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Attorneys for Plaintiffs, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

LAURA BARBOZA and DAMON POTTER,
individually, on a representative basis, and on
behalf of all others similarly situated;

Plaintiffs,

v.

RUDOLPH FOODS COMPANY, INC., an
Ohio Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB2129090
*[Assigned to Hon. Judge Joseph T. Ortiz,
Dept. S17, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: April 3, 2023
Time: 1:30 p.m.
Dept.: S17

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiff in this action, and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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1 **COUNSEL'S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled over 500 employee vs. employer litigation matters during my 21
7 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 250 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in close to half of those actions to date, and anticipate
12 receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). As of the end of last year, my team and I held the record for the largest
17 known PAGA-only case in California's history as of that time - a \$12.5 million-dollar court
18 approved settlement, which followed extensive litigation, summary adjudication and writs to the
19 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior
20 Court).

21 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
22 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior
23 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
24 against Walmart that was tried to the jury in District Court for the Central District, wherein the
25 jury awarded Plaintiffs over \$6 million. Following the successful outcome in trial, both cases
26 were appealed.

27 6. Over the last four or five consecutive years, I have been selected by my peers as a
28 "Super Lawyer" in Employment Litigation, a distinction that only 5% of lawyers receive.

BRIEF SUMMARY OF THE SETTLEMENT

7. Following a contested mediation, Plaintiffs and Defendants (collectively, the “Parties”) continued additional negotiations and eventually entered into a Class Action and PAGA Settlement Agreement and Release of Claims resolving the wage and hour claims of the putative class (the “Settlement Agreement” or “S.A.”), which is attached hereto as **Exhibit 1**. The Settlement Agreement seeks to release and discharge Defendants from the claims brought against it in exchange for Defendants’ agreement to pay \$1,250,000 on a non-reversionary, non-claims made basis (each Class Member will receive his/her share of the Net Settlement Amount without having to submit a claim form or take any action, except for those who opt-out). Plaintiffs seeks to represent a class of all current and former non-exempt workers who worked at any Rudolph Foods locations in California at any time during the Class Period of June 14, 2017, through December 20, 2022. Under the terms of the Settlement Agreement, Defendants will not oppose Class Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the Settlement Amount, Class Counsel’s litigation expenses not to exceed \$25,000, Settlement Administrator Costs of \$10,000, PAGA Penalties of \$50,000 of which \$37,500 will be paid to the LWDA and the remaining \$12,500 will be paid to the Aggrieved Employees, and a service award not to exceed \$10,000 to Plaintiff Laura Barboza and \$10,000 to Plaintiff Damon Potter. After subtracting these deductions from the Settlement Amount, approximately \$728,333.33 will be available to pay individual settlement amounts to approximately 501 Class Members who do not opt-out of the settlement, as follows:

<i>Gross Settlement Amount</i>	\$ 1,250,000.00
Attorneys’ Fees (1/3)	\$ 416,666.67
Litigation Costs (not to exceed)	\$ 25,000.00
Administrator Costs	\$ 10,000.00
PAGA Penalties	\$ 50,000.00
Class Representatives Service Awards	\$ 20,000.00
<i>Net Settlement Amount</i>	\$ 728,333.33

8. Assuming 501 Class Members, the average payment to each Class Member will be approximately \$1,453.76 (\$728,333.33 / 501). However, the actual payment will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class

1 Member during the Class Period, with each Work Week having a value of approximately
2 \$22.76 (\$728,333.33/ 32,000 estimated Work Weeks).

3 9. Each Class Member will receive the Class Notice, explaining the nature of the
4 case, and the process for participating, objecting and opting-out, and advising of his/her
5 estimated settlement payment and the number of Weeks Worked he/she is credited with
6 working during the Class Period (*see* Exhibit A to the S.A.).

7 **PROCEDURAL BACKGROUND**

8 10. My office has performed considerable work and diligently investigated and
9 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
10 significant settlement fund for the benefit of the Class. We efficiently communicated and
11 exchanged information informally with Defense counsel which enabled the parties to
12 successfully settle the case. Because of the risks involved in litigating the case and the contested
13 legal and factual issues, my office believes this settlement to be fair, reasonable, and adequate.

14 11. After being retained by Plaintiff Damon Potter (“Plaintiff”), we submitted on June
15 14, 2021, a letter to the California Labor Workforce Development Agency (the “LWDA”) for
16 civil penalties under the Private Attorney General Act of 2004 (the “PAGA”), and
17 simultaneously sent a letter to Defendant requesting the production of Plaintiff’s personnel and
18 timekeeping records to further evaluate the wage and hour claims. The LWDA ultimately
19 declined to assert jurisdiction over the PAGA, thereby giving Plaintiff the right to bring PAGA
20 claims. Plaintiffs later submitted amended notice letters to the LWDA, all of which are
21 collectively attached hereto as **Exhibit 2**.

22 12. On June 14, 2021, we filed a putative class action against Defendants. Then on
23 August 20, 2021, we filed the operative First Amended Complaint to add PAGA claims. In the
24 first half of 2022, we learned of the Barboza Actions and after discussions with Barboza’s
25 counsel, the Plaintiffs agreed to join forces and proceed in a consolidated manner.

26 13. Defendant retained counsel and immediately began to defend the case. Then,
27 after early discussions among counsel, the Parties agreed to attend early mediation and scheduled
28 a mediation with Steve Rottman, Esq. on October 20, 2022.

1 14. In preparation for the mediation, the Parties informally exchanged documents and
2 information that allowed both sides to calculate the potential damages and evaluate potential risk,
3 including policies and procedures pertaining to each claim alleged, and statistics relating to the
4 number of current and former employees, number of shifts, pay periods worked and other things.
5 Defendant also provided its written policies and practices and a robust sampling of payroll and
6 timekeeping records for Class Members. This information enabled both parties to take a deep
7 dive into the claims. Additionally, during this process, Plaintiffs and counsel analyzed,
8 researched, and investigated the potential issues, including matters related to the calculation of
9 damages, trial, and appellate issues and risks.

10 15. On October 20, 2022, Plaintiffs and Defendant participated in mediation before
11 Steve Rottman, Esq., a well-respected wage-and-hour mediator. The mediation was successful,
12 and the Parties reached a global settlement that resolved all claims brought by both Plaintiffs,
13 which included the filing of a Consolidated Complaint in the Barboza Actions. The Parties
14 memorialized the terms of the settlement in a long-form Settlement Agreement and, pursuant to
15 the terms of the settlement, the Parties now seek preliminary approval of the Settlement.

16 **THE WAGE AND HOUR CLAIMS, CLASS COUNSEL’S INVESTIGATION, AND**
17 **EVALUATION OF THE SETTLEMENT**

18 16. The putative Class in this case consists of approximately 501 similarly situated
19 non-exempt workers who worked at any Rudolph Foods locations in California at any time
20 during the Class Period. Plaintiffs alleged numerous wage and hour violations on behalf of the
21 Class Members. However, Defendant vigorously contested and denied each of Plaintiffs’
22 material allegations on the merits and as to the propriety of a class action or PAGA
23 representative action, as discussed herein.

24 17. In preparation for mediation, Kristina Bui Carlson, an associate within my firm,
25 my co-counsel and I formulated a damages model and risk analysis based upon detailed data
26 obtained through informal discovery and information exchanges. The summary of the claims
27 below is based on calculations by our expert and us, and the risks that we potentially faced,
28 giving significant credit to the defenses that Defendants raised or would like raise in further

1 proceedings. Following the informal exchange and other information provided by Defendant, we
2 estimated the following data points through the date of mediation: (1) 472 class members, (2)
3 329 class members that separated from employment during the 3-year lookback for Labor Code
4 § 203, (3) a projected 36,270 workweeks 181,350 shifts worked during the estimated Class
5 Period, and (4) approximately 15,990 wage statements during the estimated PAGA Period. From
6 these metrics, and when factoring in claim certification probabilities and liability probabilities,
7 we formulated detailed damages models to value the claims in preparation for mediation and to
8 reach a realistic and reasonable resolution.

9 18. Here, there were several categories of claims alleged by Plaintiffs, including but
10 not limited to: (1) unpaid wage claims under various theories, (2) meal and rest break violations,
11 (3) derivative claims for waiting time and wage statement penalties due to the other alleged
12 violations, and (4) PAGA claims (many of which arose out of the underlying class claims).

13 19. As to the unpaid wage claims, Plaintiffs alleged various distinct theories of
14 liability. First, Plaintiffs alleged that Defendant implemented a pre-shift COVID-19 screening
15 program that subjected Class Members to uncompensated work, including the use of personal
16 cell phones for work purposes (i.e., unpaid business expenses) and unpaid sick pay. Second,
17 Plaintiffs alleged that Defendant failed properly calculate the overtime rate of pay when there
18 was a bonus earned, resulting in a systematic underpayment to the Class. In total, Plaintiffs'
19 counsel estimated the maximum value of these unpaid wages to be \$1,088,100.

20 20. However, Defendant vehemently opposed these unpaid wage claims on the merits
21 and as to the propriety of class certification. For example, as to regular rate issue, Defendant
22 argued that that bonus compensation was rare and that Defendant did factor in bonus
23 compensation into the regular rate of pay. Moreover, in addition to its other defenses on the
24 merits, Defendants argued that Plaintiffs would be unable to meet its evidentiary burden at
25 summary judgment and/or trial because Plaintiffs and the Class would be unable to introduce
26 evidence as to the amount of unpaid wages (since the claims are not apparent from the
27 timekeeping records alone), thus defeating liability.

28 ///

1 21. Due to these defenses and arguments, Plaintiffs assigned a 20% risk for the
2 COVID-19 screening claim and 30% risk for the regular rate of pay claim at the class
3 certification stage. And, due to the defenses as to the merits, Plaintiff assigned the following
4 merits-based risk to each claim: 40% risk on the COVID-19 screening claim and a 20% risk on
5 the regular rate claim. In sum, Plaintiffs' counsel calculated the risk-adjusted value of the unpaid
6 wage claims as \$565,812.

7 22. Plaintiffs also alleged meal and rest break claims against Defendant. Given the
8 total number of shifts at issue (an estimate of 181,350), and when incorporating violation rates
9 from expert review of the timekeeping records and other evidence, Plaintiffs' counsel estimated a
10 15% violation rate for meal breaks and a 30% violation rate for rest breaks, leading to 27,203
11 alleged meal violations and 54,405 alleged rest break violations. This established a maximum
12 potential value for these claims of \$1,408,554 (81,608 violations multiplied by the average
13 hourly rate of \$17.26 as the applicable premium rate under § 226.7).

14 23. However, Defendant raised numerous arguments in response to this claim,
15 including that it maintained fully compliant written policies and specifically authorized the Class
16 Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break
17 or take a short/late break. Further, Defendant argues that it provides its employees with 15-
18 minute rest breaks; and thus cut against Plaintiffs' rest break claims. Therefore, Defendant
19 asserted that a fact-finder would have to determine for each Class Member whether a break was
20 missed and why, and why a break was noncompliant or nonexistent, because if it was by the
21 employee's choice, no liability attaches to Defendant. These defenses are factored into
22 Plaintiffs' analysis in two ways. First, these issues raise questions regarding whether the meal
23 and rest break claims could be certified, and Plaintiffs placed a 40% risk at the class certification
24 stage for meal periods and a 50% risk for rest breaks. Second, these defenses also go toward the
25 merits given the evidentiary question of proving the number of meal and rest violations. As
26 such, Plaintiffs placed a 30% risk on the merits for meal breaks, and an additional 50% risk on
27 the merits for rest breaks, setting the risk-adjusted value for the combined meal and rest break
28 claims at \$1,572,876.

1 24. Finally, Plaintiffs alleged claims for waiting time penalties and wage statement
2 violations, including issuing wage payments through an out of state banking institution. But
3 these claims were almost entirely derivative of the claims above, meaning that they only had
4 merit if the claims for unpaid wages or meal/rest breaks were successful. The maximum values
5 for these claims were as follows: (1) \$1,362,850 for waiting time penalties [329 former
6 employees x \$17.26 per hour x 8.0 hours per day x 30 days], and (2) \$1,589,000 for wage
7 statement violations [15,990 wage statements at the \$50/\$100 formula under § 226(e)].

8 25. But Defendant raised a variety of defenses to these derivative claims that
9 impacted the valuation. Namely, as to the wage statement violations, Defendant argued that its
10 wage statements did not violate Labor Code §§ 226, 212, and 213, and, even if there was a
11 “technical” violation, that Plaintiffs would be unable to prove the required “knowing and
12 intentional” and “injury” elements. Based on these facts and defenses, Plaintiffs placed a
13 nominal 40% risk at class certification (mirroring the claims on which the wage statement claim
14 was based) and estimated another 30% risk the merits, leading to a risk-adjusted value of
15 \$667,380 for the wage statement claims.

16 26. Then, as to the waiting time penalty claim, Plaintiffs’ valuation had to account for
17 the fact that this claim was derivative of the unpaid wage and meal/rest break claims (*e.g.*, the
18 unpaid wage premiums) and, if those claims failed at certification or on the merits, there would
19 be no waiting time penalties owed, so the same risks for those claims applied to this claim.
20 Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on
21 the merits, Plaintiffs would have to prove that the violations (if any existed) were “willful” under
22 the meaning of Labor Code § 203. And, here, Defendant argued that there could not be a finding
23 of a “willful” violation since they had compliant written policies and any deviations therefrom
24 were inadvertent and unintentional. As a result of this analysis, Plaintiffs’ counsel applied a 30%
25 risk at class certification and a 30% risk on the merits, leading to a risk-adjusted value of
26 \$667,797.

27 27. In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiffs
28 estimate the risk-adjusted class recovery as follows:

•	Unpaid Wage Claims	\$	565,812
•	Meal and Rest Break Claims	\$	1,572,876
•	Wage Statement Claims	\$	667,380
•	Waiting Time Penalty Claims	\$	<u>667,797</u>
•	Total Risk Adjusted Penalties and Damages	\$	3,473,864

THE SETTLEMENT IS FAIR, JUST, AND REASONABLE

28. The settlement was the product of extensive arm's length negotiations, facilitated by an experienced mediator. Though cordial and professional, the settlement negotiations were adversarial and non-collusive in nature. The settlement reached is the product of substantial effort by the parties and their counsel. Although we believed that there was a possibility of certifying the claims, we recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate.

