

Justin F. Marquez (SBN 262417)
justin@wilshirelawfirm.com

Benjamin H. Haber (SBN 315664)
benjamin@wilshirelawfirm.com

Arrash T. Fattahi (SBN 333676)
afattahi@wilshirelawfirm.com

WILSHIRE LAW FIRM

3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

KANEISHA KINGSBURY, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

CARAVAN FOODS II, INC., a corporation;
STERLING BV, INC., a corporation; and DOES
1 through 10, inclusive,

Defendants.

Case No. RG21096357

CLASS ACTION

[Assigned to: Hon. Brad Seligman, Dept. 23]

**DECLARATION OF JUSTIN F.
MARQUEZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Filed concurrently with: Plaintiff's Notice of
Motion and Motion for Preliminary Approval
of Class Action Settlement, Memorandum of
Points and Authorities; and [Proposed] Order
Granting Plaintiff's Motion for Preliminary
Approval of Class Action Settlement]

PRELIMINARY APPROVAL HEARING

Date: September 13, 2022

Time: 3:00 p.m.

Dept: 23

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1. I am admitted, in good standing, to practice as an attorney in the State of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Southern, Eastern, and Northern Districts of California. I am a Senior Partner at Wilshire Law Firm, PLC, counsel of record for Plaintiff Kaneisha Kingsbury (“Plaintiff”). I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them under oath if called as a witness. This Declaration is submitted in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

2. This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiff and putative class members worked in California as hourly-paid, non-exempt employees for Defendant during the class period. Defendant specializes in the development, production, and supply of frozen and fresh bakery products.

3. Plaintiff alleges that Defendant's payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours worked by not recording the actual start and end times of shifts for each workday. Plaintiff further alleges that Defendant failed to include all remuneration in the employees' overtime rate and meal period premiums. Plaintiff further alleges that Defendant failed to provide employees with legally compliant meal and rest periods. Plaintiff further alleges that Defendant failed to reimburse employees for all necessary business-related expenditures. Based on these allegations, Plaintiff asserts claims against Defendant for failure to pay minimum and straight time wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay all final wages at termination, failure to provide accurate itemized wage statements, failure to indemnify employees for expenditures, unfair business practices, and civil penalties under PAGA.

4. On April 9, 2021, Plaintiff filed a putative wage-and-hour class action complaint

1 against Defendant for: (1) failure to pay minimum and straight time wages (Cal. Lab. Code §§ 204,
2 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Cal. Lab. Code §§ 1194 and 1198);
3 (3) failure to provide meal periods (Cal. Lab. Code §§ 226.7 and 512); (4) failure to authorize and
4 permit rest periods (Cal. Lab. Code §§ 226.7); (5) failure to timely pay final wages at termination
5 (Cal. Lab. Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Cal. Lab.
6 Code § 226); and (7) unfair business practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*). On May
7 6, 2021, Plaintiff filed a First Amended Class Action Complaint, which removed Sterling Foods,
8 Inc. from the complaint, added Sterling BV, Inc. as a defendant, and added a cause of action for
9 Failure to Indemnify Employees for Expenditures. As part of the Settlement, the Parties stipulated
10 to Plaintiff being afforded leave to file a Second Amended Class and Representative Action
11 Complaint, which will add a cause of action for civil penalties under PAGA and remove Sterling
12 BV, Inc. as a defendant (while simultaneously dismissing Sterling BV, Inc. from the action) (the
13 “Operative Complaint”). (Settlement, Article VIII.)

14 DISCOVERY AND INVESTIGATION

15 5. Following the filing of the initial Complaint, the Parties exchanged documents and
16 information before mediating this action. Defendant produced timekeeping and pay records for
17 the class members. Defendant also provided documents of their wage and hour policies and
18 practices during the class period, and information regarding the total number of current and former
19 employees in its informal discovery responses.

20 6. After reviewing documents regarding Defendant’s wage and hour policies and
21 practices, analyzing Defendant’s timekeeping and payroll records, Class Counsel was able to
22 evaluate the probability of class certification, success on the merits, and Defendant’s maximum
23 monetary exposure for all claims. Class Counsel also investigated the applicable law regarding
24 the claims and defenses asserted in the Litigation. Class Counsel reviewed these records and
25 utilized an expert to prepare a damages analysis prior to mediation

26 SETTLEMENT NEGOTIATIONS

27 7. On June 7, 2022, the Parties participated in private mediation with experienced class
28 action mediator, Tripper Ortman, Esq. The mediation was conducted via Zoom. The settlement

1 negotiations were at arm's length and, although conducted in a professional manner, were
2 adversarial. The Parties went into the mediation willing to explore the potential for a settlement
3 of the dispute, but each side was also prepared to litigate their position through trial and appeal if
4 a settlement had not been reached.

5 8. After extensive negotiations and discussions regarding the strengths and
6 weaknesses of Plaintiff's claims and Defendant's defenses, the Parties were able to reach a
7 resolution, the material terms of which are encompassed within the Settlement Agreement.
8 Attached as **Exhibit 1** is a true and correct copy of the Stipulated Settlement Agreement and
9 Release of Claims ("Settlement" or "Settlement Agreement").

10 9. The Settlement includes \$10,000.00 allocated to Plaintiff's claims under PAGA,
11 with 75% of which (\$7,500.00) being paid to the Labor and Workforce Development Agency
12 ("LWDA") (within 35 calendar days of the Final Effective Date) and 25% (\$2,500.00) being
13 distributed on a pro-rata basis to the PAGA Members. (Settlement, § 5.06 (b)(4).) Class Counsel
14 submitted the proposed Settlement to the LWDA before filing the Motion for Preliminary
15 Approval.

16 10. The Settlement provides that Defendant will not oppose a fee application of up to
17 33 1/3% (\$416,666.67) of the Gross Fund Value Amount, plus out-of-pocket costs not to exceed
18 \$20,000.00. (Settlement, § 5.06 (b)(1).)

19 11. I requested several bids from experienced class action settlement administrators to
20 handle the responsibilities of the Settlement Administrator under this Settlement. The Parties
21 accepted the bid of CPT Group, Inc. CPT Group, Inc. has multiple years of experience in the field
22 of Class Action Administration, particularly in the wage-and-hour arena. In its bid, CPT Group,
23 Inc. agreed to cap its costs at \$14,500.00 if there are 1,300 class members. The bid also provides
24 that class notice will be provided in English and Spanish. A true and correct copy of the bid is
25 attached hereto as **Exhibit 2**.

26 12. Wilshire Law Firm, PLC has no fee-splitting agreement with any other counsel in
27 this case.

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1 THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE

2 13. Class Counsel has conducted a thorough investigation into the facts of this case.
3 Based on the foregoing discovery and their own independent investigation and evaluation, Class
4 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
5 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
6 of significant delay, the defenses that could be asserted by Defendant both to certification and on
7 the merits, trial risk, and appellate risk.

8 14. Based on an analysis of the facts and legal contentions in this case, documents and
9 information from Defendant, I evaluated Defendant's maximum exposure. I took into account the
10 risk of not having the claims certified and the risk of not prevailing at trial, even if the claims are
11 certified. After using the data Defendant provided, including class member timekeeping and
12 payroll records, as well as class member demographics (i.e., the number of class members,
13 workweeks, and average total compensation of the class), with the assistance of a statistics expert,
14 I created a damages model to evaluate the realistic range of potential recovery for the class. The
15 damages model is based on the following benchmarks:

16 Total Class Members: 1,090
17 Terminated Class Members during 3-year statute: 613
18 Total Workweeks: 78,498
19 PAGA Pay Periods: 28,083
20 Avg. Hourly Rate: \$14.82

21 15. Based on Plaintiff's discovery and investigation, Class Counsel reached the
22 conclusion that Defendant failed to pay class members for all hours worked, including overtime
23 wages, failed to include non-discretionary remuneration in overtime payments and meal period
24 premiums, failed to provide employees with all meal and rest periods, and failed to indemnify
25 employees for necessary business-related expenditures. Defendant denied these claims.

26 16. Plaintiff alleges that Defendant failed to pay for all hours worked, including
27 minimum, straight time, and overtime wages. My expert analyzed Defendant's timekeeping and
28 payroll records and found many instances where he concluded that Defendant failed to pay

employees for all hours worked, particularly the time employees spent performing work-related duties pre-shift, during meal periods, and post-shift. A more conservative estimate was appropriate given the difficulty of proving an off-the-clock work violation on a class-wide basis. Assuming that Defendant failed to pay employees for one hour of off-the-clock work per workweek, with 92.1% of that work being paid at the overtime rate, potential liability for this claim is \$2,121,696.00. Additionally, my expert investigated the issue regarding Defendant's alleged failure include non-discretionary remuneration in the employees' overtime rate and meal period premiums and found that Defendant's exposure for this theory of liability to be at \$143,529.00. Because individualized issues can be a significant obstacle to certifying and proving off-the-clock and regular rate claims, I discounted this figure by 80% to account for the difficulty of prevailing on a motion for class certification and a trial on the merits, yielding a realistic damage estimate of **\$453,045.00.**¹

17. With respect to the meal period claim, Plaintiff alleges that Defendant required her and similarly situated class members to work in lieu of taking meal periods. My expert analyzed Defendant's timekeeping records and opined that approximately 54.5% of all meal breaks had violations of short, missed, or no meal periods. Potential liability (factoring in the meal period premiums issued by Defendant) for the meal period claim, which includes shifts 5-6 hours long, shifts over six hours long, shifts over ten hours long, and shifts over 12 hours long, is \$3,665,725.00, including interest; however, I discounted this figure by 90% to account for the difficulty of certifying and proving meal period claims, as well as Defendant's contention that the claim lacks merit, yielding a realistic damage estimate of **\$366,572.50.**

18. With respect to the rest period claim, Plaintiff alleges that Defendant required her and similarly situated class members to work in lieu of taking rest periods. Assuming a 50% violation rate for the class period based on Plaintiff's and other class members' experience working

¹ This discount for risk at certification and trial is reasonable because the Judicial Council of California found that only 21.4% of all class actions were certified either as part of a settlement *or* as part of a contested certification motion. *See Findings of the Study of California Class Action Litigation, 2000-2006*, available at [http:// www.courts.ca.gov/documents/class-action-lit-study.pdf](http://www.courts.ca.gov/documents/class-action-lit-study.pdf).

1 for Defendant, Defendant's potential liability for the rest period claim is \$3,430,900.00; however,
2 I discounted this figure by 90% to account for the difficulty of certifying and proving rest period
3 claims, particularly because rest periods do not have to be recorded, and to account for the
4 possibility of class members voluntarily choosing to forego a rest period, yielding a realistic
5 damage estimate of **\$343,900.00**.

6 19. With respect to the claim for unreimbursed business expenses, Plaintiff alleges that
7 Defendant required her and similarly situated class members to purchase specific work-related
8 tools (e.g., screwdrivers, scrapers, crescent wrenches, etc.) and to use their personal cell phones
9 for employment-related matters. My expert estimated the potential liability for this claim to be
10 worth \$1,264,179.00; however, I discounted this figure by 90% to account for the difficulty of
11 certifying and proving this claim, as well as Defendant's contention that the claim lacks merit,
12 yielding a realistic damage estimate of **\$126,417.90**.

13 20. In sum, I estimated that Plaintiff's maximum recovery for the unpaid wages based
14 on the failure to pay for all hours worked (minimum, straight time, and overtime wages) and meal
15 and rest period violations, as well as Defendant's failure to indemnify its employees for necessary
16 business expenses, is \$10,626,029.00, but, **after factoring in the risk and uncertainty of**
17 **prevailing at certification and trial, I estimate that Plaintiff's realistic estimated recovery for**
18 **the non-penalty claims is \$1,289,935.40.**

19 21. With respect to Plaintiff's derivative claims for statutory and civil penalties,
20 Plaintiff estimated that Defendant's realistic potential liability is **\$450,000.00**. While Defendant's
21 maximum potential liability for waiting time penalties is \$2,585,679.00 based on approximately
22 613 terminated class members during the 3-year statute, \$1,856,000.00 for inaccurate wage
23 statements based on approximately 464 class members who worked 28,083 pay periods within the
24 1-year statute, and \$2,808,300.00 for PAGA violations based on the Court assessing a \$100 penalty
25 for initial violations for all 28,083 pay periods within the 1-year statute, I believe that it would be
26 unrealistic to expect the Court to award the full \$7,249,979.00 in penalties given Defendant's
27 defenses, the contested nature of Plaintiff's claims, and the discretionary nature of penalties.
28 Considering that the underlying claims are estimated to be \$1,289,935.40, such a disproportionate

award would also raise due process concerns. Weighing these factors, and applying a discount to account for the risk and uncertainty of prevailing at trial, I arrived at \$450,000.00 for statutory and civil penalties.

22. Using these estimated figures, Plaintiff predicted that the realistic maximum recovery for all claims, including penalties, would be \$1,739,935.40. This means that the \$1,250,000.00 settlement figure represents 71.8% of the realistic maximum recovery ($\$1,250,000 / \$1,739,935.40 = 71.8\%$). Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class.² Indeed, because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

23. While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action. Plaintiff also recognizes that proving the amount of wages due to each Class Member would be an expensive, time-consuming, and uncertain proposition.

24. This Settlement avoids the risks and the accompanying expense of further litigation. Although the Parties had engaged in a significant amount of investigation, informal discovery and class-wide data analysis, the Parties had not yet completed formal written discovery. Plaintiff intended to depose corporate officers and managers of Defendant. Moreover, preparation for class certification and a trial remained for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or adverse summary judgment ruling. Had the Court certified any claims, Defendant could move to decertify the claims. As a result, the Parties would incur considerably more attorneys' fees and costs through trial.

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² See, e.g., *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class claims was between 9.53 percent of plaintiffs' maximum recovery); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (finding that "a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is just over 9% of the maximum potential recovery asserted by either party.").

1 25. The Net Fund Value Amount available for Class Member settlement payments is
2 estimated to be \$778,833.33, for a class of 1,090 persons.³ **As a result, each Settlement Class**
3 **Member is eligible to receive an average net benefit of approximately \$714.53.**

4 26. The proposed Settlement of \$1,250,000.00 therefore represents a substantial
5 recovery when compared to Plaintiff's reasonably forecasted recovery. When considering the risks
6 of litigation, the uncertainties involved in achieving class certification, the burdens of proof
7 necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the
8 settlement amount of \$1,250,000.00 is within the "ballpark" of reasonableness, and preliminary
9 settlement approval is appropriate.

10 ENHANCEMENT AWARD FOR PLAINTIFF IS REASONABLE

11 27. Class Counsel represent that Plaintiff devoted a great deal of time and work assisting
12 counsel in the case, communicated with counsel very frequently for litigation and to prepare for
13 mediation, and was frequently in contact with Class Counsel during the mediation. Plaintiff's
14 requested enhancement award is reasonable particularly in light of the substantial benefits Plaintiff
15 generated for all class members.

16 28. Throughout this Litigation, Plaintiff, who is a former employee of Defendant, has
17 cooperated immensely with my office and has taken many actions to protect the interests of the
18 class. Plaintiff provided valuable information regarding unpaid overtime, meal period, and rest
19 period claims. Plaintiff also informed my office of developments and information relevant to this
20 action, participated in decisions concerning this action, and made herself available to answer
21 questions during the mediation. Before we filed this case, Plaintiff provided my office with
22 documents regarding the claims alleged in this action. The information and documentation
23 provided by Plaintiff was instrumental in establishing the alleged wage and hour violations alleged
24 in this action, and the recovery provided for in the Settlement Agreement would have been

25 _____
26 ³ The Net Fund Value Amount is: \$1,250,000.00 minus \$416,666.67 for Class Counsel's
27 attorneys' fees, minus \$20,000.00 for Class Counsel's litigation expenses, minus \$14,500.00 in
28 administration costs, minus \$7,500.00 for the PAGA portion sent to the LWDA, minus \$2,500.00
for payments to the PAGA Members, and minus \$10,000.00 for the class representative service
award.

1 impossible to obtain without Plaintiff's participation.

2 29. At the same time, Plaintiff faced many risks in adding herself as the class
3 representative in this matter. Plaintiff faced actual risks with her future employment, as putting
4 herself on public record in an employment lawsuit could also very well affect her likelihood for
5 future employment. Furthermore, as part of this Settlement, Plaintiff is executing a general release
6 of all claims against Defendant.

7 30. In turn, class members will now have the opportunity to participate in a settlement,
8 reimbursing them for alleged wage violations they may have never known about on their own or
9 been willing to pursue on their own. If these class members would have each tried to pursue their
10 legal remedies on their own, that would have resulted in each having to expend a significant amount
11 of their own monetary resources and time, which were obviated by Plaintiff putting herself on the
12 line on behalf of these other class members.

13 31. In the final analysis, this class action would not have been possible without the aid
14 of Plaintiff, who put her own time and effort into this Litigation, sacrificed the value of her own
15 individual claims, and placed herself at risk for the sake of the class members. The requested
16 enhancement award for Plaintiff for her service as the class representative and for her general
17 release of all individual claims is a relatively small amount of money when the time and effort put
18 into the Litigation are considered and in comparison to enhancements granted in other class actions.
19 The requested incentive award is therefore reasonable to compensate Plaintiff for her active
20 participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation, et al.*,
21 No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class members were
22 misclassified as exempt outside salespersons, I was co-lead Class Counsel and helped negotiate a
23 \$2.5 million class action settlement for 339 class members, and the court approved a \$25,000.00
24 class representative incentive award for each named plaintiff.

25 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

26 32. The Settlement provides for attorney's fees payable to Class Counsel in an amount
27 up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of \$416,666.67,
28 plus actual costs and expenses not to exceed \$20,000.00. The proposed award of attorneys' fees

1 to Class Counsel in this case can be justified under either method – lodestar or percentage recovery.
2 Class Counsel, however, intend to base the proposed award of fees, costs and expenses on the
3 percentage method as many of the entries in the time records will have to be redacted to preserve
4 attorney-client and attorney work product privileges.

5 33. I am informed and believe that the fee and costs provision is reasonable. The fee
6 percentage requested is less than that charged by my office for most employment cases. My office
7 invested significant time and resources into the case, with payment deferred to the end of the case,
8 and then, of course, contingent on the outcome.

