

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GABRIELA SOTO HURTADO, individually,
and on behalf of other members of the general
public similarly situated,

Plaintiff,

vs.

SWEET EARTH, INC., a Delaware
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 5:21-cv-04894-BLF

**JOINT STIPULATION OF CLASS ACTION
AND PAGA SETTLEMENT AND RELEASE**

1 This Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement” or
2 “Settlement Agreement”) is made and entered into by and between Plaintiff Gabriela Soto Hurtado
3 (“Plaintiff” or “Class Representative”), as an individual and on behalf of all others similarly situated, and
4 Defendant Sweet Earth, Inc. (“Defendant”) (collectively with Plaintiff, the “Parties”).

5 DEFINITIONS

6 The following definitions are applicable to this Settlement Agreement. Definitions contained
7 elsewhere in this Settlement Agreement will also be effective:

8 1. “Action” means *Hurtado v. Sweet Earth, Inc.*, No. 5:21-cv-04894-BLF (United States
9 District Court, Northern District of California).

10 2. “Attorneys’ Fees and Costs” means attorneys’ fees approved by the Court for Class
11 Counsel’s litigation and resolution of the Action, and all out-of-pocket costs incurred and to be incurred
12 by Class Counsel in the Action, including but not limited to expert/consultant fees, investigation costs, and
13 costs associated with documenting the Settlement, providing any notices required as part of the Settlement
14 or Court order, securing the Court’s approval of the Settlement, administering the Settlement, and
15 obtaining entry of a Judgment terminating the Action. Class Counsel will request attorneys’ fees not in
16 excess of one-third (1/3) of the Gross Settlement Amount, or One Hundred Ninety One Thousand Six
17 Hundred Sixty Seven Dollars (\$191,667). The Attorneys’ Fees and Costs will also mean and include the
18 additional reimbursement of any costs and expenses associated with Class Counsel’s litigation and
19 settlement of the Action, up to Twenty Thousand Dollars (\$20,000), subject to the Court’s approval.
20 Defendant has agreed not to oppose Class Counsel’s request for fees and reimbursement of costs as set
21 forth above.

22 3. “Class Counsel” means Capstone Law APC.

23 4. “Class List” means a complete list of all Class Members that Defendant will diligently
24 and in good faith compile from its records and provide to the Settlement Administrator within thirty (30)
25 calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in Microsoft
26 Office Excel, or similarly readable format, and will include each Class Member’s full name; last reported
27 mailing address listed in Defendant’s records, telephone number (to the extent available in Defendant’s
28 records); Social Security number; dates of employment; and the respective number of Workweeks that

each Class Member worked during the Class Period and the number of Workweeks during the PAGA Period.

5. “Class Member(s)” or “Settlement Class” means all persons employed in California by Defendant as hourly-paid employees at any time during the period from May 27, 2017 through May 21, 2022. The term “Class Member(s)” is used herein solely for the purpose of identifying the individuals who are eligible to participate in this Settlement, and the Parties agree that the use of this term is not an admission that class action certification is proper under the standards applied to contested certification motions.

6. “Class Notice” means the Notice of Class Action Settlement, substantially in the form attached as Exhibit A.

7. “Class Period” or “Settlement Period” means the period from May 27, 2017 through May 21, 2022.

8. “Class Representative Enhancement Payment” means the amount to be paid to Plaintiff in recognition of her effort and work in prosecuting the Action on behalf of Class Members. Subject to the Court granting final approval of this Settlement Agreement and subject to the exhaustion of any and all appeals, Plaintiff will request Court approval of a Class Representative Enhancement Payment of up to Ten Thousand Dollars (\$10,000).

9. “Court” means the United States District Court, Northern District of California.

10. “Defendant” means Defendant Sweet Earth, Inc.

11. “Effective Date” means the latest of: (a) if no timely objections are filed, or if any filed objections are withdrawn prior to Final Approval, then the date of Final Approval; or (b) if a Class Member files an objection to the Settlement, the thirty-first (31st) calendar day after the date of Final Approval, provided no appeal is initiated by an objector; or (c) if a timely appeal is initiated by an objector, then the date of final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final judicial approval of the Settlement.

12. “Final Approval” means the date on which the Court enters an order granting final approval of the Settlement Agreement.

13. “Gross Settlement Amount” means the Gross Settlement Amount of Five Hundred

Seventy Five Thousand Dollars (\$575,000) to be paid by Defendant in full satisfaction of all Released Class Claims and Released PAGA Claims. The Gross Settlement Amount includes all Individual Settlement Payments, Attorneys' Fees and Costs, the Class Representative Enhancement Payment, the General Release Payment, the PAGA Settlement Amount, and the Settlement Administration Costs. In no event will Defendant be liable for more than the Gross Settlement Amount except as otherwise explicitly set forth herein. There will be no reversion of the Gross Settlement Amount to Defendant. Defendant will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions, which shall not be paid from the Gross Settlement Amount.

14. "Individual Settlement Payment" means each Participating Class Member's and PAGA Member's respective shares of the Net Settlement Fund and PAGA Fund.

15. "Net Settlement Fund" means the portion of the Gross Settlement Amount remaining after deducting the Attorneys' Fees and Costs, Class Representative Enhancement Payment, General Release Payment, the PAGA Settlement Amount, and Settlement Administration Costs. The Net Settlement Fund will be distributed to Participating Class Members. There will be no reversion of the Net Settlement Fund to Defendant.

16. "Notice of Objection" means a Class Member's valid and timely written objection to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the objector's full name, signature, address, and telephone number, (b) a written statement of all grounds for the objection accompanied by any legal support for such objection; (c) copies of any papers, briefs, or other documents upon which the objection is based; and (d) a statement whether the objector intends to appear at the final fairness hearing.

17. "PAGA Members" means all persons employed in California by Defendant as hourly-paid employees at any time during the period from May 27, 2020 through May 21, 2022.

18. "PAGA Period" means the period from May 27, 2020 through May 21, 2022.