29. The settlement will result in a fair payment to each class member based on the number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiffs and their counsel have diligently investigated the claims and defenses on behalf of the Class Members and worked to achieve a resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with further litigation described above and weighing them against the benefits of a known compromise and settlement as set forth in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best interest of Plaintiff and the Class, and is a fair and reasonable resolution of the claims alleged.

30. Plaintiffs' counsel brought to bear a great deal of experience in negotiating the settlement of this case. As detailed herein, Plaintiffs' counsel engaged in the necessary discovery and investigation, making it possible to exercise informed judgment throughout the settlement process, including significant document review (e.g. documents pertaining to Defendant's policies and procedures, personnel documents, among others), and conducted an extensive analysis of the detailed class-wide data provided by Defendant.

1 31. Based on my experience in other cases, including wage and hour matters, I
2 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
3 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
4 settlement at this time is in the best interests of the class. The settlement provides each class
5 member with compensation for the alleged violations when viewed in relation to the costs and
6 risks inherent in obtaining class certification and proceeding to trial.

7 32. Plaintiffs' counsel, as well as Defendant's counsel, fully endorse the terms and
8 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

9 33. Of course, the settlement amount represents a compromise figure, taking into
10 account the various risks surrounding class certification and the merits of Defendants' asserted
11 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
12 members, with no reversion to Defendants.

13 **PLAINTIFFS' REQUESTED ENHANCEMENT PAYMENT**

14 34. Plaintiffs seek an enhancement payment of \$10,000 each Plaintiff for their service
15 to the class, which I believe is fair and warranted. The Plaintiffs each came forward in an effort
16 to effectuate a policy and practice change that benefitted all other Class Members, and to recover
17 unpaid wages. They each assumed significant risk in bringing this litigation—namely, had they
18 lost, they would have been ordered to pay Defendant's costs.

19 35. Plaintiffs provided invaluable assistance to my office and the Class in this case,
20 including providing factual background for the Class Complaint; reviewing the litigation
21 documents; providing information and documents about Defendant's policies and practices;
22 participating in phone calls to discuss litigation and settlement strategy; and reviewing the
23 settlement documents. Plaintiffs agreed to participate in this case with no guarantee of personal
24 benefit. At final approval, Plaintiffs will submit a comprehensive declaration setting forth all of
25 the reasons why he believes that the service award should be approved.

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1 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
2 **REQUESTED FEES AND COSTS**

3 36. As set forth above, I have handled over 250 class and representative actions, have
4 been appointed as class counsel and have successfully resolved over half of those cases, and
5 many others remain pending and will successfully resolve in the future.

6 37. When this case was taken on a contingency fee basis, with my firm agreeing to
7 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
8 course of this litigation, my firm and my co-counsel paid all costs including filing fees, court
9 costs, research fees, and mediation costs. There was never a guarantee that we would recoup
10 those expenditures.

11 38. It is my experience that attorney fee awards of one-third of a common fund
12 settlement is the standard in California. In this case, Plaintiffs' counsel agreed to seek one-third
13 of the Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The
14 fee is further warranted because it is within the range of reasonableness typically awarded in
15 class actions. The litigation costs are reasonably capped at \$25,000 and will be based on the
16 actual amount of costs incurred at the time of final approval.

17 **SETTLEMENT ADMINISTRATOR**

18 39. The parties request that the Court appoint Phoenix Settlement Administrators to
19 serve as the Settlement Administrator. Phoenix is experienced in administering class action
20 settlements, and has provided a proposal to administer this settlement for a total of \$10,000,
21 which is attached hereto as **Exhibit 3**.

22 **SUBMISSION TO THE LWDA**

23 40. Plaintiff has concurrently submitted the settlement to the LWDA in accordance
24 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit 4**.

25 **EXHIBITS AND CONCLUSION**

26 41. A true and correct copy of the Settlement Agreement is attached as **Exhibit 1**.
27 Moreover: (a) a true and correct copy of the proposed Class Notice is attached as Exhibit A to
28 the Settlement Agreement.

42. Plaintiff Potter's original Notice and both amended Notices to the LWDA are attached as **Exhibit 2**.

43. Phoenix's proposal to administer the Settlement is attached hereto as **Exhibit 3**.

44. The LWDA's confirmation of receipt of this Motion and Declaration is attached hereto as **Exhibit 4**.

45. For the foregoing reasons, it is respectfully requested that the Court grant preliminary approval of the settlement as being fair, reasonable, and in the best interests of the class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement payment to the Class Representatives.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 9, 2023 at Riverside, California.

By: Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “1”

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[Additional Counsel Listed on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

LAURA BARBOZA and DAMON POTTER,
on behalf of all others similarly situated;

Plaintiffs,

vs.

RUDOLPH FOODS COMPANY, INC., an
Ohio Corporation, and DOES 1 through 20,
inclusive;

Defendants.

AND THE CONSOLIDATED/RELATED
ACTIONS.

Case No.: CIVSB2129090

**CLASS AND REPRESENTATIVE
ACTION SETTLEMENT AGREEMENT
AND RELEASE OF CLAIMS**

Consolidated/Related Actions:

- *Barboza v. Rudolph Foods Company, Inc., et al.*; County of San Bernardino, Case No. CIVSB2208663
- *Potter v. Personnel Staffing Solutions Group, Inc., Rudolph Foods Company, Inc., et al.*; County of Riverside, Case No. CVRI2102858

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13 Attorney for Defendant, Rudolph Foods Company, Inc.

1 This Class and Representative Action Settlement Agreement and Release of Claims is
2 entered into by and between Plaintiffs Laura Barboza and Damon Potter, individually, on a
3 representative basis, and on behalf of all others similarly situated and the interests of the
4 California Labor and Workforce Development Agency (“LWDA”), and Defendant Rudolph
5 Foods Company, Inc. and is approved by their respective counsel of record, subject to the terms
6 and conditions hereof and the Court’s approval.

7 **A. Definitions**

8 1. “Agreement,” “Settlement” or “Settlement Agreement” shall mean this Class and
9 Representative Action Settlement Agreement and Release of Claims, including any attached
10 Exhibits.

11 2. “Attorney’s Fees and Cost Award” shall have the meaning ascribed to it in
12 Paragraph 49(f) below.

13 3. “Class Counsel” refers to Brian Mankin and Kristina Bui Carlson of Lauby
14 Mankin Lauby LLP, Nazo Koulloukian of Koul Law Firm, and Sahag Majarian II of the Law
15 Offices of Sahag Majarian II.

16 4. “Class Data” means a confidential spreadsheet that includes, for each Settlement
17 Class Member: full names; last known addresses; telephone numbers; Social Security Numbers;
18 the total Weeks Worked during the PAGA Period for each PAGA Member, and the total Weeks
19 Worked during the Class Period for each Settlement Class Member.

20 5. “Class Period” is deemed to be any time during the period June 14, 2017,
21 through December 20, 2022.

22 6. “Class Representatives” or “Plaintiffs” means and refers to Laura Lizbeth
23 Barboza Gomez and Damon Potter.

24 7. “Consolidated Action” or “Lawsuit” means and refers to the following actions:
25 *Damon Potter v. Personnel Staffing Solutions Group, Inc., Rudolph Foods Company, Inc., et al.*
26 (Riverside County Superior Court, Case No. CVRI2102858) (the “Potter Action”), and *Laura*
27 *Barboza v. Rudolph Foods Company, Inc., et al.* (San Bernardino County Superior Court, Case
28 Nos. CIVSB2129090 and CIVSB2208663 (the “Barboza Action(s)”).

1 8. “Consolidated Complaint” refers to the operative complaints on file in the Potter
2 Action and the Barboza Actions, as well as the pending First Amended Complaint filed in the
3 first-filed Barboza Action (San Bernardino County Superior Court, Case No. CIVSB2129090),
4 which was filed on February 6, 2023 that will consolidate and incorporate the Potter Action and
5 the second-filed Barboza Action (San Bernardino County Superior Court, Case No.
6 CIVSB2208663) into the first-filed Barboza Action and therein collectively allege the Released
7 Class Claims and Settled PAGA Claims.

8 9. “Court” means the California Superior Court, County of San Bernardino.

9 10. “Defendant” or “Rudolph Foods” means and refers to Rudolph Foods
10 Company, Inc.

11 11. “Defendant’s Counsel” or “Defense Counsel” means and refers to Nossaman
12 LLP.

13 12. “Effective Date” means the latest of the following dates: (i) if no Class Member
14 timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil
15 Procedure § 663, then the date the Court enters an order granting Final Approval of the
16 Settlement; (ii) if a Class Member intervenes or files a motion to vacate the Judgment, then
17 sixty-one (61) calendar days following the date the Court enters an order granting Final
18 Approval, assuming no appeal is filed; or (iii) if a Class Member timely and properly intervenes
19 or files a motion to vacate the Judgment under Code of Civil Procedure § 663 or initiates
20 another collateral attack, and if a timely appeal is filed, then the date of final resolution of that
21 appeal or other collateral attack (including any requests for rehearing and/or petitions for
22 *certiorari*), resulting in final judicial approval of the Settlement.

23 13. “Escalator Clause” means if the number of Weeks Worked by the Settlement
24 Class during the Class Period is 10% greater or more than the estimated 32,143 Weeks Worked
25 during that period (i.e., more than 35,358 workweeks), the Gross Settlement Amount will
26 increase pro rata per additional Week Worked above 35,358 workweeks.

27 14. “Final Approval” refers to the order of the Court granting final approval of this
28 Settlement Agreement and entering a judgment approving this Agreement on substantially the

terms provided herein or as the same may be modified by subsequent agreement of the Parties.

15. “Final Settlement Class” means, collectively, all Settlement Class Members who have not opted out of the Settlement Class by submitting a timely Request for Exclusion.

16. “Gross Settlement Amount” or “GSA” shall have the meaning ascribed to it in Paragraph 49(a) below.

17. “Individual Settlement Payment” shall have the meaning ascribed to it in Paragraph 49(c) below.

18. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 49(b) below.

19. “Notice” means the notice of settlement of class action that will be sent to the Settlement Class Members, a copy of which is attached as **Exhibit “A.”**

20. “Notice Response Deadline” is 30 calendar days from the date the Notice is mailed to the Settlement Class Members.

21. “Objecting Settlement Class Member” means a Settlement Class Member, other than Plaintiffs, who submits a valid and timely objection to the terms of this Agreement with respect to the Settled Class Claims, pursuant to Paragraph 70(c) below.

22. “PAGA Members” means all current and former non-exempt employees who worked at a Rudolph Foods Facility in California at any time during the PAGA Period, including direct hires of Rudolph Foods and temporary employees assigned to work at a Rudolph Foods Facility.

23. “PAGA Penalties” means the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well as the individual PAGA payment allocated to each PAGA Member.

24. “PAGA Period” is deemed to be any time during the period of June 14, 2020, through December 20, 2022.

25. “Participating Class Member” means any and all Settlement Class Members who are deemed to participate, who will receive an Individual Settlement Payment, and who do not

1 opt-out by submitting a timely valid Request for Exclusion.

2 26. "Parties" or "Settling Parties" mean Plaintiffs, the Settlement Class, and
3 Defendant, collectively.

4 27. "Preliminary Approval Date" means the date the Court approves the Settlement
5 Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

6 28. "Preliminary Approval Order" means the judicial Order to be entered by the
7 Court, upon the application or motion of the Plaintiffs, preliminarily approving this Settlement
8 and providing for the issuance of the Notice to the Settlement Class, an opportunity to opt out of
9 the Settlement, an opportunity to submit timely objections to the Settlement, and setting a
10 hearing on the fairness of the terms of Settlement, including approval of attorneys' fees and
11 costs. Defendant will not object to Plaintiffs' motion for preliminary approval, but will be
12 provided with an opportunity to review and comment upon the motion at least ten days before it
13 is filed.

14 29. "QSF" means the Qualified Settlement Fund set up by the Settlement
15 Administrator for the benefit of the Final Settlement Class, and from which the settlement
16 payments shall be made, and which is intended to be a fund that qualifies under Internal
17 Revenue Code Sec. 468.

18 30. "Released Parties" means Defendant and its affiliated companies, parents,
19 members, subsidiaries, related companies and business concerns, past and present, including
20 their predecessors and successors, and each of them, as well as each of their insurers, partners,
21 trustees, directors, owners, shareholders, officers, agents, attorneys, servants, joint employers
22 and employees, temporary service providers and staffing agencies employing temporary
23 employees for the time worked at the Rudolph Foods Facility, past and present, and each of
24 them and anyone acting in concert with foregoing.

25 31. "Release" shall mean the release and discharge of the Settled Class Claims by
26 Plaintiffs and all of the Participating Class Members and the release and discharge of the Settled
27 PAGA Claims by Plaintiffs and all of the PAGA Members. The *res judicata* effect of the
28 Judgment will be the same as that of the Release of the Settled Class Claims and Settled PAGA

1 Claims.

2 32. “Request for Exclusion” means and refers to a valid and timely request for
3 exclusion from the Settlement of the Settled Class Claims, which may be submitted by any
4 Settlement Class Member, other than Plaintiffs, pursuant to Paragraph 70(a) below.

5 33. “Rudolph Foods Facility” means the warehouses and facilities in California that
6 Rudolph Foods owned or operated, including but not limited to in San Bernardino and
7 Beaumont, California.

8 34. “Service Payment” or “Service Award” means the amount approved by the Court
9 to be paid to the Class Representatives in addition to their Individual Settlement Payment as a
10 Participating Class Member.