9 34. It is further estimated that my office will need to expend at least another 50 to 100
10 hours to monitor the process leading up to the final approval and payments made to the class. My
11 office also bears the risk of taking whatever actions are necessary if Defendant fails to pay.

12 35. The risk to my office has been very significant, particularly if we would not be
13 successful in pursuing this class action. In that case, we would have been left with no compensation
14 for all the time taken in litigating this case. Indeed, I have taken on a number of class action cases
15 that have resulted in thousands of attorney hours being expended and ultimately having
16 certification denied or the defendant company going bankrupt. The contingent risk in these types
17 of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing
18 on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

19 36. Because most individuals cannot afford to pay for representation in litigation on an
20 hourly basis, Wilshire Law Firm, PLC represents virtually all of its employment law clients on a
21 contingency fee basis. Pursuant to this arrangement, we are not compensated for our time unless
22 we prevail at trial or successfully settle our clients' cases. Because Wilshire Law Firm, PLC is
23 taking the risk that we will not be reimbursed for our time unless our client settles or wins his or
24 her case, we cannot afford to represent an individual employee on a contingency basis if, at the
25 end of our representation, all we are to receive is our regular hourly rate for services. It is essential
26 that we recover more than our regular hourly rate when we win if we are to remain in practice so
27 as to be able to continue representing other individuals in civil rights employment disputes.

28 37. As of the drafting of Plaintiff's Motion for Preliminary Approval of Class Action

Settlement, my office has incurred around \$15,849.91 in expenses litigating this action, and we anticipate accruing additional costs up to Final Approval of the Settlement. These expenses were reasonably necessary to the Litigation and were actually incurred by my office. They should be reimbursed in full, up to the maximum amount allowed in the Settlement Agreement.

MY EXPERIENCE AND QUALIFICATIONS

38. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News & World Report as one of the nation's Best Law Firms in 2022 and is comprised of over 55 attorneys and over 300 employees. Wilshire Law Firm, PLC is actively and continuously practicing in employment litigation, representing employees in both individual and class actions in both state and federal courts throughout California.

39. Wilshire Law Firm, PLC is qualified to handle this Litigation because its attorneys are experienced in litigating Labor Code violations in both individual, class action, and representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling, numerous wage and hour class action lawsuits, as well as class actions involving consumer rights and data privacy litigation.

40. I graduated from the University of California, Los Angeles's College Honors Program in 2004 with Bachelor of Arts degrees in History and Japanese, *magna cum laude* and *Phi Beta Kappa*. As an undergraduate, I also received a scholarship to study abroad for one year at Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in 2008.

41. My practice is focused on advocating for the rights of consumers and employees in class action litigation and appellate litigation. I am currently the primary attorney in charge of litigating several class action cases in state and federal courts across the United States.

42. I have received numerous awards for my legal work. From 2017 to 2020, Super Lawyers selected me as a "Southern California Rising Star," and in 2022, I was selected as a "Southern California Super Lawyer." In 2016 and 2017, the National Trial Lawyers selected me as a "Top 40 Under 40" attorney. I am also rated 10.0 ("Superb") by Avvo.com.

43. I am on the California Employment Lawyers Association ("CELA")'s Wage and

Hour Committee and Mentor Committee, and I was selected to speak at CELA’s 2019 Advanced Wage & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively mentored young attorneys through CELA’s mentorship program.

44. I am also an active member of the Consumer Attorneys of California (“CAOC”). In 2020, I was selected for a position on CAOC’s Board of Directors. I am also a member of CAOC’s Diversity Committee, and I help assist the CAOC in defeating bills that harm employees. Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC, in defeating AB 443, which proposed legislation that sought to limit the enforceability of California Labor Code § 226.

45. As the attorney responsible for day-to-day management of this matter at the Wilshire Law Firm, PLC, I have over eleven years of experience with litigating wage and hour class actions. Over the last eleven years, I have managed and assisted with the litigation and settlement of several wage and hour class actions. In those class actions, I performed similar tasks as those performed in the course of prosecuting this action. My litigation experience includes:

- a. I served as lead or co-lead in negotiating class action settlements worth over \$10 million in gross recovery to class members for each year during 2020 and 2021.
- b. To my knowledge, I am the only attorney to appear on each of the following *Top Verdict* lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- c. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by winning class certification on behalf of hundreds of thousands of consumers for misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct. C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- d. As lead counsel, I prevailed against Bank of America by: winning class certification on behalf of thousands of employees for California Labor Code violations; defeating appellate review of the court’s order certifying the class; defeating summary judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.* (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019

1 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2,
2 2018).). The decision certifying the class in *Frausto* is also discussed in *Class*
3 *Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call*
4 *Center Employees for Violation of State Law Wage and Hour Rules*, 35 A.L.R. Fed.
5 3d Art. 8.

6 e. I was the primary author of the class certification and expert briefs in *ABM*
7 *Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action
8 for over 40,000 class members for off-the-clock, meal period, split shift, and
9 reimbursement claims. *ABM Industries Overtime Cases* is the first published
10 California appellate authority to hold that an employer’s “auto-deduct policy for
11 meal breaks in light of the recordkeeping requirements for California employers is
12 also an issue amenable to classwide resolution.” (*Id.* at p. 310.)⁴ Notably, the Court
13 of Appeal also held that expert analysis of timekeeping records can also support the
14 predominance requirement for class certification. (*Id.* at p. 310-11.) In 2021, the
15 case settled for \$140 million, making it one of the largest ever wage and hour class
16 action settlements for hourly-paid employees in California.

17 f. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d
18 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims
19 under California’s Private Attorney Generals Act (“PAGA”) cannot be used to
20 calculate the amount in controversy under the Class Action Fairness Act (“CAFA”).
21 This case is cited in several leading treatises such as *Wright & Miller’s Federal*
22 *Practice & Procedure*, and *Newberg on Class Actions*. In October 2016, the U.S.
23 Supreme Court denied review of a case that primarily concerned *Yocupicio*. That
24 effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus
25 support from a brief authored by Andrew J. Pincus.⁵ Considering that leading

26 ⁴ As a California district court observed before the *ABM Industries Overtime* decision,
27 “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE*
28 *Connectivity Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL
1758048, *7.)

⁵ <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.

Supreme Court practitioners from the class action defense bar were very motivated in undermining *Yocupicio* case, but failed, this demonstrates the national importance of the *Yocupicio* decision.

- g. On December 13, 2018, the United States District Court granted final approval of the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in which I served as lead counsel. In doing so, the Court found: “Class Counsel’s declarations show that the attorneys are experienced and successful litigators.” (*Id.* at p. *10.)
- h. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a reported decision permitting class-wide discovery even though the employer has a lawful policy because “[t]he fact that a company has a policy of not violating the law does not mean that the employees follow it, which is the issue here.” The court also ordered defendant to pay for the cost of *Belaire-West* notice.
- i. In 2013, I represented a whistleblower that reported that his former employer was defrauding the State of California with the help of bribes to public employees. The case, a false claims (*qui tam*) action, resulted in the arrest and criminal prosecution of State of California employees by the California Attorney General’s Office.
- j. In 2013, I was part of a team of attorneys that obtained conditional certification for over 2,000,000 class members in a federal labor law case for misclassification of independent contractors that did crowdsourced work on the Internet, *Otey v. CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the following pro-plaintiff reported decisions:

- 1) 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding that an unaccepted Rule 68 offer doesn’t moot plaintiff’s claims, and granting plaintiff’s motion to strike defendant’s affirmative defenses based on *Twombly/Iqbal*).

- 2) 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order

granting conditional collective certification).

3) 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the magistrate judge's discovery ruling which held that "evidence of other sources of income is irrelevant to the question of whether a plaintiff is an employee within the meaning of the FLSA").

4) 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting broad discovery because "an FLSA plaintiff is entitled to discovery from locations where he never worked if he can provide some evidence to indicate company-wide violations").

j. From 2012 to 2013, I was part of a team of attorneys that obtained class certification for over 60,000 class members for off-the-clock claims, *Linares v. Securitas Security Services USA, Inc.*, Los Angeles Superior Court No. BC416555. We also successfully opposed subsequent appeals to the California Court of Appeal and California Supreme Court.

46. Benjamin H. Haber is a fifth-year Associate Attorney at Wilshire Law Firm, PLC. He was admitted to practice law in the State of California and the Central, Southern, Eastern, and Northern Districts of California. He graduated from the University of California, Los Angeles, with a Bachelor of Arts in Political Science, and received his Juris Doctor from the University of California, Hastings College of the Law in 2016. During law school, he was a member of the executive board for the Hastings Law Journal and a student mediator at the San Francisco Superior Court, Small Claims Division. Since graduating law school, he has focused his legal work primarily on wage and hour class action litigation. His current contingent billing rate for this case is \$650 per hour, which is consistent with his level of experience in the wage and hour arena.

47. Arrash T. Fattahi is a second-year Associate Attorney at Wilshire Law Firm, PLC. He was admitted to practice law in the State of California and the Central and Southern Districts of California in January 2021. Arrash graduated from the University of California, Los Angeles, with a Bachelor of Arts in Political Science, *summa cum laude*. He received his Juris Doctor from The George Washington University Law School. During law school, he was a member of the

1 student editorial board for the *Federal Circuit Bar Journal*. Since January 2021, his practice has
2 mainly been focused on wage and hour class action litigation. His current contingent billing rate
3 for this case is \$450 per hour.

4 48. My current contingent billing rate of \$850 per hour is consistent with my practice
5 area, lead appellate experience in the Ninth Circuit Court of Appeals, numerous awards received,
6 legal market and accepted hourly rates:

7 a. In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town
8 Anymore,” *NATIONAL LAW JOURNAL*, the following hourly billing rates were
9 reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense of
10 wage-and-hour class actions that I opposed when litigating wage-and-hour class
11 actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd
12 Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435,
13 8th Year - \$455. I am a 12th year attorney and Senior Partner, with most of my
14 experience in class action litigation as a primary practice area. Having successfully
15 briefed and argued a published appeal in the Ninth Circuit Court of Appeals
16 involving CAFA and PAGA, having experience certifying large class actions
17 (including *ABM Industries Overtime Cases*, which was decided on appeal), and
18 having received numerous awards for my legal work, my hourly rate should be
19 adjusted upward.

20 b. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior
21 Court approved my \$750 hourly rate when he granted final approval of the class
22 action settlement in *Faye Zhang v. Richemont North America, Inc.*, Case No.
23 19STCV32396.

24 c. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District
25 Court granted final approval of the \$1,600,000 class action settlement in *Carlos*
26 *Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-
27 SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the
28 Court approved my then \$750 hourly rate after finding it was “reasonable, given the

1 qualifications of the attorneys who worked on this matter.” (*Id.* at p. *3.)

2 d. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court
3 approved my \$800 hourly rate when he granted final approval of the class action
4 settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, No. 30-2019-
5 01066522-CU-OE-CXC.

6 e. On May 6, 2022, the Hon. Jay A. Garcia-Gregory of the United States District Court,
7 District of Puerto Rico, approved my \$850 hourly rate when he granted final
8 approval of the class action settlement in *Serrano v. Inmediata Corp.*, No. 3:19-cv-
9 01811-JAG, Dkt. 57 (U.S. Dist. Ct. P.R. May 6, 2022).

10 I declare under penalty of perjury under the laws of the State of California and the United
11 States that the foregoing is true and correct.

12 Executed on August 19, 2022, at Los Angeles, California.

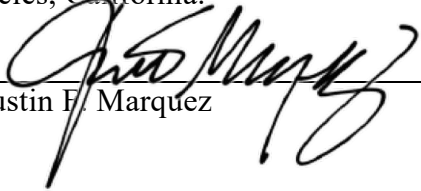
13
14 
Justin F. Marquez

Exhibit 1

STIPULATED SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

ARTICLE I

INTRODUCTION

It is stipulated and agreed by and among the undersigned Parties, subject to the approval of the Court pursuant to section 382 of the California Code of Civil Procedure, that the Settlement of this action shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in the “Definitions” section or as defined elsewhere in this Stipulated Settlement Agreement and Release of Claims (hereafter “Agreement”).

Plaintiff Kaneisha Kingsbury (“Representative Plaintiff”) and the putative Class Members make this agreement with Defendant Caravan Foods II, Inc. (“Defendant” or “Caravan”). Representative Plaintiff and Defendant collectively are referred to in this Agreement as “the Parties.”

The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendant to pay a non-reversionary all-in settlement in the total maximum amount of \$1,250,000.00 (One Million, Two Hundred Fifty Thousand Dollars and Zero Cents) as provided in Section 5.06 below (“Gross Fund Value Amount”) upon the terms and conditions of this Agreement and for the consideration set forth herein, including but not limited to a release of all claims by Representative Plaintiff and the Class Members as set forth herein.

ARTICLE II

RECITALS

This Agreement is made in consideration of the following facts:

2.1. WHEREAS on April 9, 2021 Representative Plaintiff filed her complaint in Alameda County Superior Court against Caravan and Sterling Foods, Inc. asserting the following causes of action on a class basis:

- (1) Failure to Pay Minimum and Straight Time Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Authorize and Permit Rest Periods;
- (5) Failure to Timely Pay Final Wages at Termination;

1 (6) Failure to Provide Accurate Itemized Wage Statements; and

2 (7) Violation of Business & Professions Code §§17200, et seq.;

3 2.2. WHEREAS, on April 12, 2021, Representative Plaintiff sent a “Notice of Labor Code
4 Violations and PAGA Penalties” to the California Labor and Workforce Development Agency (the
5 “LWDA”) alleging that while employed by Caravan and Sterling Foods, Inc., Representative
6 Plaintiff and other employees had suffered various violations of the California Labor Code;

7 2.3. WHEREAS, on May 6, 2021, Representative Plaintiff amended her complaint by
8 removing Sterling Foods, Inc. from the complaint, substituting in Sterling BV, Inc. (“Sterling”) as a
9 defendant, and adding a cause of action for Failure to Indemnify Employees for Expenditures;

10 2.4. WHEREAS, on May 10, 2021, Representative Plaintiff sent an “Amended Notice of
11 Labor Code Violations and PAGA Penalties” to the LWDA, substituting in Sterling as an alleged
12 employer, reasserting the prior violations of the Labor Code violations, and adding an additional
13 allegation of Failure to Reimburse and Indemnify Business Expenses;

14 2.5. WHEREAS, the Parties engaged in informal discovery, exchanging information,
15 documents and reviewing and analyzing extensive data made available by Defendant which enabled
16 the parties to thoroughly evaluate Representative Plaintiff’s claims, the claims of the putative class,
17 Defendant’s defenses, and the likely outcomes, risks and expense of pursuing litigation;

18 2.6. WHEREAS, on June 7, 2022, the Parties attended a mediation session with
19 professional mediator Tripper Ortman via Zoom and reached terms of this arm’s-length Settlement;

20 2.7. WHEREAS, a bona fide dispute exists as to whether any amount of wages or
21 penalties are due from Defendant to any Class Member and/or to the LWDA and/or to any allegedly
22 aggrieved employees;

23 2.8. WHEREAS, the Parties desire to compromise and settle all issues and claims that
24 have been or could have been brought, based on the allegations in the operative Complaint, against
25 Defendant or related persons in the Action, including all claims brought on a putative class,
26 collective and representative basis in the Action;

27 2.9. WHEREAS, based on the discovery exchanged as well as their own independent
28 investigation and evaluation, the Parties have considered the claims asserted by Representative

1 Plaintiff, the defenses asserted by Defendant, the risks associated with the continued prosecution of
2 the Action, the cost of continued litigation through trial and appeals, and after considering all the
3 circumstances, the Parties have concluded that the proposed settlement set forth in this Agreement is
4 fair, adequate, and reasonable and confers substantial benefits upon the Class Members;

5 2.10. WHEREAS, the Parties further agree that the Agreement, the fact of this Settlement,
6 any of the terms of this Agreement, and any documents filed in connection with the Settlement shall
7 not constitute, or be offered, received, claimed, construed, or deemed as an admission, finding, or
8 evidence of: (i) any wrongdoing by any Released Parties, (ii) any violation of any statute or law by
9 Released Parties, (iii) any liability on the claims or allegations in the Action on the part of any
10 Released Parties, (iv) any waiver of Defendant's right to arbitration or the enforceability of any
11 arbitration agreement, or (v) the propriety of certifying a litigation class or collective (conditionally
12 or otherwise) or pursuing representative relief under the PAGA in the Action or any other civil or
13 administrative proceeding; and this Agreement shall not be used by any Person for any purpose
14 whatsoever in any administrative or legal proceeding, including but not limited to arbitrations, other
15 than a proceeding to enforce the terms of the Agreement;

16 2.11. NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND
17 AGREED, by Representative Plaintiff for herself and on behalf of the Participating Class Members
18 and by Defendant, that, subject to the approval of the Court, the Action shall be settled,
19 compromised, and dismissed, on the merits and with prejudice, and the Released Class Claims, as
20 defined below, shall be finally and fully compromised, settled and dismissed as to the Released
21 Parties, in the manner and upon the terms and conditions hereafter set forth in this Agreement.

22 **ARTICLE III**

23 **DEFINITIONS**

24 As used in the Agreement, the following terms have the meanings specified below:

25 a. "Action" means the civil action commenced by Representative Plaintiff in the California
26 Superior Court, County of San Diego entitled *Kaneisha Kingsbury v. Caravan Foods II, Inc., et al.*,
27 Case No. RG21096357 on April 9, 2021.
28

1 b. "Agreement" means this Stipulated Settlement Agreement And Release Of Claims, including
2 the Class Notice, as defined below, attached as Exhibit A.

3 c. "Claims Administrator" means the third-party administrator approved by the court who will
4 administer the settlement as set forth below.

5 d. "Claims Administration Costs" means all costs incurred by the Claims Administrator in
6 administration of the Settlement, including, but not limited to address verification measures, mailing
7 of notice to the Class, calculation of Individual Settlement Payments, generation of Individual
8 Settlement Payment checks, administration of uncashed checks, generation of checks to Class
9 Counsel for attorney's fees and costs, generation of the check to the Representative Plaintiff for her
10 Service Award, generation of a check for the PAGA Payment, and generation and submission of all
11 tax-related documents, all pursuant to the terms of this Agreement.

