator's fees and expenses. The Settlement Administrator will include a cover letter, attached as Exhibit A to the instant settlement agreement, to each Settlement Group Member with their Settlement Share payment.

- F. **Pay Periods.** Defendant has represented that the Settlement Group Members have worked a total of no more than 16,000 total pay periods during the period from July 28, 2020 through May 5, 2022 – the date of the Parties’ mediation. The settlement as negotiated contemplates a Pay Period count through court approval. However, should the actual number of pay periods worked by the Settlement Group Members exceed Twenty Percent (20%) of this figure (*i.e.*, 19,200 pay periods from July 28, 2020 through court approval), the Defendant, at its sole and exclusive discretion, may elect to: (1) end the Covered Period as of the date of the Pay Period counts hits the 20% cap of 19,200 or (2) consent to have the PAGA Settlement Amount be increased by the percentage that the actual number of pay periods exceeds the permitted 20% cap of 19,200.
- G. **Disposition of Uncashed Settlement Share Checks.** If a Settlement Share check comes back to the Settlement Administrator as non-deliverable, the Settlement Administrator will make reasonable efforts to find a current address for the Settlement Group Member and re-mail the check. If a Settlement Group Member fails to cash the check for his or her Settlement Share within 60 days after it is mailed to the Settlement Group Member (or, in the case where the check was returned as non-deliverable, within 60 days after it is mailed to the new address for the Settlement Group Member), the Settlement Administrator will transfer the money represented by the check to the California State Controller’s Office Unclaimed Property Fund.
- H. **Process for Court Approval.**
1. The Parties will cooperate in seeking approval of the Settlement, including by drafting and filing a joint stipulation, or as necessary a motion for approval of the Settlement by the Superior Court (the “Joint Motion”). The Joint Motion will ask the Superior Court to (1) approve the Settlement and (2) dismiss the Action with prejudice, each side to bear its own costs and attorneys’ fees except as provided by the Settlement. Pursuant to PAGA, Cal. Lab. Code § 2699(1)(2), the Settlement will be sent to the LWDA at the same time it is filed with the Court.
 2. At the same time the Parties file the Joint Motion, Plaintiff will seek approval of (1) a Representative Plaintiff’s Payment of seven thousand, five hundred dollars (\$7,500); (2) a Plaintiff’s Counsel Fees and Expenses Payment of 33.33% of the Total Settlement Amount or up to Eighty Three Thousand Three Hundred Twenty Five Dollars and Zero Cents (\$83,325.00) for attorneys’ fees; (3) up to Twenty Thousand Dollars and Zero Cents (\$20,000.00) for actual litigation costs; and (4) the cost of the settlement administration which is not expected to exceed \$15,000. Defendant will not oppose it, provided it is consistent with this Agreement. In the event the Court approves a payment less than any of these amounts, the difference will be retained as part of the Net Settlement Amount.

3. The Parties will cooperate in the drafting and/or filing of any additional documents reasonably necessary to be prepared or filed and will take all steps that may be requested by the Superior Court relating to the approval and implementation of the Settlement.
4. This Agreement does not grant any right for any Settlement Group Member to object, opt out or otherwise exclude themselves from the Settlement, or any right to appeal from the approval of the Settlement by the Court.
5. If the Court does not approve the Settlement without material modification, the Parties will meet and confer to address the Court's concerns and determine whether resolution of the Action still can be obtained in a manner consistent with those concerns. If, after those efforts, the Court still does not approve of the Settlement without material modification, or if the Court's final approval of the Settlement is reversed or materially modified on appellate review, then the Settlement will become null and void. A modification of the Representative Plaintiff's Payment or the Plaintiff's Counsel Fees and Expenses Payment will not be deemed a material modification of the Settlement.
6. Pursuant to California Labor Code section 2699(1)(3), the Parties will submit to the LWDA a copy of the Superior Court's order approving the Settlement within 10 days after entry of the order.

I. Releases of Claims.

1. **By Plaintiff.** In consideration of the Settlement and her Representative Plaintiff's Payment, as of the date the Settlement becomes Final, Plaintiff, on behalf of herself and her heirs, successors, agents, and all other related persons or entities who could assert a claim based on her employment and/or dealings with NFI, waives and releases any and all claims against Defendant and their parents, predecessors, successors, subsidiaries, affiliates, trusts, employees, officers, agents, attorneys, stockholders, fiduciaries, other service providers, and related persons and entities, and assigns (the "Released Parties"), including but not limited to the claim and allegations raised in the Action or that could have been raised in the Action and those arising from or related to Plaintiff's employment with Defendant (the "Released Claims"). The Released Claims include, but are not limited to, claims arising under (as amended) Title VII of the Civil Rights Act, 42 U.S.C. section 1981, the Americans with Disabilities Act, the Vocational Rehabilitation Act, the Worker Adjustment and Retraining Notification Act, the Fair Labor Standards Act, the Fair Employment and Housing Act, the California Civil Code, the California Labor Code (including PAGA), and all other federal, state and local laws regulating employment. The Released Claims include all claims, whether known or unknown. Thus, even if Plaintiff discovers facts in addition to or different

from those that she now knows or believes to be true with respect to the subject matter of the Released Claims, those claims will remain released and forever barred. Notwithstanding anything contained herein, the Released Claims do not cover any pending workers' compensation claims.