11 35. “Settled Class Claims” or “Class Claims” by the Participating Class Members
12 upon Final Approval of the Settlement will include all causes of action and claims, charges,
13 complaints, liens, demands that were alleged in the Consolidated Complaint or reasonably could
14 have been alleged based on the allegations, the facts, statutory citation and/or legal theories
15 contained in the Consolidated Complaint, including all of the following claims for relief: (a)
16 failure to pay minimum wages, (b) failure to pay for all hours worked, including overtime
17 wages, (c) failure to provide compliant meal periods, (d) failure to provide compliant rest
18 breaks, (e) failure to timely pay wages, including final wages, (f) failure to provide accurate
19 itemized wage statements, (g) unfair and unlawful competition, (h) failure to provide proper
20 cool-down rest periods, (i) failure to provide suitable seating, (j) failure to reimburse for
21 required business expenses, (k) failure to pay all required sick pay, (l) failure to provide safe
22 and healthful working conditions; and (m) all other claims for statutory penalties based on the
23 facts or claims alleged in the Consolidated Complaint (the “Released Class Claims”). These
24 claims and their related recovery provisions include, but are not limited to, California Labor
25 Code sections 200, 201, 202, 203, 204, 212, 213, 218, 218.5, 226, 226.3, 226.7, 227.3, 246, 510,
26 512, 558, 558.1, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1199, 2800, 2802 and
27 all related provisions of the California Code of Regulations, California Industrial Wage Orders,
28 California Health and Safety Code sections 6400 *et seq.*, and California Business & Professions

Code sections 17200 *et seq.* The release of the foregoing claims extends to all theories of relief regardless of whether the claim is, was or could have been alleged as separate claims, causes of action, lawsuits or based on other theories of relief, or different right or duty of an alleged statute, whether under federal law, state law or common law (including, without limitation, as violations of the California Labor Code, Industrial Wage Orders, applicable regulations, California Health and Safety Code, and California Business and Professions Code). “Settled Class Claims” includes all types of relief available for the above-referenced claims, including, without limitation, any claims for damages, restitution, losses, penalties, fines, liens, attorneys’ fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated damages. The time period governing the Settled Class Claims shall be the same as the Class Period.

36. “Settled PAGA Claims” means any and all claims for civil penalties under the Private Attorneys General Act, Labor Code § 2698 *et seq.*, that Plaintiffs alleged against the Released Parties, on behalf of PAGA Members and State of California, based on the facts stated in the Consolidated Complaint and in Plaintiffs’ notice letters to the LWDA (including any amendments thereto), or reasonably could have been alleged based on the allegations, the facts, statutory citation and/or legal theories under the PAGA contained in the Consolidated Complaint, including, but not limited to, all of the following claims for relief: (a) failure to pay minimum wages, (b) failure to pay for all hours worked, including overtime wages, (c) failure to provide compliant meal periods, (d) failure to provide compliant rest breaks, (e) failure to timely pay wages each period and upon separation of employment, (f) failure to provide accurate itemized wage statements and violation of recordkeeping requirements, (g) failure to provide safe and healthful working conditions, (h) failure to provide proper cool-down rest periods, (i) failure to provide suitable seating, (j) failure to reimburse for required business expenses, (k) failure to pay all required sick pay, and (l) all other claims for PAGA penalties based on the facts or claims alleged in the Consolidated Complaint. These claims and their related recovery provisions include, but are not limited to, California Labor Code sections 200, 201, 202, 203, 204, 212, 213, 218, 218.5, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 558.1, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1199, 2800, and 2802 and all related

provisions of the California Code of Regulations, the California Industrial Wage Orders, and California Health and Safety Code sections 6400 *et seq.* The time period governing the Settled PAGA Claims shall be any time during the PAGA Period.

37. “Settlement Administrator” means and refers to Phoenix Settlement Administrators, the third-party class action settlement administrator based on low bid or mutually agreed to by the Parties that will provide the Notice Packet to the Class Members and distribute the settlement amounts as described in this Agreement.

38. “Settlement Administration Costs” means the costs payable from the Gross Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property due diligence, reporting and remittance obligations, distributing the Gross Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement.

39. “Settlement Class” consists of current and former non-exempt employees who worked at a Rudolph Foods Facility in California at any time during the Class Period, including direct hires of Rudolph Foods and temporary employees assigned to work at a Rudolph Foods Facility.

40. “Settlement Class Member” or “Class Member(s)” refers to individual members of the Settlement Class.

41. “Weeks Worked” or “Eligible Weeks,” in the context of Settlement Class Members, means all weeks during the Class Period in which the Settlement Class Member was worked at least one shift during the week at the Rudolph Foods Facility. Likewise, in the context of PAGA Members, it means all weeks during the PAGA Period in which the PAGA Member worked at least one shift during the week at the Rudolph Foods Facility.

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1 **B. General Terms and Recitals**

2 42. The Potter Action was initially filed in the Riverside County Superior Court as a
3 class action on June 14, 2021, and was subsequently amended on August 20, 2021 to add
4 corresponding PAGA claims. The Barboza Actions were separately filed in the San Bernardino
5 County Superior Court, first as a representative PAGA action on November 22, 2021 and then
6 as a class action on May 19, 2022. In preparation for Court approval of settlement, Plaintiffs
7 agreed to proceed in one Consolidated Action.

8 43. Defendant and the Released Parties specifically and generally deny any and all
9 liability or wrongdoing of any sort with regard to the claims alleged, make no concessions or
10 admissions of liability of any sort, and contend that for any purpose other than settlement, the
11 Consolidated Action is not appropriate for class or representative action treatment.

12 44. The Class Representatives believe they can proceed with their representative and
13 class claims, that the Consolidated Action is meritorious, and that class certification is
14 appropriate.

15 45. The Parties have conducted a thorough investigation into the facts of the
16 Consolidated Action. In preparation for mediation, the parties exchanged discovery informally,
17 including Defendant's written policies and practices and the production of payroll records,
18 timekeeping records, and employment status for Settlement Class Members. Class Counsel
19 represent, and Defendant understands, that each has diligently pursued an investigation of the
20 proposed Class Members' and PAGA Members' claims against Defendant and is both
21 knowledgeable about the claims and damages, and has done extensive research with respect to
22 the applicable law and potential defenses to the claims. Class Counsel represent, and Defendant
23 understands, that each has diligently pursued an investigation of the Class Members' claims
24 against Defendant. Based on the foregoing data and on their own independent investigation and
25 evaluation, Class Counsel is of the opinion that the settlement with Defendant for the
26 consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and
27 adequate and is in the best interest of the Class Members and PAGA Members/LWDA in light
28 of all known facts and circumstances, including the risk of significant delay and uncertainty

1 associated with litigation, various defenses asserted by Defendant, and numerous potential
2 appellate issues.

3 46. On October 20, 2022, Plaintiffs and Defendant participated in a private
4 mediation before Steve Rottman, Esq., one of the most highly experienced and respected class
5 action mediators in California. The matter resolved at mediation globally pursuant to a
6 mediator's proposal, conditioned upon the filing of the Consolidated Complaint. At all times,
7 the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

8 47. The Parties agree that neither the Parties' Settlement, this Agreement, nor the
9 acts to be performed or judgments to be entered pursuant to the terms of the Settlement and
10 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
11 any statute or law or liability on the claims or allegations in the Action.

12 48. Stipulation for Class Certification and Representative Treatment. For settlement
13 purposes only, Defendant will stipulate that the Settlement Class Members described herein
14 who do not submit a Request for Exclusion from the Settlement Class may be conditionally
15 certified as a settlement class and that the PAGA Members are appropriate for representative
16 treatment for purposes of settlement. This stipulation to certification and representative
17 treatment is in no way an admission that class action certification and/or representative
18 treatment is proper and shall not be admissible in this or in any other action except for the sole
19 purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final
20 Approval, the Parties' stipulation to class certification and representative treatment as part of the
21 Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be
22 admissible in connection with, the issue of whether or not certification and/or representative
23 treatment would be appropriate in a non-settlement context. Defendant expressly reserves its
24 rights and declares that it would continue to oppose class certification, representative treatment,
25 and the substantive merits of the case should the Court decline to issue Final Approval.
26 Plaintiffs expressly reserve their rights and declare that they will continue to pursue class
27 certification, representative treatment, and a trial should the Court decline to issue Final
28 Approval.

1 **C. Terms of Settlement**

2 49. The financial terms of the Settlement are as follows:

3 (a) Gross Settlement Amount: The Parties agree to settle this Consolidated
4 Action for One Million Two Hundred and Fifty Thousand Dollars and No Cents (\$1,250,000)
5 (“the Gross Settlement Amount”). The Gross Settlement Amount is the maximum amount that
6 will be paid by Defendant (except for the employer’s share of payroll taxes and withholdings
7 and subject to the Escalator Clause), and includes Individual Settlement Payments, Attorneys’
8 Fees and Costs Award, the Service Payment to the Class Representatives, all Settlement
9 Administration Costs, and PAGA Penalties. Defendant shall separately pay the employers’
10 share of applicable payroll tax obligations, which shall be reported through the Settlement
11 Administrator.

12 (b) Net Settlement Amount: The “Net Settlement Amount” is defined as the
13 Gross Settlement Amount less the Attorneys’ Fees and Costs Award, the Service Payment to the
14 Class Representatives, as approved and awarded by the Court, the Settlement Administration
15 Costs, as approved and awarded by the Court, and PAGA Penalties. If the Court reduces the
16 Attorneys’ Fees and Costs Award, Service Awards, or Settlement Administrator Costs, or either
17 increases or decreases the amount allocated to the PAGA Penalties, the Net Settlement Amount
18 shall be increased or decreased accordingly, and the increase or decrease shall not impact the
19 validity and enforceability of the Settlement.

20 (c) Individual Settlement Payments for the Settlement Class: Individual
21 Settlement Payments will be calculated and apportioned from the Net Settlement Amount based
22 on the number of Eligible Weeks a Settlement Class Member worked during the Class Period.
23 Specific Calculations of Individual Settlement Payments will be made as follows:

- 24 • Defendant will calculate the total number of Weeks Worked by each
25 Settlement Class Member during the Class Period and the aggregate total
26 number of Weeks Worked by all Settlement Class Members during the Class
27 Period.
28 • To determine each Settlement Class Member’s estimated Individual

1 Settlement Payment, the Settlement Administrator will use the following
2 formula: The Net Settlement Amount will be divided by the aggregate total
3 number of Weeks Worked, resulting in the "Week Value." Each Settlement
4 Class Member's Individual Settlement Payment will be calculated by
5 multiplying his or her total number of Weeks Worked during the Class
6 Period by the Week Value.

- 7 • Individual Settlement Payments will be reduced by any required deductions
8 for each Participating Class Member as specifically set forth herein,
9 including employee-side tax withholdings and deductions.
- 10 • The entire Net Settlement Amount will be disbursed to all Participating Class
11 Members. If there are any valid and timely Requests for Exclusion, the
12 Settlement Administrator shall proportionally increase the Individual
13 Settlement Payment for each Participating Class Member according to the
14 number of Weeks Worked, so that the amount actually distributed to the
15 Settlement Class equals 100% of the Net Settlement Amount.
- 16 • The Parties acknowledge and agree that the formula used to calculate
17 Workweeks, individual Settlement Payments, PAGA Workweeks and PAGA
18 payments does not imply that all of the elements of damages covered by the
19 release are not being taken into account. The above formulas were devised
20 as practical and logistical tools to simplify the payment process.

21 (d) Allocation of Individual Settlement Payments: The Individual Settlement
22 Payments will be allocated based on the allegations in the Action as follows: 20% will be
23 allocated as wages subject to withholding of all applicable local, state and federal taxes; 80% to
24 interest and statutory penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226,
25 2699) from which no taxes will be withheld. The Settlement Administrator will issue to each
26 Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms
27 with respect to the wage allocation and a Form 1099 with respect to the penalties and interest
28 allocations.

1 (e) Service Payment to Class Representatives: The amounts, if any, awarded
2 to the Class Representatives as a Service Payment will be set by the Court in its discretion in
3 exchange for the services Plaintiffs performed on behalf of the Class and for entering into the
4 general release of all claims discussed hereinafter. The Service Payments are not to exceed the
5 following amounts: \$10,000 to Damon Potter and \$10,000 to Laura Barboza. Defendant agrees
6 not to oppose these requests. Plaintiffs will not request exclusion from the Settlement Class.
7 The Service Payment to Plaintiffs will be paid out of the Gross Settlement Amount. The Class
8 Representatives will be issued IRS Form 1099 in connection with this payment and shall be
9 solely and legally responsible to pay any and all applicable taxes on this payment. The Parties
10 agree that any amount awarded as the Service Payment to Plaintiffs less than the requested
11 amount shall not be a basis for Class Counsel to void this Settlement Agreement nor to appeal
12 this aspect of the Court's ruling. Should the Court approve a lesser amount for the Service
13 Payment, the difference shall be added to the Net Settlement Amount to be distributed to the
14 Participating Class Members.

15 (f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a
16 request by Class Counsel to the Court for an award of attorneys' fees of not more than one-third
17 (1/3) of the Gross Settlement Amount (\$416,666.67), subject to Court approval, plus reasonable
18 litigation costs not to exceed \$25,000, which shall be allocated according to proof and subject to
19 Court approval ("Attorney's Fees and Cost Award"). Defendant agrees not to oppose any
20 contention by Class Counsel that attorneys' fees should be based on the common fund theory.
21 The Attorney's Fee and Cost Award shall be paid from the Gross Settlement Amount, and
22 except for this award, Defendant shall have no further obligation to pay any attorneys' fees,
23 costs or expenses to Class Counsel. Should the Court approve a lesser amount than what is
24 sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be
25 distributed to the Participating Class Members. The Parties agree that any amount awarded as
26 attorneys' fees and costs to Class Counsel less than the requested amount shall not be a basis for
27 Class Counsel to rescind or otherwise void this Settlement Agreement. The Settlement
28 Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of

attorneys' fees and costs awarded by the Court.

(g) Settlement Administration Costs: The fees and other charges of the Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed \$10,000, unless approved by all Parties and the Court.

(h) PAGA Penalties: The Parties agree that \$50,000 is allocated to PAGA Penalties and is to be paid from the Gross Settlement Amount, subject to Court approval. Of this amount, \$37,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the Private Attorney General Act of 2004 ("PAGA") and \$12,500 (25%) will be paid to the PAGA Members on a Weeks Worked basis, which will be treated entirely as civil penalties and shall be reported as required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the Settlement.

(i) Tax Liability: Class Counsel, Defendant, and Defendant's counsel make no representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder, and Plaintiffs and the Settlement Class Members are not relying on any statement or representation by Class Counsel, Defendant, or Defendant's counsel in this regard. Plaintiffs, Participating Class Members, and PAGA Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective Settlement Amounts described herein. The amount of federal income tax withholding will be based upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to applicable state and/or local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, are changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendant into compliance with any such changes. Plaintiffs, Participating Class Members, and PAGA Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective payments described herein and will hold

1 Defendant harmless from and against any claims resulting from treatment of such payments as
2 non-taxable damages.

3 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
4 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
5 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
6 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
7 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
8 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
9 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
10 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
11 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
12 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
13 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
14 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
15 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
16 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
17 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
18 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
19 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
20 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
21 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
22 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR
23 ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
24 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
25 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
26 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

27 50. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
28 Participating Class Members under this Agreement, as well as any other payments made

pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any benefit plans to which any Settlement Class Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of equity plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement will not affect any rights, contributions, or amounts to which any Settlement Class Members may be entitled under any benefit plans. The Parties agree that the amounts paid pursuant to this Settlement are not for days or hours worked, and are not included toward any regular rate of pay calculation, or any benefit vesting or accrual purpose.

51. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under no circumstances will any portion of the Gross Settlement Amount revert to Defendant. Participating Class Members will not have to make a claim in order to receive an Individual Settlement Payment, and PAGA Members will not have to make a claim in order to receive their share of PAGA Penalties. Distributions, in the form of Individual Settlement Payments, will be made directly to each Participating Class Member and PAGA Member. The Settlement Administrator shall be responsible for accurately and timely reporting and remittance obligations with respect to unclaimed funds as a result of a Participating Class Member or PAGA Member not cashing an Individual Settlement Payment by the check cashing deadline, as set forth herein.

52. Class Counsel and Plaintiffs believe that the Settlement is fair and reasonable, and adequate, and will so represent same to the Court.

D. Release by Participating Class Members, LWDA and PAGA Members

53. Settled Class Claims. Upon entry of the Final Approval Order and Defendant's funding of the Settlement Amount, the Participating Class Members will forever completely release and discharge the Released Parties from the Settled Class Claims for the Class Period. It is the intent of the Parties that the Final Approval Order and judgment entered by the Court shall have full equitable and collateral estoppel and *res judicata* effect and be final and binding upon Participating Class Members regarding the Settled Class Claims.

1 54. Each Participating Class Member will be deemed to have made the foregoing
2 Release as if by manually signing it.

3 55. Plaintiffs and Defendant intend that the Settlement described in this Agreement
4 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
5 arbitration, demand, or other action of any kind, by each and all of the Participating Class
6 Members to obtain a recovery based on, arising out of, and/or related to any and all of the
7 Settled Class Claims. The Class Members shall be so notified in the Notice. This paragraph
8 only applies to Participating Class Members and, thus, does not apply to any Class Member
9 who timely and validly submits a Request for Exclusion, nor does it apply to PAGA Members
10 with respect to the Settled PAGA Claims.

11 56. Settled PAGA Claims. Upon entry of the Final Approval Order and Defendant's
12 funding of the Settlement Amount, Plaintiffs, standing in the shoes of the Labor
13 Commissioner/LWDA, and on behalf of the State of California and all PAGA Members, will
14 forever completely release and discharge the Released Parties from the Settled PAGA Claims
15 through the PAGA Period. It is the intent of the Parties that the Final Approval Order and
16 judgment entered by the Court shall have full equitable and collateral estoppel and *res judicata*
17 effect and be final and binding upon PAGA Members regarding the Settled PAGA Claims.

18 57. Plaintiffs and Defendant also intend that the Settlement described in this
19 Agreement will release and preclude any further PAGA claim to obtain a recovery based on,
20 arising out of, and/or related to any and all of the Settled PAGA Claims. The PAGA Members
21 shall be so notified in the Notice and Class Counsel shall provide appropriate notice to the
22 LWDA of this Agreement prior to the filing of the Motion for Preliminary Approval. This
23 section is not intended to preclude any PAGA Member other than Plaintiffs from bringing any
24 claim other than the Settled PAGA Claims.

25 58. Labor Code Section 206.5. Class Representatives, on behalf of themselves and
26 the Participating Class Members, acknowledge and agree that the claims alleged in the
27 Consolidated Complaint or that could have reasonably been alleged, including claims for unpaid
28 wages and untimely payment of wages, are disputed, and that the payments set forth herein

1 constitute payment of all sums allegedly due to them.

2 **E. Release by Plaintiffs/Class Representatives**

3 59. As a material inducement to Defendant to enter into this Settlement Agreement,
4 Class Representatives do hereby, for themselves and for their respective spouses, heirs,
5 successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators,
6 guardians, personal representatives, and assigns forever and completely release and discharge
7 the Released Parties from any and all charges, complaints, claims, liabilities, obligations,
8 promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands,
9 costs, losses, debts, and expenses (including back wages, statutory penalties, civil penalties,
10 liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of any nature
11 whatsoever, from the beginning of time through the execution of this Agreement, whether
12 known or unknown, suspected or unsuspected, including but not limited to all claims arising out
13 of, based upon, or relating to Class Representatives' employment with Defendant or the
14 remuneration for or termination of such employment (collectively, the "Class Representatives'
15 Claims"). In addition, Plaintiff Cortes and Defendant have agreed to enter into a confidential,
16 individual settlement agreement and general release.

17 60. Without limiting the generality of the foregoing, this general release by Class
18 Representatives includes all claims or rights arising out of alleged violations of any contracts,
19 express or implied (including but not limited to any contract of employment); any contract or
20 covenant of good faith or fair dealing (express or implied); any tort, including negligence, fraud,
21 misrepresentation under California Labor Code 970, negligent infliction of emotional distress,
22 intentional infliction of emotional distress, and defamation; any "retaliation" claims; any claims
23 relating to any breach of public policy; and all federal, state, local and other governmental
24 statutory claims, regulations, and ordinances, and federal and state common law claims
25 (including but not limited to those for contract, tort and equity), including without limitation the
26 , Age Discrimination in Employment Act,), 42 USC sec. 1981, 42 USC sec. 1983, the Fair
27 Labor Standards Act, the California Constitution, the California Unfair Competition Act
28 (California Business and Professions Code section 17200 *et seq.*), Title VII of the Civil Rights

1 Act of 1964 (race, color, religion, sex, and national origin discrimination or harassment,
2 including retaliation for reporting discrimination or harassment), sections 503 and 504 of the
3 Rehabilitation Act of 1973 (disability discrimination), the Equal Pay Act, 29 U.S.C. § 209(4)(1)
4 (equal pay), the Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability
5 discrimination), the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical
6 leave), the California Fair Employment and Housing Act, Cal. Gov't Code § 12900, *et seq.*
7 (discrimination or harassment in employment and/or housing, including discrimination or
8 harassment based on race, religious creed, color, national origin, ancestry, physical or mental
9 disability, marital status, sex (including pregnancy), sexual orientation, genetic, or age,
10 including retaliation for reporting discrimination or harassment), the California Family Rights
11 Act, Cal. Gov't Code § 12945.1, *et seq.* (family/medical leave), the California Labor Code or
12 any Industrial Welfare Commission Wage Order, Executive Order 11246 (race, color, religion,
13 sex, and national origin discrimination or harassment), Executive Order 11141 (age
14 discrimination), and the Employee Retirement Income Security Act, 29 U.S.C. § 1000, *et seq.*
15 (employee benefits).

16 61. Class Representatives agree that there is a risk that any injury that they may have
17 suffered by reason of the Released Parties' relationship with them might not now be known, and
18 there is a further risk that said injuries, whether known or unknown at the date of this Settlement
19 Agreement, might possibly become progressively worse, and that as a result thereof further
20 damages may be sustained. Nevertheless, Class Representatives agree to forever and fully
21 release and discharge the Released Parties, and understands that by the execution of this
22 Settlement Agreement no further claims for any such injuries that existed at the time of the
23 execution of this Settlement Agreement may ever be asserted by Class Representatives with
24 respect to claims arising in the time period from the beginning of time to the execution of this
25 Settlement Agreement.

26 62. Class Representatives expressly waive and relinquish all rights and benefits
27 afforded by Section 1542 of the Civil Code of the State of California and do so understanding
28 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil

1 Code of the State of California states:

2 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
3 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
4 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
5 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
6 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
7 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
8 OR RELEASED PARTY.

9 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
10 full and complete release and discharge of all parties, Class Representatives and Class Counsel
11 expressly acknowledge that this Settlement Agreement is intended to include in its effect,
12 without limitation, all claims whether known or unknown, suspected or unsuspected, contingent
13 or non-contingent, that now exist, upon any theory of law or equity, including without
14 limitation, conduct which is negligent, intentional, with or without malice, or a breach of any
15 duty, law, or rule, without regard to the subsequent discovery or existence of such different or
16 additional facts, in favor of the Class Representatives against the Released Parties, or any of
17 them, for the time period from the beginning of time to the execution of this Settlement
18 Agreement, and that this Settlement Agreement contemplates the extinguishment of any such
19 Class Representatives' claims. Notwithstanding the above, the general release by Class
20 Representatives shall not extend to claims for workers' compensation benefits, claims for
21 unemployment benefits, or other claims that may not be released by law.

22 **F. Interim Stay of Proceedings**

23 63. Pending completion of all of the prerequisites necessary to effectuate this
24 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the
25 Action except such as are necessary to effectuate the Settlement.

26 **G. Notice Process**

27 64. Appointment of Settlement Administrator. The Parties have agreed to the
28 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
including mailing the Notice, using standard devices to obtain forwarding addresses,
independently reviewing and verifying documentation associated with any claims or opt-out

requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Settlement Payments, drafting and mailing the settlement checks to Participating Class Members, and PAGA Members, issuing W-2 and 1099 Tax Forms, unclaimed funds due diligence, reporting and remittance obligations, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders. The Settlement Administrator (along with any of its agents) shall represent and warrant that it will: (a) provide reasonable and appropriate administrative, physical and technical safeguards for any personally identifiable information (“PII”), which it receives from Defendant; (b) not disclose the PII to Class Counsel, Plaintiffs, any party or third parties, including agents or subcontractors, without Defendant’s consent; (c) not disclose or otherwise use the PII other than to carry out its duties as set forth herein; (d) promptly provide Defendant with notice if PII is subject to unauthorized access, use, disclosure, modification, or destruction; and (e) continue to protect the PII upon termination of its services.

65. Disputes Regarding Settlement Administration. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until Plaintiffs and Defendant notify the Court that all payments and obligations contemplated by this Settlement Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiffs, Participating Class Members, PAGA Members, and Class Counsel any W-2, 1099, or other Tax Forms as may be required by law for all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate government authorities.

66. Class Data. Within 21 days after entry of the Preliminary Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members’ addresses against those on file with the

1 U.S. Postal Service's National Change of Address List. The Class Data provided to the
2 Settlement Administrator will remain confidential, shall be used solely to administer the
3 Settlement, and it will not be used or disclosed to anyone (including Class Counsel), except as
4 required by applicable tax authorities, pursuant to Defendant's express written consent, or by
5 order of the Court. Although Class Counsel will not be provided with the list of Class Data,
6 nothing herein shall prevent Class Counsel from communicating with Class Members regarding
7 the Action and Settlement.

8 67. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
9 Administrator to the Settlement Class Members, by first class mail, in English and Spanish,
10 within thirty (30) calendar days following the Settlement Administrator's receipt of the Class
11 Data. The Settlement Administrator shall use standard devices, including a skip trace, to obtain
12 forwarding addresses of Settlement Class Members if any envelopes are returned.

13 68. Returned Notices. The Settlement Administrator will take steps to ensure that
14 the Notice is received by all Settlement Class Members, including utilization of the National
15 Change of Address Database maintained by the United States Postal Service to review the
16 accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any
17 Settlement Class Member for whom an updated address is located within ten (10) calendar days
18 following both the Settlement Administrator learning of the failed mailing and its receipt of the
19 updated address. The Notice shall be identical to the original Notice, except that it shall notify
20 the Settlement Class Member that the exclusion (opt-out) request or objection must be returned
21 by the later of the Notice Response Deadline or fifteen (15) days after the remailing of the
22 Notice.

23 69. Disputes Regarding Information on Notices. Class Members are deemed to
24 participate in the Settlement, unless they opt-out, and PAGA Members may not opt out of the
25 Settled PAGA Claims. The Notice will inform Class Members of his/her estimated Individual
26 Settlement Payment and the number of Weeks Worked during the Class Period and during the
27 PAGA Period. Class Members may dispute their Weeks Worked if they feel they should be
28 credited with more Eligible Weeks than the Class Data shows by timely submitting evidence to

1 the Settlement Administrator. The Class Data will be presumed determinative absent reliable
2 evidence to rebut it, but the Settlement Administrator will evaluate the evidence submitted by
3 the Class Member and provide the evidence submitted to Class Counsel and Defense Counsel
4 who agree to meet and confer in good faith about the evidence to determine the Class Member's
5 actual number of Weeks Worked and estimated Individual Settlement Payment. If Class
6 Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the
7 Settlement Administrator to render a final decision. Class Members will have until the Notice
8 Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court.
9 In the event that the Settlement Administrator increases the number of Weeks Worked for any
10 Settlement Class Member, then the Settlement Administrator will recalculate the Participating
11 Class Members' Individual Settlement Payments; accordingly, in no event will Defendant be
12 required to increase the Gross Settlement Amount.

13 70. Settlement Class Members' Rights. Each Settlement Class Member will be fully
14 advised of the Settlement, the ability to object to the provisions in the Settlement related to the
15 Settled Class Claims, and the ability to opt-out or request exclusion from the Settlement with
16 respect to the Settled Class Claims. The Notice will inform the Settlement Class Members of
17 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
18 with respect to the Settled Class Claims in accordance with the following guidelines:

19 (a) Requests for Exclusion from Participating in the Settlement Class. Any
20 Settlement Class Member, other than Plaintiffs, may request to be excluded from the Settlement
21 Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on
22 or before the Notice Response Deadline. The Request for Exclusion should state:

23 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT
24 CLASS IN THE RUDOLPH FOODS LAWSUIT. I
25 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM
26 THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY
MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS
IN THIS LAWSUIT."

27 To be valid, any Request for Exclusion must include the full name, address, telephone
28 number, last four digits of the social security number or date of birth, and signature of the

1 Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by
2 mail to the Settlement Administrator at the specified address or fax number. Any such Request
3 must be made in accordance with the terms set forth in the Notice. A Request for Exclusion
4 will be timely only if postmarked by the Notice Response Deadline, unless the Parties otherwise
5 agree in writing. Any Settlement Class Member who timely requests exclusion in compliance
6 with these requirements: (i) will not have any rights under this Agreement with respect to the
7 Settled Class Claims, including the right to object, appeal, or comment on the Settlement; (ii)
8 will not be entitled to receive any payments under this Agreement for the Settled Class Claims;
9 and (iii) will not be bound by this Agreement, or the Judgment, with respect to the Settled Class
10 Claims. Any PAGA Member who requests timely exclusion will still be subject to the Settled
11 PAGA Claims to the fullest extent permitted by law and shall be sent his or her share of PAGA
12 Penalties.