12 e. "Class Claims" means all claims for wages, benefits and related penalties actually alleged or
13 that could have been alleged in the Action by the Representative Plaintiff, on behalf of themselves
14 and the California Class Members, based on the facts alleged in the First Amended Complaint,
15 including but not limited to: (1) Failure to Pay Minimum and Straight Time Wages; (2) Failure to
16 Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest
17 Periods; (5) Failure to Timely Pay Final Wages at Termination; (6) Failure to Provide Accurate
18 Itemized Wage Statements; (7) Violation of Business & Professions Code §§17200, et seq.; (8)
19 Failure to Reimburse for Business Expenses; (9) Violations of the Private Attorneys General Act
20 (Cal. Labor Code §2699, et seq.; and (10) Attorneys' Fees and Costs of Litigation associated with
21 this Action. "Class Claims" also includes all claims that the Representative Plaintiff and/or Class
22 Members may have against the Released Parties relating to (i) the payment, taxation and allocation
23 of the Class Counsel Award pursuant to this Settlement Agreement and (ii) the payment, taxation
24 and allocation of Representative Plaintiff's Service Awards pursuant to this Settlement Agreement.

25 f. "Class Counsel" means the attorneys for the Class and the Class Members, who are:

26 Justin F. Marquez
27 justin@wilshirelawfirm.com
28 Benjamin H. Haber
benjamin@wilshirelawfirm.com
Arrash T. Fattahi

afattahi@wilshirelawfirm.com
Wilshire Law Firm
3055 Wilshire Blvd., 12th Floor
Los Angeles, CA 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

g. “Class Member(s)” means current and former non-exempt, hourly paid employees who were employed by Caravan in the State of California at any time commencing four (4) years prior to the filing of this Action to the date of mediation, June 7, 2022 (which is estimated to consist of approximately 1,090 current and former employees).

h. “PAGA Member(s)” or “Aggrieved Employee(s)” means current and former non-exempt, hourly paid employees who were employed by Caravan in the State of California at any time from April 12, 2020 to the date of the mediation, June 7, 2022.

i. “Class Notice” means the Notice of Proposed Class Action Settlement attached hereto as Exhibit “A” or in substantially the same form as ultimately approved by the Court.

j. “Class Period” means the period from April 9, 2017 through the date of mediation, June 7, 2022.

k. “PAGA Period” means the period from April 12, 2020 through the date of mediation, June 7, 2022.

l. “Complete and General Release” means an irrevocable and unconditional release given only by Representative Plaintiff, releasing Defendant and the Released Parties from any and all charges, complaints, claims, causes of action, debts, sums of money, controversies, agreements, promises, damages and liabilities of any kind or nature whatsoever, both at law and equity, known or unknown, suspected or unsuspected, arising from conduct occurring on or before the date Representative Plaintiff signs this Settlement Agreement, including but not limited to a release of any and all rights Representative Plaintiff has to sue or bring any type of claim under (a) California state law, the Fair Labor Standards Act; (d) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (e) the Employment Act of 1967, (f) the Civil Rights Act of 1991, (g) the Civil Rights Act of 1866 and 1870, (g) 42 U.S.C. § 1981, as amended, (h) Executive Order 11246, (i) the Americans with Disabilities Act, 42 U.S.C. § 12101, et. seq, as amended, (j) the Family and

1 Medical Leave Act, as amended, (k) the Equal Pay Act of 1963, as amended, (l) the Immigration and
 2 Reform Control Act, as amended, (m) the Occupational Safety and Health Act, as amended, (n) the
 3 Sarbanes-Oxley Act of 2002, as amended, (o) the Employment Retirement Income Security Act of
 4 1974, as amended (except vested benefits), (p) the Worker Adjustment and Benefit Protection Act of
 5 1990, as amended, (q) the Worker Adjustment and Retraining Notification Act, as amended, (r) any
 6 federal, state or common law claim or cause of action based on any alleged failure to pay wages,
 7 breach of contract, wrongful discharge, constructive discharge, retaliation, defamation, slander,
 8 liable, intentional or negligent infliction of emotional distress, misrepresentation, fraud, promissory
 9 estoppel, (s) any other tort or negligence claim or obligations arising out of any of Defendant's
 10 employment policies or practices, employee handbooks, and/or any statements by any employee or
 11 agent of Defendant whether oral or written; and (t) for reinstatement, back pay, bonus, attorneys'
 12 fees, compensatory damages, costs, front pay, any form of equitable or declaratory relief, liquidated
 13 damages, emotional distress, personal injury, punitive damages, pain and suffering, medical
 14 expenses, damage to reputation, damage for personal, emotional or economic injury or damage of
 15 any kind. This provision is intended by the Parties to be all-encompassing and to act as a full and
 16 total release of any claim, whether specifically enumerated herein or not, that Representative
 17 Plaintiff might have or have had, that exists or ever has existed on or prior to the date this Settlement
 18 Agreement is signed. This release includes a 1542 Waiver. The Parties understand and agree that the
 19 word "claims" includes all actions, group actions (including any pending or future collective, class,
 20 private attorney general or representative actions for which Representative Plaintiff may otherwise
 21 qualify as a putative class member or represented party), complaints and grievances that could
 22 potentially be brought by Representative Plaintiff against the Released Parties.

23 m. "Defendant" shall mean *Caravan Foods II, Inc.*

24 n. "Defense Counsel" means counsel for Defendant, who are:

25 Lindsay E. Hutner
 26 hutnerl@gtlaw.com
 27 Sam Hyde
 28 hydes@gtlaw.com
 Greenberg Traurig, LLP
 101 Second Street, Suite 2200
 San Francisco, CA 94105

Telephone: (415) 655-1300
Facsimile: (415) 707-2010

o. “Final Effective Date” means the date on which the Settlement is approved and the Court’s Final Order and Judgment becomes Final. The Court’s Final Order and Judgment becomes final upon the later of: (i) if an intervention is granted, but no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Court’s Judgment (this time period shall not be less than 60 calendar days after the Court’s Judgment is entered); (ii) if an appeal is filed, the date affirmance of an appeal of the Judgment becomes final under the California Rules; (iii) if an appeal is filed, the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Judgment; (iv) if objections are filed and overruled, and no appeal is taken of the final approval order, then the Effective Date of final approval will be sixty-five (65) days after the trial court enters final approval; or (v) if no intervention is granted and no objections are filed, the date on which the Court grants final approval of this Agreement on substantially the terms provided herein as the same may be modified by subsequent written agreement of the Parties and signs the Final Order granting final approval of this Agreement.

p. “Final Fairness and Approval Hearing” means the hearing to determine whether the proposed Agreement settling the Action should be finally approved as fair, reasonable, and adequate; whether the proposed plan of allocation of the Net Fund Value Amount should be approved; whether the Representative Plaintiff’s Service Award should be approved; and whether the applications of Class Counsel for attorney’s fees and costs should be approved.

q. “Final Order” refers to the order of the Court granting final approval of this Agreement as to the Final Settlement Class (defined below) and entering a judgment approving this Agreement on substantially the terms provided herein or as the same may be modified by subsequent written agreement of the Parties.

r. “Final Settlement Class” refers to the Representative Plaintiff and all Class Members who do not timely and validly exclude themselves from the class in compliance with the exclusion procedures set forth in Section 5.04.a of this Agreement.

1 s. "Gross Fund Value Amount" means the \$1,250,000.00 (One Million, Two Hundred Fifty
2 Thousand Dollars and Zero Cents) to be paid by Defendant as provided by this Agreement to settle
3 this Action. This is an "all in" number that includes, without limitation, all monetary benefits and
4 payments for the Final Settlement Class Members, the Service Awards, the Class Counsel Award,
5 the Settlement Administrator expenses and the PAGA Payment, and all other claims for interest,
6 fees, and costs. Other than the employer's share of payroll taxes, in no event will Defendant pay
7 more than the Gross Fund Value Amount.

8 t. "Individual Settlement Payments" means the amounts of money from the Net Fund Value
9 Amount that shall be paid to the Participating Class Members less employee's portion of payroll
10 taxes owed. Individual Settlement Payments shall be each Participating Class Member's share of the
11 Net Fund Value Amount (which share shall be determined by the calculations provided in this
12 Agreement at Section 5.06.c.).

13 u. "Judgment" refers to the judgment entered by the Court in conjunction with the Final Order.

14 v. "LWDA" means the California Labor and Workforce Development Agency.

15 w. "Net Fund Value Amount" means the Gross Fund Value Amount of \$1,250,000.00 (One
16 Million, Two Hundred Fifty Thousand Dollars and Zero Cents) less all of the following amounts
17 approved by the Court: (1) Class Counsel's court-approved attorney's fees (not to exceed 33 1/3% of
18 the Gross Fund Value, an amount currently estimated to be Four Hundred Sixteen Thousand, Six
19 Hundred Sixty Six Dollars and Sixty-Seven Cents (\$416,666.67) if the escalator clause in Section
20 5.06 does not apply); (2) Class Counsel's court-approved collective litigation costs (not to exceed
21 Twenty Thousand Dollars (\$20,000.00); (3) the court-approved Service Award to be paid to the
22 Representative Plaintiff (not to exceed Ten Thousand Dollars (\$10,000.00); (4) the amount of court-
23 approved PAGA penalties to be paid to the LWDA of Ten Thousand Dollars (\$10,000.00) which
24 equates to 75% of the total amount allocated for PAGA Penalties of Seven Thousand and Five
25 Hundred Dollars (\$7,500.00); and (5) the Claims Administrator's court-approved fees in the
26 anticipated amount of not more than Fifteen Thousand Dollars (\$15,000.00). The estimated Net
27 Fund Value Amount is estimated to be \$778,833.33 plus any residuals from amounts requested in
28

1 this paragraph which are not ultimately distributed to the respective Parties due to invoicing of a
2 lesser amount by the Claims Administrator or court approval of a lesser amount than requested.

3 x. “Non-Participating Class Member(s)” means those Class Members who submit to the Claims
4 Administrator a valid and timely written request to be excluded from the Class pursuant to Section
5 5.04.a below.

6 y. “PAGA” means the Private Attorneys General Act of 2004, California Labor Code sections
7 2698, *et seq.*

8 z. “Participating Class Member(s)” means those Class Members who do not submit valid
9 requests for exclusion.

10 aa. “Parties” means Representative Plaintiff and Defendant as defined herein.

11 bb. “Released Parties” means (i) Caravan Foods II, Inc. and its past, present, and future parents,
12 subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities,
13 whether foreign or domestic, and (ii) the past, present, and future shareholders, officers, directors,
14 members, investors, agents, employees, consultants, representatives, fiduciaries, insurers, attorneys,
15 legal representatives, predecessors, successors, and assigns of the entities listed in (i).

16 cc. “Released Class Claims” means the Class Claims, and if Class Members cash the checks for
17 their Individual Settlement Payments, that the Final Settlement Class Members are fully and
18 irrevocably releasing in exchange for the consideration provided by this Settlement Agreement,
19 whether arising at law, in contract or in equity, and whether for economic or non-economic damages,
20 restitution, injunctive relief, penalties or liquidated damages from April 9, 2017, through the date of
21 mediation, June 7, 2022.

22 dd. “Representative Plaintiff” and/or “Kingsbury” means named Plaintiff Kaneisha Kingsbury.

23 ee. “Service Award” means a monetary amount not to exceed Ten Thousand Dollars
24 (\$10,000.00) for the Representative Plaintiff which, subject to Court approval, shall be paid pursuant
25 to Section 5.06.b.3 of the Agreement, as provided below.

26 ff. “Settlement” means the disposition of this Action and all related claims effectuated by this
27 Agreement.

ARTICLE IV

CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

4.1. Certification Of Class And Claims. Solely for the purposes of this Settlement, the Parties stipulate and agree that the Court may certify a class consisting of “all current and former non-exempt hourly paid employees who worked for Defendant within the State of California at any time from April 9, 2017 through the date of mediation, June 7, 2022.”

4.2. Appointment Of Class Representative. Solely for the purposes of this Settlement, the Parties stipulate and agree Representative Plaintiff shall be appointed as representative of the Final Settlement Class.

4.3. Appointment Of Class Counsel. Solely for the purposes of this Settlement, the Parties stipulate and agree that Class Counsel shall be appointed as counsel for the Final Settlement Class.

4.4. Appointment Of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that CPT Group, Inc. shall be appointed to serve as Settlement Administrator.

4.5. Conditional Nature Of Stipulation For Certification. Solely for the purposes of this Settlement, the Parties stipulate and agree to the certification of the Final Settlement Class. Should, for whatever reason, the Settlement not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of whether the Class Members and/or the Class Claims should be certified in a non-Settlement context in this Action or in any other lawsuit. Defendant expressly reserves its right to oppose claim or class certification in this or any other action should this Settlement not become effective.

4.6. Stay Of Proceedings. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.

4.7. Arbitrability of Claims. The Settlement is not intended to and may not be deemed to affect the enforceability of any arbitration agreement between Defendant and Representative Plaintiff and/or between Defendant and any Class Member.

ARTICLE V

PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT

Because the Parties have stipulated to the certification of the Class for settlement purposes only, this Agreement requires preliminary and final approval by the Court. Accordingly, as set forth in Section IV, the Parties enter into this Agreement on a conditional basis. This Agreement is contingent upon the approval and certification by the Court. If the Court does not grant either the Preliminary or Final Approval of the settlement, the fact that the Parties were willing to stipulate to class certification for the purposes of this Agreement shall have no bearing on, or be admissible in connection with, the issue of whether any class should be certified in a non-settlement context. If the Final Effective Date does not occur, this Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendant expressly reserves the right to challenge the propriety of class certification for any purpose if the settlement does not become final.

The Parties and their respective counsel shall take all steps that may be requested by the Court relating to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain Court approval and implement this Agreement. The procedure for obtaining Court approval of and implementing this Agreement shall be as follows.

Section 5.01: Motion for Conditional Class Certification and Preliminary Approval

a. Representative Plaintiff shall bring a motion before the Court for an order conditionally certifying the Class based on the preliminary approval of this Agreement, including the Class Notice attached hereto as Exhibit "A." The date that the Court grants preliminary approval of this Agreement shall be the "Preliminary Approval Date."

b. Representative Plaintiff shall serve a notice of settlement on the LWDA at the same time they file motion for preliminary approval.

c. The Parties stipulate to the form of, and agree to submit to the Court for its consideration, this Settlement Agreement, and the following Exhibits to this Settlement Agreement: the Class Notice (Exhibit A) and a [Proposed] Preliminary Approval Order approved by both Parties.

d. The [Proposed] Preliminary Approval Order shall:

- 1 • Conditionally grant class certification;
- 2 • Conditionally appoint Representative Plaintiff and Class Counsel as
- 3 representatives of the proposed Class Members;
- 4 • Appoint CPT Group, Inc. as the Settlement Administrator, and order the
- 5 Settlement Administrator to provide notice of the settlement as outlined
- 6 below;
- 7 • Confirm that the procedure for distributing the Class Notice (discussed below)
- 8 (i) constituted the best practicable notice; (ii) constituted notice that was
- 9 reasonably calculated, under the circumstances, to apprise Settlement Class
- 10 Members of the pendency of the Action, and their right to exclude himself
- 11 from or object to the proposed settlement and to appear at the Final Fairness
- 12 and Approval Hearing; (iii) was reasonable and constituted due, adequate, and
- 13 sufficient notice to all persons entitled to receive notice; and (iv) met all
- 14 applicable requirements of, due process, and any other applicable rules or law;
- 15 • Confirm the notice of settlement served by Representative Plaintiff on the
- 16 LWDA satisfies the requirements of the PAGA.
- 17 • Impose a stay on all litigation of the Action pending the Final Fairness and
- 18 Approval Hearing, or Class Members from prosecuting any claims against
- 19 Defendant or the Released Parties pending the Final Fairness and Approval
- 20 Hearing unless they have timely opted-out of the settlement; and;
- 21 • Order that the preliminary approval of the Settlement, certification of the
- 22 Class Claims and all actions associated with them, are undertaken on the
- 23 condition that they shall be vacated if the Settlement Agreement is terminated
- 24 or disapproved in whole or in material part by the Court (i.e. not including
- 25 modification of the amount of Attorney's Fees, Attorney's Costs, or Class
- 26 Representative Enhancement by the Court), or any appellate court and/or
- 27 other court of review in which event the Settlement Agreement and the fact
- 28 that it was entered into shall not be offered, received, or construed as an

admission or as evidence for any purpose, including but not limited to an admission by any Party of liability or non-liability or of the certifiability of a litigation class or the appropriateness of maintaining a representative action.

Section 5.02: The Claims Administrator

A court-appointed third-party Claims Administrator will serve to administer this Settlement pursuant to the terms herein. The Claims Administrator will administer the settlement by performing address verification for the Class Members, distributing the Class Notice and Reminder Postcards, if necessary, performing skip traces, receiving and recording completed Settlement Opt-Outs, adjudicating Class Members' disputes over workweeks worked during the Class Period in the relevant positions as an hourly and/or non-exempt employee, providing Class Counsel and counsel for Defendant with weekly updates on the status of Opt-Outs, and handling any potential inquiries about the calculation of the Individual Settlement Amounts. The Claims Administrator shall provide the Parties with the names of individuals who submitted timely Opt-Outs after the expiration of the claims period for inclusion in the proposed final approval Order. The actions of the Claims Administrator shall be governed by the terms of this Stipulation. The Parties, through their counsel, may provide written information needed by the Claims Administrator pursuant to the Stipulation.

All costs of administering the Settlement, including but not limited to all costs and fees associated with preparing, issuing, and mailing any and all notices to Class Members, all costs and fees associated with computing, processing, reviewing, and mailing the Individual Settlement Payments, all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency, all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering disbursements from the Net Fund Value Amount, and any other costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of its duties under this Agreement ("Claims Administration Costs"), anticipated to be not more than Fifteen Thousand Dollars (\$15,000.00), shall be paid out of the Gross Fund Value Amount.

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1 **Section 5.03: Notice to Class Members**

2 **a. Initial Identification of Class Members:** Within seven (7) business days following
3 entry of the Preliminary Approval Order, Defendant shall provide to the Claims Administrator a
4 confidential list in Excel spreadsheet format containing the name and last known address, telephone
5 number, and social security number of each Class Member. This list shall also contain the gross
6 wages earned by each individual Class Member as an hourly or non-exempt employee for Defendant
7 during the Class Period and the commencement dates and termination dates (if applicable) relating to
8 each individual Class Member during the Class Period. This information shall be treated as
9 confidential.