19. "PAGA Settlement Amount" means the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency ("LWDA") and PAGA Members to resolve Plaintiff's claim under the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA") ("PAGA Settlement"). The Parties have agreed that Twenty Thousand Dollars (\$20,000) of the Gross

Settlement Amount will be allocated to the PAGA Settlement. Pursuant to PAGA, Seventy-Five Percent (75%), or Fifteen Thousand Dollars (\$15,000), of the PAGA Settlement Amount will be paid to the California Labor and Workforce Development Agency ("Labor and Workforce Development Agency Payment"), and Twenty-Five Percent (25%), or Five Thousand Dollars (\$5,000) ("PAGA Fund"), of the PAGA Settlement will be disbursed to PAGA Members, regardless whether they request to be excluded from the Settlement Class.

20. "Parties" means Plaintiff and Defendant collectively.

21. "Participating Class Members" means all Class Members who do not submit timely and valid Requests for Exclusion.

22. "Plaintiff" means Plaintiff Gabriela Soto Hurtado.

23. "Preliminary Approval" means the date on which the Court enters an order granting preliminary approval of the Settlement Agreement.

24. "Qualified Settlement Account" means the account established by the Settlement Administrator pursuant to Internal Revenue Code Section 1.468B-1.

25. "Released Class Claims" means all claims asserted in the Action, reasonably arising from or related to the facts and claims alleged in the Action, or that reasonably could have been raised in the Action based on the facts and claims alleged in the civil complaint and all amendments thereto, or included in any letter Plaintiff's counsel sent to the LWDA on behalf of Plaintiff during the Class Period. The Released Class Claims include all claims for unpaid wages, including overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; missed meal period and rest-period premiums, including failure to pay premiums at the regular rate of compensation; reimbursement for all necessary business expenses; payment for all hours worked, including off-the-clock work; failure to pay vacation and paid time off upon termination; failure to provide accurate and timely wage statements; unfair business practices; penalties including, but not limited to, civil penalties, statutory penalties, recordkeeping penalties, and waiting-time penalties; attorneys' fees and costs; and all claims reasonably related to the Released Class Claims arising under the California Labor Code (including, but not limited to, sections 200, 201, 202, 203, 204, 210, 218.5, 226, 226(a), 226.3, 226.7, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, and 2802), the applicable Wage Orders of the

1 California Industrial Welfare Commission, California Business and Professions Code section 17200, *et*
2 *seq.*, and federal common law. The Released Class Claims excludes the release of claims not permitted by
3 law.

4 26. “Released PAGA Claims” means all claims for civil penalties under California Labor
5 Code §§ 2698, *et seq.*, that were brought or could reasonably have been brought based on the facts alleged
6 in Plaintiff’s LWDA letter sent during the PAGA Period.

7 27. “Released Parties” means Defendant and Nestle U.S.A., Inc., and all of their past, present
8 and future agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders,
9 stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or
10 partnerships, divisions, assigns, predecessors, successors, insurers, consultants, service providers, joint
11 venturers, joint employers, co-employers, dual employers, alleged joint employers, alleged co-employers,
12 alleged dual employers, affiliates, alter-egos, and affiliated organizations, and all of their respective past,
13 present and future employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents,
14 subsidiaries, and assigns.

15 28. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a
16 request to be excluded from the Settlement Class. The Request for Exclusion must: (a) set forth the name,
17 address, telephone number, and last four digits of the Social Security Number of the Class Member
18 requesting exclusion; (b) be signed by the Class Member; (c) be returned to the Settlement Administrator;
19 (d) clearly state that the Class Member does not wish to be included in the Settlement; and (e) be faxed or
20 postmarked on or before the Response Deadline.

21 29. “Response Deadline” means the deadline by which Class Members must postmark or fax
22 to the Settlement Administrator Requests for Exclusion, disputes concerning the calculation of Individual
23 Settlement Payments, and/or Notices of Objection. The Response Deadline will be forty-five (45) calendar
24 days from the initial mailing of the Class Notice by the Settlement Administrator, unless the forty-fifth
25 (45th) calendar day falls on a Sunday or State holiday, in which case the Response Deadline will be
26 extended to the next day on which the U.S. Postal Service is open.

27 30. “Settlement Administration Costs” means the costs payable from the Gross Settlement
28 Amount to the Settlement Administrator for administering this Settlement, including, but not limited to,

printing, distributing, and tracking documents for this Settlement; tax reporting; distributing the Gross Settlement Amount; and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs will be paid from the Gross 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. Based on an estimated Settlement Class of approximately Three Hundred and Thirty (330) Class Members, the Settlement Administration Costs are currently estimated to be Ten Thousand Dollars (\$10,000).

31. “Settlement Administrator” means CPT Group, Inc., or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this Settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

32. “Workweeks” means the number of days of employment for each Class Member during the Class Period, subtracting days on leave of absence (if any), dividing by seven (7), and rounding up to the nearest whole number. All Class Members will be credited with at least one Workweek during the Class Period, and all PAGA Members will be credited with at least one Workweek during the PAGA Period.

TERMS OF AGREEMENT

The Plaintiff, on behalf of herself and the Settlement Class, and Defendant agree as follows:

33. Funding of the Gross Settlement Amount. Defendant will make a one-time deposit of the Gross Settlement Amount of Five Hundred Seventy Five Thousand Dollars (\$575,000) into a Qualified Settlement Account to be established by the Settlement Administrator. Defendant also will fund the employer’s share of payroll taxes due upon the portion of the Settlement Payments that are characterized as wages and submit the payment to the Settlement Administrator. After the Effective Date, the Settlement Administrator will distribute the Gross Settlement Amount in the amounts specified herein in the following payments: (a) Individual Settlement Payments; (b) the Labor and Workforce Development Agency Payment; (c) the Class Representative Enhancement Payment; (d) Attorneys’ Fees and Costs; and (e) Settlement Administration Costs. Defendant will deposit the Gross Settlement Amount and the employer’s

1 share of payroll taxes within ten (10) calendar days of the Effective Date ("Funding Date").

