

STEPHEN NOER V. FIVE STAR FOOD CONTAINERS, INC. CLASS AND REPRESENTATIVE ACTION
MEMORANDUM OF AGREEMENT

1. Defendants Five Star Food Containers, Inc. and Larry Luc (“Defendants”) and Plaintiff Stephen Noer (hereinafter “Plaintiff”) hereby set forth the terms of a Memorandum of Agreement (herein after “MOA” or “Agreement”) designed to bind the parties to terms of a settlement to be thereafter memorialized further in a long form Stipulation of Settlement, the provisions of which are consistent with this MOA.
2. For purposes of this Agreement, the “Action” is defined as *Noer v. Five Star Food Containers, Inc.*, et al., San Bernardino Superior County Superior Court Case No. Case No. CIVSB2116131. This MOA memorializes the settlement reached in the mediation on January 31, 2022 between Plaintiff and Defendants (the “Parties”). This MOA confirms the essential terms of the settlement and assists in preparation of a comprehensive settlement agreement. This MOA is admissible and enforceable by, binding on, and subject to disclosure by all Parties.
3. The Parties intend to enter into a more formal “long form” agreement (“Stipulation of Settlement”) not inconsistent with the terms of this MOA, but if they fail to execute a more formal agreement, this MOA will be final, binding and enforceable pursuant to California Code of Civil Procedure section 664.6 and admissible pursuant to California Evidence Code Section 1123. The Parties shall have 30 days from the date of this MOA to agree to a “long form” Stipulation of Settlement, including a proposed Notice form, Share form, and preliminary/final approval orders. Plaintiff shall prepare the initial draft. In the event that the Parties do not complete that “long form” Stipulation of Settlement within 30 days, either party may move for preliminary approval of this class action settlement on the basis of the terms set forth in this MOA. In that event, Plaintiff will propose customary terms and procedures for the notice process and settlement administration.
4. The parties agree to cooperate fully with each other to accomplish the terms of the Agreement by entering into the long-form Stipulation of Settlement, to use their best efforts to finalize the Agreement, and to use any other efforts that may become necessary by order of the court, or otherwise, to effectuate the Agreement.
5. The Parties will stipulate to class certification for purposes of settlement only. If the Court does not grant either preliminary or final approval of this settlement, the Parties stipulate that class certification will be revoked without prejudice.
6. The Parties agree that the proper scope and definition of the class alleged in the operative complaint and the definition of the Settlement Class Members for purposes of this agreement are “Defendants’ hourly, non-exempt employees employed by Defendants who worked at least one shift in California from June 1, 2017 to the date of preliminary approval or May 2, 2022 whichever is earlier.”
7. The Release Period starts on June 1, 2017 and runs through the date of preliminary approval or May 2, 2022 whichever is earlier.

8. The Parties and their counsel agree that the consideration described in the subparagraphs below constitutes their good faith compromise of the Action based upon their assessment of the value of the case, and the mutual risks and costs of further litigation. Specifically, the consideration provided by Defendants consist of the following:
- a. Defendants shall pay the Settlement Fund Amount ("Settlement Fund Amount" or "MSA") of \$500,000.00 in full and complete settlement of this matter, which sum includes all attorneys' fees, costs, administration costs, PAGA payments, and enhancement award to the class representative. In no event shall Defendants be liable for more than \$500,000.00 as the Settlement Fund Amount as a result of this Agreement, except that Defendant shall pay the employer's portion of any payroll taxes outside the Settlement Fund Amount. The balance after deduction of attorneys' fees, costs, administration costs, and enhancement awards will be the "Net Settlement Amount."
 - b. This is a non-reversionary settlement. All funds represented by uncashed checks remaining in the Qualified Settlement Fund shall be tendered to the State Controller's Unclaimed Property Fund, so that all Settlement Class Members will have an opportunity to claim their payments after the expiration of the settlement checks.
 - c. Defendants shall pay the Settlement Fund Amount in two installments. The first installment of \$250,000 will be paid within ten business days of preliminary approval. The second installment of \$250,000 will be paid 6 months after that payment.
 - d. As part of this Settlement, on or before February 28, 2022, Defendants shall cause to be deposited the sum of \$200,000 in a Qualified Settlement Fund to be established by the Settlement Administrator to be held in trust pending final approval of this Settlement. Should final approval of this Settlement not be granted for any reason, Defendants shall be entitled to return of this deposit within 30 days of that denial.
 - e. Employer Side Payroll Tax Obligations. Under the terms of the Agreement, Defendants shall pay employer-side payroll tax obligations that shall be paid separately and in addition the Settlement Fund Amount.
9. The Parties agree that the consideration described in Paragraph 8, above, constitutes adequate consideration for the settlement and release described immediately below.
- a. *Release by Plaintiff:* The Plaintiff shall be bound by a complete Section 1542 release and waiver of all claims known and unknown, without exception, against the "Released Parties" (below), except as may be prohibited by law. As part of this Release, Defendants will pay Plaintiff \$25,000 for his individual claims as pled in the operative complaint. This payment shall not increase the size of the MSA. If this payment is not approved of by the Court, the MSA shall not be decreased and the Settlement will remain binding on the Parties.
 - b. *Release by Settlement Class Members:* All Settlement Class Members who do not opt out of the Settlement will be bound by a limited Section 1542 waiver that releases all claims against the Released Parties, whether known or unknown, within the definition of "Released Claims" (below), irrespective of the factual or legal basis for such claims. However, to be clear, the scope of the Section 1542 waiver is limited to the Released Claims. The parties understand and specifically agree that the limited Section 1542