10 **b. Mailing of Class Notice:** Promptly upon receipt of the Class Member information
11 from Defendant, the Claims Administrator shall attempt to obtain updated addresses for Class
12 Members from the U.S. Postal Service and Accurint. Within fourteen (14) calendar days after receipt
13 of the Class Member information from Defendant, or receipt of any updated addresses from the U.S.
14 Postal Service, whichever is later, the Claims Administrator shall mail the Class Notice to all Class
15 Members via first-class mail using the updated address information. With respect to each Class
16 Notice that is returned as undeliverable, the Claims Administrator shall promptly attempt to
17 determine a correct address using an additional skip trace service such as Experian and shall re-send
18 the Class Notice via first-class mail to any new address thereby determined within 10 days of
19 receiving the notice that the Class Notice was undeliverable.

20 **c. Notification to Counsel:** No later than ten (10) days prior to the Final Fairness and
21 Approval Hearing, the Claims Administrator shall provide Defense Counsel and Class Counsel with
22 a declaration attesting to completion of the notice process, including any attempts to obtain valid
23 mailing addresses for and re-sending of any returned Class Notices, as well as the number of valid
24 opt-outs that the Claims Administrator received. Upon approval by the court, compliance with the
25 procedures described in this Section 5.03.b shall constitute due and sufficient notice to Class
26 Members of this proposed Settlement and the Final Fairness and Approval Hearing and shall satisfy
27 the requirement of due process. Nothing else shall be required of the Parties, Class Counsel, Defense
28

Counsel, or the Claims Administrator to satisfy the requirements of providing notice of the proposed Settlement and the Final Fairness and Approval Hearing.

Section 5.04: Responses to Notice

a. Requests for Exclusion from Class

For any other Class Member to validly exclude himself or herself from the Class and this Settlement (*i.e.*, to validly opt-out), a written request for exclusion must be signed by the Class Member or his or her authorized representative, and must be sent to the Claims Administrator, postmarked by no later than thirty (30) days after the date the Claims Administrator initially mails the Class Notice to the Class Members. For Notices re-mailed by the Claims Administrator pursuant to section 5.03.b, the written request for exclusion must be postmarked by no later than thirty (30) days of the initial mailing of the Class Notice or twenty (20) days of the re-mailing, whichever is later. The Class Notice shall contain individualized estimated payments, set forth instructions on how to opt-out and include the language to be used in a request for exclusion. The date of the initial mailing (or re-mailing for Class Notices re-mailed) of the Class Notice and the date the signed request for exclusion was postmarked, shall be conclusively determined according to the records of the Claims Administrator. Any Class Member who timely and validly requests exclusion from the Class and this Settlement shall become a Non-Participating Class Member and shall not be entitled to any Individual Settlement Payment, shall not be bound by the terms and conditions of this Agreement, and shall not have any right to object, appeal, or comment thereon.

Final Settlement Class members may exclude themselves or “opt out” from a release of Class Claims by not depositing or cashing their Individual Settlement Payment checks. The Class Notice and Individual Settlement Payment check will conspicuously advise Final Settlement Class of such.

b. Objections to Settlement

For any Class Member to object to this Agreement, or any term of it, the person making the objection must not submit a request for exclusion (*i.e.*, must not opt-out), and must, by no later than thirty (30) days after the Class Notice was initially mailed to the Class Members, file with the Court and serve on Class Counsel and Defense Counsel, a written statement of the grounds of objection, signed by the objecting Class Member or his or her attorney, along with all supporting papers. For

1 Class Notices re-mailed by the Claims Administrator pursuant to section 5.03.b, written statements
2 of the grounds for objection must be filed and served no later than thirty (30) days after the initial
3 mailing of the Class Notice or twenty (20) days of the re-mailing, whichever is later. The date of
4 mailing or re-mailing of the Class Notice to the objecting Class Member shall be conclusively
5 determined according to the records of the Claims Administrator. The Court retains final authority
6 with respect to the consideration and admissibility of any Class Member objections.

7 Counsel for the Parties shall file any response to the objections submitted by objecting Class
8 Members at least ten (10) court days before the date of the Final Fairness and Approval Hearing or
9 ten (10) days after the receipt of the notice of objection, whichever is later.

10 **c. Failure to Object**

11 Any Class Member who fails to timely file and serve such a written statement of his or her
12 intention to object shall be foreclosed from making any objection to this settlement, unless otherwise
13 ordered by the Court.

14 **d. Failure to Timely Opt Out**

15 Any Class Member who fails to submit a timely request for exclusion from the Class
16 automatically shall be deemed a member of the Final Settlement Class whose rights and claims with
17 respect to the issues raised in the Action are determined by the Court's Final Order, and by the other
18 rulings in the Action.

19 **e. Right of Defendant to Void Agreement**

20 If more than ten percent (10%) of Class Members make a valid request to be excluded from
21 the Class as described in Section 5.04.a above and thus become Non-Participating Class Members,
22 Defendant shall have the right, but not the obligation, to void the Agreement. If Defendant exercises
23 that right to void the Agreement, then the Parties shall have no further obligations under the
24 Agreement, including any obligation by Defendant to pay the Gross Fund Value Amount, or any
25 amounts that otherwise would have been owed under this Agreement, except that Defendant shall
26 pay the Claims Administrator's reasonable fees and expenses incurred as of the date that Defendant
27 exercises their right to void the Agreement. Defendant shall notify Class Counsel and the Court
28 whether they are exercising the right to void the Agreement no later than ten (10) calendar days after

the Claims Administrator notifies the Parties of the final total number of valid requests to be excluded.

Section 5.05: Final Fairness and Approval Hearing

a. Final Approval Hearings

On the date set forth in the Order of Preliminary Approval and Class Notice, which shall be approximately one hundred and five (105) days after the initial mailing of the Notice of Proposed Class Action Settlement, or on a reasonable date as set forth by the Court, a Final Fairness and Approval Hearing shall be held before the Court in order (1) to review this Agreement and determine whether the Court should give it final approval; and (2) to consider any timely objections made pursuant to Section 5.04.b above and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the Parties shall ask the Court to give final approval to this Agreement and shall submit to the Court a proposed Final Order approving the Settlement and which shall be entered in the Action.

Representative Plaintiff shall file a motion requesting final approval of the Settlement approved by all Parties, the entry of which is a material condition of this Settlement. The Final Approval Order shall adjudge that, among other things:

- The Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement and that the Class Notice (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, and their right to exclude himself from or object to the proposed settlement and to appear at the Final Approval Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of due process, and any other applicable rules or law.
- The Settlement is fair, reasonable, and adequate;
- Representative Plaintiff and Class Counsel may adequately represent the Final Settlement Class for the purpose of entering into and implementing the

1 Agreement;

- 2 • The Settlement Administrator is to execute the distribution of proceeds
3 pursuant to the terms of this Agreement;
- 4 • The Final Approval Order and Judgment of dismissal shall be final and
5 entered forthwith;
- 6 • Without affecting the finality of the Final Approval Order and Judgment, the
7 Court retains continuing jurisdiction over Representative Plaintiff, Defendant,
8 the Final Settlement Class as to all matters concerning the administration,
9 consummation, and enforcement of this Settlement Agreement;
- 10 • As of the Final Approval Date, the Representative Plaintiff, the Final
11 Settlement Class, and their Legally Authorized Representatives, heirs, estates,
12 trustees, executors, administrators, principals, beneficiaries, representatives,
13 agents, assigns, and successors, and/or anyone claiming through them or
14 acting or purporting to act for them or on their behalf, regardless of whether
15 they have received actual notice of the proposed Settlement, have
16 conclusively compromised, settled, discharged, and provided: the Complete
17 and General Release (in the case of Representative Plaintiff) and the release of
18 Released Class Claims (in the case of the Final Settlement Class Members),
19 and are bound by the provisions of this Settlement Agreement;
- 20 • Notwithstanding the submission of a timely request for exclusion, Class
21 Members are still bound by the settlement and release of the PAGA Claims or
22 remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal.4th
23 969 (2009), as requests for exclusion do not apply to the PAGA Claims, and
24 further affirms that the State's claims for civil penalties pursuant to PAGA are
25 also extinguished;
- 26 • This Settlement Agreement and the Final Approval order and Judgment to be
27 binding on, and have *res judicata* and preclusive effect in, all pending and
28 future lawsuits or other proceedings that encompass the claims of

Representative Plaintiffs and Final Settlement Class members and/or their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming through them or acting or purporting to act for them or on their behalf;

- Representative Plaintiff and the Final Settlement Class members are permanently barred from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on the claims released herein; and
- The Settlement provided for herein, and any proceedings undertaken pursuant thereto, are not, and should not in any event be offered, received, or construed as evidence of, a presumption, concession, or an admission by any Party of liability or non-liability or of the certifiability or non-certifiability of a litigation class or collective, or that PAGA representative claims may validly be pursued; provided, however, that reference may be made to this Settlement in such proceedings as may be necessary to effectuate the provisions of this Settlement.

b. Vacatur, Reversal, or Material Modification of Final Order and Judgment on Appeal or Review

If, after a notice of appeal, petition for review, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Final Order and Judgment such that there is a material modification to the Settlement and that court's decision is not completely reversed, and the Final Order and Judgment is not fully affirmed on review by a higher court, then Representative Plaintiff and Defendant shall each have the right, but not the obligation, to void the Settlement, which the Party must do by giving written notice to the other Parties, the final reviewing court, and the Court not later than ten (10) business days after the final reviewing court's decision vacating, reversing, or materially modifying the Final Order becomes final and non-appealable. If either Party exercises its right to void the Agreement under this section, then the Parties shall have no further

obligations under the Agreement, including any obligation by Defendant to pay the Gross Fund Value Amount, or any amounts that otherwise would have been owed under this Agreement. The Party exercising its right to void the Agreement shall pay the Claims Administrator's reasonable fees and expenses incurred as of the date the Party exercises its right to void the Agreement. If the Parties mutually agree to void the Agreement, then the Claims Administrator's reasonable fees and expenses incurred as of the date the Parties exercise their right to void the Agreement shall be split equally. A vacatur, reversal, or modification of the Court's award of the Service Award or Class Counsel's fees or costs shall not constitute a vacatur, reversal, or material modification of the Final Order and Judgment within the meaning of this paragraph.

Section 5.06: Settlement Payment Procedures

a. Settlement Sum

In exchange for the releases set forth in this Agreement, Defendant agrees to pay the Gross Fund Value Amount of One Million, Two Hundred Fifty Thousand Dollars (\$1,250,000.00), exclusive of employer-side payroll taxes. The Gross Fund Value Amount was calculated based on the premise that there are approximately 1090 Class Members eligible to participate in the Settlement representing a total of approximately 78,328 workweeks. In the event the actual number of workweeks in the Settlement is greater than 20% of this estimate, then the Gross Fund Value Amount will be increased by the same proportion above 20%. The Settlement Sum includes Class Counsel's attorney's fees not to exceed 33 1/3% of the Gross Fund Value and litigation costs of not more than Twenty Thousand Dollars (\$20,000.00), a Service Award for Representative Plaintiff of not more than Ten Thousand Dollars (\$10,000.00), the PAGA penalty payment of Ten Thousand Dollars (\$10,000.00), which includes the payment of Seven Thousand and Five Hundred Dollars (\$7,500.00) to the LWDA, the Claims Administration Costs anticipated to be not more than Fifteen Thousand Dollars (\$15,000.00).

b. Allocation of Settlement Amount: In full and complete settlement of the Action and subject to this Settlement being approved by the Court, Defendant shall pay One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00), (the "Gross Fund Value Amount"). The Gross Fund Value Amount shall be paid to the Claims Administrator no later than thirty (30) calendar days

1 after the Final Effective Date. If the Court does not grant final approval upon the material terms of
2 the settlement (other than modification of the requested attorney's fees, costs or class representative
3 service award) or if more than 10% of the putative class members opt out as set forth in Section
4 5.04(e) and the Defendant elects to void the settlement, Defendant shall have no further obligation
5 under this Agreement. If the Court grants final approval of the settlement, the settlement funds shall
6 be disbursed as follows:

7 **1. Reasonable attorney's fees and litigation expenses:** Class Counsel have
8 stated they shall request that the Court award them reasonable attorney's fees in an amount up to 33
9 1/3% of the Gross Fund Value and litigation costs in an amount up to Twenty Thousand Dollars
10 (\$20,000.00). Defendant has agreed neither to oppose nor adversely comment on the fees and
11 litigation costs request. The award of reasonable attorney's fees and litigation costs granted by the
12 Court shall be paid out of the Gross Fund Value Amount within thirty-five (35) calendar days of the
13 Final Effective Date in accordance with Section 5.06.d.2-3, below.

14 **2. Reasonable expenses of the Claims Administrator:** The Claims
15 Administrator shall be paid out of the Gross Fund Value Amount and such payment shall not
16 constitute payment to any Participating Class Member(s). The Claims Administration Costs,
17 expected not to exceed Fifteen Thousand Dollars (\$15,000.00), shall be paid out of the Gross Fund
18 Value Amount within thirty five (35) calendar days after the Final Effective Date in accordance with
19 Section 5.06.d.1, below.

20 **3. Reasonable Service Award to the Representative Plaintiff:**
21 Subject to Court approval, the Representative Plaintiff shall make a separate application for
22 up to Ten Thousand Dollars (\$10,000.00) as a Service Award. The Service Award shall be paid by
23 check made payable to the Representative Plaintiff, which shall be delivered by the Claims
24 Administrator to Class Counsel within thirty-five (35) calendar days after the Final Effective Date.
25 The Service Award shall be paid out of the Gross Fund Value Amount and shall not constitute
26 payment(s) to any Participating Class Member(s).

27 It is the intent of the Parties that the Service Award represent payment to Representative
28 Plaintiff for the additional risks undertaken in prosecuting this action and her service to the Class

Members, and not wages, thus, the Claims Administrator shall not withhold any taxes from the Service Award. The Service Award shall be reported on a Form 1099, which shall be provided by the Claims Administrator to the Representative Plaintiff and to the pertinent taxing authorities as required by law. Although it is the contemplation of the Parties that the Service Award does not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing authority may take the position that some or all of the Service Award constitutes wages for income tax and withholding purposes. The Representative Plaintiff agrees to assume the responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority the amounts required by law, if any, to be withheld by Defendant from the Service Award paid under this Agreement.

4. PAGA Payment: A payment of Ten Thousand Dollars (\$10,000.00) shall be allocated to PAGA penalties, Seven Thousand and Five Hundred Dollars (\$7,500.00) of which shall be payable to the California LWDA within thirty (35) calendar days of the Final Effective Date. The PAGA penalties shall be paid out of the Gross Fund Value Amount. The remaining portion of the PAGA payment shall be distributed pro-rata to the PAGA Members as set forth below in Section 5.06.c.2.

5. Allocation to Participating Class Members: The amount remaining from the Gross Fund Value Amount after deducting the court-awarded reasonable attorney's fees and litigation costs, reasonable Claims Administration Costs, reasonable Service Award payment, and PAGA penalties portion allocated to the LWDA (the "Net Fund Value Amount") shall be distributed to members of the Class in accordance with the formula set forth below in Section 5.06.c. Final Settlement Class members are not eligible to receive any compensation other than the Individual Settlement Payments discussed below.

c. Individual Settlement Payments: The Individual Settlement Payments shall be calculated as follows:

1. Calculation: Each Class Member of the Final Settlement Class who does not Opt-Out shall be eligible to receive his/her Individual Settlement Payment, which shall be based on information contained in Defendant's pertinent payroll records, and calculated as follows:

i) Each Class Member of the Final Settlement Class shall be allocated a payment equal to the pro rata portion of the number of weeks worked by that class member while employed with Defendant within the State of California during the Class Period in proportion to the total aggregated weeks worked by All Settlement Class Members during the class period.

ii) The employee's share of the payroll taxes shall be deducted and paid from the Individual Settlement Payment. The Claims Administrator shall calculate the Individual Settlement Payments and the amount of the employee's share of payroll taxes to be deducted therefrom in order to determine the net Individual Settlement Payment.

2. PAGA Payment: The Administrator will calculate each PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$2,500) by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's pay periods.

3. Dispute Resolution: The Claims Administrator shall have the initial responsibility of resolving all disputes that arise during the claims administration process, including, without limitation, disputes, if any, regarding the calculation of the total number of gross wages earned by each Class Member in their respective positions as residential managers (or otherwise similar job duties and/or title) where the information submitted by Defendant based on their employment records differs from the information submitted by Class Members. In resolving such disputes, Defendant's employment records shall be presumed to be accurate and correct, and shall be final and binding, unless the information submitted by the Claimant (e.g., pay stubs, employment records, etc.) proves otherwise. In the event the Claims Administrator cannot resolve a dispute based on a review of the available information, the Claims Administrator shall request a conference call between the Claims Administrator, Class Counsel, and Defense Counsel to discuss and resolve the dispute. After such call, if there is no resolution of the dispute, the dispute shall be submitted to the Court for a final and binding resolution on the Class Member. In advance of the conference call, the Claims Administrator shall fax or email copies of all available information to all counsel.

4. Fair Formula: The Parties hereby agree that the formula for allocating payments to

1 Participating Class Members as provided herein is reasonable and designed to provide a fair
2 settlement to the Participating Class Members.

3 **5. Allocation of Net Fund Value Amount Payments and Taxes:** All Individual
4 Settlement Payments made to Participating Class Members under this Agreement shall be allocated
5 as wages. The Claims Administrator shall deduct from each Individual Settlement Payment all
6 employee portions of payroll taxes from the amount allocated to wages. Those Individual Settlement
7 Payments shall be treated by the parties as wages, subject to withholding and reporting on a Form
8 W-2. Participating Class Members shall report such Individual Settlement Payments as wages
9 received, and Defendant shall report such Individual Settlement Payments as wages paid, on their
10 respective federal and state income tax returns. No part of the Individual Settlement Payments shall
11 be classified as a penalty or allocated to a penalty for purposes of Section 62(f) of the Internal
12 Revenue Code of 1986, but rather shall be classified as wages. Defendant shall not make as part of
13 this Agreement, nor be required to make, any deductions, nor pay any monthly contributions for any
14 insurance, retirement, bonuses, 403(b), or profit-sharing plans related to monies paid as a result of
15 this Agreement.