2 34. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application or
3 motion by Class Counsel for Attorneys' Fees and Costs of not more than One Hundred Ninety One
4 Thousand Six Hundred Sixty Seven Dollars (\$191,667), plus the reimbursement of out-of-pocket costs
5 and expenses associated with Class Counsel's litigation and settlement of the Action (including
6 expert/consultant fees, investigations costs, etc.), not to exceed Twenty Thousand Dollars (\$20,000), both
7 of which will be paid from the Gross Settlement Amount.

8 35. Class Representative Enhancement Payment. In recognition of her effort and work in
9 prosecuting the Action on behalf of Class Members, Defendant agrees not to oppose or impede any
10 application or motion for a Class Representative Enhancement Payment of up to Ten Thousand Dollars
11 (\$10,000) to Plaintiff. The Class Representative Enhancement Payment will be paid from the Gross
12 Settlement Amount and will be in addition to Plaintiff's Individual Settlement Payment paid pursuant to
13 the Settlement. Plaintiff will be solely and legally responsible to pay any and all applicable taxes on the
14 Class Representative Enhancement Payment. Plaintiff understands and agrees that this Settlement
15 Agreement shall remain in full force and effect even if the full amount of Class Representative
16 Enhancement Payment sought by Plaintiff is not ultimately awarded by the Court.

17 36. Settlement Administration Costs. The Settlement Administrator will be paid for the
18 reasonable costs of administration of the Settlement and distribution of payments from the Gross
19 Settlement Amount, which is currently estimated to be Ten Thousand Dollars (\$10,000). These costs,
20 which will be paid from the Gross Settlement Amount, will include, *inter alia*, the required tax reporting
21 on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms, distributing Class
22 Notices, calculating and distributing the Gross Settlement Amount, and providing necessary reports and
23 declarations.

24 37. PAGA Settlement Amount. Subject to Court approval, the Parties agree that the amount
25 of Twenty Thousand Dollars (\$20,000) from the Gross Settlement Amount will be designated for
26 satisfaction of Plaintiff's PAGA claim. Pursuant to PAGA, Seventy-Five Percent (75%), or Fifteen
27 Thousand Dollars (\$15,000), of this sum will be paid to the LWDA and Twenty-Five Percent (25%), or
28 Five Thousand Dollars (\$5,000), will be paid to PAGA Members in proportion to the number of

1 Workweeks worked during the PAGA Period.

2 38. No Right to Exclusion or Objections to the PAGA Settlement. Because this settlement
3 resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a Private
4 Attorney General of, and for, the State of California and the LWDA, the Parties agree that no PAGA
5 Member has the right to exclude himself or herself from the release of the Released PAGA Claims, and
6 all PAGA Members will receive their shares of the PAGA Fund. The Parties also agree that no PAGA
7 Member has the right to object to the PAGA Settlement Amount.

8 39. Net Settlement Fund. The entire Net Settlement Fund will be distributed to Participating
9 Class Members. No portion of the Net Settlement Fund will revert to or be retained by Defendant.

10 40. PAGA Fund. The entire PAGA Fund will be distributed to all PAGA Members. No
11 portion of the PAGA Fund will revert to or be retained by Defendant.

12 41. Individual Settlement Payment Calculations. Individual Settlement Payments will be
13 calculated and apportioned from the Net Settlement Fund and PAGA Fund based on the number of
14 Workweeks a Class Member worked during the Class Period and PAGA Period, respectively. Specific
15 calculations of Individual Settlement Payments will be made as follows:

16 41(a) Payments from the Net Settlement Fund. Defendant will provide the total
17 number of Workweeks worked by each Class Member during the Class
18 Period. To determine each Class Member's estimated Individual Settlement
19 Payment from the Net Settlement Fund, the Settlement Administrator will use
20 the following formula: The Net Settlement Fund will be divided by the
21 aggregate total number of Workweeks, resulting in the "Workweek Value."
22 Each Class Member's "Individual Settlement Payment" will be calculated by
23 multiplying each individual Class Member's total number of Workweeks by
24 the Workweek Value. The Individual Settlement Payment will be reduced by
25 any required deductions for each Participating Class Member as specifically
26 set forth herein, including employee-side tax withholdings, garnishments, or
27 other lawful deductions. The entire Net Settlement Fund will be disbursed to
28 all Class Members who do not submit timely and valid Requests for

1 Exclusion. If there are any valid and timely Requests for Exclusion, the
2 Settlement Administrator shall proportionately increase the Individual
3 Settlement Payment for each Participating Class Member according to the
4 number of Workweeks worked, so that the amount actually distributed to the
5 Settlement Class equals 100% of the Net Settlement Fund.

6 41(b) Payments from the PAGA Fund. Defendant will provide the total number of
7 Workweeks worked by each PAGA Member during the PAGA Period. To
8 determine each PAGA Member's estimated "Individual Settlement
9 Payment," the Settlement Administrator will use the following formula: The
10 PAGA Fund will be divided by the aggregate total number of Workweeks,
11 resulting in the "PAGA Workweek Value." Each PAGA Member's
12 "Individual Settlement Payment" will be calculated by multiplying each
13 individual PAGA Member's total number of Workweeks by the PAGA
14 Workweek Value. The entire PAGA Fund will be disbursed to all PAGA
15 Members.

16 42. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
17 Participating Class Members under this Settlement, as well as any other payments made pursuant to this
18 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any
19 Class Members may be eligible, including, but not limited to, profit-sharing plans, bonus plans, 401(k)
20 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather,
21 it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or
22 amounts to which any Class Members may be entitled under any benefit plans.

23 43. Administration Process. The Parties agree to cooperate in the administration of the
24 Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in
25 administration of the Settlement.