13 (b) Binding Effect on Participating Class Members. Except for those
14 Settlement Class Members who exclude themselves in compliance with the procedures set forth
15 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for
16 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
17 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
18 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
19 reasonableness, and adequacy of the Settlement.

20 (c) Objections to Settlement of the Settled Class Claims. Any Settlement
21 Class Member, other than Plaintiffs, may object to the terms of this Agreement, except as to the
22 Settled PAGA Claims. To object, a Settlement Class Member shall inform the Settlement
23 Administrator, in writing, of his or her objection which must be postmarked by the Notice
24 Response Deadline at the address set forth in the Notice. Such objection shall include the
25 objecting Settlement Class Member's full name, address, telephone number, and dates of
26 employment with Defendant, the case name and number, the basis for the objection, including
27 any legal support and each specific reason in support of the objection, as well as any
28 documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is

1 represented by counsel, the name and address of his or her counsel. The Settlement
2 Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within
3 three (3) calendar days of receipt, and the Settlement Administrator shall attach the same to its
4 declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any
5 Participating Class Member who files an objection remains eligible to receive monetary
6 compensation from the Settlement. Plaintiffs and Defendant shall not be responsible for any
7 fees, costs, or expenses incurred by any Class Member and/or his or her counsel related to any
8 objections to the Settlement. Submitting an objection does not preserve the right to appeal a
9 final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely
10 and properly intervening or filing a motion to vacate the judgment under Code of Civil
11 Procedure Section 663. To the extent a Class Member submits a Request for Exclusion and
12 objection, the objection shall be disregarded and the Class Member shall be excluded from the
13 Class. Settlement Class Members and PAGA Members may not object to or opt-out of the
14 Settlement with respect to the PAGA Claims.

15 (d) Failure to Object. Any Settlement Class Member who desires to object to
16 the Settled Class Claims in the Settlement but fails to timely submit a written objection or in
17 person objection at the Final Approval Hearing waives any right to object and will be foreclosed
18 from making any objection to this Settlement. Any Settlement Class Member who does not
19 timely and properly become a party of record by intervening or filing a motion to vacate the
20 judgment waives any and all rights to appeal from the Judgment, including all rights to any
21 post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment,
22 motion for new trial, a motion under California Code of Civil Procedure Section 473, and
23 extraordinary writs.

24 (e) Responses to Objections. Counsel for the Parties may file a response to
25 any objections submitted by objecting Settlement Class Members at least five (5) court days
26 before the date of the Final Approval Hearing.

27 (f) Settlement Class Members will have until the Notice Response Deadline
28 to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The

1 Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what
2 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
3 request of Class Counsel or Defense Counsel.

4 (g) Defective Submissions. If a Settlement Class Member's Request for
5 Exclusion or objection is defective as to the requirements listed herein, that Settlement Class
6 Member will be given an opportunity to cure the defect(s). The Settlement Administrator will
7 mail the Settlement Class Member a cure letter within three (3) business days of receiving the
8 defective submission to advise the Settlement Class Member that his or her submission is
9 defective and that the defect must be cured to render the Request for Exclusion or objection
10 valid. The Settlement Class Member will have the later of (i) the Notice Response Deadline or
11 (ii) 15 calendar days from the date of the cure letter to postmark or fax a revised Request for
12 Exclusion or objection. If the revised Request for Exclusion or objection is not postmarked or
13 received by fax within that period, it will be deemed untimely.

14 71. Declaration of Due Diligence. The Settlement Administrator shall provide
15 counsel for the Parties, at least twenty-five (25) calendar days prior to the final approval
16 hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the
17 Notice.

18 72. Funding of the Settlement Amount. Defendant shall make a one-time deposit
19 into the QSF of the Gross Settlement Amount within fifteen (15) calendar days after the
20 Effective Date. Defendant separately shall pay into the QSF its share of employer payroll taxes
21 as calculated and directed by the Settlement Administrator, which shall be distributed and
22 reported by the Settlement Administrator. Once Defendant has complied with its obligation set
23 forth in this paragraph, it shall be deemed to have satisfied all of the terms and conditions of this
24 Agreement, shall be entitled to all the protections afforded it under the Agreement, and shall
25 have no further obligations under the Agreement. The Settlement Administrator (and not
26 Defendant) shall issue the applicable W-2s and IRS Form 1099 reflecting all payments to the
27 Class Members and PAGA Members.

28 73. Distribution of Funds. No later than ten (10) calendar days after the deposit of

1 the Gross Settlement Amount into the QSF, the Settlement Administrator will mail the
2 Individual Settlement Payments to the Participating Class Members, the payment to Class
3 Counsel for the Attorneys' Fees and Costs Award, any Service Payment to the Class
4 Representatives, the payment to the LWDA for PAGA penalties, and will pay itself the
5 Settlement Administration Costs. To comply with California Rules of Court, rule 3.771,
6 settlement checks shall include the following language on the check: "A Court has approved
7 settlement of the class action and PAGA representative action and entered judgment for claims
8 asserted in *Barboza, et al. v. Rudolph Foods Company, Inc.*, case number San Bernardino
9 Superior Court Case No. CIVSB2129090."

10 74. Deadline for Cashing Settlement Checks. Participating Class Members and
11 PAGA Members shall have 180 calendar days after mailing by the Settlement Administrator to
12 cash their settlement checks. If any Participating Class Member's or PAGA Member's check is
13 not cashed within that period, the check will be void and a stop-payment will be issued, and the
14 Settlement Administrator shall issue the unclaimed funds to the California State Controller's
15 Office in the name of the Class Member or PAGA Member, or as otherwise directed by the
16 Court. The release will be binding upon all Participating Class Members and PAGA Members
17 who do not cash their checks within the 180-day period. In the event that any settlement check
18 is returned to the Settlement Administrator within 180 days of mailing, the Settlement
19 Administrator will, within five (5) business days of receipt of the returned settlement check,
20 perform a skip trace to locate the individual, and notify Defense Counsel and Class Counsel of
21 the results. If a new address is located by these means, the Administrator will have ten (10)
22 business days to re-issue the check. Neither Defendant, Defense Counsel, Class Counsel,
23 Plaintiffs, nor the Settlement Administrator will have any liability for lost or stolen settlement
24 checks, forged signatures on settlement checks, or unauthorized negotiation of settlement
25 checks. Without limiting the foregoing, in the event a Participating Class Member or PAGA
26 Member notifies the Settlement Administrator that he or she believes that a settlement check has
27 been lost or stolen, the Settlement Administrator shall immediately stop payment on such check.
28 If the check in question has not been negotiated prior to the stop payment order, the Settlement

1 Administrator will issue a replacement check.

2 75. No person shall have any claim against Defendant (or their designees),
3 Defendant's Counsel, Plaintiffs, Class Counsel, or the Settlement Administrator based on
4 mailings, distributions, payments or reports made in accordance with or pursuant to this
5 Agreement. This provision does not, however, prevent a Party from seeking enforcement of
6 this Agreement.

7 76. Without prejudice to any other remedies, the Settlement Administrator shall
8 agree to be responsible for any breach of its obligations (whether committed by the Settlement
9 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless
10 from and against all liabilities, claims, causes of action, costs and expenses (including legal fees
11 and expenses) arising out of any breach committed by the Settlement Administrator or its
12 agents.

13 **H. Duties of the Parties Prior to the Court's Approval**

14 77. Upon the filing of the Consolidated Complaint, counsel in the Potter Action may
15 file a dismissal without prejudice of those actions in their respective jurisdictions, thereby
16 leaving only the Consolidated Complaint pending in San Bernardino Superior Court. Plaintiffs
17 will thereafter move the Court for Preliminary Approval of this Settlement and entry of the
18 Preliminary Approval Order accomplishing the following:

19 (a) Scheduling the Final Approval Hearing on the issue of whether this
20 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
21 and a hearing on fees, costs and the Service Payments;

22 (b) Approving as to form and content the proposed Notice (attached hereto as
23 Exhibit A);

24 (c) Directing the mailing of the Notice by first class mail to the Settlement
25 Class Members;

26 (d) Preliminarily approving this Settlement; and

27 (e) Preliminarily certifying the class for purposes of this Settlement.

28 78. Reallocation of Settlement Proceeds. In the event the Court fails, on its first

1 hearing, to approve this Agreement because the amount of the PAGA Penalties is not adequate,
2 then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within
3 this Agreement, in order to try to achieve Final Approval of the Agreement upon any
4 subsequent Court hearings.

5 **I. Duties of the Parties Following Court's Final Approval**

6 79. In connection with the Final Approval Hearing provided for in this Settlement
7 Agreement, Class Counsel shall submit a proposed Final Approval Order:

8 (a) Approving the Settlement, adjudging the terms thereof to be fair,
9 reasonable and adequate, and directing consummation of its terms and provisions;

10 (b) Approving Class Counsel's application for an award of attorneys' fees
11 and reimbursement of litigation costs and expenses, the Service Payment to the Class
12 Representatives, and the payment to the Settlement Administrator for costs of administering the
13 settlement; and

14 (c) Entering judgment approving settlement, thereby permanently barring all
15 Participating Class Members from prosecuting any Settled Class Claims against any of the
16 Released Parties and permanently barring all PAGA Members and the LWDA from prosecuting
17 any Settled PAGA Claims against any of the Released Parties.

18 80. Final Judgment. The Settlement Administrator shall give the Participating Class
19 Members and PAGA Members notice of the entry of Final Judgment on a postcard or letter that
20 will be included with the Individual Settlement Payments. If any amended judgment is required
21 under Code of Civil Procedure section 384, the Parties will work together in good faith to
22 jointly submit and a proposed amended judgment.

23 **J. Other Terms**

24 81. Waiver. The waiver by one Party of any breach of this Agreement by another
25 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

26 82. Full and Complete Defense. This Agreement may be pleaded by any Released
27 Party as a full and complete defense to, and may be used as the basis for an injunction against,
28 any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted,

1 asserting any Released Claim.

2 83. Parties' Authority. The signatories hereto represent that they are fully authorized
3 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
4 hereof.

5 84. No Publicity. Communications regarding this Settlement prior to the
6 Preliminary Approval Date shall be limited to Court-Approved Notices in the Action. After the
7 Preliminary Approval Date, Class Counsel and Class Representatives agree that they will not
8 publicize this Settlement on their website, social media, blogs, micro-blog, vlogs or any other
9 media, including, reporting to Jury Verdicts or any other reporting services and agree that any
10 breach of this paragraph is a material breach of the Settlement Agreement. Nothing herein shall
11 be construed to prevent Class Counsel from the public filing of motions or other case materials
12 in the Action related to seeking and obtaining Court approval of this Settlement and the related
13 awards of attorneys' fees and costs, or to communications with Settlement Class Members or
14 their representatives about this Settlement, including through the posting of Court-filed
15 documents on Class Counsel's websites for access solely by the Settlement Class Members, or
16 to prevent the Parties or their representatives from communicating with financial or legal
17 advisors regarding the Settlement. In response to any media inquiry, Class Counsel may state
18 only that the Action has been settled on terms mutually agreeable to the Parties.

19 85. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
20 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
21 such documents and to take such other action as may reasonably be necessary to implement the
22 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
23 best efforts, including all efforts contemplated by this Settlement Agreement and any other
24 efforts that may become necessary by order of the Court, or otherwise, to effectuate this
25 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
26 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
27 Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary
28 and final approval of the settlement, and the final entry of judgment. Class Counsel shall

1 provide Defendant's Counsel with copies of the Preliminary Approval Motion and Final
2 Approval Motion for review at least five days prior to the filing deadline.

3 86. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
4 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
5 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
6 cause of action or rights released and discharged by this Settlement Agreement.

7 87. No Admission. Defendant denies any and all liability to Plaintiffs and/or any
8 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
9 that might have been asserted in this Action. Nothing in this Settlement Agreement is intended
10 or shall be construed as an admission of liability, fault or wrongdoing by Defendant. Nothing in
11 this Settlement Agreement shall operate or be construed as an admission of any liability or that
12 class certification is appropriate in any context other than this Settlement Agreement.
13 Nonetheless, Defendant wishes to settle and compromise the matters at issue in the Complaint
14 to avoid further substantial expense and the inconvenience and distraction of protracted and
15 burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent
16 in litigation, and without conceding any infirmity in the defenses that they have asserted or
17 could assert against Plaintiffs, have determined that it is desirable and beneficial that Plaintiffs'
18 claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

19 88. Inadmissibility of Agreement. Whether or not the Court issues the Final
20 Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement,
21 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing
22 on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has
23 entered into this Settlement Agreement with the intention of avoiding further disputes and
24 litigation with the attendant inconvenience and expenses. This Settlement Agreement is a
25 settlement document, and it, along with all related documents such as the notices, and motions
26 for preliminary and final approval, shall, pursuant to California Evidence Code section 1152
27 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an
28 action or proceeding to approve the settlement, and/or interpret or enforce this Settlement

1 Agreement and corresponding judgment. The stipulation for class certification as part of this
2 Settlement Agreement is for settlement purposes only and if, for any reason the settlement is not
3 approved, the stipulation will be of no force or effect.

4 89. Notices. Unless otherwise specifically provided herein, all notices, demands or
5 other communications given hereunder shall be in writing and shall be deemed to have been
6 duly given as of the third business day after mailing by United States registered or certified
7 mail, return receipt requested, addressed:

8 To the Settlement Class Members and PAGA Members:

9 Brian J. Mankin, Esq. [CSB No. 216228]
10 *brian@lmlfirm.com*
11 Kristina Bui Carlson, Esq. [CSB No. 294924]
12 *kristina@lmlfirm.com*
13 LAUBY, MANKIN & LAUBY LLP
14 5198 Arlington Avenue, PMB 513
15 Riverside, CA 92504
16 Tel: (951) 320-1444 | Fax: (951) 320-1445

17 Nazo Koulloukian, SBN 263809
18 *nazo@koullaw.com*
19 KOUL LAW FIRM
20 3435 Wilshire Blvd., Suite 1710
21 Los Angeles, CA 90010
22 Tel: (213) 761-5484 | Fax: (818) 561-3938

23 To Defendant:

24 Pavneet Singh Mac, Esq.
25 *pmac@nossaman.com*
26 NOSSAMAN LLP
27 18101 Von Karman Avenue, #1800
28 Irvine, CA 92612
Tel: (949) 833-7800 | Fax: (949) 833-7878

90. Construction. The Parties hereto agree that the terms and conditions of this
Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the
Parties and that this Settlement Agreement shall not be construed in favor of or against any
Party by reason of the extent to which any Party or his or its counsel participated in the drafting

1 of this Settlement Agreement. Plaintiffs and Defendant expressly waive the common-law and
2 statutory rule of construction that ambiguities should be construed against the drafter of an
3 agreement and further agree, covenant, and represent that the language in all parts of this
4 Agreement shall be in all cases construed as a whole, according to its fair meaning.