waiver described above is a material part of the consideration for this Agreement; was critical in justifying the agreed upon economic value of this settlement, and without it Defendants would not have agreed to the consideration provided; and is narrowly drafted and necessary to ensure that Defendants are obtaining peace of mind regarding the resolution of claims that were or could have been alleged based on the facts and legal theories contained in Plaintiff's operative complaint. To the extent not plead in the complaint, Plaintiff will amend—and Defendants will cooperate in that amendment—the complaint to include the claims set forth above.

- c. *Definition of "Released Claims"*: All claims arising out of the claims and allegations made in the Complaint or that reasonably could have been alleged based on the factual allegations contained in the operative complaint, including all of the following claims for relief: (a) failure to pay overtime wages and double time wages (b) failure to provide meal breaks and pay proper meal break premiums, (c) failure to provide accurate itemized wage statements, (d) failure to timely provide all wages owed at the end of employment, (e) failure to maintain accurate payroll records, (f) unfair business practices, and (g) civil penalties under the Private Attorneys General Act ("PAGA"). The period of the Release shall extend to the limits of the Release Period. The *res judicata* effect of the Judgment will be the same as that of the Release.
- d. *Definition of "Released Parties"*: Collectively, Defendants and each of Defendants' respective past, present, and future parents, subsidiaries, principals, and any other person, corporation, association or partnership responsible or potentially responsible for the claims made in the Action, and the past, present, and future shareholders, directors, officers, agents, employees, attorneys, insurers, predecessors, successors, heirs, and assigns of any of the foregoing.

- 10. Defendants will not oppose a request by the named Plaintiff to be appointed Class Representative and for an enhancement payment of up to \$5,000, to be deducted from the Settlement Fund Amount, in exchange for his service as Class Representative. This enhancement payment is in addition to the payment to which he is entitled as Settlement Class Member and in addition to the payment described in Paragraph 9(a). In the event that the Court reduces or does not approve the requested Class Representative enhancement payment, Plaintiff shall not have the right to revoke this MOA or this settlement, and it will remain binding.
- 11. The Parties designate that \$25,000 of the Settlement Fund Amount will be allocated for violations of PAGA. 75% of this amount will be payable to the LWDA and the remaining 25% will be payable to the Settlement Class.
- 12. Defendants will not oppose an application for an award to Class Counsel, from the Settlement Fund Amount, of up to one-third of the Settlement Fund Amount in attorneys' fees, plus actual costs and expenses, of up to \$15,000, as supported by declaration. Even in the event that the Court reduces or does not approve the requested Class Counsel Award and costs, Plaintiff's Counsel shall not have the right to revoke this MOA or this settlement, and it will remain binding.
- 13. Plaintiffs' counsel will select a Settlement Administrator on the basis of cost and competence, with the best interests of the Class in mind. Defendants and Defendants' counsel shall not enter into any contractual relationship with the Settlement Administrator. Fees of the Settlement

Administrator shall be paid out of the Settlement Fund Amount, in the amount up to \$15,000. The Stipulation of Settlement shall make clear that Plaintiff, Plaintiff's counsel, Defendants, and Defendants' counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the settlement payments or development of the list of recipients of settlement payments.