26 44. Delivery of the Class List. Within thirty (30) calendar days of Preliminary Approval,
27 Defendant will provide the Class List to the Settlement Administrator and to Class Counsel.

28 45. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class

1 List from Defendant, the Settlement Administrator will mail a Class Notice to all Class Members via
2 regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

3 46. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement
4 Administrator will perform a search based on the National Change of Address Database for information
5 to update and correct for any known or identifiable address changes. Any Class Notices returned to the
6 Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via
7 regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator
8 will indicate the date of such re-mailing on the Class Notice. If no forwarding address is provided, the
9 Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other
10 search using the name, address, and/or Social Security number of the Class Member involved, and will
11 then perform a single re-mailing. Those Class Members who receive a re-mailed Class Notice, whether
12 by skip-trace or by request, will have either (a) an additional fifteen (15) calendar days, or (b) until the
13 Response Deadline, whichever is later, to submit a Request for Exclusion or an objection to the Settlement.

14 47. Class Notices. All Class Members will be mailed a Class Notice. Each Class Notice will
15 provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's principal
16 terms; (c) the Settlement Class Member and PAGA Member definitions; (d) the total number of
17 Workweeks each respective Class Member and PAGA Member worked for Defendant during the Class
18 Period and PAGA Period; (e) each Class Member's and PAGA Member's estimated Individual Settlement
19 Payment and the formula for calculating Individual Settlement Payments; (f) the dates which comprise the
20 Class Period and PAGA Period; (g) instructions on how to submit Requests for Exclusion or Notices of
21 Objection; (h) the deadlines by which the Class Member must postmark or fax Request for Exclusions or
22 postmark Notices of Objection to the Settlement; and (i) the claims to be released.

23 48. Disputed Information on Class Notices. Class Members will have an opportunity to
24 dispute the information provided in their Class Notices. To the extent Class Members dispute their
25 employment dates or the number of Workweeks on record, Class Members may produce evidence to the
26 Settlement Administrator showing that such information is inaccurate. Defendant's records will be
27 presumed correct, but the Settlement Administrator shall contact the Parties regarding the dispute and the
28 Parties will work in good faith to resolve it. All disputes must be submitted by the Response Deadline and

will be decided within ten (10) business days after the Response Deadline.

49. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3) business days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have until (a) the Response Deadline or (b) fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark or fax a revised Request for Exclusion. If the revised Request for Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

50. Request for Exclusion Procedures. Any Class Member wishing to opt out of the Settlement Agreement must sign and fax or postmark a written Request for Exclusion to the Settlement Administrator before the Response Deadline. In the case of Requests for Exclusion that are mailed to the Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request for Exclusion has been timely submitted.

51. Settlement Terms Bind All Class Members Who Do Not Opt Out. Any Class Member who does not affirmatively opt out of the Settlement Agreement by submitting a timely and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the Released Class Claims, as well as any judgment that may be entered by the Court if it grants Final Approval of the Settlement.

52. Releases by Participating Class Members. Upon the Funding Date, and except as to such rights or claims as may be created by this Settlement Agreement, each Participating Class Member, together and individually, on their behalf and on behalf of their respective heirs, executors, administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released Parties, or any of them, from each of the Released Class Claims arising during the Class Period.

53. Releases by PAGA Members. Upon the Funding Date, and except as to such rights or claims as may be created by this Settlement Agreement, each PAGA Member, together and individually, on their behalf and on behalf of their respective heirs, executors, administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released Parties, or any of them, from each of the Released PAGA Claims during the PAGA Period.

1 54. Defendant's Right to Rescind. Defendant will have, in its sole discretion, the right to void
2 and withdraw from the Settlement if, at any time prior to Final Approval, Five Percent (5%) or more of
3 Class Members opt out of the Settlement. Defendant must exercise this right of rescission in writing to
4 Class Counsel within fourteen (14) calendar days after the latter of the Response Deadline or the date the
5 Settlement Administrator reports to Defendant in writing the total number of Class Members who have
6 validly and timely opted out of the Settlement. If the option to rescind is exercised, then Defendant will be
7 solely responsible for all Settlement Administration Costs incurred to the date of rescission.

8 55. Objection Procedures. To object to the Settlement Agreement, a Class Member may either
9 postmark a valid Notice of Objection to the Settlement Administrator on or before the Response Deadline
10 or appear in person at the Final Approval Hearing. Class Members who fail to object either by submitting
11 a valid Notice of Objection or appearing in person at the Final Approval Hearing will be deemed to have
12 waived all objections to the Settlement and will be foreclosed from making any objections, whether by
13 appeal or otherwise, to the Settlement Agreement. At no time will any of the Parties or their counsel seek
14 to solicit or otherwise encourage Class Members to submit written objections to the Settlement Agreement
15 or appeal from the Final Approval order and judgment. Class Counsel will not represent any Class
16 Members with respect to any such objections to this Settlement. If a Class Member timely submits both a
17 Notice of Objection and a Request for Exclusion, the Request for Exclusion will be given effect and
18 considered valid, the Notice of Objection shall be rejected, and the Class Member shall not participate in
19 or be bound by the Settlement.

20 56. Certification Reports Regarding Individual Settlement Payment Calculations. The
21 Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly report that
22 certifies the number of Class Members who have submitted valid Requests for Exclusion or objections to
23 the Settlement through the date of the report and notes whether any Class Member has submitted a
24 challenge to any information contained in their Class Notice. Additionally, the Settlement Administrator
25 will provide to counsel for both Parties any updated reports regarding the administration of the Settlement
26 Agreement as needed or requested.

27 57. Distribution Timing of Individual Settlement Payments. Within ten (10) calendar days of
28 the Funding Date, the Settlement Administrator will issue payments from the Gross Settlement Amount

1 to: (a) Participating Class Members and PAGA Members; (b) the Labor and Workforce Development
2 Agency; (c) Plaintiff; and (d) Class Counsel. The Settlement Administrator will also issue a payment to
3 itself for Court-approved services performed in connection with the Settlement.