5 91. Captions and Interpretations. Paragraph titles or captions contained herein are
6 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
7 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
8 Settlement Agreement is contractual and not merely a recital other than paragraphs 45-51.

9 92. Modification. This Settlement Agreement may not be changed, altered, or
10 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
11 Settlement Agreement may not be discharged except by performance in accordance with its
12 terms or by a writing signed by all of the Parties hereto.

13 93. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
14 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
15 provide written notice to the other Party and allow an opportunity to cure the alleged
16 deficiencies, and Plaintiffs and Defendant agree to seek the help of the mediator identified in
17 this Agreement to resolve any dispute they are unable to resolve informally. During this period,
18 the Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any
19 legal action or other proceeding instituted by any person or entity other than Plaintiffs or
20 Defendant.

21 94. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
22 dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure
23 Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action
24 over all Parties to interpret, enforce, and effectuate the terms, conditions, intents and obligations
25 of this Agreement.

26 95. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b),
27 this Agreement is intended by the Parties to be, and shall be, enforceable, binding and
28 admissible in a court of law.

1 96. Choice of Law. This Settlement Agreement shall be governed by and construed,
2 enforced and administered in accordance with the laws of the State of California.

3 97. Integration Clause. This Settlement Agreement contains the entire agreement
4 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
5 or contemporaneous agreements, understandings, representations, and statements, whether oral
6 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
7 hereunder may be waived except in writing.

8 98. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
9 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
10 successors and assigns.

11 99. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
12 because the members of the Settlement Class are numerous, it is impossible or impractical to
13 have each Class Member execute this Settlement Agreement. The Notice will advise all
14 Settlement Class Members of the binding nature of the releases provided herein and such shall
15 have the same force and effect as if this Settlement Agreement were executed by each
16 Settlement Class Member.

17 100. Invalidity of Any Provision. Before declaring any provision of this Settlement
18 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
19 extent possible consistent with applicable precedents so as to define all provisions of this
20 Settlement Agreement valid and enforceable.

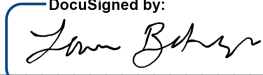
21 101. No Collateral Attack. This Settlement Agreement shall not be subject to
22 collateral attack by any Settlement Class Member, PAGA Member, or any recipient of the Class
23 Notice after the Effective Date. Such prohibited collateral attacks shall include but not be
24 limited to claims that the Settlement Class Member or PAGA Member failed for any reason to
25 receive timely notice of the procedure for disputing the calculation of her or his Individual
26 Settlement Payment and/or individual PAGA payment.

27 102. Counterparts. This Settlement Agreement may be executed in counterparts, and
28 when each Party has signed and delivered at least one such counterpart, each counterpart shall

be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.

Dated: March 7, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

DocuSigned by:

38AA45DBEE6D4AE...
Laura Lizbeth Barboza Gomez

Dated: March __, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

Damon Potter

Dated: March __, 2023

DEFENDANT:
RUDOLPH FOODS COMPANY, INC.

By: Michelle Gardner
Title: Vice President, Human Resources & Safety

Dated: March __, 2023

DEFENDANT'S COUNSEL:
NOSSAMAN LLP

Pavneet Singh Mac, Esq.
Attorneys for Defendant

Dated: March 7, 2023

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP


Brian Mankin, Esq.
Attorneys for Plaintiffs

be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.

Dated: March ___, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

Laura Lizbeth Barboza Gomez

Dated: March 7, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

Damon Potter
Damon Potter (Mar 7, 2023 17:11 PST)

Damon Potter

Dated: March ___, 2023

DEFENDANT:
RUDOLPH FOODS COMPANY, INC.

By: Michelle Gardner
Title: Vice President, Human Resources & Safety

Dated: March ___, 2023

DEFENDANT'S COUNSEL:
NOSSAMAN LLP

Pavneet Singh Mac, Esq.
Attorneys for Defendant

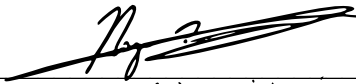
Dated: March ___, 2023

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

Brian Mankin, Esq.
Attorneys for Plaintiffs

1
2 Dated: March 7, 2023

CLASS COUNSEL:
THE KOUL LAW FIRM

3
4 
5 Nazo Koulloukian, Esq.
6 Attorneys for Plaintiffs

7 Dated: March 7, 2023

CLASS COUNSEL:
LAW OFFICES OF SAHAG MAJARIAN II

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10 Sahag Majarian, Esq.
11 Attorneys for Plaintiffs

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Laura Lizbeth Barboza Gomez

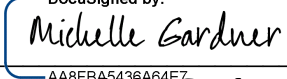
7 Dated: March __, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

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9 _____
Damon Potter

10 Dated: March 8, 2023

DEFENDANT:
RUDOLPH FOODS COMPANY, INC.

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12
13 DocuSigned by:

14 AA9EBA5436A64E7
By: Michelle Gardner

Title: Vice President, Human Resources & Safety

15 Dated: March 8, 2023

DEFENDANT'S COUNSEL:
NOSSAMAN LLP

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17 
18 _____

Pavneet Singh Mac, Esq.
Attorneys for Defendant

19 Dated: March __, 2023

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

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21
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Brian Mankin, Esq.
Attorneys for Plaintiffs

EXHIBIT “A”

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

Barboza, et al. v. Rudolph Foods Company, Inc., et al.
Superior Court of the State of California, County of San Bernardino
Case No. CIVSB2129090

To: all current and former non-exempt employees who worked at a Rudolph Foods Facility in California at any time between June 14, 2017, and December 20, 2022, including direct hires of Rudolph Foods and temporary employees assigned to work at a Rudolph Foods Facility (the “Class”):

As used herein, “Rudolph Foods Facility” means the warehouses and facilities in California that Rudolph Foods owned or operated, including but not limited to in San Bernardino and Beaumont, California.

THIS NOTICE is of a proposed settlement of a class action and representative lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on [REDACTED], 2023, to address whether the proposed settlement should be approved (the “Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

[IDENTIFYING INFORMATION]

You have been identified as a Class Member and/or Aggrieved Employee in the above lawsuit. Under the terms of the proposed settlement, you are estimated to receive approximately **\$INSERT AMOUNT** as your share of the Settlement should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share may be more or less than this estimate. Your estimate is based on the number of Weeks Worked at a Rudolph Foods Facility in California during the periods of June 14, 2017, to December 20, 2022 (the “Class Period”). Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator once the Settlement receives final approval by the Court. See Section IV for additional details.
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you will not receive any payment for the Class Claims. You still will receive a payment as part of the civil penalties paid pursuant to the California Private Attorneys General Act of 2004 (“PAGA”) and will release your claims for such civil penalties. See Section V for additional details.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement by [REDACTED], 2023. See Section V for additional details.
DISPUTE YOUR NUMBER OF PAY PERIODS CREDITED	If you believe the number of weeks that you were credited with working during the Class Period is incorrect, you may submit a written dispute along with supporting evidence to the Settlement Administrator. See Section IV for additional details.

I. Why did I get this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Barboza, et al. v. Rudolph Foods Company, Inc., et al.*, San Bernardino County Superior Court Case No. CIVSB2129090 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You received this notice because the records show that you worked at a Rudolph Foods Facility (either as a direct hire of Rudolph Foods or as a Temp employee) as a non-exempt employee (meaning you were paid hourly or otherwise eligible for

overtime pay) at some point between during the Class Period. The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you meet the definition of a Class Member and received this Notice, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

Two Plaintiffs and Class Representatives (who are current and former employees of Rudolph Foods and/or worked there as a Temp employee) filed class and representative action lawsuits against Rudolph Foods and Personnel Staffing Solutions Group, Inc. on behalf of the Class Members. All of the Plaintiffs joined forces and agreed to combine their actions into one action. To that end, a Consolidated Complaint was filed on about February 6, 2023, combining all three cases into one case (which will be referred to as the “Action” or “Lawsuit”). The pending Action alleges the following Class Claims against Rudolph Foods on behalf of the Class Members: (a) failure to pay minimum wages, (b) failure to pay for all hours worked, including overtime wages, (c) failure to provide compliant meal periods, (d) failure to provide compliant rest breaks, (e) failure to timely pay wages, including final wages, (f) failure to provide accurate itemized wage statements, (g) unfair and unlawful competition, (h) failure to provide proper cool-down rest periods, (i) failure to provide suitable seating, (j) failure to reimburse for required business expenses, (k) failure to pay all required sick pay, and (l) all other claims for statutory penalties based on the facts or claims alleged in the Consolidated Complaint (the “Class Claims”). The Lawsuit also sought civil penalties on behalf of the California Labor Workforce Development Agency (“LWDA”). The civil penalty claims are called “PAGA Claims” and the relevant period for PAGA Claims is June 14, 2020, to December 20, 2022 (“PAGA Period”).

Rudolph Foods has denied, and continues to deny, the factual and legal allegations in the Lawsuit and believes that it has valid defenses to Plaintiffs’ claims. By agreeing to settle, Rudolph Foods is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action and/or a representative action. Rudolph Foods has agreed to settle the case as part of a compromise with Plaintiffs and the Class Members.

The Court has not ruled on the merits of Plaintiffs’ claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, Rudolph Foods and Plaintiffs have concluded that it is in their respective best interests and the interests of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. After providing extensive information to Class Counsel, the Settlement was reached following an arm’s length mediation with a respected and experienced mediator, who is also a retired judge. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Proposed Settlement was a good option to resolve the disputed claims.

The Class Representatives and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to Rudolph Foods the risk of denial of class certification or representative status, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Rudolph Food, this Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, Rudolph Foods will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement. If a Class Member does not participate as to the Class Claims, his/her share of the settlement of the Class Claims will be paid to those who do participate.

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III. Who are the attorneys representing the Parties?

<u>Attorneys for the Class Members:</u>	<u>Attorneys for Rudolph Foods:</u>
Brian J. Mankin, Esq. <i>brian@lmlfirm.com</i> Kristina Bui Carlson, Esq. <i>kristina@lmlfirm.com</i> LAUBY, MANKIN & LAUBY LLP 5198 Arlington Avenue, PMB 513 Riverside, CA 92504 Nazo Koulloukian, Esq. <i>nazo@koullaw.com</i> KOUL LAW FIRM 3435 Wilshire Blvd., Suite 1710 Los Angeles, CA 90010 Tel: (213) 761-5484 Sahag Majarian, II, Esq. LAW OFFICES OF SAHAG MAJARIAN II 18250 Ventura Blvd. Tarzana, CA 91356 Tel: (818) 609-0807	Pavneet Singh Mac, Esq. <i>pmac@nossaman.com</i> NOSSAMAN LLP 18101 Von Karman Avenue, #1800 Irvine, CA 92612 Tel: (949) 833-7800

IV. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all current and former non-exempt employees who worked at a Rudolph Foods Facility in California at any time during the Class Period, including direct hires of Rudolph Foods and any Temp employees assigned to work at a Rudolph Foods Facility (the “Settlement Class” or “Class Members”). The Court also approved a representative group of all current and former non-exempt employees who worked at a Rudolph Foods Facility in California at any time during the PAGA Period, including direct hires of Rudolph Foods and any Temp employees assigned to work at a Rudolph Foods Facility (“Aggrieved Employees”). Class Members who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, will become “Participating Class Members” and will be mailed Settlement checks, and in exchange will be bound by the Settlement and release of certain wage and penalty claims against Rudolph Foods.

Without admitting any wrongdoing, Rudolph Foods has agreed to pay \$1,250,000 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Gross Settlement Amount:

Settlement Administration Costs. The Court has approved **XX** to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, approximately **\$XX** will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.

Penalties to the California Labor Workforce and Development Agency. The Labor Code Private Attorneys General Act (“PAGA”) authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other PAGA Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$50,000 of the Gross Settlement Amount will be allocated to Plaintiffs’ PAGA Claims. Of this amount, \$37,500 will be paid to the LWDA in satisfaction of the claims for civil penalties under PAGA, and the remaining \$12,500 will be divided between all Aggrieved Employees based on the number of weeks worked during the PAGA Period, regardless of their receipt of payments for settlement of the Class Claims. You do not have the right to opt-out or exclude yourself from receiving the civil penalties paid to pursuant to PAGA. Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$12,500 allocation:

Do you Qualify as an Aggrieved Employee?	Weeks Worked as an Aggrieved Employee	Your Share of PAGA Penalties
YES/NO	INSERT	\$INSERT

Service Payment to Class Representatives. Class Counsel will ask the Court to award the Class Representatives a Service Payment to compensate them for their service and extra work provided on behalf of the Class Members and in exchange for a general release of claims totaling \$10,000 each to Laura Barboza and Damon Potter. The Class Representatives also will receive their individual share of the Settlement as Class Members and Aggrieved Employees.

Attorneys' Fees and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or costs. Class Counsel will ask for fees of one-third of the common fund Gross Settlement Amount (which is \$416,666.67) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$25,000 for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above from the Gross Settlement Amount, the balance will form the Net Settlement Amount for distribution to Participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately \$. Individual Settlement Payments to Class Members will be calculated and apportioned from the Net Settlement Amount based on the number of weeks a Class Member is credited with working during the Class Period. A Class Member is credited with one Week Worked each time the Class Member works at least one shift in a week at the Rudolph Foods Facility in California. Specific calculations of Individual Settlement Payments will be made as follows: the Settlement Administrator will divide the total Weeks Worked by all Settlement Class Members into the Net Settlement Amount to determine a per "Workweek Value." The Workweek Value will be multiplied by the number of Weeks Worked by each Settlement Class Member during the Class Period to determine the Individual Settlement Payment, prior to legal deductions/withholdings, for each Class Member. If any Class Member opts-out of the Settlement, his/her Individual Settlement Payment will be distributed to all Participating Class Members (i.e., those who do not opt-out).