14. The Class Notice will contain an estimated individual settlement payment, dates of employment, how to opt-out of the settlement, how to contest the workweek calculation (i.e., a "Share" form), and how to object to the settlement. Settlement Class Members will be mailed and e-mailed a Class Notice and return postage-paid envelope. A reminder postcard will be mailed and e-mailed out 30 days after the Class Notice is sent to Settlement Class Members.
 - a. Settlement Class Members who submit timely requests to opt out of the settlement will not participate in the settlement and will not be bound by the terms of the proposed settlement or the final judgment.
 - b. After reductions for attorneys' fees, costs, administrative costs, and class representative enhancement payment, (including without limitation any penalties and interest payable thereon), the remaining (net) balance of the Settlement Fund Amount shall be distributed on a pro rata basis to Settlement Class Members, subject to the distribution formula agreed upon by the Parties. Payments shall be reduced as necessary to account for mandatory payroll withholdings. Recipients of payments pursuant to this Agreement are exclusively responsible for all other tax obligations.
15. The settlement payment for each individual claimant shall be allocated as follows: (a) 33% as wages; and (b) 67% as penalties and interest. The Settlement Administrator will be responsible for issuing to claimants a form W-2 for amounts deemed "wages" and an IRS Form 1099 for the portions allocated to penalties and interest.
16. Defendant maintains the right, in their sole discretion, to revoke the settlement and its stipulation to class certification prior to the final fairness hearing in the event that 10% or more of Settlement Class Members opt out of the settlement.
17. Defendants have represented that the Class size through mediation is 39 Settlement Class Members. Plaintiff has relied upon this representation in entering into this MOA. Should the number of Settlement Class Members increase beyond 39, the MSA shall increase proportionately for each Settlement Class Members above 43.
18. All Settlement Class Members who have not validly opted out by the stated time period will be subject to the Release.
19. The Parties and their counsel agree not to take any action to encourage any Settlement Class Members to opt out of and/or object to the Settlement.
20. Defendants expressly deny any liability. Neither this MOA nor the Stipulation of Settlement shall constitute an admission of liability.

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IT IS SO AGREED.

PLANTIFF

Dated: _____

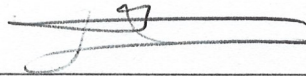
Stephen Noer

DEFENDANTS

Dated: 2/3/2022

Five Star Food Containers,
Five Star Food Containers, Inc.

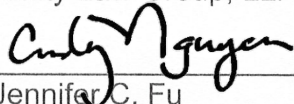
Dated: 2/3/2022


Larry Luc

APPROVED AS TO FORM ONLY BY COUNSEL

Dated: 2/3/2022

Amity Law Group, LLP


Jennifer C. Fu
Cindy T. Nguyen
Attorneys for Defendants

King & Siegel LLP

Dated: _____

Elliot J. Siegel
Attorneys for Plaintiff and the Putative Class

IT IS SO AGREED.

Dated: 01 / 31 / 2022

PLANTIFF



Stephen Noer

DEFENDANTS

Dated: _____

Five Star Food Containers, Inc.

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Cindy T. Nguyen
Attorneys for Defendants

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Elliot J. Siegel

Elliot J. Siegel
Attorneys for Plaintiff and the Putative Class

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Sent for signature to Stephen Noer (stephen.daniel0117@gmail.com) and Elliot Siegel (elliott@kingsiegel.com) from alice@kingsiegel.com
IP: 216.240.51.22



VIEWED

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18:25:50 UTC-8

Viewed by Elliot Siegel (elliott@kingsiegel.com)
IP: 216.240.51.22



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Signed by Elliot Siegel (elliott@kingsiegel.com)
IP: 216.240.51.22



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Viewed by Stephen Noer (stephen.daniel0117@gmail.com)
IP: 76.167.164.243



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IP: 76.167.164.243



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