16 The Parties understand and agree that Defendant is not providing tax or legal advice, or
17 making representations regarding tax obligations or consequences, if any, related to this Agreement,
18 and that the members of the Final Settlement Class will assume any such tax obligations or
19 consequences that may arise from this Agreement, and that Final Settlement Class Members shall
20 not seek any indemnification from Defendant in this regard. The Parties agree that, in the event that
21 any taxing body determines that additional taxes are due from any Final Settlement Class Member,
22 such Class Member assumes all responsibility for the payment of any such taxes.

23 **d. Timing of Settlement Payments:** As set forth in Section 5.06.b. above, no later than
24 thirty (30) calendar days following the Final Effective Date, Defendant shall remit the full Gross
25 Fund Value Amount to the Claims Administrator via wire transfer (or other method reasonably
26 calculated to be received by the Claims Administrator within thirty (30) calendar days after the Final
27 Effective Date) for the purposes of making the payments described herein. Payments from the Gross
28

1 Settlement Fund shall fund the settlement and meet the obligations of Section 5.06.b and be paid by
2 the Claims Administrator within the time frames set forth below in sections 5.06.d.1-5.

3 Payments of the following from the Gross Fund Value Amount shall be made in accordance
4 with the following subparagraphs:

5 **1. Claims Administrator:** The Claims Administrator shall be paid the Claims
6 Administration costs from the Gross Fund Value, expected to be not more than Fifteen Thousand
7 Dollars (\$15,000.00), thirty (35) calendar days after the Final Effective Date.

8 **2. Class Counsel's Fees:** The amounts approved by the Court for Class
9 Counsel's fees shall be paid by the Claims Administrator within thirty-five (35) calendar days after
10 the Final Effective Date and the Claims Administrator shall pay the total attorney's fee award to
11 Class Counsel.

12 **3. Class Counsel's Costs:** The amount approved by the Court for Class
13 Counsel's costs shall be paid by the Claims Administrator within thirty-five (35) days after the Final
14 Effective Date.

15 **4. Class Representative's Service Award:** The amount approved by the Court
16 for the Class Representative's Service Award shall be paid by the Claims Administrator to Class
17 Counsel within thirty-five (35) calendar days after the Final Effective Date.

18 **5. Individual Settlement Payments:** Within fifteen (15) days of the last date for
19 Opt-Outs or Objections to be timely submitted in accordance with Section 5.04.a and 5.04.b, above,
20 the Claims Administrator shall provide to the Parties a written statement of all Individual Settlement
21 Payments to be paid to all Participating Class Members and all required payroll taxes. The Claims
22 Administrator will distribute the Individual Settlement Payments to all Participating Class Members
23 within thirty-five (35) calendar days of the Final Effective Date. Claims Administrator shall issue to
24 each Participating Class Member a check in the amount of his or her Individual Settlement Payment,
25 as described in Section 5.06.c.1 (less applicable taxes and withholdings) via first-class mail.

26 Uncashed checks not negotiated within 120 days of their issuance are void. All Final Settlement
27 Class Members shall be bound by this Agreement and the release herein even if the Class Member
28 does not cash the settlement check issued to him or her comprising his or her Individual Settlement

1 Payment. If any Settlement Class Member has not cashed his or her Settlement Payment check
 2 within ninety (90) days of issuance, the Settlement Administrator shall mail that Class Member a
 3 postcard reminding him/her of the deadline to cash such check and providing information as to how
 4 to obtain a reissued check in the event the check was lost, stolen or misplaced. Any checks issued to
 5 Class Members shall remain valid and negotiable for one hundred twenty (120) days from the date of
 6 issuance. After all settlement funds have been distributed and all checks issued to Settlement Class
 7 Members have either been cashed or have remained uncashed and gone stale, the Settlement
 8 Administrator shall deposit any residual funds from uncashed checks with the California State
 9 Controller's Office – Unclaimed Property.

10 **e. Residuals**

11 If any amount of the Gross Fund Value Amount remains unallocated as a result of
 12 modification to the requested attorney's fees, costs, Class Representative Service Award or Claims
 13 Administration Costs, this amount shall become part of the Net Fund Value Amount and be
 14 distributed pursuant to Section 5.06.c.

15 **f. Circular 230 Disclaimer**

16 Each party to this agreement (for purposes of this section, the "acknowledging party" and
 17 each party to this agreement other than the acknowledging party, an "other party") acknowledges
 18 and agrees that (1) no provision of this agreement, and no written communication or disclosure
 19 between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall
 20 any such communication or disclosure constitute or be construed or be relied upon as, tax advice
 21 within the meaning of united states treasury department circular 230 (31 CFR part 10, as amended);
 22 (2) the acknowledging party (a) has relied exclusively upon his or its own, independent legal and tax
 23 counsel for advice (including tax advice) in connection with this agreement, (b) has not entered into
 24 this agreement based upon the recommendation of any other party or any attorney or advisor to any
 25 other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or
 26 adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party;
 27 and (3) no attorney or adviser to any other party has imposed any limitation that protects the
 28 confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such

1 limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax
2 structure of any transaction, including any transaction contemplated by this agreement.

3 **ARTICLE VI**

4 **LIMITATIONS ON USE OF THIS SETTLEMENT**

5 **Section 6.01: No Admission**

6 Defendant denies that Defendant has engaged in any unlawful activity, that Defendant failed
7 to comply with the law in any respect, that Defendant has any liability to anyone based upon the
8 claims asserted in the Action, and Defendant asserts that but for this Settlement a class should not be
9 certified in this Action. This Agreement is entered into solely for the purpose of compromising
10 highly disputed claims. Nothing in this Agreement is intended or shall be construed as an admission
11 of liability or wrongdoing by Defendant.

12 Defendant has concluded that any further defense of this litigation would be protracted and
13 expensive for all Parties. Substantial amounts of time, energy, and resources of Defendant have been
14 spent and, unless this Settlement is agreed to, will continue to be devoted to the defense of the
15 Claims asserted by the Class. Defendant has also taken into account the risks of further litigation in
16 reaching this decision. Defendant has, therefore, agreed to settle in the manner and upon the terms
17 set forth in this Agreement to put to rest the Claims as set forth in the Action.

18 As to the claims and allegations in this Action, including but not limited to wage claims,
19 meal and rest period claims, overtime pay claims, minimum wage claims, claims for uncompensated
20 work time, wage statement claims, claims for waiting time penalties, unfair business practices
21 claims, claims for reimbursement of business expenses, and claims for PAGA penalties, Defendant
22 denies and continues to deny each of those claims and contentions alleged by Representative
23 Plaintiff and the Class in the Action. Defendant has repeatedly asserted and continues to assert
24 defenses thereto, and has expressly denied and continues to deny any wrongdoing or legal liability
25 arising out of any of the facts or conduct alleged in the Action.

26 **Section 6.02: Non-Evidentiary Use**

27 Whether or not the settlement becomes final, neither this Agreement nor any of its terms nor
28 the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or

1 deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties,
2 including but not limited to, evidence of a presumption, concession, indication, or admission by any
3 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b)
4 disclosed, referred to, or offered in evidence against any of the Released Parties in any further
5 proceeding in the Action, or any other civil, criminal, or administrative action or proceeding except
6 for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to
7 establish that a Class Member has resolved any of his/her claims released through this Agreement.

8 **Section 6.03: Nullification**

9 The Parties have agreed to the certification of the Class for the sole purpose of effectuating
10 this Agreement. If (a) the Court should for any reason fail to certify a class for settlement, or (b) the
11 Court should for any reason fail to approve this Settlement in the form agreed to by the Parties
12 (except for the amount of attorney's fees, costs and Service Awards awarded), or (c) the Court
13 should for any reason fail to enter the Final Order, or (d) the Final Order is reversed, modified, or
14 declared or rendered void, then (i) this Agreement shall be considered null and void; (ii) neither this
15 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
16 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had
17 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to
18 stipulate to class certification as part of the Settlement shall have no bearing on, and shall not be
19 admissible in connection with, the issue of whether a class should be certified in a non-settlement
20 context in this Action or any other action, and in any of those events, Defendant expressly reserves
21 the right to oppose any motion for class certification.

22 Invalidity of any material portion of this Agreement, except for the amount of attorney's
23 fees, costs and Service Award, shall invalidate this Agreement in its entirety unless the Parties shall
24 subsequently agree in writing that the remaining provisions shall remain in full force and effect.

25 **ARTICLE VII**

26 **RELEASES**

27 **Section 7.01: Releases by Class Members**

28 On the Final Effective Date, the Final Settlement Class shall be bound by this Agreement.

1 **Section 7.02: Release of All Claims Relating To The Action**

2 Upon the court's final approval of the class settlement and entry of Final Order and
3 Judgment, each member of the Final Settlement Class shall be deemed to have released and
4 discharged each Defendant and all of its former and present parents, and affiliates, and their officers,
5 directors, employees, partners, shareholders, attorneys, and agents, and any other successors, assigns
6 or legal representatives from any and all claims that were asserted and that could have been asserted
7 based on the facts contained in the Complaint filed in this Action and which were included leading
8 up to and during mediation, including without limitation to, any and all alleged claims for unpaid
9 wages, unpaid minimum wages, unpaid overtime, regular rate compensation, unpaid meal or rest
10 break premiums, itemized wage statement penalties, unreimbursed business expenses, failure to
11 provide requisite writings, waiting time penalties under the California Labor Code and Business &
12 Professions Code (including Section 17200 et seq.); claims for penalties brought under the Labor
13 Code Private Attorneys General Act of 2004 (Labor Code Section 2698 *et seq.*); claims for
14 restitution and other equitable relief, liquidated damages, or penalties in their positions as Settlement
15 Class Members during the Class Period.

16 The Final Settlement Class acknowledges that it may hereafter discover claims presently
17 unknown and unsuspected, or facts in addition to or different from those which they now know or
18 believe to be true with respect to claims released herein. Nevertheless, Final Settlement Class
19 members acknowledge that a portion of the consideration received herein is for a release with
20 respect to unknown damages and complaints, whether resulting from known injuries and
21 consequences or from unknown injuries or unknown consequences, and agree that it is their
22 intention to fully, finally, and forever to settle and release all matters and all claims that exist,
23 hereafter may exist, or might have existed based on the facts and allegations set forth in the
24 Complaint.

25 Final Settlement Class Members who cash or deposit their Individual Settlement Payment
26 checks will also release their Class Claims.

27 **Section 7.03: 1542 Release By Kaneisha Kingsbury**

1 In addition to the Settlement Class Members' Released Class Claims described above, in
2 exchange for the consideration recited in this Agreement, including but not limited to the court-
3 approved Class Representative Service Award, Kingsbury enters into a Complete and General
4 Release which releases, acquits, and discharges any covenants not to sue any of the Releasees for
5 any claim, whether known or unknown, which Kingsbury has ever had, or hereafter may claim to
6 have, arising on or before the date that she signs this Agreement, including without limitation to, any
7 claims relating to or arising out of any aspect of her employment, or the termination of her
8 employment, with Defendant, any claims for unpaid compensation, wages, reimbursement for
9 business expenses, penalties, or waiting time penalties under the California Labor Code, the
10 California Business and Professions Code, the federal Fair Labor Standards Act, 29 U.S.C. section
11 201, *et seq.*, or any federal, state, county or city law or ordinance regarding wages or compensation;
12 any claims for employee benefits, including without limitation, any claims under the Employee
13 Retirement Income Security Act of 1974; any claims of employment discrimination on any basis,
14 including without limitation, any claims under Title VII of the Civil Rights Act of 1964, the Civil
15 Rights Act of 1866, 42 U.S.C. section 1981, the Civil Rights Act of 1991, the Americans with
16 Disabilities Act of 1991, the Family and Medical Leave Act of 1993, the California Government
17 Code, or any other federal, state, county or city law or ordinance regarding employment
18 discrimination. Kingsbury acknowledges and agrees that the foregoing general release is given in
19 exchange for the consideration provided to her under this Agreement by Defendant. However, this
20 release shall not apply to claims for workers' compensation benefits, unemployment insurance
21 benefits, pension or retirement benefits, or any other claim or right that as a matter of law cannot be
22 waived or released.

23 Kingsbury expressly waives any rights or benefits available to her under the provisions of
24 Section 1542 of the California Civil Code, which provides as follows:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
26 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
27 FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY
28

1 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
2 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

3 Kingsbury understands fully the statutory language of Civil Code section 1542 and, with this
4 understanding, nevertheless elects to, and does, assume all risks for claims that have arisen, whether
5 known or unknown, which she ever had, or hereafter may claim to have, arising on or before the date
6 of her signature to this Agreement, and specifically waives all rights she may have under California
7 Civil Code section 1542.

8 **ARTICLE VIII**

9 **STIPULATION FOR LEAVE TO FILE SECOND AMENDED CLASS AND**
10 **REPRESENTATIVE ACTION COMPLAINT**

11 The Parties stipulate to Plaintiff being afforded leave to file a Second Amended Class and
12 Representative Action Complaint (attached hereto as Exhibit "B"). The Second Amended Class and
13 Representative Action Complaint will include a cause of action for civil penalties pursuant to the
14 PAGA, as well as remove Sterling BV, Inc. as a defendant (while simultaneously dismissing Sterling
15 BV, Inc. from the action).

16 **ARTICLE VIII**

17 **MISCELLANEOUS PROVISIONS**

18 **Section 8.01: Amendments or Modification**

19 The terms and provisions of this Agreement may be amended or modified only by an express
20 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.

21 **Section 8.02: Representations and Warranties of Defendant's Records**

22 Defendant represents and warrants that the documents provided to Class Counsel during and
23 after mediation that constituted a material condition to this Settlement are substantially accurate to
24 the best of their knowledge.

25 **Section 8.03: Assignment**

26 None of the rights, commitments, or obligations recognized under this Agreement may be
27 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express
28 written consent of each other Party and their respective counsel. The representations, warranties,
covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under

STIPULATED SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

1 this Agreement and shall not be construed to confer any right or to avail any remedy to any other
2 person.

3 **Section 8.04: Governing Law**

4 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
5 shall be determined, in accordance with the laws of the State of California, irrespective of the State
6 of California's choice of law principles.

7 **Section 8.05: Entire Agreement**

8 This Agreement, including the Exhibit referred to herein, which forms an integral part hereof,
9 contains the entire understanding of the Parties hereto with respect of the subject matter contained
10 herein. In case of any conflict between text contained in Articles I through VI of this Agreement and
11 text contained in the Exhibit to this Agreement, the former (*i.e.*, Articles I through VI) shall be
12 controlling. There are no restrictions, promises, representations, warranties, covenants, or
13 undertakings governing the subject matter of this Agreement other than those expressly set forth or
14 referred to herein. This Agreement supersedes all prior agreements and understandings among the
15 Parties hereto with respect to the settlement of the Action including correspondence between Class
16 Counsel and Defense Counsel. No rights hereunder may be waived except in writing.

17 **Section 8.06: Counterparts and Fax Signatures**

18 This Agreement, and any amendments hereto, may be executed in any number of
19 counterparts and any Party and/or their respective counsel hereto may execute any such counterpart,
20 each of which when executed and delivered shall be deemed to be an original and all of which
21 counterparts taken together shall constitute one instrument. It shall not be necessary in making proof
22 of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.
23 A fax or electronic signature on this Agreement shall be as valid as an original signature.

24 **Section 8.07: Meet and Confer Regarding Disputes**

25 Should any dispute arise among the Parties or their respective counsel regarding the
26 implementation or interpretation of this Agreement, a representative of Class Counsel and a
27 representative of Defense Counsel shall meet and confer in good faith in an attempt to resolve such
28 disputes prior to submitting such disputes to the Court.

Section 8.08: Agreement Binding on Successors

This Agreement shall be binding upon, and inure to the benefit of, the successors in interest of each of the Parties.

Section 8.09: Cooperation in Drafting

The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement shall not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

Section 8.10: Fair Settlement

Representative Plaintiff, Defendant, Class Counsel, and Defense Counsel have arrived at this Agreement through arm's-length negotiation and believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action considering all relevant factors, current and potential, and believe the Agreement is consistent with public policy and fully complies with applicable provisions of law.

Section 8.11: 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 and shall not be considered in interpreting this Agreement.

Section 8.12: Notice

All notices, demands, or other communications given under this Agreement shall be in writing and deemed to have been duly given as of the third business day after mailing by first-class United States mail, addressed as follows:

To Representative Plaintiff and the Class:

Justin F. Marquez
justin@wilshirelawfirm.com
Benjamin H. Haber
benjamin@wilshirelawfirm.com
Arrash T. Fattahi
afattahi@wilshirelawfirm.com
Wilshire Law Firm
3055 Wilshire Blvd., 12th Floor
Los Angeles, CA 90010
Telephone: (213) 381-9988

1 Facsimile: (213) 381-9989

2 *To Defendant:*

3 Lindsay E. Hutner
4 hutnerl@gtlaw.com
5 Sam Hyde
6 hydes@gtlaw.com
7 Greenberg Traurig, LLP
8 101 Second Street, Suite 2200
9 San Francisco, CA 94105
10 Telephone: (415) 655-1300
11 Facsimile: (415) 707-2010

12 **Section 8.13: Enforcement and Continuing Jurisdiction of the Court**

13 To the extent consistent with class action procedure, this Agreement shall be enforceable by
14 the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain
15 continuing jurisdiction over this Action and over all Parties and Class Members to the fullest extent
16 to enforce and effectuate the terms and intent of this Agreement.

17 **Section 8.14: Mutual Full Cooperation**

18 The Parties agree to fully cooperate with each other to accomplish the terms of this
19 Agreement, including but not limited to execution of such documents, and to take such other action
20 as may reasonably be necessary to implement the terms of this Agreement. The Parties to this
21 Agreement shall use their best efforts, including all efforts contemplated by this Agreement, to
22 effectuate this Agreement and the terms set forth herein. In the event the Parties are unable to reach
23 agreement on the form or content of any document needed to implement the Settlement, or on any
24 supplemental provisions that may become necessary to effectuate the terms of the Settlement, the
25 Parties agree to seek the assistance of the Court.