Weeks Worked as a Class Member During the Class Period	Your Share of the Net Settlement Amount
INSERT	\$INSERT

Disputes to Pay Periods Credited. For each Settlement Class Member, the Weeks Worked at a Rudolph Foods Facility during the Class Period will be calculated from available records. If you disagree with the number of Weeks you are credited with working above, you may submit evidence to the Settlement Administrator on or before , 2023, with documentation to establish the number of eligible Workweeks you claim to have actually worked at a Rudolph Foods Facility from June 14, 2017, to December 20, 2022. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINSTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Settlement Administrator will render a final decision.

Payments to Class Members. After the Court grants Final Approval of the Settlement and after Judgment is entered, settlement checks will be mailed to all Participating Class Members who did not timely request to be excluded. For those Aggrieved Employees who requested to be excluded from the settlement of the Class Claims, their settlement checks will be for their share of PAGA civil penalties only for release of the PAGA Claims, and they will not include any payment for settlement of the Class Claims. Participating Class Members and Aggrieved Employees will have 180 days from the issuance of the last check to cash all of the checks. In the event that any Participating Class Member or Aggrieved Employee fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller's Office in the name of the Participating Class Member or Aggrieved Employee, so that the Participating Class Member or Aggrieved Employee can attempt to collect the funds at a later date.

Allocation and Taxes. One-third (33.33%) of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining two-thirds (66.67%) will be considered and reported as interest and penalties (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited

to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, the payments will be reported on IRS Form 1099 as income. Payments for PAGA Claims shall be paid one hundred percent (100%) as civil penalties for which no taxes shall be withheld and for which payment will be reported on IRS Form 1099. Participating Class Members and Aggrieved Employees are responsible for the proper income tax treatment of the Individual Settlement Payments and their payments for PAGA Claims. The Settlement Administrator, Rudolph Foods and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments or payments for PAGA Claims. Participating Class Members and Aggrieved Employees will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments or payments for PAGA Claims. Accordingly, Participating Class Members and Aggrieved Employees should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release of Class Claims (aka the “Settled Class Claims”). Once the Court approves the proposed Settlement and enters Judgment, and Rudolph Foods funds the Settlement, then the Settlement Agreement will bind all Class Members who have not opted out of the Settlement and will bar them from bringing the Class Claims against Defendant Rudolph Foods and the Released Parties (defined below). Specifically, the Participating Class Members will fully release and discharge the Released Parties of any and all causes of action and claims, charges, complaints, liens, demands that were alleged in the Consolidated Complaint or reasonably could have been alleged based on the allegations, the facts, statutory citation and/or legal theories contained in the Consolidated Complaint, including all of the following claims for relief: (a) failure to pay minimum wages, (b) failure to pay for all hours worked, including overtime wages, (c) failure to provide compliant meal periods, (d) failure to provide compliant rest breaks, (e) failure to timely pay wages each period and upon separation of employment, (f) failure to provide accurate itemized wage statements and violation of recordkeeping requirements, (g) failure to provide safe and healthful working conditions, (h) failure to provide proper cool-down rest periods, (i) failure to provide suitable seating, (j) failure to reimburse for required business expenses, (k) failure to pay all required sick pay, and (l) all other claims for PAGA penalties based on the facts or claims alleged in the Consolidated Complaint. These claims include, but are not limited to, California Labor Code sections 200, 201, 202, 203, 204, 212, 213, 218, 218.5, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 558.1, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1199, 2800, 2802 and all related provisions of the California Code of Regulations, and the California Industrial Wage Orders, California Health and Safety Code sections 6400 *et seq.* and California Business & Professions Code sections 17200 *et seq.* The release of the foregoing claims extends to all theories of relief regardless of whether the claim is, was or could have been alleged as separate claims, causes of action, lawsuits or based on other theories of relief, or different right or duty of an alleged statute, whether under federal law, state law or common law (including, without limitation, as violations of the California Labor Code, the Wage Orders, applicable regulations, California Health and Safety Code, and California’s Business and Professions Code section 17200). “Settled Class Claims” includes all types of relief available for the above-referenced claims, including, without limitation, any claims for damages, restitution, losses, penalties, fines, liens, attorneys’ fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated damages. The time period governing these Settled Class Claims shall be at any time from June 14, 2017, through December 20, 2022 (“Class Period”).

Release of PAGA Claims (aka the “Settled PAGA Claims”). Also upon the Court’s approval of the Settlement, entry of Judgment, and Communications Test Design, Inc.’s funding of the Settlement Amount, the Settlement Agreement will bind the LWDA, Plaintiff, and all Aggrieved Employees, and will bar them from bringing PAGA claims against Rudolph Foods and the Released Parties based on the facts stated in the Consolidated Complaint and in Plaintiffs’ notice letters to the LWDA (including any amendments thereto), or reasonably could have been alleged based on the allegations, the facts, statutory citation and/or legal theories under the PAGA contained in the Consolidated Complaint, including all of the following claims for relief: (a) failure to pay minimum wages, (b) failure to pay for all hours worked, including overtime wages, (c) failure to provide compliant meal periods, (d) failure to provide compliant rest breaks, (e) failure to timely pay wages each period and upon separation of employment, (f) failure to provide accurate itemized wage statements and violation of recordkeeping requirements, (g) failure to provide safe and healthful working conditions, (h) failure to provide proper cool-down rest periods, (i) failure to provide suitable seating, (j) failure to reimburse for required business expenses, (k) failure to pay all required sick pay, and (l) all other claims for PAGA penalties based on the facts or claims alleged in the Consolidated Complaint. These claims include, but are not limited to, California Labor Code sections 200, 201, 202, 203, 204, 212, 213, 218, 218.5, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 558.1, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1199, 2800, and 2802 and all related provisions of the California Code of Regulations, the California Industrial Wage Orders, and California Health and Safety Code sections 6400 *et seq.* The time period governing the Settled PAGA Claims shall be any time during the PAGA Period. The Settled PAGA Claims do not release any potential claims for wages or statutory penalties.

Released Parties. “Released Parties” means Defendant Rudolph Foods and its affiliated companies, parents, members, subsidiaries, related companies and business concerns, past and present, including their predecessors and successors, and each of them, as well as each of their insurers, partners, trustees, directors, owners, shareholders, officers, agents, attorneys, servants, joint employers and employees, temporary service providers and Staffing Agencies employing Temporary Employees, past and present, and each of them and anyone acting in concert with foregoing.

Waiver of Labor Code Section 206.5(e). Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Participating Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. That section provides in pertinent part as follows:

“No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made.”

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. What options do I have?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive an Individual Settlement Payment unless you exclude yourself from the settlement by following the opt-out procedure set forth below. If you disagree with the number of Weeks Worked, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described above. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or an Individual Settlement Payment.

If you are a current employee, your decision as to whether or not to participate in this Settlement will not be considered by Rudolph Foods, who will not take any adverse employment action against you based on your participation in the Settlement.

- B. **Exclude Yourself from the Class Claims in the Settlement.** If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion from the Class Claims in the Class Action Settlement” letter/card postmarked no later than [REDACTED], 2023 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE RUDOLPH FOODS LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator, [ADDRESS], postmarked no later than [REDACTED], 2023. Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement with respect to the Class Claims, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any money for the Class Claims under this Settlement; and (3) will not be bound by this Settlement, or the Judgment, with respect to the Class Claims. You still will be bound by this Settlement with respect to the release of the PAGA Claims.

- C. **Object to Settlement.** You also have the right to object to the terms of the Settlement with respect to the Class Claims if you believe they are unfair or unreasonable. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Class Claims portion of the Settlement, you must submit a written objection stating your full name, address, telephone number, dates of employment at Communications Test Design, Inc., the case name and number, the name and address of your attorney(s) if you are represented, each specific reason in support of your objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and mailed to the Settlement

Administrator, [ADDRESS], by no later than [REDACTED], 2023. Objections that do not include all required information, or that are not submitted timely, may not be considered by the Court. **You need not object to the Settlement if you only dispute the number of Weeks Worked.**

If you choose to object to the Class Claims portion of the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2023, at XX a.m. in Department XX of the San Bernardino County Superior Court, located at XX. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [REDACTED], 2023. All objections or other correspondence must state the name and number of the case. If you wish to appear at the Final Approval hearing, please contact Class Counsel or the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

VI. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were employed by Communications Test Design, Inc. in California at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the above-described Settled Class Claims. All Aggrieved Employees will be deemed to have entered into a release of the Settled PAGA Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue and the releases will not take effect.

VII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, and Class Counsel's request for attorneys' fees and reimbursement of documented litigation costs and the Service Payment to the Class Representatives on [REDACTED], 2023 at XX a.m. in Department XX of the San Bernardino County Superior Court, located at XX.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

VIII. How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Class Action Settlement Agreement at Office of the Clerk, San Bernardino County Superior Court, XX, during regular court hours. You may also contact Class Counsel or the Settlement Administrator using the contact information listed above for more information.

IX. Reminder as to time limits.

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion from the Settled Class Claims is [REDACTED], 2023. The deadline for mailing an objection to the Settlement Administrator is [REDACTED], 2023. These deadlines will be strictly enforced.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**

EXHIBIT “2”



June 14, 2021

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Personnel Staffing Solutions Group, Inc.
8301 Florence Avenue, Suite 305
Downey, CA 90240

Rudolph Foods Company, Inc.
920 W. 4th Street
Beaumont, CA 92223

Rudolph Foods Company, Inc.
6575 Bellefontaine
Lima, OH 45804

Re: PAGA Civil Penalty Claim
Damon Potter v. Personnel Staffing Solutions Group and Rudolph Foods Company

To the Labor and Workforce Development Agency, Personnel Staffing Solutions Group, Inc., and Rudolph Foods Company, Inc.:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Damon Potter (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), Personnel Staffing Solutions Group, Inc., Rudolph Foods Company, Inc., and/or any affiliated entities (the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately November 2020 through April 2021. Claimant alleges that, at all relevant times, he and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations that Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Also, at all relevant times, Claimant was compensated on an hourly basis plus additional compensation in the form of shift differentials and/or nondiscretionary bonuses. However, on the occasions when Claimant worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional earned compensation during the pay period, the Company failed to properly include these amounts

in the calculations for Claimant's regular rate of pay. Therefore, the Company failed to pay proper overtime for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic workload, Claimant was subjected to meal period violations when he was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second meal period on occasions for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, Claimant was unable to leave the premises for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Finally, during his employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between the Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. exists such that all entities acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. are an integrated enterprise and should be treated as a single employer because Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. are now and at all material times herein mentioned were the owner(s) of other MinuteClinic Entities, and are/were Claimant's and the Aggrieved Employees' actual employer. In addition, Claimant alleges that at all relevant times herein Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. had the authority, in the interest of the other, to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. are the agents, servants,



employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges that Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. have been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which the owners of Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. should be imposed jointly and severally against the owners of such entities. Adherence to the fiction of the separate existence of the corporate entity of Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, the owners of Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. are liable for PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations regarding minimum wage among other claims. *See Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 (“if there is evidence and a finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws (§ 558(a)) or ‘pays or causes to be paid to any employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (holding the same)

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company’s failure to accurately record and compensate for all hours worked as well as the failure properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, overtime wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees worked in excess of 8 and/or 12 hours per day, and/or forty hours per week without receiving proper payment of the requisite overtime and/or doubletime wages for all hours worked pursuant to Labor Code §§ 204 and 510 and/or the applicable IWC Wage Order. Claimants and the Aggrieved Employees were also not paid all earned wages to which they were entitled at the rates agreed upon by the Company, including, but not limited to shift differential pay.



Accordingly, Labor Code §§ 210, 558, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.



PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including: failure to accurately state gross wages earned; failure to accurately state total hours worked; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates (including the accurate overtime rate of pay); and failure to accurately state the corresponding number of hours worked at each hourly rate. Additionally, the Company’s wage statements failed to accurately state the name and address of the legal entity that is the employer. Accordingly, Claimants are entitled to damages under Labor Code § 226(e), including reasonable attorneys’ fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any



order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: peter@lmfirm.com





January 17, 2023

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Personnel Staffing Solutions Group, Inc.
8301 Florence Avenue, Suite 305
Downey, CA 90240

Rudolph Foods Company, Inc.
920 W. 4th Street
Beaumont, CA 92223

Rudolph Foods Company, Inc.
6575 Bellefontaine
Lima, OH 45804

**Re: PAGA Civil Penalty Claim – Amended Notice
*Damon Potter v. Personnel Staffing Solutions Group and Rudolph Foods Company***

To the Labor and Workforce Development Agency, Personnel Staffing Solutions Group, Inc., and Rudolph Foods Company, Inc.:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Damon Potter (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), Personnel Staffing Solutions Group, Inc., Rudolph Foods Company, Inc., and/or any affiliated entities (the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s) and California Code of Regulations, Title 8, section 11000 *et seq.*

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately November 2020 through April 2021. Claimant alleges that, at all relevant times, he and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations that Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Also, at all relevant times, Claimant was compensated on an hourly basis plus additional compensation in the form of shift differentials and/or nondiscretionary bonuses. However, on the occasions when Claimant worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received

additional earned compensation during the pay period, the Company failed to properly include these amounts in the calculations for Claimant's regular rate of pay. Therefore, the Company failed to pay proper overtime for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic workload, Claimant was subjected to meal period violations when he was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second meal period on occasions for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, Claimant was unable to leave the premises for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Finally, during his employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between the Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. exists such that all entities acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. are an integrated enterprise and should be treated as a single employer because Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. are now and at all material times herein mentioned were the owner(s) of other MinuteClinic Entities, and are/were Claimant's and the Aggrieved Employees' actual employer. In addition, Claimant alleges that at all relevant times herein Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. had the authority, in the interest of the other, to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that



Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges that Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. have been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which the owners of Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. should be imposed jointly and severally against the owners of such entities. Adherence to the fiction of the separate existence of the corporate entity of Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, the owners of Personnel Staffing Solutions Group, Inc. and Rudolph Foods Company, Inc. are liable for PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations regarding minimum wage among other claims. *See Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 (“if there is evidence and a finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws (§ 558(a)) or ‘pays or causes to be paid to any employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (holding the same)

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company’s failure to accurately record and compensate for all hours worked as well as the failure properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, overtime wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees worked in excess of 8 and/or 12 hours per day, and/or forty hours per week without receiving proper payment of the requisite overtime and/or doubletime wages for all hours worked pursuant to Labor Code §§ 204 and 510 and/or the applicable IWC Wage Order. Claimants and the Aggrieved Employees were also not paid all earned wages to which they were entitled at the rates agreed upon by the Company, including, but not limited to shift differential pay.