2. **By the Settlement Group Members.** Upon Court approval of the Settlement and payment by Defendant of all funds due under the terms of this Settlement, Defendant shall be entitled to a release from the State of California and the Labor and Workforce Development Agency, as well as from the Aggrieved Employees, of all claims for Civil Penalties pursuant to Labor Code section 2698 et seq. (PAGA) that were pled or could have been pled based on the factual allegations in operative First Amended Complaint in the Action and the April 14, 2021 LWDA letter, including specifically, claims for PAGA penalties arising out of or based on alleged: failure to pay minimum wages, failure to pay overtime wages, failure to provide compliant meal periods, failure to provide compliant rest periods, failure to provide timely wages, failure to provide timely wages upon separation, failure to provide accurate itemized wage statements, and/or failure to maintain accurate payroll records. This release includes all claims for civil penalties arising under the California Labor Code, including but not limited to Labor Code sections 200, 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 432, 510, 512, 558, 1102.5, 1174, 1174(3), 1174.5, 1194, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, and the applicable Wage Orders of the Industrial Welfare Commission. The release shall include the Defendant and all of its parent, subsidiary, affiliated and related companies and entities, as well as its/their officers, directors, investors, owners, shareholders, employees, partners, members, agents, and attorneys, and any entities or partnerships with which they are affiliated, past or present. The Parties agree that upon the Effective Date, the LWDA, the Aggrieved Employees, and Plaintiff shall be deemed to have, and by operation of the court's Approval Order and Judgment shall have, released the Defendant and any Released Parties from any claim for civil penalties arising out of the Released Claims or specifically enumerated herein;
3. **Waiver of Section 1542.** In granting the release of claims set forth above, Plaintiff hereby expressly waives the protection of California Civil Code section 1542, which states:

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

- J. **Tax Indemnification.** Plaintiff agrees that she is solely responsible for all tax obligations, including, but not limited to, all payment obligations, which may arise as a consequence of payments to her under this Settlement, that she will indemnify and hold Defendant and the Released Parties, as defined above, harmless from and against any and all costs and expenses, including, interest, assessments, withholding and penalties, arising out of any dispute over the non-withholding or other tax treatment of any of the proceeds paid to her as a result of this Settlement, and that she will not make any claim against the Released Parties for any cost or expense if an adverse determination is made by a tax agency in connection with the non-withholding or other tax treatment of payments made to them under this Settlement.
- K. **Confidentiality Preceding Court Approval.** Prior to filing of the Joint Motion, Plaintiff and Plaintiff's Counsel will not issue any press or other media releases or have any communication with the press or media or anyone other than family members, clients, Settlement Group Members, financial advisors, retained experts, and vendors related to settlement administration, regarding the Settlement. If, before the filing of the Joint Motion, Plaintiff or Plaintiff's Counsel disclose to any unauthorized party (a) that a settlement has been reached or (b) any of the terms of the Settlement except as required by law or to effect the Settlement, Defendant may rescind the Settlement, rendering it null and void.
- L. **No Assistance with Future Action or Proceeding Regarding Released Claims.** Plaintiff agrees and understands that, except as may be required by subpoena, court order, or other force of law, Plaintiff will not in any way assist or encourage any individual or entity in commencing or prosecuting any action or proceeding, or in any way participate or cooperate in any such action or proceeding, including any trial, pretrial preparation, or prelitigation fact-gathering, connected with any and all of the claims released under this Agreement.
- M. **Fair, Adequate, and Reasonable Settlement.** The Parties agree that the Settlement is fair and reasonable and will so represent to the Superior Court.
- N. **Admissibility of Agreement.** Notwithstanding any privilege applicable to settlement or mediation proceedings, this Agreement may be introduced into evidence to prove the fact and terms of the Settlement.
- O. **No Admission of Liability.** Neither this Agreement nor any other documents prepared in connection with this Settlement are in any way an admission of liability by Defendants or any other party. In particular, this Agreement may not be used in any future proceeding as an admission by any party of any liability or any fact used to establish liability.
- P. **Waiver of Appeals.** The Parties waive all appeals from the final approval of the Settlement unless the Court materially modifies the Settlement, except that Plaintiff and Plaintiff's Counsel may appeal from an order by the Court that reduces the amounts sought for the Representative Plaintiff's Payment and the

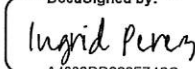
Plaintiff's Counsel Fees or Expenses Payment. Such an order or affirmance of such an order will not entitle Plaintiff to void the Settlement. Defendant's payment obligations under the Settlement will be suspended pending an appeal of the Judgment.