26 **Section 8.15: Authorization to Act**

27 Class Counsel warrant and represent that they are authorized by the Representative Plaintiff,
28 and Defense Counsel warrant that they are authorized by Defendant, to take all appropriate action
required to effectuate the terms of this Agreement, except for signing the documents, including but
not limited to this Agreement, that are required to be signed by the Parties.

1 **Section 8.16: No Reliance on Representations**

2 The Parties have made such investigation of the facts and the law pertaining to the matters
3 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely,
4 on any statement, promise, or representation of fact or law, made by any of the other Parties, or any
5 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
6 rights, or with regard to the advisability of making and executing this Agreement, or with respect to
7 any such matters. No representations, warranties, or inducements have been made to any Party
8 concerning this Agreement other than those expressly set forth or referred to herein.

9 **Section 8.17: No Collateral Attack**

10 This Agreement shall not be subject to collateral attack by any Class Member or any
11 recipient of the Class Notice after the Final Effective Date. Such prohibited collateral attacks shall
12 include but not be limited to claims that the Class Member failed for any reason to receive timely
13 notice of the procedure for disputing the calculation of his or her Individual Settlement Payment.

14 **Section 8.18: No Public Comment/Non-Disparagement Clause**

15 Representative Plaintiff and Class Counsel will not make any public disclosure of the
16 settlement terms until after the settlement is preliminarily approved by the Court. Class Counsel will
17 take all steps necessary to ensure Representative Plaintiff is aware of, and will encourage her to
18 adhere to, the restriction against any public disclosure of the settlement terms until after the
19 settlement is preliminarily approved by the Court. None of these prohibitions on public comment
20 shall prohibit Class Counsel's communications with the Court as necessary to finalize the settlement.

21 Representative Plaintiff and Defendant represent and agree that they have not and will not
22 directly or indirectly disparage, encourage, assist, or induce others to disparage the other Party. For
23 the purposes of this Agreement, "disparage" shall include making or publishing any statement or
24 other content, whether in written, oral, electronic, digital or other form, truthful or otherwise, which
25 may reasonably be expected to adversely affect the business, public image, reputation or goodwill of
26 the other Party, including, without limitation, their operations, employees, directors or related
27 persons, and their past, present or future products or services and the facts relating to Representative
28 Plaintiff's past employment.

Section 8.19: Interim Stay of Proceedings

The Parties agree to the Court staying and holding all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, in abeyance pending the Settlement Hearing to be conducted by the Court.

1 **EXECUTION BY PARTIES AND COUNSEL**

2
3 Dated: 8/17/2022
Dated: August __, 2022

DocuSigned by:

92AB727B80DD43C

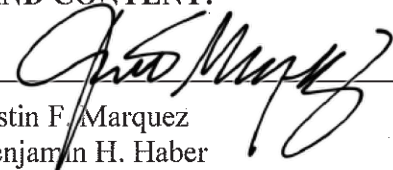
Kaneisha Kingsbury, Representative Plaintiff

5 Dated: August 17, 2022

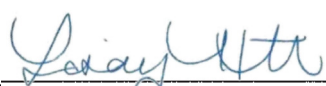
6 By: 
7 For Defendant Caravan Foods II, Inc.

8 **APPROVED AS TO FORM AND CONTENT:**

9 Dated: August 17, 2022

10 
Justin F. Marquez
11 Benjamin H. Haber
Arrash T. Fattahi
12 Wilshire Law Firm
Attorneys for Representative Plaintiff

14 Dated: August 18, 2022

15 
Lindsay E. Hutner
16 Sam Hyde
Greenberg Traurig, LLP
17 Attorneys for Defendant

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TABLE OF EXHIBITS

- Exhibit A:** Notice of Proposed Class Action Settlement
- Exhibit B:** Second Amended Class and Representative Action Complaint

Exhibit A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

KANEISHA KINGSBURY, individually, on behalf of all others similarly situated, and on behalf of the State of California and other aggrieved persons,

Plaintiff,

v.

CARAVAN FOODS II, INC.; and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: RG21096357

NOTICE OF PENDENCY OF PUTATIVE CLASS ACTION, PROPOSED SETTLEMENT AND HEARING DATE FOR COURT APPROVAL

Judge: Hon. Brad Seligman
Dept.: 23
Action Filed: April 9, 2021
Trial Date: Not set

TO: All current and former non-exempt hourly paid employees who worked for Defendant Caravan Foods II, Inc. within the State of California at any time from April 9, 2017 through June 7, 2022.

If You Qualify For Inclusion in The Settlement Class And You Wish To Participate In The Settlement And Receive A Settlement Payment, You Are Not Required To Take Any Action.

Please read this notice carefully. If you choose not to participate and would like to be excluded from the settlement or if you choose to object to the terms of the settlement, this notice requires you to file a request for exclusion or notice of objection on or before **<<30 days after notice mailed>>**, 2022. **YOU ARE NOT BEING SUED.** If you choose to be excluded from the settlement, you will not receive any settlement funds.

Pursuant to the order of the Alameda County Superior Court, entered **<<preliminary approval>>**, YOU ARE HEREBY NOTIFIED AS FOLLOWS: A proposed settlement has been reached between the Parties in the lawsuit identified in the caption above, pending in the Alameda County Superior Court, on behalf of the Settlement Class described above, which has been provisionally certified for purposes of this settlement. Your estimated individual settlement amount is **<< >>**. This is only an estimate. The final amount may change and is subject to final approval by the Court.

You have received this notice because records indicate you qualify as a member of the Settlement Class. This notice is designed to advise you of how you can participate in the settlement, how you can object to the settlement, and how you can exclude yourself from the settlement.

I. BACKGROUND OF THE CASE

Kaneisha Kingsbury filed a class action complaint in the Alameda County Superior Court entitled *Kaneisha Kingsbury v. Caravan Foods II, Inc. et al.*, Case No. RG21096357, on behalf of herself and a proposed class consisting of allegedly similarly situated individuals currently or formerly employed by *Caravan Foods II, Inc.* ("Caravan"). The complaint asserts claims for: (1) Failure to Pay Minimum and Straight Time Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal

Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Timely Pay Final Wages at Termination; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Failure to Indemnify Employees for Expenditures; (8) Violation of Business & Professions Code §§ 17200, et seq.; and (9) Civil Penalties under the Private Attorneys General Act, California Labor Code §§ 2699, et seq. (“PAGA”) (the “Litigation”).

Caravan contends the claims in this Litigation are without merit, and disputes all claims for damages, penalties, and other relief. No court has ruled on the merits of the Litigation.

Kingsbury has vigorously prosecuted this case, and Caravan has vigorously defended it. The Parties have investigated the facts to assess the relative merits of Kingsbury’s class action and representative claims and Caravan’s defenses to those claims. Kingsbury’s attorneys (“Class Counsel”) reviewed extensive documents and information produced by Caravan and conducted extensive analysis of the potential damages and claims.

The Parties believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including liability, and the amount of damages or penalties, if any, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, the Parties believe that the proposed settlement is fair, reasonable and adequate.

The Parties have entered into a Class Action Settlement Agreement which has been granted preliminary approval by the Court. The Agreement provisionally certifies the Settlement Class for purposes of this settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

Kingsbury and Class Counsel support this settlement. Among the reasons given for support include the risk that class certification could be denied, the inherent risk of trial on the merits, and the delays associated with litigation, including appeals.

The settlement provides for the following:

A. Gross Settlement Fund: Defendant will pay \$1,250,000.00 to settle the Litigation. The \$1,250,000.00 Gross Settlement Fund shall consist of the following elements: (a) Class Counsel’s Attorney’s Fees; (b) Litigation Expenses; (c) Class Representative Service Award; (d) Settlement Administration Expenses; (e) PAGA Payment to the California Labor and Workforce Development Agency and Aggrieved Employees; and (f) Net Settlement Fund. Each of these components is described below.

B. Class Counsel’s Attorney’s Fees: Class Counsel anticipates requesting an attorney fee award of not more than one-third of the Gross Settlement Fund, subject to court approval, which shall be paid from the Gross Settlement Fund.

C. Litigation Costs: Class Counsel anticipates requesting an award of no more than \$20,000.00 subject to court approval, as reimbursement for litigation costs, which shall be paid from the Gross Settlement Fund.

D. Class Representative Service Award: Kingsbury anticipates requesting a service award of no more than \$10,000.00 subject to court approval, for her role serving as Class Representative, which shall be paid from the Gross Settlement Fund.

E. PAGA Allocation: The Parties have designated \$10,000.00 of the Gross Settlement Fund as representing the recovery of civil penalties pursuant to the PAGA. Of this amount, 75% (\$7,500.00) will be paid to the California Labor and Workforce Development Agency (LWDA), and the remaining 25% (\$2,500.00) shall be distributed pro-rata to the PAGA Members.

F. Settlement Administration Expenses: The Parties have selected, and the court has approved CPT Group, Inc. to administer the settlement. Upon final approval, Class Counsel will request that the court approve a payment to CPT Group, Inc. to cover its fees and costs associated with giving notice to the Class, administering and disbursing the Net Settlement Fund, and other activities required to administer the settlement. The Parties estimate that the payment to CPT Group, Inc. will be approximately \$15,000, which shall be paid from the Gross Settlement Fund.

G. Net Settlement Fund: The Net Settlement Fund consists of all funds remaining from the Gross Settlement Fund after subtraction of court-approved Class Counsel's Attorney's Fees, Litigation Costs, Class Representative Service Award, PAGA Payment, and Settlement Administration Expenses. The Net Settlement Fund will be distributed to the Settlement Class as described below.

H. Class Defined: "Class" means "All current and former non-exempt hourly paid employees who worked for Defendant Caravan Foods II, Inc. within the State of California at any time from April 9, 2017 through June 7, 2022."

I. Settlement Class Defined: "Settlement Class" – means all those persons who are members of the Class and who have not properly and timely excluded themselves ("opted out") from the Litigation.

J. Settlement Period Defined: "Settlement Period" – means April 9, 2017 through June 7, 2022.

K. Allocation of Net Settlement Fund Among Settlement Class Members: Each Settlement Class Member shall be entitled to a portion of the Net Settlement Fund which will be allocated proportionally based on the amount of week worked by each Settlement Class Member during the Settlement Period in proportion to the total aggregated weeks worked by all the Settlement Class Members during the Settlement Period.

L. Tax Treatment of Payments to Settlement Class Members: All Individual Settlement Payments made to Participating Class Members under this Agreement shall be allocated as wages. The Claims Administrator shall deduct from each Individual Settlement Payment all employee portions of payroll taxes from the amount allocated to wages. Those Individual Settlement Payments shall be treated by the parties as wages, subject to withholding and reporting on a Form W-2. Participating Class Members shall report such Individual Settlement Payments as wages received. No part of the Individual Settlement Payments shall be classified as a penalty or allocated to a penalty for purposes of Section 62(f) of the Internal Revenue Code of 1986, but rather shall be classified as wages. Each Settlement Class Member shall be responsible for remitting to state and/or federal taxing authorities any applicable taxes which may be owed on the portion of his or her Settlement Payment or Class Representative Service Award. The Settlement Administrator shall report all required information to the appropriate taxing authorities regarding all payments made pursuant to this Agreement.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?

Your interests as a Settlement Class Member are represented by Kingsbury and Class Counsel. Unless you opt out of the Settlement Class, you are a part of the Settlement Class, you will receive your settlement share, be bound by the terms of the settlement agreement and any final judgment that may be entered by the court, and you will be deemed to have released certain claims against Defendant as described below. Class Counsel will be seeking court approval for payment for its fees and litigation costs from the Gross Settlement Fund. Accordingly, as a member of the Settlement Class you will not be individually responsible for the payment of attorney's fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and costs.

A. Participating in the Settlement

If You Qualify For Inclusion In The Settlement Class And You Wish To Participate In The Settlement, You Are Not Required To Take Any Action. If the court grants final approval to the settlement and you qualify as a Settlement Class Member, you will receive a Settlement Payment based on the calculations described above. Your estimated individual settlement amount is << >>. This is only an estimate. The final amount may change and is subject to final approval by the Court. You will also be bound by the terms of the settlement and will release Defendant and all related or affiliated entities from any and all claims that you may have based on the allegations in the lawsuit.

B. Objecting to the Settlement

If you would like to challenge any of the settlement terms you can object to the settlement before final approval. However, if the Court rejects your objection you will still be bound by the terms of the settlement unless you seek exclusion, as described below. To object, you must mail a written objection entitled "Class Member Objection" and a notice of intention to appear to the Alameda County Superior Court, Department 23, 1221 Oak Street, Oakland, CA 94612, by <<30 days after notice mailing>>, 2022, and send copies to the following:

CLASS COUNSEL:

Justin F. Marquez
Benjamin H. Haber
Arrash Fattahi
Wilshire Law Firm
3055 Wilshire Blvd., 12th Floor
Los Angeles, CA 90010
Tel: (213) 381-9988 / Fax: (213) 381-9989

COUNSEL FOR DEFENDANT:

Lindsay E. Hutner
Sam Hyde
Greenberg Traurig, LLP
101 Second Street, Suite 2200
San Francisco, CA 94105
Tel: (415) 655-1300/Fax: (415) 707-2010

Any Class Member Objection shall state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, telephone number, and the dates of your employment as a qualified member of the Settlement Class defined above. To be valid and effective, any Class Member Objection to approval of the settlement must be mailed to Alameda County Superior Court and served upon and received by each of the above-listed attorneys no later than << 30 days after notice mailed>>, 2022. **DO NOT TELEPHONE THE COURT.**

If you choose to file Class Member Objection to the terms of this settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney. To do so, you must file an entry of appearance with the Clerk of the Alameda County Superior Court and deliver copies to each of the attorneys listed above. Such entry of appearance must be filed with the court and delivered to the above attorneys no later than <<30 days after notice mailed>>, 2022. You will then continue as a settlement class member either *in propria persona* or with representation by your own attorney and will be solely responsible for the fees and costs of your attorney. The final fairness hearing at which the court will adjudicate any objections and be asked to approve the settlement will be on _____, 2022 at _____ a.m. in Department 23 of the Alameda County Superior Court, or such other, later date as the court may authorize.

C. Excluding Yourself from the Settlement

If you qualify for inclusion in the Class but you do not wish to participate in the settlement, you may exclude yourself (i.e., "opt-out") by submitting a letter requesting exclusion. Your letter must be signed by you personally and must clearly state: (1) your name, address, telephone number, the last four digits of your social security number, and the dates of your employment; and (2) your wish to be excluded from the Settlement Class. **Your letter requesting exclusion must be hand-delivered or postmarked on or before <<30 days after notice mailed>>, 2022, and mailed to:**

<<Name, Address and Telephone Number of Settlement Administrator>>

Any person who timely submits a letter following the procedures above to request exclusion from the Class shall, upon receipt, no longer be a member of the Settlement Class, shall be barred from participating in any portion of the settlement, may not object to the settlement, and shall receive no payment or benefits from the settlement. Any such person will not have been deemed to have released any claims he or she may have against Defendant by and through this litigation.

IV. EFFECT OF THE SETTLEMENT

A. Released Rights and Claims

Upon the Court's final approval of the class settlement and entry of final judgment, each Class Member shall be deemed have released and discharged each Defendant and all of its former and present parents, and affiliates, and their officers, directors, employees, partners, shareholders, attorneys, and agents, and any other successors, assigns or legal representatives from any and all claims that were asserted and that could have been asserted based on the facts contained in the Complaint filed in this action and which were included leading up to and during mediation, including without limitation to, any and all claims for alleged claims for unpaid wages, unpaid minimum wages, unpaid overtime, regular rate compensation, unpaid meal or rest break premiums, itemized wage statement penalties, unlawful deduction of wages and/or rent in amounts exceeding that permitted by law, failure to provide requisite writings, waiting time penalties under the California Labor Code and Business & Professions Code (including Section 17200 et seq.); claims for penalties brought under the PAGA, claims for restitution and other equitable relief, liquidated damages, or penalties in their positions as Settlement Class Members during the Class Period. The cashing of any settlement check shall further constitute a release of any related claims pursuant to the Fair Labor Standards Act which could have been brought based on the facts and allegations in the Complaint.

B. Payment to Settlement Class Members

The distribution of the Settlement Fund will be paid approximately 35 calendar days after final court approval of this Settlement, and all appeals, if any, are exhausted.

V. FINAL SETTLEMENT APPROVAL HEARING

The court will hold a hearing in Department 23 of the Alameda County Superior Court, 1221 Oak Street, Oakland, CA 94612, on << >>, 2022, at a.m., to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for Attorney's Fees and Litigation Costs, and the Class Representative Service Award to be paid to the Class Representative. Class Counsel's application for attorney's fees and reimbursement of expenses will be on file with the Court no later than 16 court days before this hearing and will be available for review after that date.

The hearing may be continued without further notice to the settlement class. It is not necessary for you to appear at this hearing unless you have timely filed an objection.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you are referred to the detailed Stipulated Settlement Agreement and Release of Claims, which is on file with the Clerk of the Superior Court. The pleadings and other records in this litigation including the Class Action Settlement Agreement, may be examined at any time during regular business hours at the Office of the Clerk of the Alameda County Superior Court, or by contacting Class Counsel.

DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

BY ORDER OF THE SUPERIOR COURT

Exhibit B

Justin F. Marquez, Esq. (SBN 262417)
justin@wilshirelawfirm.com
Benjamin H. Haber, Esq. (SBN 315664)
benjamin@wilshirelawfirm.com
Arrash T. Fattahi, Esq. (SBN 333676)
afattahi@wilshirelawfirm.com

WILSHIRE LAW FIRM

3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

KANEISHA KINGSBURY, individually, on
behalf of all others similarly situated, and on
behalf of the State of California and other
aggrieved persons,

Plaintiff,

v.