Employers rounded Claimant and aggrieved employee timecards in a manner that favors Employers. Indeed, with Employers' strict policies against arriving to work late, Claimant and aggrieved employees clock in before their shift start time and this consistently benefitted Employers. The California Supreme Court has rejected the *de minimis* argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. California law will permit a "rounding policy only 'if the rounding policy is fair and neutral on its face and 'it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.'" (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See's Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Employers is neither fair nor neutral, as it consistently shaved time from Claimant and aggrieved employees' hours worked, resulting in a failure to compensate Claimant and aggrieved employees for all hours worked.

Accordingly, Labor Code §§ 210, 558, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ..." Labor Code § 512(a) states in pertinent part: "[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes."

Section 12 of applicable IWC Wage Order states in pertinent part: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company's policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee's regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.



**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties without reimbursement. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802



**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**
(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee's name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including: failure to accurately state gross wages earned; failure to accurately state total hours worked; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates (including the accurate overtime rate of pay); and failure to accurately state the corresponding number of hours worked at each hourly rate. Additionally, the Company's wage statements failed to accurately state the name and address of the legal entity that is the employer. Accordingly, Claimants are entitled to damages under Labor Code § 226(e), including reasonable attorneys' fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199
(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES
(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.



CONCLUSION

Based on the foregoing, the Company may be liable for penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,

A handwritten signature in black ink that reads "Kristina Bui Carlson". The signature is written in a cursive, flowing style.

By: Kristina Bui Carlson, Esq.

E-mail: kristina@lmfirm.com





Nazo@Koullaw.com

P (213) 761 – 5484

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3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

January 17, 2023

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Rudolph Foods Company, Inc.
P.O. Box 509
Lima, OH 45802

Rudolph Foods Company, Inc.
C/O Francisco Quirarte
920 W. 4th St.
Beaumont, CA

Rudolph Foods Company, Inc.
6575 Bellefontaine Rd.
Lima, OH 45804

Re: AMENDED PAGA Notice Pursuant to California Labor Code §2698 *et seq.*

Claimant: Laura Barboza
Employer: Rudolph Foods Company, Inc.

Dear Sir or Madam:

Laura Barboza (“Claimant”) has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM and Sahag Majarian of Law Offices of Sahag Majarian II, to represent her, and all other aggrieved employees, for conditions of employment and wage and hour claims against her former employer, Rudolph Foods Company, Inc. (hereafter “Employers”). Claimant submits this amended PAGA letter to provide notice of and to clarify her claims against Employers.

Rudolph Foods Company, Inc. is a food production and packaging company. The work being done by the wage laborers is packaging Rudolph Foods Company, Inc.’s products into boxes for shipment. Claimant worked for Employers from 2019 until June 29, of 2021.

Employers have violated, and/or has caused to be violated, several Labor Code provisions, and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Comply with California Law Concerning Payment of Lawful Wage For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)

Section 2(G) of Wage Order 1 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and her coworkers earning at or near minimum wage do not receive payment for all hours worked as a result of unlawful employment practices, including being forced to wait in line for temperature checks prior to clocking in, answering a required health questionnaire from their phone prior to clocking in and being required to put on and take off a work uniform while off the clock, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below. Employer has also failed to pay the required minimum wage for all hours worked, and has failed to pay all wages owed twice per month.

Off-the-Clock Hours Worked- Waiting in Required Lines

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time. Claimant and aggrieved employees were required to perform several required duties off the clock. Employees were required to wait in lines to clock in for work because there was only one machine to do so, taking up to 2 minutes of their time for which they were under Employer’s control but were paid nothing. Employees were also required to participate in mandatory temperature checks prior to clocking into work. This time spent waiting in these required lines was required by Employer and was essential and required before employees could begin and/or resume working on the clock. Claimant and aggrieved employees were also required to answer a series of COVID related questions on their personal cell phones, during their personal time prior to clocking in for work. Finally, Claimant and aggrieved employees were also required to

put on and take off a work uniform, for which they were paid zero for their dress/undress time. Employer has violated Labor Code §§510 1194, 1198, 1199 and Wage Order 1. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

Failure to Include Bonus Pay in Regular Rate of Pay for Calculating Overtime

Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” Employer fails to include nondiscretionary bonuses into the regular rate of pay for purposes of calculating overtime.

Bonuses. It is well established that non-discretionary bonuses retroactively increase the employee’s “regular rate” of pay for purposes of calculating overtime. (Labor Code §207) The “regular rate” is calculated by dividing the hours worked in a week by all the compensation earned for that week. When an employee is later paid a bonus that is partly due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee’s regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Employer has failed to properly calculate and pay overtime compensation, making no adjustment to overtime rates reflected in any of Claimant or aggrieved employees’ paystubs. Claimant and other employees have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor Code. §1194. Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation of the labor code to fail to comply with a wage order.

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Claimant and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Employer has also violated §§1198 and 1199. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Unpaid Wages – Rounding

Employers round Claimant and aggrieved employee timecards in a manner that favors Employers. Indeed, with Employers’ strict policies against arriving to work late, Claimant and aggrieved employees clock in before their shift start time and this consistently benefitted Employers.

The California Supreme Court has rejected the *de minimis* argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. California law will permit a “rounding policy only ‘if the rounding policy is fair and neutral on its face and ‘it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.’” (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Employers is neither fair nor neutral, as it consistently shaved time from Claimant and aggrieved employees’ hours worked, resulting in a failure to compensate Claimant and aggrieved employees for all hours worked.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimants and employee all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 et seq.)

Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer’s practices described above, including forcing employees to wait in long lines to clock in for work and to receive mandatory temperature checks, requiring employees to answer a mandatory health questionnaire off the clock and putting on and taking off a mandatory work uniform. Based on Employer’s unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, employer’s failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 1-2001 4(B). Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Provide Timely Meal Breaks

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 et seq., Wage Order 1)

Labor Code §512 provides, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11 of Wage Order 1 provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

In this case, Claimant claims that although she and her coworkers frequently were given their meal breaks late and were often interrupted. Plaintiff and those similarly situated would often work more than five consecutive hours with no meal break.

Section 11 of Wage Order 1 requires employers to authorize and permit employees to take an uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code §1198, “the employment of any employee... under conditions of labor prohibited by the order is unlawful.” Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employer never paid penalty pay to Claimant or aggrieved employees for noncompliant meal periods. As a derivative claim, Claimant alleges that her pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et seq.*

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 et seq.)

Employer has failed to maintain a policy and practice that provides or permits its employees to take off-duty rest periods as required by California law. Employees are entitled to at least a ten minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and Wage Order 1. Often Employees were not given timely rest breaks and when they were allowed to take timely rest breaks they were frequently interrupted.

Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee’s regular rate of pay for missed or

untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a) and §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et seq.*

Failure to Provide Proper Cool-Down Rest Periods

(Cal. Labor Code §§ 226.7, 1198, 2698 *et seq*)

Labor Code section 226.7, subdivision (c) further provides that:

If an employer fails to provide an employee a... recovery period in accordance with a state .. law, including, but not limited to an applicable statute or applicable regulation, standard, or order of the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Employers required Claimant and aggrieved employees to consistently work in in temperatures far exceeding eighty (80) degrees Fahrenheit and did not provide adequate cool down period opportunities. Because the break room was a 3-4 minute walk from the work area and because there was no seating provided in the work area by the Employer, there was no opportunity to be able to cool down. Claimant and aggrieved did not feel safe asking to take a moment of rest if they felt like they were going to pass out from the heat because of intimidation and pressure from their Employers. Claimant did, in fact, witness a fellow Employee pass out from the heat in their working area. The Claimant and aggrieved employees were exposed to a high risk of suffering heat illness so that their life, safety, and health were jeopardized by Employer's conduct, violating California Code of Regulation, Title, section 3395 and Labor Code sections 226.7 and 1198.

Failure to Provide Safe Working Conditions

(Cal. Labor Code §1198, Wage Order 1)

Employer's workplaces would get unsafely hot. Claimant and aggrieved employees were forced to work in incredibly hot and unventilated rooms reaching temperatures of over 100 degrees.

Employer does not have proper climate control or ventilation. Claimant and her coworkers worked in unbearable heat and.

Wage Order 1 ¶15 requires:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

In addition to climate control issues, Employer failed to take safety measures required to keep employees safe during COVID-19. Labor Code 1198 makes it unlawful to employ employee in conditions prohibited by the wage order. By violating the wage order, Employer is liable for civil penalties pursuant to §2698 *et. seq.*

Failure to Provide Place Of Employment That Is Safe And Healthful

(Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202)

Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein. Cal. Labor Code §6401 provides that “every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer. Pursuant to Cal. Labor Code §6402, no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful. Cal. Labor Code §6403 states that no employer shall fail or neglect to provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe, or to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe, or to do every other thing reasonably necessary to protect the life, safety, and health of employees. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

Employer failed to timely make changes to the workplace at the onset of COVID. Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The Employees continued to work without distancing during a portion of their workday which was performed outside. Employers did not provide adequate masks for their Employees. Masks were only given to those who forgot to bring their own personal masks to work. There was no effective written covid prevention program. Claimant is knowledgeable of COVID outbreaks at the workplace and believes they were due to a lack of COVID safety practices. Employers employed their employees under unsafe conditions violative of Cal-OSHA regulations and the Health and Safety Code.

As a result of these practices, Employers have violated Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for their Employees, as outlined above. Employers are liable for civil penalties pursuant to Cal. Labor Code §2699 *et seq.*

Failure To Provide Suitable Seating
(Lab. Code section 1198 and Wage Order 1-2001, Section 14)

Labor Code section 1198 states, in pertinent part, “The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

Section 14 of Wage Order 1 provides that:

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

At all relevant times, Employer failed to provide Claimant and aggrieved employees with suitable seating during their employment as required by section 12 of the applicable Wage Order. Claimant and other aggrieved employees were not provided with seating during shifts in which they worked at positions which would reasonably permit the use of seating, nor was seating provided within a 3-4 minute walk from work areas for necessary breaks. Accordingly, Claimant, on behalf of herself and aggrieved employees, will pursue civil penalties under Labor Code §2698 *et seq.*, and all available remedies to the extent allowed by law for the alleged violations.

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties.

Claimant and aggrieved employees are required to use their personal cell phones for work related communications, although Employers did not reimburse them in any way for the expense of their personal cell phone use as required by the Labor Code. Notably, employees are required to answer a COVID health questionnaire every day prior to clocking in for work. This requires employees to utilize their personal every workday for the sole purpose of serving their employers. Employees were also expected to provide their own personal masks during work and were not reimbursed for them. Accordingly, Employers are liable for civil penalties under PAGA §2699 *et seq.*

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Employers issue payments to Claimant and aggrieved employees through an out of state banking institution in violation of Labor Code §§212 and 213. Accordingly, Employers are liable for civil penalties under PAGA §2699 *et seq.*

Failure to Provide Accurate Itemized Wage Statements

(Cal. Labor Code §§ 226, 1174, 2699 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimants and the aggrieved employees, and maintain accurate records, in accordance with Labor Code §§ 226 and 1174.

Based on and as a result of the above-mentioned Labor Code violations, Employers maintained and issued inaccurate wage statements, failing to include required hours and overtime hours worked and misrepresenting actual regular hours worked on the final wage statement. Employer further failed to include meal and rest period penalties, thus failing the requirements of Labor Code §226(a). Employer also failed to list required sick pay pursuant to Executive Order N-51-20. Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled.

Claimant will seek penalties as permitted under Labor Code §226 for herself and other aggrieved employees for each violation. Further, claimant will seek recovery of civil

penalties under Labor Code §226.3, and PAGA, Labor Code §2698, *et seq.*, on behalf of the LWDA against the Employers if authorized to file a representative action on behalf of the State of California for Employers' paystub violations.

Conclusion

Employers have violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue these claims as a representative action in civil court.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a long horizontal flourish extending to the right.

Nazo Koulloukian, Esq.
Sahag Majarian, II, Esq.
Attorney for Claimant

Cc:

Sahag Majarian, Esq.
Law Offices of Sahag Majarian II
18250 Ventura Blvd.
Tarzana, CA 91356

EXHIBIT “3”



November 23, 2022

CASE ASSUMPTIONS

Class Members	550
Opt Out Rate	1%
Opt Outs Received	5
Total Class Claimants	545
Subtotal Admin Only	\$10,360.22

Flat Fee Total \$10,000.00

For 550 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Case: Barboza v. Rudolph Foods, Opt-Out Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Brian J. Mankin
Firm: Lauby, Mankin & Lauby, LLP
Contact Number: (951) 320-1444
Email: brian@lmlfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **550** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$150.00	1		\$150.00
Call Center & Long Distance	\$2.00	100		\$200.00
NCOA (USPS)	\$137.50	1		\$137.50
Total				\$887.50

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Reminder Postcard

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Data Merge & Duplication Scrub	\$0.10	550		\$55.00
Notice Packet & Opt-Out Form	\$1.35	550		\$742.50
Estimated Postage (up to 2 oz.)*	\$0.58	550		\$319.00
Check Cashing Reminder Postcard Postage Included	\$0.60	114		\$68.67
Total				\$1,385.17

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



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CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	5		\$275.00
Skip Tracing Undeliverables	\$0.85	138		\$116.88
Remail Notice Packets	\$0.75	135		\$100.88
Estimated Postage	\$0.61	135		\$82.05
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$624.80

Database Programming / Processing Opt-Outs, Deficiencies or Disputes				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	2		\$300.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	5		\$275.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	11		\$110.00
Case Manager	\$85.00	4		\$340.00
Total				\$1,225.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	2		\$270.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	3		\$285.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	7		\$945.00
Mail Class Checks *	\$1.00	545		\$545.00
Estimated Postage	\$0.61	545		\$332.45
Total				\$2,647.45

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



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CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	3		\$345.00
Remail Checks & Tax Forms (Postage Included)	\$1.70	109		\$185.30
Case Associate	\$55.00	4		\$220.00
Reconcile Uncashed Checks	\$85.00	6		\$510.00
Conclusion Reports	\$115.00	3		\$345.00
Case Manager Conclusion	\$85.00	4		\$340.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,000.00	1		\$1,000.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Controllers Office	\$300.00	1		\$300.00
Estimated <u>49</u> Total Class Members				
Total				\$3,590.30

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$10,360.22



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CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: 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 data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT “4”