- Q. **Complete Agreement.** This Agreement and its exhibits constitute the entire agreement between the Parties relating to the Settlement and supersedes all prior or contemporaneous agreements, representations, warranties, covenants, or inducements regarding its subject matter, including but not limited to the Memorandum of Agreement executed by the Parties on or about May 24, 2022.
- R. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
- S. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- T. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- U. **Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. Facsimile and electronic signatures (e.g., DocuSign) will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

PLAINTIFF INGRID PEREZ ACKNOWLEDGES AND AGREES THAT PLAINTIFF HAS FULLY READ, UNDERSTANDS, AND VOLUNTARILY ENTERS INTO THIS AGREEMENT. PLAINTIFF ACKNOWLEDGES AND AGREES THAT PLAINTIFF HAS HAD AN OPPORTUNITY TO ASK QUESTIONS AND CONSULT WITH AN ATTORNEY OF PLAINTIFF'S CHOICE BEFORE SIGNING THIS AGREEMENT. PLAINTIFF FURTHER ACKNOWLEDGES THAT PLAINTIFF'S SIGNATURE BELOW IS AN AGREEMENT TO RELEASE COMPANY FROM ANY AND ALL CLAIMS THAT CAN BE RELEASED AS A MATTER OF LAW.

Dated: 06-16, 2022

INGRID PEREZ

DocuSigned by:


A4983BD922F748C...

Ingrid Perez
Plaintiff

NUTRICION FUNDAMENTAL, INC.

Dated: _____, 2022

By: _____

Its: _____

Approved as to Form:

Dated: June 16th, 2022

Moon & Yang, APC

Kane Moon

Brett Gunther

Attorneys for Ingrid Perez

Dated: _____, 2022

Gordon Rees Scully Mansukhani, LLP

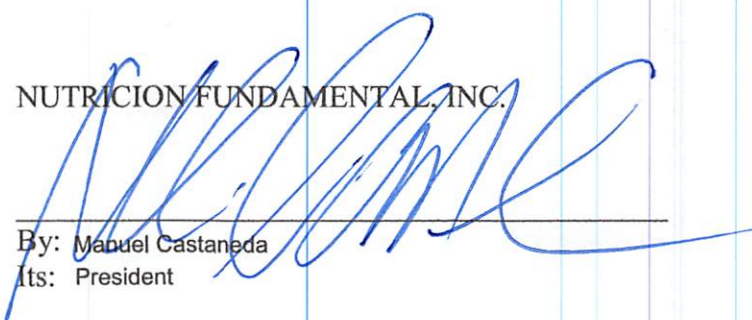
Joshua Wagner

Annette Rose

Attorneys for Nutricion Fundamental, Inc.

NUTRICION FUNDAMENTAL, INC.

Dated: 06-15, 2022


By: Manuel Castaneda
Its: President

Approved as to Form:

Dated: _____, 2022

Moon & Yang, APC

Kane Moon
Brett Gunther
Attorneys for Ingrid Perez

Dated: _____, 2022

Gordon Rees Scully Mansukhani, LLP

Joshua Wagner
Annette Rose
Attorneys for Nutricion Fundamental, Inc.

NUTRICION FUNDAMENTAL, INC.

Dated: _____, 2022

By:
Its:

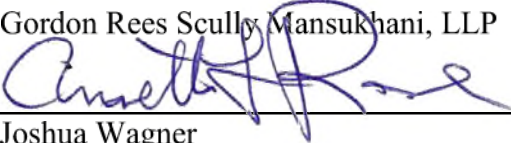
Approved as to Form:

Dated: _____, 2022

Moon & Yang, APC

Kane Moon
Brett Gunther
Attorneys for Ingrid Perez

Dated: June 16, 2022

Gordon Rees Scully Mansukhani, LLP


Joshua Wagner
Annette Rose
Attorneys for Nutricion Fundamental, Inc.

EXHIBIT A

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Payment From *Perez v. Nutricion Fundamental Inc.*

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Perez v. Nutricion Fundamental Inc.*, Los Angeles County Superior Court Case No. 21STCV15036.

That case was filed against Nutricion Fundamental Inc. (“NFI”) pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called “PAGA”). The claim was brought on behalf of the State of California and all similarly situated “aggrieved employees” who worked as non-exempt employees for NFI. You have been identified as one of the employees on whose behalf the case was brought.

The plaintiff in the case claimed that NFI owed penalties under PAGA for certain California Labor Code violations. NFI denies that it did anything wrong or that it owes any penalties. The parties agreed to resolve the case, and as part of that settlement, NFI agreed to pay a certain amount of money categorized as PAGA penalties. Under the PAGA statute, the penalties get divided between the State and the employees. The enclosed check represents your portion of the penalties allocated to the employees.

It is important to note that this is not a class action settlement. You may have received notifications in the mail regarding other class action settlements you may or may not have been a part of in the past. This case against NFI is not a class action. Therefore, you cannot seek to opt out from the PAGA settlement to pursue your own claims.

If you have any questions, you can contact the Settlement Administrator at:

ILYM Group, Inc.
14751 Plaza Drive, Suite J
Tustin, California 92780
www.ilymgroup.com
Tel: (888) 250-6810

Sincerely,