CARAVAN FOODS II, INC., a corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: RG21096357

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

1. Failure to Pay Minimum and Straight Time Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197);
2. Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194 and 1198);
3. Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512);
4. Failure to Authorize and Permit Rest Periods (Cal. Lab. Code §§ 226.7);
5. Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203);
6. Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226);
7. Failure to Indemnify Employees for Expenditures (Cal. Lab. Code § 2802);
8. Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and
9. Civil Penalties Under PAGA (Cal. Lab. Code § 2699, *et seq.*)

DEMAND FOR JURY TRIAL

Plaintiff Kaneisha Kingsbury (“Plaintiff”), based upon facts that either have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, alleges as follows:

INTRODUCTION & PRELIMINARY STATEMENT

1. Plaintiff brings this action against Defendant CARAVAN FOODS II, INC. and DOES 1 through 10 (hereinafter collectively referred to as “Defendants”) for California Labor Code violations and unfair business practices stemming from Defendants’ failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages, failure to furnish accurate wage statements, and failure to indemnify employees for expenditures.

2. Plaintiff brings the First through Eighth Causes of Action individually and as a class action on behalf of herself and certain current and former employees of Defendants (hereinafter collectively referred to as the “Class” or “Class Members,” and defined more fully below). The Class consists of Plaintiff and all other persons who have been employed by any Defendant in California as an hourly-paid or non-exempt employee during the statute of limitations period applicable to the claims pleaded here.

3. Plaintiff brings the Ninth Cause of Action as a representative action under the California Private Attorneys General Act (“PAGA”) to recover civil penalties that are owed to her, the State of California, and past and present non-exempt employees employed by Defendants in the State of California during the statute of limitations period for her PAGA claim (hereinafter referred to as the “Aggrieved Employees”).

4. Defendants own/owned and operate/operated an industry, business, and establishment within the State of California, including Alameda County. As such, and based upon all the facts and circumstances incident to Defendants’ business in California, Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission (“IWC”), and the California Business & Professions Code.

5. Despite these requirements, throughout the statutory period, Defendants maintained a systematic, company-wide policy and practice of:

- (a) Failing to pay employees for all hours worked, including all minimum, straight time, and overtime wages in compliance with the California Labor Code and IWC Wage Orders;
- (b) Failing to provide employees with timely and duty-free meal periods in compliance with the California Labor Code and IWC Wage Orders, failing to maintain accurate records of all meal periods taken or missed, and failing to pay an additional hour's pay for each workday a meal period violation occurred;
- (c) Failing to authorize and permit employees to take timely and duty-free rest periods in compliance with the California Labor Code and IWC Wage Orders, and failing to pay an additional hour's pay for each workday a rest period violation occurred;
- (d) Willfully failing to pay employees all minimum, straight time, overtime, meal period premium, and rest period premium wages due within the time period specified by California law when employment terminates;
- (e) Failing to provide employees with accurate, itemized wage statements containing all the information required by the California Labor Code and IWC Wage Orders; and,
- (f) Failing to indemnify employees for expenditures incurred in direct discharge of duties of employment.

6. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

7. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff, the Class, and the Aggrieved Employees.

Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of “respondent superior.”

THE PARTIES

A. Plaintiff

8. Plaintiff Kaneisha Kingsbury is a resident of Alameda County, California who worked for Defendants in Union City, California as an hourly-paid, non-exempt employee from approximately October 2016 to approximately October 2020.

9. Plaintiff reserves the right to seek leave to amend this complaint to add new Plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

10. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant CARAVAN FOODS II, INC. is, and at all times herein mentioned, was:

- (a) A corporation qualified to do business and actually conducting business in numerous counties throughout the State of California, including in Alameda County; and,
- (b) The former employer of Plaintiff and the current and/or former employer of the putative Class and the Aggrieved Employees because Defendant CARAVAN FOODS II, INC. suffered and permitted Plaintiff, the Class, and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions.

11. Plaintiff does not know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sue said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff, the Class, and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

12. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and

each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiff, the Class, and the Aggrieved Employees in the State of California.

13. Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other employees described in the class definitions below, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

14. Plaintiff worked for Defendants in California as an hourly-paid, non-exempt employee from approximately October 2016 to approximately October 2020. During Plaintiff's employment for Defendants, Defendants paid Plaintiff an hourly wage and classified her as non-exempt from overtime. Defendants typically scheduled Plaintiff to work at least five days in a workweek and at least eight hours per day, but Plaintiff mostly worked more than eight hours in a workday and more than forty (40) hours in a workweek.

15. Throughout Plaintiff's employment, Defendants failed to pay for all hours worked (including minimum, straight time, and overtime wages), failed to provide Plaintiff with legally compliant meal periods, failed to authorize and permit Plaintiff to take rest periods, failed to timely pay all final wages to Plaintiff when Defendants terminated her employment, failed to

furnish accurate wage statements to Plaintiff, and failed to indemnify Plaintiff for expenditures. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

16. Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff, the Class, and the Aggrieved Employees for all hours worked, including minimum wages, straight time wages, and overtime wages. Defendants required Plaintiff, the Class, and the Aggrieved Employees to work "off-the-clock", uncompensated, by, for example, requiring Plaintiff, the Class, and the Aggrieved Employees to work unpaid during legally required meal periods. Some of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked, Defendants also failed to maintain accurate records of the hours Plaintiff, the Class, and the Aggrieved Employees worked.

17. Throughout the statutory period, Defendants wrongfully failed to provide Plaintiff, the Class, and the Aggrieved Employees with their legally mandated 30-minute, uninterrupted, and duty-free meal period. Plaintiff, the Class, and the Aggrieved Employees routinely worked through meal periods "off-the-clock," and Defendants frequently paid Plaintiff, the Class, and the Aggrieved Employees less than all their work time. Much of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked, Defendants also failed to maintain accurate records of the hours Plaintiff, the Class, and the Aggrieved Employees worked. Defendants also regularly, but not always, required Plaintiff, the Class, and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every five hours of work, or without compensating Plaintiff, the Class, and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Instead, Defendants continued to assert control over Plaintiff, the Class, and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiff, the Class, and the Aggrieved Employees permission to take a meal period. Defendants also never informed Plaintiff of her right to, nor permitted her to take, a second meal period when Plaintiff worked at least ten hours

1 of work in a workday. Accordingly, Defendants' policy and practice was not to provide meal
2 periods to Plaintiff, the Class, and the Aggrieved Employees in compliance with California law.

3 18. Throughout the statutory period, Defendants have wrongfully failed to authorize
4 and permit Plaintiff, the Class, and the Aggrieved Employees to take legally compliant rest
5 periods. Defendants regularly required Plaintiff, the Class, and the Aggrieved Employees to
6 work in excess of four consecutive hours a day without Defendants authorizing and permitting
7 them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or
8 major fraction of four hours), or without compensating Plaintiff, the Class, and the Aggrieved
9 Employees for rest periods that were not authorized or permitted. Instead, Defendants continued
10 to assert control over Plaintiff, the Class, and the Aggrieved Employees by requiring, pressuring,
11 or encouraging them to perform work tasks which could not be completed without working in
12 lieu of taking mandatory rest periods, or by denying Plaintiff, the Class, and the Aggrieved
13 Employees permission to take a rest period. Accordingly, Defendants' policy and practice was to
14 not authorize and permit Plaintiff, the Class, and the Aggrieved Employees to take rest periods in
15 compliance with California law.

16 19. Throughout the statutory period, Defendants willfully failed and refused to timely
17 pay Plaintiff, the Class, and the Aggrieved Employees all final wages due at their termination of
18 employment. In addition, Plaintiff's final paychecks did not include payment for all
19 expenditures, minimum wages, straight time wages, overtime wages, meal period premium
20 wages, and rest period premium wages owed to her by Defendants at the conclusion of her
21 employment. On information and belief, Defendants' failure to timely pay Plaintiff's final wages
22 when her employment terminated was not a single, isolated incident, but was instead consistent
23 with Defendants' policy and practice that applied to Plaintiff, the Class, and the Aggrieved
24 Employees.

25 20. Throughout the statutory period, Defendants failed to furnish Plaintiff, the Class,
26 and the Aggrieved Employees with accurate, itemized wage statements showing all applicable
27 hourly rates, and all gross and net wages earned (including correct hours worked, correct wages
28 for meal periods that were not provided in accordance with California law, and correct wages for

1 rest periods that were not authorized and permitted to take in accordance with California law).

2 As a result of these violations of California Labor Code § 226(a), the Plaintiff, the Class, and the
3 Aggrieved Employees suffered injury because, among other things:

- 4 (a) the violations led them to believe that they were not entitled to be paid
5 minimum, straight time, overtime, meal period premium, and rest period
6 premium wages, even though they were entitled;
- 7 (b) the violations led them to believe that they had been paid the minimum,
8 straight time, overtime, meal period premium, and rest period premium
9 wages, even though they had not been;
- 10 (c) the violations led them to believe they were not entitled to be paid
11 minimum, straight time, overtime, meal period premium, and rest period
12 premium wages at the correct California rate even though they were
13 entitled;
- 14 (d) the violations led them to believe they had been paid minimum, straight
15 time, overtime, meal period premium, and rest period premium wages at
16 the correct California rate even though they had not been;
- 17 (e) the violations hindered them from determining the amounts of minimum,
18 straight time, overtime, meal period premium, and rest period premium
19 wages owed to them;
- 20 (f) in connection with their employment before and during this action, and in
21 connection with prosecuting this action, the violations caused them to have
22 to perform mathematical computations to determine the amounts of wages
23 owed to them, computations they would not have to make if the wage
24 statements contained the required accurate information;
- 25 (g) by understating the wages truly due to them, the violations caused them to
26 lose entitlement and/or accrual of the full amount of Social Security,
27 disability, unemployment, and other governmental benefits;
28

(h) the wage statements inaccurately understated the wages, hours, and wage rates to which Plaintiff, the Class, and the Aggrieved Employees were entitled, and Plaintiff, the Class, and the Aggrieved Employees were paid less than the wages and wage rates to which they were entitled.

Thus, Plaintiff, the Class, and the Aggrieved Employees are owed the amounts provided for in California Labor Code § 226(e).

21. Throughout the statutory period, Defendants have wrongfully required Plaintiff, the Class, and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants. Plaintiff, the Class, and the Aggrieved Employees regularly paid out-of-pocket for necessary expenses in the form of work-related tools and equipment.

22. Plaintiff, the Class, and the Aggrieved Employees incurred substantial expenses as a direct result of performing their job duties for Defendants, but Defendants failed to indemnify Plaintiff, the Class, and the Aggrieved Employees for these employment-related expenses.

CLASS ACTION ALLEGATIONS

23. Plaintiff brings certain claims individually, as well as on behalf of each and all other persons similarly situated, and thus, seeks class certification under California Code of Civil Procedure § 382.

24. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

25. The proposed Class consists of and is defined as:

All persons who worked for any Defendant in California as an hourly-paid or non-exempt employee at any time during the period beginning four years before the filing of the initial complaint in this action and ending when notice to the Class is sent.

26. At all material times, Plaintiff was a member of the Class.

27. Plaintiff undertakes this concerted activity to improve the wages and working conditions of all Class Members.

28. There is a well-defined community of interest in the litigation and the Class is

readily ascertainable:

- (a) Numerosity: The members of the Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire Class is unknown to Plaintiff at this time; however, the Class is estimated to be greater than forty (40) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all Class Members' claims as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no conflicts with or interests antagonistic to any Class Member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.
- (d) Superiority: A Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
 - 1) The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
 - 2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;

3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and,

4) The difficulties likely to be encountered in the management of a class action.

(e) Public Policy Considerations: The public policy of the State of California is to resolve the California Labor Code claims of many employees through a class action. Indeed, current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are also fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

29. There are common questions of law and fact as to the Class (and each subclass, if any) that predominate over questions affecting only individual members, including without limitation, whether, as alleged herein, Defendants have:

- (a) Failed to pay Class Members for all hours worked, including minimum, straight time, and overtime wages;
- (b) Failed to provide meal periods and pay meal period premium wages to Class Members;
- (c) Failed to authorize and permit rest periods and pay rest period premium wages to Class Members;
- (d) Failed to provide Class Members with timely final wages;
- (e) Failed to provide Class Members with accurate wage statements;
- (f) Failed to indemnify Class Members for expenditures; and,
- (g) Violated California Business & Professions Code §§ 17200 *et. seq.* as a result of their illegal conduct as described above.

1 30. This Court should permit this action to be maintained as a class action pursuant to
2 California Code of Civil Procedure § 382 because:

- 3 (a) The questions of law and fact common to the Class predominate over any
4 question affecting only individual members;
- 5 (b) A class action is superior to any other available method for the fair and
6 efficient adjudication of the claims of the members of the Class;
- 7 (c) The members of the Class are so numerous that it is impractical to bring all
8 members of the class before the Court;
- 9 (d) Plaintiff, and the other members of the Class, will not be able to obtain
10 effective and economic legal redress unless the action is maintained as a
11 class action;
- 12 (e) There is a community of interest in obtaining appropriate legal and
13 equitable relief for the statutory violations, and in obtaining adequate
14 compensation for the damages and injuries for which Defendants are
15 responsible in an amount sufficient to adequately compensate the members
16 of the Class for the injuries sustained;
- 17 (f) Without class certification, the prosecution of separate actions by
18 individual members of the class would create a risk of:
- 19 1) Inconsistent or varying adjudications with respect to individual
20 members of the Class which would establish incompatible standards
21 of conduct for Defendants; and/or
- 22 2) Adjudications with respect to the individual members which would,
23 as a practical matter, be dispositive of the interests of other
24 members not parties to the adjudications, or would substantially
25 impair or impede their ability to protect their interests, including but
26 not limited to the potential for exhausting the funds available from
27 those parties who are, or may be, responsible Defendants; and,
- 28 (g) Defendants have acted or refused to act on grounds generally applicable to

the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

31. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. The Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiff contemplates the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

FIRST CAUSE OF ACTION

(Against All Defendants for Failure to Pay Minimum and Straight Time Wages for All Hours Worked)

32. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this Complaint.

33. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

34. At all relevant times herein mentioned, Defendants knowingly failed to pay to Plaintiff and the Class compensation for all hours they worked. By their failure to pay compensation for each hour worked as alleged above, Defendants willfully violated the provisions of California Labor Code § 1194, and any additional applicable Wage Orders, which require such compensation to non-exempt employees.

35. Accordingly, Plaintiff and the Class are entitled to recover minimum and straight time wages for all non-overtime hours worked for Defendants.

36. By and through the conduct described above, Plaintiff and the Class have been deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

37. By virtue of the Defendants' unlawful failure to pay additional compensation to Plaintiff and the Class for their non-overtime hours worked without pay, Plaintiff and the Class

suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class and which will be ascertained according to proof at trial.

38. By failing to keep adequate time records required by California Labor Code § 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage compensation due to Plaintiff and the Class.

39. Pursuant to California Labor Code § 1194.2, Plaintiff and the Class are entitled to recover liquidated damages (double damages) for Defendants' failure to pay minimum wages.

40. California Labor Code § 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates required by law, including minimum and straight time wages. However, during all such times, Defendants systematically failed and refused to pay Plaintiff and the Class all such wages due and failed to pay those wages twice a month.

41. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum and straight time wages, interest, and reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5, 218.6, and 1194(a).

SECOND CAUSE OF ACTION

(Against All Defendants for Failure to Pay Overtime Wages)

42. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this Complaint.

43. California Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

44. California Labor Code §§ 1194 and 1198 provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, California Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

1 45. At all times relevant hereto, Plaintiff and the Class have worked more than eight
2 hours in a workday, as employees of Defendants.

3 46. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class
4 overtime compensation for the hours they have worked in excess of the maximum hours
5 permissible by law as required by California Labor Code §§ 510 and 1198.

6 47. By virtue of Defendants' unlawful failure to pay additional premium rate
7 compensation to the Plaintiff and the Class for their overtime hours worked, Plaintiff and the
8 Class have suffered, and will continue to suffer, damages in amounts which are presently
9 unknown to them but which exceed the jurisdictional minimum of this Court and which will be
10 ascertained according to proof at trial.

11 48. By failing to keep adequate time records required by Labor Code § 1174(d),
12 Defendants have made it difficult to calculate the full extent of overtime compensation due to
13 Plaintiff and the Class.

14 49. Plaintiff and the Class also request recovery of overtime compensation according
15 to proof, interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well
16 as the assessment of any statutory penalties against Defendants, in a sum as provided by the
17 California Labor Code and/or other statutes.

18 50. California Labor Code § 204 requires employers to provide employees with all
19 wages due and payable twice a month. The Wage Orders also provide that every employer shall
20 pay to each employee, on the established payday for the period involved, overtime wages for all
21 overtime hours worked in the payroll period. Defendants failed to provide Plaintiff and the Class
22 with all compensation due, in violation of California Labor Code § 204.

23 **THIRD CAUSE OF ACTION**

24 **(Against All Defendants for Failure to Provide Meal Periods)**

25 51. Plaintiff incorporates by reference and re-alleges as if fully stated herein
26 paragraphs 1 through 22 in this Complaint.

27 52. Under California law, Defendants have an affirmative obligation to relieve the
28 Plaintiff and the Class of all duty in order to take their first daily meal periods no later than the

1 start of Plaintiff and the Class' sixth hour of work in a workday, and to take their second meal
2 periods no later than the start of the eleventh hour of work in the workday. California Labor
3 Code § 512, and Section 11 of the applicable Wage Orders require that an employer provide
4 unpaid meal periods of at least thirty (30) minutes for each five-hour period worked. It is a
5 violation of California Labor Code § 226.7 for an employer to require any employee to work
6 during any meal period mandated under any Wage Order.

7 53. Despite these legal requirements, Defendants regularly failed to provide Plaintiff
8 and the Class with both meal periods as required by California law. By their failure to permit
9 and authorize Plaintiff and the Class to take all meal periods as alleged above (or due to the fact
10 that Defendants made it impossible or impracticable to take these uninterrupted meal periods),
11 Defendants willfully violated the provisions of California Labor Code § 226.7 and the applicable
12 Wage Orders.

13 54. Under California law, Plaintiff and the Class are entitled to be paid one hour of
14 additional wages for each workday he or she was not provided with all required meal period(s),
15 plus interest thereon.

16 **FOURTH CAUSE OF ACTION**

17 **(Against All Defendants for Failure to Authorize and Permit Rest Periods)**

18 55. Plaintiff incorporates by reference and re-alleges as if fully stated herein
19 paragraphs 1 through 22 in this Complaint.