4 58. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment
5 checks returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for more
6 than one hundred and eighty (180) calendar days after issuance will be tendered to the California State
7 Controller's Office's Unclaimed Property Division in the name of the Participating Class Member.

8 59. Certification of Completion. Upon completion of administration of the Settlement, the
9 Settlement Administrator will provide a written declaration under oath to certify such completion to the
10 Court and counsel for all Parties.

11 60. Treatment of Individual Settlement Payments. All Individual Settlement Payments will
12 be allocated as follows: (a) Fifteen Percent (15%) of each Individual Settlement Payment will be allocated
13 as wages for which IRS Forms W-2 will be issued, and (b) Eighty-Five Percent (85%) will be allocated as
14 non-wages for which IRS Forms 1099-MISC will be issued.

15 61. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
16 will be responsible for issuing to Plaintiff, Participating Class Members, PAGA Members, and Class
17 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this
18 Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes and
19 penalties to the appropriate government authorities.

20 62. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect of
21 the payments called for hereunder, and Plaintiff and Participating Class Members are not relying on any
22 statement, representation, or calculation by Defendant or by the Settlement Administrator in this regard.

23 63. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
24 OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS
25 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY")
26 ACKNOWLEDGES AND AGREES THAT: (1) NO PROVISION OF THIS AGREEMENT, AND NO
27 WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR
28 THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL

1 ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE,
2 RELIED UPON AS TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY
3 DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
4 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN,
5 INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN
6 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT
7 BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR
8 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
9 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER
10 PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
11 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY
12 HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY
13 SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH
14 LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING
15 PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION,
16 INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

17 64. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that
18 they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
19 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or
20 right herein released and discharged.

21 65. Nullification of Settlement Agreement. In the event that the Court does not finally approve
22 the Settlement as provided herein or the Settlement does not become final for any other reason, then this
23 Settlement Agreement and any documents generated to bring it into effect will be null and void. Any order
24 or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as
25 void from the beginning.

26 66. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to request
27 the Preliminary Approval of the Settlement Agreement and the entry of a Preliminary Approval Order for:
28 (a) conditional certification of the Settlement Class for settlement purposes only, (b) Preliminary Approval

of the proposed Settlement Agreement, and (c) setting a date for a final fairness hearing. The Preliminary Approval Order will provide for the Class Notice to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed Notice of Class Action Settlement, attached as Exhibit A. Class Counsel will be responsible for drafting all documents necessary to obtain Preliminary Approval.

67. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the Court's permission, a final fairness hearing will be conducted to determine the Final Approval of the Settlement Agreement along with the amounts properly payable for: (a) Attorneys' Fees and Costs; (b) the Class Representative Enhancement Payment; (c) Individual Settlement Payments; (d) the Labor and Workforce Development Agency Payment; and (e) all Settlement Administration Costs. The final fairness hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class Counsel will be responsible for drafting all documents necessary to obtain Final Approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs application to be heard at the Final Approval hearing.

68. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by the Court or after the final fairness hearing, the Parties will present the judgment to the Court for its approval. After entry of the judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) Settlement administration matters, and (c) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement. A copy of the judgment will be posted to the Settlement Administrator's website.

69. Release by Plaintiff. Upon the Funding Date, in addition to the claims being released by all Participating Class Members, Plaintiff will release and forever discharge the Released Parties to the fullest extent permitted by law of and from any and all claims, known or unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, including but not limited to claims arising from or related to Plaintiff's employment with Defendant and Plaintiff's compensation while an employee of Defendant ("Plaintiff's Released Claims"). Plaintiff's Released

1 Claims include, but are not limited to, all claims arising from or related to the Action. Plaintiff's Released
2 Claims include all claims for unpaid wages, including, but not limited to, failure to pay minimum wages,
3 straight time compensation, overtime compensation, double-time compensation, and interest; the
4 calculation of the regular rate of pay for any and all reasons, including but not limited to overtime, meal or
5 rest premiums and paid sick leave; wages related to alleged illegal time rounding; missed meal period and
6 rest period premiums; reimbursement for all necessary business expenses; payment for all hours worked,
7 including travel time and off-the-clock work; pay stubs and wage statements; deductions; failure to
8 provide, create, and keep accurate records; unfair business practices; penalties including, but not limited
9 to, recordkeeping penalties, wage statement penalties, minimum wage penalties, and waiting-time
10 penalties; and attorneys' fees and costs. Plaintiff's Released Claims also include all claims arising under
11 the California Labor Code (including, but not limited to, sections 200, 201, 201.1, 201.3, 201.5, 202, 203,
12 204, 205.5, 206, 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.3, 226.7,
13 226.8, 227.3, 245.5, 246, 246.5, 247.5, 248.5, 249, 256, 450, 510, 511, 512, 516, 550, 551, 552, 558, 1174,
14 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 2698 *et seq.*, 2699 *et seq.*, 2802, and 2810.5);
15 the Wage Orders of the California Industrial Welfare Commission; the California Private Attorneys
16 General Act of 2004; California Business and Professions Code section 17200, *et seq.*; the California Civil
17 Code including, but not limited to, sections 3287, 3336 and 3294; 12 CCR § 11040; 8 CCR § 11060;
18 California Code of Civil Procedure § 1021.5; the California common law of contract; the FLSA, 29 U.S.C.
19 § 201, *et seq.*; federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. § 1001,
20 *et seq.* ("ERISA"). Plaintiff's Released Claims also include all claims for lost wages and benefits,
21 emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under federal, state,
22 or local laws for discrimination, harassment, retaliation, and wrongful termination, such as, by way of
23 example only, (as amended) 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the
24 Americans With Disabilities Act, the Age Discrimination in Employment Act, the California Fair
25 Employment and Housing Act, and the laws of contract and tort. This release excludes the release of claims
26 not permitted by law. To the extent the foregoing release is a release to which Section 1542 of the
27 California Civil Code or similar provisions of other applicable law may apply, Plaintiff expressly waives
28 any and all rights and benefits conferred upon her by the provisions of Section 1542 of the California Civil

Code or similar provisions of applicable law which are as follows:

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

70. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

71. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or terms will modify, vary, or contradict the terms of this Settlement Agreement.

72. Amendment or Modification. No amendment, change, or modification to this Settlement Agreement will be valid unless in writing and signed, either by the Parties or their counsel, and approved by the Court.

73. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties

1 may seek the assistance of the Court to resolve such disagreement.

2 74. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
3 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

4 75. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto will
5 be governed by and interpreted according to the laws of the State of California.

6 76. Execution and Counterparts. This Settlement Agreement is subject only to the execution
7 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
8 executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned
9 copies of the signature page, will be deemed to be one and the same instrument.

10 77. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
11 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
12 Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account
13 all relevant factors, present and potential. The Parties further acknowledge that they are each represented
14 by competent counsel and that they have had an opportunity to consult with their counsel regarding the
15 fairness and reasonableness of this Settlement.

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

20 79. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
21 certification for purposes of this Settlement only; except, however, that Plaintiff or Class Counsel may
22 appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court, and
23 either party may appeal any court order that materially alters the Settlement Agreement's terms.

24 80. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to
25 class action certification for purposes of the Settlement only. If, for any reason, the Settlement is not
26 approved, the stipulation to certification will be void. The Parties further agree that certification for
27 purposes of the Settlement is not an admission that class action certification is proper under the standards
28 applied to contested certification motions and that this Settlement Agreement will not be admissible in this

1 or any other proceeding as evidence that either a class action should be certified or Defendant is liable to
2 Plaintiff or any Class Member.

3 81. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute
4 that has arisen between them and to avoid the burden, expense, and risk of continued litigation. In entering
5 into this Settlement, Defendant does not admit, and specifically denies, that it violated any federal, state,
6 or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other
7 applicable laws, regulations, or legal requirements; breached any contract; violated or breached any duty;
8 engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to
9 its employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the
10 negotiations connected with it, will be construed as an admission or concession by Defendant of any such
11 violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce
12 the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be offered or
13 received as evidence in any action or proceeding to establish any liability or admission on the part of
14 Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance
15 with, federal, state, local, or other applicable law.

16 82. No Public Comment. Neither Plaintiff nor Class Counsel shall issue any press release or
17 announcement of any kind related in any way to the Settlement. Class Counsel agree that, prior to
18 Preliminary Approval of the Settlement, they will keep the terms of this settlement confidential except
19 for purposes of communicating with Plaintiff. Class Counsel shall inform Plaintiff that the Settlement is
20 confidential and advise Plaintiff to keep the Settlement confidential. From and after Preliminary
21 Approval of the Settlement, Plaintiff and Class Counsel may comment regarding the specific terms of
22 the Settlement: (a) as required by law; (b) as required under the terms of the Settlement; or (c) as required
23 under counsel's duties and responsibilities as Class Counsel. In all other cases, Plaintiff and Class
24 Counsel agree to limit their statements regarding the terms of the Settlement, whether oral, written, or
25 electronic (including the world wide web), to say the putative class action has been resolved and that
26 Plaintiff and Class Counsel are satisfied with the Settlement's terms. Nothing in this Paragraph is
27 intended to interfere with Class Counsel's duties and obligations to faithfully discharge their duties as
28 Class Counsel, including but not limited to, communicating with Class Members regarding the

1 settlement. Class Counsel may disclose the name of the Parties in this action, the venue/case number, and
2 settlement details available in the public record, for the limited purpose of allowing Class Counsel to
3 prove adequacy as class counsel in other actions or for purposes of seeking approval of an unrelated
4 settlement.

5 83. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement
6 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute
7 a further waiver by such Party of the same or any other condition, covenant, right, or remedy.

8 84. Enforcement Actions. In the event that one or more of the Parties institutes any legal action
9 or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to
10 declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to
11 recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, under the standards set
12 forth within the meaning of applicable law.

13 85. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
14 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
15 more strictly against one Party than another merely by virtue of the fact that it may have been prepared by
16 counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between
17 the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

18 86. Representation By Counsel. The Parties acknowledge that they have been represented by
19 counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this
20 Settlement Agreement has been executed with the consent and advice of counsel. Further, Plaintiff and
21 Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

22 87. All Terms Subject to Final Court Approval. All amounts and procedures described in this
23 Settlement Agreement will be subject to final Court approval.

24 88. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
25 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement
26 Agreement.

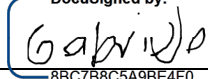
27 89. Binding Agreement. The Parties warrant that they understand and have full authority to
28 enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully

enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 5/11/2023

DocuSigned by:

8BC7B8C5A9BE4F0...
Gabriela Soto Hurtado

DEFENDANT

Dated: _____

[Please Print Name of Authorized Signatory]
Sweet Earth, Inc.

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: 5/11/23

By: 
Raul Perez
Attorneys for Plaintiff Gabriela Soto Hurtado

**SHEPPARD, MULLIN, RICHTER &
HAMPTON LLC**

Dated: _____

By: _____
RICHARD J. SIMMONS
MORGAN P. FORSEY

Attorneys for Defendant
SWEET EARTH, INC.

1 enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any
2 proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise
3 might apply under federal or state law.

4
5 **READ CAREFULLY BEFORE SIGNING**

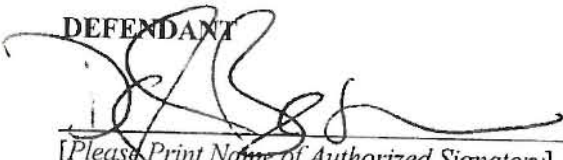
6
7 **PLAINTIFF**

8 Dated: _____

9 Gabriela Soto Hurtado

10 **DEFENDANT**

11 Dated: 6-15-23

12 
13 [Please Print Name of Authorized Signatory]
Sweet Earth, Inc.

14 **APPROVED AS TO FORM**

15 **CAPSTONE LAW APC**

16
17 Dated: _____

18 By: _____
19 Raul Perez
Attorneys for Plaintiff Gabriela Soto Hurtado

20
21 **SHEPPARD, MULLIN, RICHTER &
HAMPTON LLC**

22 Dated: 7/15/23

23 By: 
24 RICHARD J. SIMMONS
MORGAN P. FORSEY

25 Attorneys for Defendant
26 SWEET EARTH, INC.

Exhibit A

Hurtado v. Sweet Earth, Inc., No. 5:21-cv-04894-BLF
UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA
NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully.

To: All persons employed in California by Defendant Sweet Earth, Inc. (“Defendant” or “Sweet Earth”) as hourly-paid employees at any time during the period from May 27, 2017 through May 21, 2022 (“Class Members”).

All persons employed in California by Defendant as hourly-paid employees at any time during the period from May 27, 2020 through May 21, 2022 (“PAGA Members”).

On _____, the Honorable Beth Labson Freeman of the United States District Court, Northern District of California granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendant’s records indicate that you are a Class Member and/or a PAGA Member, and therefore entitled to a payment from the settlement.**

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. Also, as explained below, if you are PAGA Member and the Court grants final approval of the settlement, you will be bound by the PAGA release and mailed a check for your share of the PAGA payment.

The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at 10:00 a.m. on _____, 2023 in Courtroom 2 of the United States District Court, Northern District of California located at 280 South 1st Street, San Jose, California 95113.

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at [https://\[REDACTED\]](https://[REDACTED]), by contacting class counsel at [REDACTED], by accessing the Court docket in this case through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

Please also note that the Final Fairness Hearing may be rescheduled by the Court to another date and/or time. Please visit the settlement website, [https://\[REDACTED\]](https://[REDACTED]), or the Court’s PACER site, to confirm that the date has not changed.

If you move, you must send the Settlement Administrator your new address; otherwise, you may never receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be deemed a "Participating Class Member," and will be eligible for a payment from the Net Settlement Fund and the PAGA Fund. In exchange, you will be bound by the terms of the proposed settlement and give up your right to assert wage and hour claims and PAGA penalty claims against Defendant based on the facts alleged in the Action during the applicable Class Period and PAGA Period.
You Can Opt Out of the Class Settlement The Opt-out Deadline is [DATE]	If you don't want to fully participate in the proposed settlement, you can opt out of the class settlement by sending the Settlement Administrator a written Request for Exclusion. Once excluded, you will no longer be eligible for a payment from the Net Settlement Fund and will not be bound by the terms of the proposed class settlement.
You Cannot Opt-Out of the Proposed PAGA Settlement	You cannot opt out of the PAGA portion of the proposed settlement. PAGA Members remain eligible to receive a payment from the PAGA Fund and must give up their rights to pursue PAGA penalty claims against Defendants based on the facts alleged in the Action during the PAGA Period.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by [DATE]	All Class Members who do not opt out ("Participating Class Members") can object to any aspect of the proposed class settlement, but not the PAGA settlement.
You Can Participate in the [DATE] Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [DATE] in Courtroom 2 of the United States District Court, Northern District of California located at 280 South 1st Street, San Jose, California 95113. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone, or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. If the Court grants final approval of the Settlement despite your objection, you will receive a payment from the Net Settlement Fund and you will be bound by the terms of the Settlement.

Summary of the Litigation

Former Sweet Earth employee Plaintiff Gabriela Soto Hurtado, on her behalf and on behalf of former non-exempt Sweet Earth employees, alleges that Defendant violated California state labor laws as a result of its alleged failure to, among other things: (1) pay minimum and overtime wages to employees for all hours worked; (2) provide employees with meal and rest breaks; (3) timely pay all wages owed to employees during each pay period and upon termination of their employment; and (4) provide employees with accurate, itemized wage statements.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. On January 31, 2023, the parties participated in a mediation with Hon. Dickran M. Tevrizian (Ret.), an experienced and well-respected class action mediator. With Judge Tevrizian's guidance, the parties were able to negotiate a complete settlement of Plaintiff's claims.

Counsel for Plaintiff, and the attorneys appointed by the Court to represent the class, Capstone Law APC ("Class Counsel"), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendant denies the factual and legal allegations in the case and believes that it has valid defenses to Plaintiff's claims. By agreeing to settle, Defendant 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. Defendant has concluded that any further defense of this litigation would be protracted and expensive for all parties. Defendant has already spent substantial amounts of time, energy, and resources defending this case and, unless this settlement is agreed to, will have to continue to devote time, energy, and resources to the defense of the claims asserted by Plaintiff. Defendant has also taken into account the risks of further litigation in reaching its decision. Defendant has, therefore, agreed to settle in the manner and upon the terms set forth in the settlement agreement to put to rest the claims as set forth in the Action.

Summary of The Proposed Settlement Terms

Plaintiff and Defendant have agreed to settle the claims alleged in the Action in exchange for a Gross Settlement Amount of \$575,000. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) a Class Representative Enhancement Payment of \$10,000 to Gabriela Soto Hurtado for her services on behalf of the class, and for a release of all claims arising out of her employment with Defendant; (3) \$191,667 in attorneys' fees and up to \$20,000 in litigation costs and expenses; (4) a \$20,000 settlement of claims under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), inclusive of a \$15,000 payment to the California Labor and Workforce Development Agency ("LWDA") in connection with the PAGA, and a \$5,000 payment ("PAGA Fund") to all PAGA Members; and (5) reasonable Settlement Administrator's fees and expenses currently estimated at \$ _____. After deducting the above payments, a total of approximately \$ _____ ("Net Settlement Fund") will be allocated to Participating Class Members. Additionally, all PAGA Members will receive a proportional share of the \$5,000 PAGA Fund, regardless whether they opt out of the Settlement Class.

Payments from Net Settlement Fund. Defendant has provided the total number of Workweeks worked by each Class Member from May 27, 2017 through May 21, 2022 ("Class Period") to the Settlement Administrator. To determine each Class Member's estimated share of the Net Settlement Fund, the Settlement Administrator used the following formula: The Net Settlement Fund divided by the aggregate total number of Workweeks, resulting in the "Workweek Value." Each Class Member's share of the Net Settlement Fund was calculated by multiplying each individual Class Member's total number of Workweeks by the Workweek Value ("Individual Settlement Payment"). The Individual Settlement Payment will be reduced by any required deductions for each Class Member as specifically set forth herein, including employee-side tax withholdings or deductions. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase each Participating Class Member's share of the Net Settlement Fund according to the number of Workweeks worked so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Fund.

According to Defendant's records, during the Class Period you worked in a non-exempt position for a total of _____ Workweeks. Accordingly, your estimated payment from the Net Settlement Fund is approximately \$ _____.

Payments from PAGA Fund. Defendant provided the total number of Workweeks worked by each PAGA Member from May 27, 2020 through May 21, 2022 ("PAGA Period") to the Settlement Administrator. To determine each PAGA Member's estimated share of the PAGA Fund, the Settlement Administrator used the following formula: The PAGA Fund divided by the aggregate total number of Workweeks, resulting in the "PAGA Workweek Value." Each PAGA Member's

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

share of the PAGA Fund was calculated by multiplying each individual PAGA Member's total number of Workweeks by the PAGA Workweek Value. A Request for Exclusion does not exclude a PAGA Member from the release of claims under California Labor Code §§ 2698, *et seq.*, and each PAGA Member will receive their portion of the PAGA fund even if he or she submits a valid Request for Exclusion.

According to Defendant's records, during the PAGA Period you worked in a non-exempt position for a total of _____ Workweeks. Accordingly, your estimated payment from the PAGA Fund is approximately \$ _____.

Your Estimated Total Payment: Based on the above, your estimated total payment from the settlement is approximately \$ _____. If you believe the Workweek information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute. All disputes must be postmarked or faxed on or before [insert date of Response Deadline] and must be sent to:

Settlement Administrator

c/o _____

Fax No. _____

If you dispute the information stated above, Defendant's records will control unless you are able to provide documentation that establishes otherwise.

Taxes on Settlement Payments. IRS Forms W-2 and 1099 will be distributed to participating Class Members and the appropriate taxing authorities reflecting the payments each Class Member receives under the settlement. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, 15% of each settlement payment will be allocated as wages for which IRS Forms W-2 will be issued, and 85% will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If want to receive your payment from the settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the Released Class Claims and—if applicable—the Released PAGA Claims:

Released Class Claims: All claims asserted in the Action, reasonably arising from or related to the facts and claims alleged in the Action, or that reasonably could have been raised in the Action based on the facts and claims alleged in the civil complaint and all amendments thereto, or included in any letter Plaintiff's counsel sent to the LWDA on behalf of Plaintiff during the Class Period. The Released Class Claims include all claims for unpaid wages, including overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; missed meal period and rest period premiums, including failure to pay premiums at the regular rate of compensation; reimbursement for all necessary business expenses; payment for all hours worked, including off-the-clock work; failure to pay vacation and paid time off upon termination; failure to provide accurate and timely wage statements; unfair business practices; penalties including, but not limited to, civil penalties, statutory penalties, recordkeeping penalties, and waiting-time penalties; attorneys' fees and costs; and all claims reasonably related to the Released Class Claims arising under the California Labor Code (including, but not limited to, sections 200, 201, 202, 203, 204, 210, 218.5, 226, 226(a), 226.3, 226.7, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, and 2802), the applicable Wage Orders of the California Industrial Welfare

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Commission, California Business and Professions Code section 17200, *et seq.*, and federal common law. The Released Class Claims excludes the release of claims not permitted by law.

Released PAGA Claims: All claims for civil penalties under California Labor Code §§ 2698, *et seq.*, that were brought or could reasonably have been brought based on the facts alleged in Plaintiff's LWDA letter sent during the PAGA Period.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name, signature, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent to the address below.

Settlement Administrator

c/o _____

The Request for Exclusion must be postmarked or faxed not later than _____, 2023. If you submit a Request for Exclusion which is not postmarked or faxed by _____, 2023, your Request for Exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, and you will:

- Not Receive a Payment from the Net Settlement Fund.
- Not release the Released Class Claims.

If you are a PAGA Member, you will still be deemed to have released the Released PAGA Claims, and you will receive a payment from the PAGA Fund.

Option 3 – Object to the Settlement

You may object to the terms of the settlement before the Final Approval Hearing. However, if the Court rejects your objection, you will still be bound by the terms of the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers must clearly identify the case name and number (*Hurtado v. Sweet Earth, Inc.*, No. 5:21-cv-04894-BLF (N.D. Cal.)) and be filed with the Court and served on the parties on or before **[DATE]**.

By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Fairness Hearing set for _____ at _____ a.m. in the United States District Court, Northern District Of California and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement if the Court approves the settlement. If the Court overrules your objection, you will be deemed to have released the Released Class Claims and Released PAGA Claims.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Additional Information

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case that are available [INSERT].

If you have any questions, you can call the Claims Administrator at (800) _____ or Class Counsel.

CLASS COUNSEL	DEFENDANTS' ATTORNEYS
Raul Perez Capstone Law APC 1875 Century Park E., Suite 1000 Los Angeles, CA 90067 Phone: 1 (888) 266-0670	SHEPPARD, MULLIN, RICHTER & HAMPTON LLP RICHARD J. SIMMONS MORGAN P. FORSEY 333 South Hope Street, 43rd Floor Los Angeles, California 90071-1448 Tel. (213) 620-1780 Email: mforsey@sheppardmullin.com

PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE, WITH INQUIRIES.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******