20 56. Defendants are required by California law to authorize and permit breaks of ten
21 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than
22 two hours). California Labor Code § 512, the applicable Wage Orders require that the employer
23 permit and authorize all employees to take paid rest periods of ten minutes each for each 4-hour
24 period worked. Thus, for example, if an employee's work time is six hours and ten minutes, the
25 employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is
26 itself a violation of California's rest break laws. It is a violation of California Labor Code §
27 226.7 for an employer to require any employee to work during any rest period mandated under
28 any Wage Order.

57. Despite these legal requirements, Defendants failed to authorize Plaintiff and the Class to take rest breaks, regardless of whether employees worked more than four hours in a workday. By their failure to permit and authorize Plaintiff and the Class to take rest periods as alleged above (or due to the fact that Defendants made it impossible or impracticable to take these uninterrupted rest periods), Defendants willfully violated the provisions of California Labor Code § 226.7 and the applicable Wage Orders.

58. Under California law, Plaintiff and the Class are entitled to be paid one hour of premium wages rate for each workday he or she was not provided with all required rest break(s), plus interest thereon.

FIFTH CAUSE OF ACTION

(Against All Defendants for Failure to Pay Wages of Discharged Employees – Waiting Time Penalties)

59. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this Complaint.

60. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

61. Within the applicable statute of limitations, the employment of many other members of the Class ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendants failed, and continue to fail to pay terminated Class Members, without abatement, all wages required to be paid by California Labor Code §§ 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

62. Defendants' failure to pay those Class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72)

hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

63. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with §§ 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

64. The Class is entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to California Labor Code § 203.

65. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, the Class is also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in this action.

SIXTH CAUSE OF ACTION

(Against All Defendants for Failure to Provide and Maintain Accurate and Compliant Wage Records)

66. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this Complaint.

67. At all material times set forth herein, California Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

68. Defendants have intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify the gross wages earned by Plaintiff and the Class, the failure to list the true “total hours worked by the employee,” and the failure to list the true net wages earned.

69. As a result of Defendants’ violation of California Labor Code § 226(a), Plaintiff and the Class have suffered injury and damage to their statutorily protected rights.

70. Specifically, Plaintiff and the members of the Class have been injured by Defendants’ intentional violation of California Labor Code § 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under California Labor Code § 226(a).

71. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and time consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as a result of having to bring this action to attempt to obtain correct wage information following Defendants’ refusal to comply with many of the mandates of California’s Labor Code and related laws and regulations.

72. Plaintiff and the Class are entitled to recover from Defendants the greater of their actual damages caused by Defendants’ failure to comply with California Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

73. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of attorney’s fees and costs to ensure compliance with this section, pursuant to California Labor Code § 226(h).

SEVENTH CAUSE OF ACTION

(Against All Defendants for Failure to Indemnify Employees for Expenditures)

74. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this Complaint.

75. As set forth above, Plaintiff and the Class were required to incur substantial necessary expenditures and losses in direct consequence of the discharge of their duties or of their obedience to directions of Defendants.

76. Defendants violated California Labor Code § 2802, by failing to pay and indemnify Plaintiff and the Class for necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of Defendants.

77. As a result, Plaintiff and the Class were damaged at least in the amounts of the expenses they paid, or which were deducted by Defendants from their wages.

78. Plaintiff and the Class are entitled to reasonable attorney's fees, expenses, and costs of suit pursuant to California Labor Code § 2802(c) and interest pursuant to California Labor Code § 2802(b).

EIGHTH CAUSE OF ACTION

(Against All Defendants for Violation of California Business & Professions Code §§ 17200, et seq.)

79. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this Complaint.

80. Defendants, and each of them, are "persons" as defined under California Business & Professions Code § 17201.

81. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other Class members, and to the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

82. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code §§ 17200, *et seq.*

83. A violation of California Business & Professions Code §§ 17200, *et seq.* may be predicated on the violation of any state or federal law. All of the acts described herein as violations of, among other things, the California Labor Code, are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of California Business & Professions Code §§ 17200, *et seq.*

Failure to Pay Minimum and Straight Time Wages

84. Defendants' failure to pay minimum and straight time wages, and other benefits in violation of the California Labor Code constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Pay Overtime Wages

85. Defendants' failure to pay overtime compensation and other benefits in violation of California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Provide Meal Periods

86. Defendants' failure to provide meal periods in accordance with California Labor Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Authorize and Permit Rest Periods

87. Defendants' failure to authorize and permit rest periods in accordance with California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

Failure to Indemnify Business Expenses

88. Defendants' failure to reimburse expenses incurred in accordance with California Labor Code § 2802, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

89. By and through their unfair, unlawful and/or fraudulent business practices described herein, the Defendants, have obtained valuable property, money and services from Plaintiff, and all persons similarly situated, and have deprived Plaintiff, and all persons similarly situated, of valuable rights and benefits guaranteed by law, all to their detriment.

90. Plaintiff and the Class Members suffered monetary injury as a direct result of Defendants' wrongful conduct.

91. Plaintiff, individually, and on behalf of members of the putative Class, is entitled to, and does, seek such relief as may be necessary to disgorge money and/or property which the

Defendants have wrongfully acquired, or of which Plaintiff and the Class have been deprived, by means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the Class are not obligated to establish individual knowledge of the wrongful practices of Defendants in order to recover restitution.

92. Plaintiff, individually, and on behalf of members of the putative class, is further entitled to and does seek a declaration that the above described business practices are unfair, unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them, from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in the future.

93. Plaintiff, individually, and on behalf of members of the putative class, has no plain, speedy, and/or adequate remedy at law to redress the injuries which the Class Members suffered as a consequence of the Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually, and on behalf of members of the putative Class, has suffered and will continue to suffer irreparable harm unless the Defendants, and each of them, are restrained from continuing to engage in said unfair, unlawful and/or fraudulent business practices.

94. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth herein above, they will continue to avoid paying the appropriate taxes, insurance and other withholdings.

95. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff and putative Class Members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Class Members; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

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NINTH CAUSE OF ACTION

**(Against All Defendants for Civil Penalties Under the Private Attorneys General Act of
2004, Cal. Lab. Code § 2698, et seq.)**

96. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this Complaint.

97. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable Industrial Welfare Commission Orders.

98. California Labor Code § 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

99. Plaintiff has exhausted her administrative remedies pursuant to California Labor Code § 2699.3. She gave written notice by online filing to the Labor and Workforce Development Agency and by certified mail to Defendants of the specific provisions of the Labor Code that Defendants have violated against Plaintiff and current and former aggrieved employees, including the facts and theories to support the violations. Plaintiff also paid the filing fee.

100. The Labor and Workforce Development Agency has not indicated that it intends to investigate Defendants’ Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint. These penalties include, but are not limited to, penalties under California Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699.

101. Based on the conduct described in this Complaint, Plaintiff is entitled to an award of civil penalties on behalf of herself, the State of California, and similarly Aggrieved Employees

of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

102. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."

PRAYER FOR RELIEF

Plaintiff, individually, and on behalf of all others similarly situated only with respect to the class claims, pray for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action with respect to the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action;

2. That Plaintiff be appointed as the representative of the Class; and,

3. That counsel for Plaintiff be appointed as Class Counsel.

As to the First Cause of Action

4. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all minimum and straight time wages due;

5. For unpaid wages as may be appropriate;

6. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

7. For liquidated damages;

8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and,

9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all

overtime wages due;

11. For unpaid wages at overtime wage rates as may be appropriate;

12. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and,

14. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

15. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

16. For unpaid meal period premium wages as may be appropriate;

17. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

18. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for costs of suit incurred herein; and,

19. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

20. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

21. For unpaid rest period premium wages as may be appropriate;

22. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

23. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for costs of suit incurred herein; and,

24. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

25. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of

1 termination of the employment;

2 26. For statutory wage penalties pursuant to California Labor Code § 203 for former
3 employees who have left Defendants' employ;

4 27. For pre-judgment interest on any unpaid wages from the date such amounts were
5 due;

6 28. For reasonable attorneys' fees and for costs of suit incurred herein; and,

7 29. For such other and further relief as the Court may deem equitable and appropriate.

8 As to the Sixth Cause of Action

9 30. That the Court declare, adjudge, and decree that Defendants violated the record
10 keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and
11 willfully failed to provide accurate itemized wage statements thereto;

12 31. For all actual damages, according to proof;

13 32. For statutory penalties pursuant to California Labor Code § 226(e);

14 33. For injunctive relief to ensure compliance with this section, pursuant to California
15 Labor Code § 226(h);

16 34. For reasonable attorneys' fees and for costs of suit incurred herein; and,

17 35. For such other and further relief as the Court may deem equitable and appropriate.

18 As to the Seventh Cause of Action

19 36. That the Court declare, adjudge, and decree that Defendants violated California
20 Labor Code § 2802 by willfully failing to indemnify employees for expenditures;

21 37. For unpaid wages or reimbursed business expenses as may be appropriate;

22 38. For pre-judgment interest on any unpaid compensation commencing from the date
23 such amounts were due;

24 39. For reasonable attorneys' fees and for costs of suit incurred herein; and,

25 40. For such other and further relief as the Court may deem equitable and appropriate.

26 As to the Eighth Cause of Action

27 41. That the Court declare, adjudge, and decree that Defendants violated California
28 Business & Professions Code §§ 17200, *et seq.* by failing to pay for all hours worked (minimum,

straight time, and overtime wages), failing to provide meal periods, failing to authorize and permit rest periods, and failing to indemnify employees for expenditures;

42. For restitution of unpaid wages to Plaintiff and all Class Members and prejudgment interest from the day such amounts were due and payable;

43. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code §§ 17200 *et seq.*;

44. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;

45. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code §§ 17200, *et seq.*; and,

46. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

47. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to pay wages for all hours worked (including minimum, straight time, and overtime), failing to provide meal periods and pay the correct amount of meal period premium wages, failing to authorize and permit rest periods and pay the correct amount of rest period premium wages, failing to pay all earned wages twice per month, failing to maintain accurate records of hours worked and meal periods, failing to pay all final wages to terminated employees, failing to furnish accurate wage statements, and failing to indemnify employees for expenditures;

48. For all actual, consequential and incidental losses and damages, according to proof;

49. For all civil penalties pursuant to California Labor Code §§ 2699, *et seq.*, and all other applicable Labor Code provisions;

50. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code § 2699; and,

51. For such other and further relief as the Court may deem equitable and appropriate.

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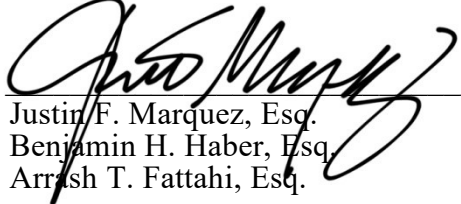
As to all Causes of Action

52. For any additional relief that the Court deems just and proper.

Respectfully submitted,

Dated: August 19, 2022

WILSHIRE LAW FIRM

By: 

Justin F. Marquez, Esq.
Benjamin H. Haber, Esq.
Arrash T. Fattahi, Esq.

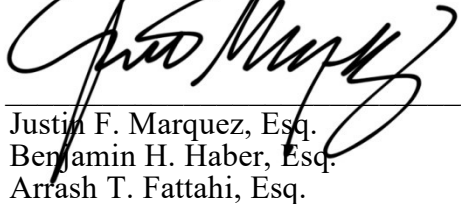
Attorneys for Plaintiff Kaneisha Kingsbury

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all causes of action triable by jury.

Dated: August 19, 2022

WILSHIRE LAW FIRM

By: 

Justin F. Marquez, Esq.
Benjamin H. Haber, Esq.
Arrash T. Fattahi, Esq.

Attorneys for Plaintiff Kaneisha Kingsbury

Exhibit 2



www.cptgroup.com

Contact Name: Timothy N. Phillips, Jr.

Randi Martz

Corporate Headquarters

50 Corporate Park, Irvine CA 92606

Tim@cptgroup.com

Main Number: (800) 542-0900

Direct Number: (818) 415-2703

Fax Number: (949) 428-1074

Case Name: Kingsbury v Caravan Foods

Date: **June 17, 2022**

All-In Settlement

Requesting Attorney: **Justin F. Marquez**

* Class Members: **1,300**

Plaintiff or Defense: **Plaintiff**

** Opt-Out Rate: **1.5%**

Firm Name: **Wilshire Law Firm, PLC**

Opt-Outs Received: **20**

Telephone: **(213) 381-9988, Ext. 345**

Postage Total: **\$1,900.12**

Email: justin@wilshirelawfirm.com

Grand Total: **\$21,109.92**

***** DISCOUNTED FLAT FEE: \$14,500.00**

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.

** For ease of comparison, in the event competing estimates use an alternate filing rate to calculate estimated cost, please advise us so that we may modify the estimate accordingly.

*** This price is valid for administration of a maximum of 20 opt-out's filed. Any additional opt-out's filed above 20 will be billed at the rate of \$8.00 per member.

Case Setup

Case Setup / Data Management / Create a Unified Mailing List / TFN Establish & Setup/ Static Website / Spanish Translation

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	7	\$665.00
System Programming/Data Base Setup	\$150.00	7	\$1,050.00
Toll-Free Number Establish/Setup*	\$150.00	2	\$300.00
Static Website	\$500.00	1	\$500.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Total			\$3,715.00

* Up to 120 days after disbursement

Notification Procedures

National Change of Address (NCOA) / Notice & Opt-Out Form in English & Spanish / Postage (up to 2 oz.)

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
NCOA	\$150.00	1	\$150.00
Project Manager-Opt-Out/Notice Format	\$95.00	2	\$190.00
Merged Data	\$0.35	1,300	\$455.00
Mailing of Notice Pack	\$1.50	1,300	\$1,950.00
Estimated Postage (up to 2 oz.)*	\$0.78	1,300	\$1,014.00
Total			\$3,759.00

*Additional charges will apply if the postage exceeds 2 oz. The final rate will be determined at the time of mailing.

Returned Mail

Notices Returned as Undeliverable / Skip Traces / Remail Notice Packets / Postage

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Update Undeliverable	\$0.50	130	\$65.00
Skip Traces	\$1.25	112	\$140.00
Remail Packs	\$1.85	98	\$181.30
Estimated Postage (up to 2 oz.)	\$0.78	98	\$76.44
Clerical Staff	\$60.00	3	\$180.00
Total			\$642.74

Opt-Out Processing

Process Opt-Outs, Deficiencies & Other Requests from Class Members / Call Center Support

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming of Opt-Out Data Base	\$150.00	4	\$600.00
Opt-Out Processing	\$5.00	20	\$100.00
Clerical Staff	\$60.00	1	\$60.00
Deficiency/Dispute Letters	\$20.00	1	\$20.00
Estimated Postage (up to 1 oz.)	\$0.58	1	\$0.58
Project Manager	\$95.00	1	\$95.00
Call Center Support	\$3.00	260	\$780.00
Total			\$1,655.58

SSN Verification

Verify SSN for Validity with IRS / IRS Backup Withholdings

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming for SSN Selection	\$150.00	1	\$150.00
Project Manager	\$95.00	3	\$285.00
SSN Verification	\$0.20	1,280	\$256.00
Total			\$691.00

Disbursement

Calculations / Data Management / Create & Manage QSF / Print & Mail Checks, 1099/W-2

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	3	\$450.00
Project Supervisor Review of Distribution	\$150.00	3	\$450.00
Project Manager-Correspond w/Attorney	\$95.00	2	\$190.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming/Setup & Printing of Checks	\$150.00	4	\$600.00
Print Mail Checks, W-2/1099 (8x10 sheet)	\$2.50	1,280	\$3,200.00
Estimated Postage (up to 1 oz.)	\$0.58	1,280	\$742.40
Total			\$6,082.40

Post-Disbursement & Tax Reporting

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration / Uncashed Funds Sent to Cy pres

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	13	\$65.00
Project Supervisor -Account Recons	\$150.00	6	\$900.00
Skip Trace	\$1.25	102	\$127.50
Remail Undeliverable Checks	\$2.50	102	\$255.00
Estimated Postage (up to 1 oz.)	\$0.58	115	\$66.70
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Final Reports	\$150.00	2	\$300.00
Project Manager - Acnt Files Sent to Atty	\$150.00	2	\$300.00
Project Supervisor - Final Declaration	\$150.00	2	\$300.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Uncashed Funds Sent to Cy pres	Included	1	Included
Total			\$4,564.20

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

Grand Total: \$21,109.92

TERMS AND CONDITIONS

These Terms and Conditions are made a part of and incorporated by reference into the CPT Group, Inc. Terms and Conditions Agreement by and between Client and CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606 ("CPT").

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with, another party.
- b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
- c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
- d) **"Claims Administrator"** means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
- e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
- f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, objections, and the like which contain Client Data.
- g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
- h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
- i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
- j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
- k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
- l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
- m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
- n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
- o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
- p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
- q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
- r) **"Products"** means any and all CPT Services, and work product resulting from Services.
- s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds

are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.

- t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
- u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
- v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
- w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
- x) **"Term"** means the term of the Agreement, as set forth in the Order.
- y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
- z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.

- 2. **Client Obligations.** Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement, and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.

- 3. **Security.** The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement, and shall promptly inform the other Parties of such breaches.

- 4. **CPT Obligations.** Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.

5. Mutual Obligations.

- a) **Resources.** Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service. If there

is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) **Incident Notification.** Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. **Qualified Settlement Fund Account.** At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. **Fees and Payment.** Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only, and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. **Term and Termination.**
- a) **Term.** The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) **Termination for Cause.** Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) **Bankruptcy Events.** A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) **Effect of Termination.** Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

- a. **Compelled Disclosure.** If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the

other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.

- b. **Remedies.** If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. **Intellectual Property.** As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, "Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. **Warranties.** Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. **Liability.**
- a. **Liability Cap.** EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
- b. **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.
15. **Miscellaneous Provisions.**
- a. **Governing Law; Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of California and

the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.

- b. Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c. Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d. Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e. Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f. Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g. No Third Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and shall not be construed as conferring any rights on any other persons.
- h. Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT

from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i. Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce, and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j. Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k. Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l. Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m. Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n. Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret or construe its meaning, scope or intent.
- o. Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power or remedy.
- p. Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

Kingsbury v. Caravan Foods II, Inc., et al.
RG21096357

DECLARATION OF NORMAJEAN FERLAND IN SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT