

CLASS AND PAGA SETTLEMENT AGREEMENT

This Class Action and Representative Action Settlement (“Settlement,” “Agreement” or “Settlement Agreement”) is made by and between Plaintiff Irving Carlos Zuniga (“Plaintiff”), on behalf of himself and all others similarly situated and aggrieved, on one hand; and Defendant House Foods America Corporation (“Defendant”), on the other hand. Plaintiff and Defendant shall be, at times, collectively referred to as the “Parties.” This Agreement is intended by the Parties to fully, finally and forever resolve the claims as set forth herein, based upon and subject to the terms and conditions of this Agreement.

1. **DEFINITIONS**

A. “FCRA Action” means the lawsuit entitled *Irving Carlos Zuniga v. House Foods America Corporation, et. al.*, currently in the United States District Court, Central District of California, Case No. 8:22-cv-00372-CJC-JDE.

B. “Labor Code and PAGA Action” means the lawsuit entitled *Irving Carlos Zuniga v. House Foods America Corporation, et. al.*, currently in Orange County Superior Court, Case No. 30-2021-01233040-CU-OE-CXC.

C. “Aggrieved Employees” means all current and former employees of Defendant in the State of California who applied for a position with Defendant and had a Background Check performed during the PAGA Period.

D. “Background Check” means any type of background check, including, but not limited to, an investigative consumer report, a credit check, a consumer report, or a criminal history check, that was conducted by Defendant on any FCRA Class Member and/or BTB Class Member.

E. “Class Counsel” means David D. Bibiyan, Jeffrey D. Klein and Vedang J. Patel of Bibiyan Law Group, P.C; and Todd M. Friedman and Adrian Bacon of the Law Offices of Todd M. Friedman, P.C. The term “Class Counsel” shall be used synonymously with the term “Plaintiff’s Counsel.”

F. “Defendant’s Counsel” means Michael I. Kessler and Clint D. Robison of O’Hagan Meyer.

G. “FCRA Class Members,” “FCRA Settlement Class,” or “FCRA Settlement Class Members” means all current, former, and prospective employees of Defendant who applied for a position with Defendant and had a Background Check performed during the FCRA Class Period.

H. “FCRA Class Period” means the period from October 15, 2019 through June 16, 2023.

I. “BTB Class Members,” “BTB Settlement Class,” or “BTB Settlement Class Members” means all current and former employees of Defendant in the State of California who applied for a position with Defendant and had a Background Check performed during the BTB Class Period.

J. “BTB Class Period” means the period from November 19, 2018 through June 16, 2023.

K. “Class Notices” means and refers to the notices sent to FCRA Class Members and BTB Class Members after preliminary approval of the Settlement in the manner described in Paragraph 9(A) of this Agreement.

L. “Court” means the United States District Court for the Central District of California.

M. “Final Approval Date” means the later of: (1) the date the Court signs an Order granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an objector, 61 days from the date of the Final Approval and Judgment; or (3) to the extent any appeals have been filed, the date on which they have been resolved or exhausted (including any requests for rehearing and/or petitions for certiorari), resulting in final and complete judicial approval of the Settlement in its entirety, with no further challenge to the Settlement being possible. The occurrence of the Final Approval Date is a prerequisite to any obligation of Defendant to pay any funds into the qualified settlement account.

N. “Defendant” means House Foods America Corporation.

O. “FCRA” means the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*

P. “Ban the Box” or “BTB” means Labor Code § 432.7.

Q. “General Release” means the broader release of claims by Plaintiff, which is in addition to Plaintiff’s limited release of claims as a Participating FCRA Class Member and Participating BTB Class Member.

R. “Gross Settlement Amount” means a non-reversionary fund in the sum of Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00),¹ which shall be paid by Defendant, from which all payments for the Individual FCRA Settlement Payments to Participating FCRA Class Members, Individual BTB Settlement Payments to Participating BTB Class Members, Settlement Administration Costs, the Service Award, the PAGA Payment and the LWDA Payment shall be paid. It expressly excludes Class Counsel’s request for attorneys’ fees and costs.

S. “Individual PAGA Payment” means a payment made to an Aggrieved Employee for his or her share of the PAGA Payment, which may be in addition to his or her Individual FCRA Settlement Share if he or she is also a Participating FCRA Class Member and/or in addition to his or her Individual BTB Settlement Share if he or she is also a Participating BTB Class Member.

T. “Individual FCRA Settlement Payment” means a payment to a Participating FCRA Class Member of his or her net share of the Net Settlement Amount resulting from the settlement of the FCRA claims, which shall be calculated using the **Distribution Formula**.

U. “Individual BTB Settlement Payment” means a payment to a Participating BTB Class Member of his or her net share of the Net Settlement Amount resulting from the settlement of the BTB claims, which shall be calculated using the **Distribution Formula**.

V. “Individual FCRA Settlement Share” means the gross amount of the Net Settlement Amount that a Participating FCRA Class Member is projected to receive which shall be calculated using the **Distribution Formula**.

¹ As the same may be increased in accordance with Paragraph 16 below.

W. “Individual BTB Settlement Share” means the gross amount of the Net Settlement Amount that a Participating BTB Class Member is projected to receive which shall be calculated using the **Distribution Formula**.

X. “LWDA Payment” means the payment to the State of California Labor and Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total amount allocated toward penalties under the California Labor Code Private Attorneys General Act, California Labor Code Section 2698, *et seq.* (“PAGA”), all of which is to be paid from the Gross Settlement Amount. The Parties have agreed that Five Thousand Dollars and Zero Cents (\$5,000.00) shall be allocated toward PAGA civil penalties, of which Three Thousand Seven Hundred and Fifty Dollars and Zero Cents (\$3,750.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and One Thousand Two Hundred and Fifty Dollars and Zero Cents (\$1,250.00) will be paid to Aggrieved Employees on a *pro rata* basis..

Y. “Net Settlement Amount” means the portion of the Gross Settlement Amount that is available for distribution to the Participating FCRA Class Members and Participating BTB Class Members after deducting Settlement Administration Costs, a Service Award to Plaintiff, the LWDA Payment, and the PAGA Payment. The Net Settlement Amount shall be allocated between the Participating FCRA Class Members and Participating BTB Class Members as follows: Each Participating FCRA Class Member shall be entitled to one Settlement Credit. Each Participating BTB Class Member shall be entitled to one Settlement Credit. Members of both Classes shall be entitled to two Settlement Credits. A Settlement Credit shall represent a pro rata share of the Net Settlement Amount based on the total number of Participating FCRA Class Members plus the total number of Participating BTB Class Members. A Class Member’s Settlement Share shall be calculated on a pro rata basis based on whether they will receive one or two Settlement Credits depending on their status as a member of either one or both of the Classes. Class Members who are both a Member of the FCRA Class and BTB Class will receive two Settlement Credits, calculated at twice the pro rata distribution of Class Members who are only a member of one Class. This shall be referred to as the **Distribution Formula**.

Z. “**Operative Complaint**” or “**Complaint**” means the Fourth Amended Complaint to be filed in the FCRA Action.

AA. “**PAGA Payment**” is the 25% portion of the Five Thousand Dollars and Zero Cents (\$5,000.00) that is allocated toward PAGA civil penalties (One Thousand Two Hundred and Fifty Dollars and Zero Cents (\$1,250.00)) that will be paid to Aggrieved Employees on a *pro rata* basis, which would be in addition to their Individual FCRA Settlement Payment if they are Participating FCRA Class Members and/or in addition to their Individual BTB Settlement Payment if they are Participating BTB Class Members, as well.

BB. “**PAGA Period**” means the period from March 30, 2020 through June 16, 2023.

CC. “**Participating FCRA Class Members**” means all FCRA Settlement Class Members who do not submit a timely and valid Request for Exclusion.

DD. “**Participating BTB Class Members**” means all BTB Settlement Class Members who do not submit a timely and valid Request for Exclusion.

EE. “**Participating Individual FCRA Settlement Share**” means the gross amount of the Net Settlement Amount that a Participating FCRA Class Member is eligible to receive based on the **Distribution Formula**, once all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she may be entitled if he or she is also an Aggrieved Employee.

FF. “**Participating Individual BTB Settlement Share**” means the gross amount of the Net Settlement Amount that a Participating BTB Class Member is eligible to receive based on the **Distribution Formula**, once all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she may be entitled if he or she is also an Aggrieved Employee.

GG. “**Plaintiff**,” “**Named Plaintiff**” or “**Class Representative**” shall refer to Plaintiff Irving Carlos Zuniga.

HH. “**Preliminary Approval Date**” means the date on which the Court enters an Order granting preliminary approval of the Settlement.

II. “**Released Parties**” shall mean Defendant and its related entities, and their past, present and/future, direct and/or indirect, owners, officers, directors, members, shareholders,

partners, managers, employees, agents, representatives, attorneys, assigns, subsidiaries, O'Hagan Meyer, insurers, investors, administrators, parent companies, House Foods Holding USA Inc., subsidiaries, affiliates, divisions, predecessors, successors, and joint venturers.

JJ. "Response Deadline" means the deadline for FCRA Settlement Class Members and BTB Settlement Class Members to mail any Requests for Exclusion or Objections to the Settlement Administrator, which is forty-five (45) calendar days from the date that the Class Notices are first mailed in English and Spanish by the Settlement Administrator, unless a FCRA Class Member or BTB Class Member's notice is re-mailed. In such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which to postmark a Request for Exclusion or Objection. The date of the postmark shall be the exclusive means for determining whether a Request for Exclusion or Objection or was submitted by the Response Deadline.

KK. "Request for Exclusion" means a written request to be excluded from the FCRA Settlement Class and/or BTB Settlement Class pursuant to Paragraph 9(C) below.

LL. "Service Award" means monetary amounts to be paid to Plaintiff of up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), which, subject to Court approval, will be paid out of the Gross Settlement Amount.

MM. "Settlement Administration Costs" means all costs incurred by the Settlement Administrator in administration of the Settlement, including, but not limited to, translating the Class Notices to Spanish, distribution of the Class Notices to the FCRA Settlement Class and BTB Settlement Class in English and Spanish, calculating Individual FCRA Settlement Shares, Individual BTB Settlement Shares, Individual FCRA Settlement Payments, Individual BTB Settlement Payments, Individual PAGA Payments, Participating Individual FCRA Settlement Shares, and Participating Individual BTB Settlement Shares, as well as associated taxes and withholdings, providing declarations, generating Individual FCRA Settlement Payment and Individual BTB Settlement Payment checks and related tax reporting forms, doing administrative work related to unclaimed checks, transmitting payment to Class Counsel for the Court-approved

amounts for attorneys' fees and reimbursement of litigation costs and expenses, to Plaintiff for his Service Award and to the LWDA for the LWDA Payment, providing weekly reports of opt-outs, objections and related information, and any other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to the terms of this Agreement. The Settlement Administration Costs are estimated not to exceed \$10,000.

NN. "Settlement Administrator" means the Third-Party Administrator mutually agreed upon by the Parties that will be responsible for the administration of the Settlement including, without limitation, translating the Class Notices in Spanish, the distribution of the Individual FCRA Settlement Payments and Individual BTB Settlement Payments to be made by Defendant from the Gross Settlement Amount and related matters under this Agreement.

2. BACKGROUND

A. On October 15, 2021, Plaintiff filed a class action complaint against Defendant and House Foods Holding USA Inc. in Orange County Superior Court, Case No. 30-2021-01226490-CU-OE-CXC asserting causes of action for (1) violation of the FCRA, (2) violation of the California Investigative Consumer Reporting Agencies Act ("ICRAA"), and (3) violation of the Consumer Credit Reporting Agencies Act ("CCRAA"). On March 9, 2022, Defendant removed the aforementioned action to the United States District Court for the Central District of California. Following extensive meet and confer efforts regarding Defendant's anticipated motion to dismiss, Plaintiff agreed to file a First Amended Complaint on April 29, 2022 as well as a Second Amended Complaint on July 15, 2022. On July 29, 2022, Defendant filed a Motion to Dismiss Plaintiff's Second Amended Complaint. On September 6, 2022, the Court granted Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint on the basis that Plaintiff had not pled sufficient facts to state claims for violation of the FCRA, violation of the ICRAA, and for damages, but with leave to amend.

B. On October 3, 2022, Plaintiff filed a Third Amended Complaint against Defendant and House Foods Holding USA Inc. asserting a cause of action for violation of the FCRA. Plaintiff's Third Amended Complaint sought to certify a class of individuals as follows: all current,

former, and prospective employees of Defendant who applied for a position with Defendant and had a consumer report obtained about him or her from October 15, 2019 through the date of final judgment. In response to the Third Amended Complaint, on October 17, 2022, Defendant filed a Motion to Dismiss. After fully briefing the Motion, on November 1, 2022, the Court issued an Order denying in substantial part Defendant's Motion to Dismiss and dismissing with prejudice Plaintiff's request for actual damages. On November 14, 2022, Defendant filed its Answer to Plaintiff's Third Amended Complaint. On December 13, 2022, Plaintiff filed a Notice of Dismissal of House Foods Holding USA Inc. without Prejudice. On December 14, 2022, the Parties filed a stipulation with the Court indicating their agreement to attend mediation with Todd Smith, Esq. on June 26, 2023 and to stay the case pending said mediation, and on December 15, 2022, the Court entered an order staying the case pending completion of mediation with Todd Smith, Esq.

C. On June 3, 2021, Plaintiff provided written notice pursuant to Labor Code section 2699.3 to the LWDA of Defendant's purported Labor Code violations with respect to its alleged practices of conducting unlawful background checks on prospective and current employees prior to making a conditional offer of employment and other wage-and-hour violations ("PAGA Notice") attached hereto as **Exhibit "A."** On November 19, 2021, Plaintiff filed a complaint against Defendant and House Foods Holding USA Inc. in Orange County Superior Court, Case No. 30-2021-01233040-CU-OE-CXC asserting one cause of action to recover civil penalties under the PAGA for various wage and hour violations and unlawful background checks prior to making a conditional offer. In response to the Complaint, Defendant filed a motion seeking to strike certain relief contained within the Complaint in which it believed was improper. Prior to the hearing on Defendant's Motion to Strike and upon learning of a prior PAGA settlement, on May 3, 2022, Plaintiff filed a First Amended Complaint which removed certain allegations including allegations of the purported wage and hour violations.

D. On July 27, 2022, Defendant filed a demurrer to Plaintiff's First Amended Complaint arguing that Plaintiff failed to state facts sufficient to constitute a cause of action. On November 4, 2022, the Court sustained the Defendant's demurrer, but with leave to amend. On

November 18, 2022, Plaintiff filed a Second Amended Complaint against Defendant asserting causes of action for violation of Labor Code § 432.7 and seeking to recover civil penalties under the PAGA for violation of Labor Code § 432.7. Plaintiff's Second Amended Complaint sought to certify a class of individuals as follows: all current and former non-exempt employees of Defendant in California from November 18, 2018 through the date of final judgment. On December 14, 2022,, the Parties filed a stipulation with the Court indicating their agreement to attend mediation with Todd Smith, Esq. on June 26, 2023, to stay the case pending said mediation, and to dismiss House Foods Holding USA Inc. as a party without prejudice, and on December 19, 2022, the Court entered an order staying the case pending completion of mediation with Todd Smith, Esq. and dismissing House Foods Holding USA Inc. as a party without prejudice.

E. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the FCRA Action and the Labor Code and PAGA Action, disputes any wages, damages, and penalties claimed by the Class Representative are owed, and further contends that, for any purpose other than settlement, the FCRA Action and the Labor Code and PAGA Action are not appropriate for class or representative action treatment. Defendant also contends that the Labor Code and PAGA Action is not manageable as a PAGA representative action.

F. The Class Representative is represented by Class Counsel. Class Counsel have conducted significant investigation of the law and facts relating to the claims asserted in the FCRA Action, Labor Code and PAGA Action, and in the PAGA Notice, and have concluded that the Settlement set forth herein is fair, reasonable, adequate and in the best interests of the FCRA Settlement Class and BTB Settlement Class, taking into account the sharply contested issues involved, the expense and time necessary to litigate the FCRA Action and Labor Code and PAGA Action through trial and any appeals, the risks and costs of further litigation of the FCRA Action and Labor Code and PAGA Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information learned through informal discovery regarding Plaintiff's allegations, and the substantial benefits to be received by FCRA Settlement Class Members and BTB Settlement Class Members.

G. Although Defendant contends that it has no liability in the FCRA Action and Labor Code and PAGA Action, Defendant has concluded that, because of the substantial expense of defending against the FCRA Action and Labor Code and PAGA Action, the length of time necessary to resolve the issues presented herein, the inconvenience involved and the concomitant disruption to its business operations, it is in its best interest to accept the terms of this Agreement. Defendant denies each of the allegations and claims asserted against them in the FCRA Action, Labor Code and PAGA Action, and in the PAGA Notice. However, Defendant, nevertheless, desires to settle the FCRA Action and Labor Code and PAGA Action for the purpose of avoiding the burden, expense and uncertainty of continuing litigation, and for the purpose of putting to rest the controversies engendered by the FCRA Action and Labor Code and PAGA Action.

H. On June 26, 2023, the Parties participated in mediation with Todd Smith, Esq., an experienced mediator of wage and hour class and PAGA actions. The mediation was successful and led to this Settlement Agreement.

I. This Agreement replaces and supersedes the any agreements, understandings, or representations between the Parties. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the FCRA Action and Labor Code and PAGA Action of Plaintiff or the FCRA Class Members and BTB Class Members have merit or that Defendant bears any liability to Plaintiff or the FCRA Class Members and BTB Class Members on those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the FCRA Action and Labor Code and PAGA Action have merit.

J. Class Counsel have conducted significant investigation of the law and facts relating to the claims asserted in the Class Action and the PAGA Notice, and have concluded that the Settlement set forth herein is fair, reasonable, adequate and in the best interests of the Settlement Class, taking into account the sharply contested issues involved, the expense and time necessary to litigate the Action through trial and any appeals, the risks and costs of further litigation of the Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information

learned through informal discovery regarding Plaintiff's allegations, and the substantial benefits to be received by Class Members.

K. This Agreement is intended to and does effectuate the full, final, and complete resolution of all FCRA Released Claims and BTB Released Claims of Plaintiff and Participating FCRA Class Members and Participating BTB Class Members, and all PAGA Released Claims of Plaintiff as the representative of the California Labor and Workforce Development Agency, of Aggrieved Employees, and, to the extent permitted by law, of the State of California and the LWDA.

3. JURISDICTION

The Court has jurisdiction over the Parties and the subject matter of the FCRA Action. The FCRA Action and Labor Code and PAGA Action include claims that, if proven, would authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted Final Approval of the Settlement and entered judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment pursuant to California Rules of Court, rule 3.769, subdivision (h).

4. STIPULATION OF CONDITIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES

The Parties stipulate to the certification of the FCRA Settlement Class and the BTB Settlement Class under this Agreement for purposes of settlement only. If the Court does not grant both Preliminary and Final Approval of the Class Action and Representative Settlement, the Parties will not stipulate to class certification, this does not constitute an admission by Defendant that class certification is proper, and this settlement stipulation will have no legal effect.

5. MOTIONS FOR APPROVAL OF SETTLEMENT AND AMENDMENT OF PLEADINGS

After full execution of this Agreement, Plaintiff will move for an order granting preliminary approval of the Settlement, approving, and directing the mailing of the proposed Notices of Class Action Settlement ("Class Notices") attached hereto as **Exhibit "B,"**

conditionally certifying the FCRA Settlement Class and BTB Settlement Class for settlement purposes only, and approving the deadlines proposed by the Parties for the submission of Requests for Exclusion and Objections. Should the Court decline to preliminarily approve any material aspects of the Settlement, the Settlement will be null and void and the Parties will have no further obligations under it. In such event, the Parties shall be returned to their respective positions as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed. If and when the Court preliminarily approves the Settlement, and after administration of the Class Notices in a manner consistent with the Court's Preliminary Approval Order, Plaintiff will move for an order finally approving the Settlement and seek entry of a Judgment in line with this Settlement. The Parties may both respond to any Objections lodged to final approval of the Settlement up to five (5) court days before the Final Approval Hearing.

As part of the Settlement, the Parties agree to work together to find mutually agreeable language in a proposed Fourth Amended Complaint in the FCRA Action which shall include Plaintiff's claim for violation of Labor Code § 432.7 on a class action basis and seeking to recover civil penalties under the PAGA for violation of Labor Code § 432.7. The Parties agree to stipulate to the filing of Plaintiff's Fourth Amended Complaint, attached hereto as **Exhibit "C."** After the stipulation and Fourth Amended Complaint are filed in the FCRA Action, Plaintiff shall dismiss the Labor Code and PAGA Action without prejudice. The Parties hereby expressly agree that whether or not the Court finally approves the Settlement, Plaintiff's allegations in the Second Amended Complaint in the Labor Code and PAGA Action will be effectively consolidated into the FCRA Action, will relate back to the date in which the Labor Code and PAGA Action was filed,, and Defendant will be estopped from making any argument that there is any adverse effect on the statute of limitations caused by Plaintiff's dismissal of the Labor Code and PAGA Action without prejudice to effectuate this consolidation.

6. STATEMENT OF NO ADMISSION

Defendant denies any wrongdoing of any sort and further denies any liability to Plaintiff, the FCRA Settlement Class and BTB Settlement Class with respect to any claims or allegations asserted in the FCRA Action, Labor Code and PAGA Action, and the PAGA Notice. This Agreement shall not be deemed an admission by Defendant of any claims or allegations asserted in the FCRA Action, Labor Code and PAGA Action, or the PAGA Notice. Except as set forth elsewhere herein, in the event that this Agreement is not approved by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived, limited or affected in any way any claims, rights or remedies, or defenses in the FCRA Action, Labor Code and PAGA Action, or the PAGA Notice, and Defendant will not be deemed to have waived, limited or affected in any way any of their objections or defenses in the FCRA Action, Labor Code and PAGA Action, and the PAGA Notice. Moreover, in such event, the Parties agree to share the Settlement Administration Costs. Payment of wages does not extend or alter the FCRA Class Member or BTB Class Member's period of employment for any purpose. The Parties shall be restored to their respective positions in the FCRA Action and Labor Code and PAGA Action prior to the entry of this Settlement.

7. RELEASE OF CLAIMS

Effective only upon the entry of an Order granting Final Approval of the Settlement, entry of Judgment and payment by Defendant to the Settlement Administrator of the full Gross Settlement Amount necessary to effectuate the Settlement, Plaintiff, all Participating FCRA Class Members, all Participating BTB Class Members, Aggrieved Employees, the LWDA, and the State of California release the Released Parties from all causes of action and claims that were alleged in the Operative Complaint in the FCRA Action or reasonably could have been alleged by reason of or in connection with any matter or fact set forth or referred to in the Operative Complaint in the FCRA Action, as follows:

A. FCRA: For Participating FCRA Class Members, the release includes all causes of actions and claims alleged in the Operative Complaint in the FCRA Action or reasonably could

have been alleged by reason of or in connection with any matter or fact set forth or referred to in the Operative Complaint in the FCRA Action, including claims for violation of the Fair Credit Reporting Act (15 U.S.C. section 1681 *et seq.*), violation of the California Investigative Consumer Reporting Agencies Act (California Civil Code section 1786 *et seq.*), and violation of the Consumer Credit Reporting Agencies Act (California Civil Code section 1785 *et seq.*) , that arose during the FCRA Class Period (the “FCRA Released Claims”).

B. BTB: For Participating BTB Class Members, the release includes all causes of actions and claims alleged in the Operative Complaint in the FCRA Action and Second Amended Complaint in the Labor Code and PAGA Action or reasonably could have been alleged by reason of or in connection with any matter or fact set forth or referred to in the Operative Complaint in the FCRA Action and Second Amended Complaint in the Labor Code and PAGA Action, including claims for violation of California Labor Code sections 432.7, 432.8, that arose during the BTB Class Period (the “BTB Released Claims”)

C. Release by All Aggrieved Employees: For Plaintiff as the representative of the California Labor and Workforce Development Agency, Aggrieved Employees, and, to the extent permitted by law, the State of California and the LWDA, the release includes all claims for civil penalties, costs, and attorneys’ fees and expenses pursuant to the California Labor Code Private Attorneys General Act of 2004 based upon all causes of actions and claims alleged in the Operative Complaint in the FCRA Action, Second Amended Complaint in the Labor Code and PAGA Action, and PAGA Notice or reasonably could have been alleged by reason of or in connection with any matter or fact set forth or referred to in the Operative Complaint in the FCRA Action, Second Amended Complaint in the Labor Code and PAGA Action, and PAGA Notice, including claims for violation of Labor Code sections 432.7, and 432.8 that arose during the PAGA Period (the “PAGA Released Claims”). The FCRA Released Claims, BTB Released Claims, and PAGA Released Claims shall be referred to herein as the “Released Claims”.

D. Claims Not Released

The releases above expressly exclude all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and any other claims outside of the FCRA Released Claims of Participating FCRA Class Members arising during the FCRA Class Period, BTB Released Claims of Participating BTB Class Members arising during the BTB Class Period, and the PAGA Released Claims of Plaintiff as the representative of the California Labor and Workforce Development Agency, Aggrieved Employees (and, to the extent permitted by law, the State of California and the LWDA) arising during the PAGA Period.

E. General Release.

Effective only upon the entry of an Order granting Final Approval of the Settlement, entry of Judgment and payment by Defendant to the Settlement Administrator of the full Gross Settlement Amount necessary to effectuate the Settlement, in addition to the Released Claims, Plaintiff makes the additional following General Release: Plaintiff releases the Released Parties from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule, law or regulation arising out of, relating to, or in connection with any act or omission of the Released Parties through the date of full execution of this Agreement in connection with Plaintiff's employment with Defendant or termination thereof, except for any and all other claims that may not be released as a matter of law through this Agreement. To the extent of the General Release provided herein, Plaintiff stipulates and agrees that, upon entry of an Order granting Final Approval of the Settlement, entry of Judgment and payment by Defendant to the Settlement Administrator of the full Gross Settlement Amount necessary to effectuate the Settlement, he shall have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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 her settlement with the debtor or released party.

8. SETTLEMENT ADMINISTRATOR

A. Plaintiff, through Class Counsel, have selected Phoenix Settlement Administrators to administer the Settlement, which includes, but is not limited to, translating the Class Notices to Spanish, distributing and responding to inquiries about the Class Notices, and calculating all amounts to be paid from the Gross Settlement Amount. Charges and expenses of the Settlement Administrator, currently estimated to be \$8,250, will be paid from the Gross Settlement Amount. If the actual amount of the Settlement Administration Costs is less, the additional amounts shall be a part of the Net Settlement Amount.

9. NOTICE, OBJECTION AND EXCLUSION PROCESS

A. Notice to the FCRA Settlement Class Members and BTB Settlement Class Members

(1) Within seven (7) calendar days after the Preliminary Approval Date, Defendant's Counsel shall provide the Settlement Administrator with information with respect to each FCRA Settlement Class Member and BTB Settlement Class Member, including his or her: (1) name; (2) last known address(es) currently in Defendant's possession, custody or control; (3) last known Social Security Number(s) in Defendant's possession, custody or control, and (4) employee identification number, if applicable, ("Class List"). The Settlement Administrator shall perform an address search using the United States Postal Service National Change of Address ("NCOA") database and update the addresses contained on the Class List with the newly found addresses, if any. Within seven (7) calendar days or soon thereafter of receiving the Class List from Defendant, the Settlement Administrator shall mail the Class Notices in English and Spanish to the FCRA Settlement Class Members and BTB Settlement Class Members via first-class regular U.S. Mail using the most current mailing address information available. The Settlement Administrator shall maintain the Class List and digital copies of all the Settlement Administrator's

records evidencing the giving of notice to any FCRA Settlement Class Member and BTB Settlement Class Members, for at least four (4) years from the Final Approval Date.

(2) The Class Notices will set forth:

- (a) the FCRA Settlement Class Member and BTB Settlement Class Member's estimated Individual FCRA Settlement Payment, estimated Individual BTB Settlement Payment, and/or Individual PAGA Payment, and the basis for each;
- (b) the information required by California Rule of Court, rule 3.766, subdivision (d);
- (c) the material terms of the Settlement;
- (d) the proposed Settlement Administration Costs;
- (e) the definition of the FCRA Settlement Class and BTB Settlement Class;
- (f) a statement that the Court has preliminarily approved the Settlement;
- (g) how the FCRA Settlement Class Member or BTB Settlement Class Member can obtain additional information, including contact information for Class Counsel;
- (h) information regarding opt-out and objection procedures; and
- (i) the date and location of the Final Approval Hearing.

(3) If a Class Notice from the initial notice mailing is returned as undeliverable, the Settlement Administrator will attempt to obtain a current address for the FCRA Settlement Class Member or BTB Settlement Class Member to whom the returned Class Notice had been mailed, within five (5) calendar days of receipt of the returned Class Notice, by undertaking skip

tracing. If the Settlement Administrator is successful in obtaining a new address, it will promptly re-mail the Class Notice to the FCRA Settlement Class Member or BTB Settlement Class Member. Further, any Class Notices that are returned to the Settlement Administrator with a forwarding address before the Response Deadline shall be promptly re-mailed to the forwarding address affixed thereto.

(4) No later than seven (7) calendar days from the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the completion of the notice process, including the number of attempts to obtain valid mailing addresses for and re-sending of any returned Class Notices, as well as the name, number of, and copies of all Requests for Exclusion and Objections received by the Settlement Administrator. The address, last four digits of their Social Security number, and any other contact or identifying information shall be redacted from copies of all Requests for Exclusion and Objections received by the Settlement Administrator prior to providing same to both Parties.

B. Objections

Only Participating FCRA Class Members and Participating BTB Class Members may object to the Settlement. In order for any FCRA Settlement Class Member or BTB Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must do so by mailing a written objection to the Settlement Administrator at the address provided on the Class Notices no later than the Response Deadline. The Settlement Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendant's Counsel and attach copies of all Objections to the Declaration it provides Class Counsel, which Class Counsel shall file in support of Plaintiff's Motion for Final Approval. The Objection should set forth in writing: (1) the Objector's name; (2) the Objector's address; (3) the Objector's signature; (4) the last four digits of the Objector's Social Security number; (5) the case name and case number (6) a statement of whether the Objector plans to appear at the Final Approval Hearing; and (7) the reason(s) for the Objection, along with whatever legal authority, if any, the Objector asserts in support of the

Objection. If a FCRA Settlement Class Member or BTB Settlement Class Member objects to the Settlement, the FCRA Settlement Class Member or BTB Settlement Class Member will remain a member of the FCRA Settlement Class or BTB Settlement Class, respectively, and if the Court approves this Agreement, the FCRA Settlement Class Member or BTB Settlement Class Member will be bound by the terms of the Settlement in the same way and to the same extent as a FCRA Settlement Class Member or BTB Settlement Class Member who does not object. The date of mailing of the Class Notices to the objecting FCRA Settlement Class Member or BTB Settlement Class Member shall be conclusively determined according to the records of the Settlement Administrator. FCRA Settlement Class Members and BTB Settlement Class Members need not object in writing to be heard at the Final Approval Hearing; they may object or comment in person at the hearing at their own expense. Class Counsel and Defendant's Counsel may respond to any objection lodged with the Court up to five (5) court days before the Final Approval Hearing.

C. Requesting Exclusion

Any FCRA Settlement Class Member or BTB Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the Settlement by mailing a written request to be excluded from the Settlement ("Request for Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline. To be valid, a Request for Exclusion must include: (1) the FCRA Class Member or BTB Class Member's name; (2) the FCRA Class Member or BTB Class Member's Address; (3) the FCRA Class Member or BTB Class Member's signature and date; (4) the last four digits of the FCRA Class Member or BTB Class Member's Social Security number; and (5) the following statement or a similar statement: "I wish to exclude myself from the settlement reached in the matter of *Zuniga v. House Foods America Corporation*. I understand that by excluding myself, I will not receive any money from the Class settlement reached in this matter." The Settlement Administrator shall immediately provide copies of all Requests for Exclusion to Class Counsel and Defendant's Counsel and shall report the names of the Requests for Exclusions that it receives, to the Court, in its declaration to be provided in advance of the Final Approval Hearing. Any FCRA Settlement Class Member or BTB Settlement Class Member who requests

exclusion using this procedure will not be entitled to receive any payment from the Settlement, except for an Individual PAGA Payment if the FCRA Class Member or BTB Class Member is an Aggrieved Employee, and will not be bound by the Settlement Agreement, except for the impact of the release of the PAGA Released Claims by Plaintiff as the representative of the California Labor and Workforce Development Agency, Aggrieved Employees, and, to the extent permitted by law, the State of California and the LWDA, if the FCRA Class Member or BTB Class Member is an Aggrieved Employee, or have any right to object to, appeal, or comment on the Settlement. Any FCRA Settlement Class Member or BTB Settlement Class Member who does not opt out of the Settlement by submitting a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if Final Approval of the Settlement is granted. A FCRA Settlement Class Member and BTB Settlement Class Member cannot submit both a Request for Exclusion and an objection. If a FCRA Settlement Class Member or BTB Settlement Class Member submits an Objection and a Request for Exclusion, the Request for Exclusion will control, and the Objection will be overruled. FCRA Settlement Class Members or BTB Settlement Class Members who worked during the PAGA Period as Aggrieved Employees that submit a valid Request for Exclusion will still be deemed Aggrieved Employees, will still receive their Individual PAGA Payments, and will be bound by the release of the PAGA Released Claims. Aggrieved Employees are not permitted to opt out of the PAGA portion of the Settlement.

10. DISTRIBUTION OF PAYMENTS

A. Distribution of Individual Settlement Payments

Participating FCRA Class Members will receive an Individual FCRA Settlement Payment, Participating BTB Class Members will receive an Individual BTB Settlement Payment, and Aggrieved Employees will receive an Individual PAGA Payment. Individual FCRA Settlement Payment, Individual BTB Settlement Payment, and Individual PAGA Payment checks shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after expiration of the 180-

day period, checks for such payments shall be canceled and funds associated with such checks shall be transmitted to the California Controller's Office, Unclaimed Property Fund.

B. Funding of Settlement

Defendant shall, within fourteen (14) calendar days of the Final Approval Date, make payment of the Gross Settlement Amount (as the same may be escalated pursuant to Paragraph 16 of this Agreement) and the attorney's fees and costs in an amount not to exceed \$120,000.00 to the Settlement Administrator pursuant to Internal Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account ("QSA") with an FDIC insured banking institution, for distribution in accordance with this Agreement and the Court's Orders, and subject to the conditions described herein.

C. Time for Distribution

Within seven (7) calendar days after payment of the full Gross Settlement Amount, or as soon thereafter as practicable, the Settlement Administrator shall distribute all payments due from the QSA for: (1) the Service Award to Plaintiff, as specified in this Agreement and approved by the Court; (2) the Attorneys' Fees and Costs Award to be paid to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA Payment, as specified in this Agreement and approved by the Court; and (5) Individual PAGA Payments to Aggrieved Employees, as specified in this Agreement and approved by the Court.. The balance remaining shall constitute the Net Settlement Amount from which Individual FCRA Settlement Payment and Individual BTB Settlement Payment shall be made to Participating FCRA Class Members and Participating BTB Class Members. All interests accrued shall be for the benefit of the FCRA Class Members and BTB Class Members and distributed on an equal share basis.

11. ATTORNEYS' FEES AND LITIGATION COSTS

It was recognized at mediation that given the modest sizes of the FCRA Class and BTB Class, and the available statutory remedies to FCRA Class Members and BTB Class Members in this case, that attorneys' fees and costs would exceed the benefits available to the FCRA Class and

BTB Class, and therefore Class Counsel would elect to instead seek fees outside of the fund, under the fee-shifting provisions outlined under the FCRA, BTB, PAGA, and other procedural and statutory avenues, as prevailing parties. For the limited purposes of this Settlement, Defendant agrees that it will not oppose an application by Plaintiff that he is the prevailing party in this action, that this action has resulted in the enforcement of an important right affecting the public interest if, that a significant benefit has been conferred on the general public and a large class of persons, that the necessity and financial burden of private enforcement are such as to make an award of fees and costs appropriate, and that such fees should not in the interest of justice be paid out of the recovery. On these grounds, Defendant agrees that it will not oppose an application by Plaintiff that he is entitled to seek fees and costs as awarded by the Court under the appropriate standards, including but not limited to those set forth under the FCRA, BTB, PAGA, Rule 23, and CCP § 1021.5 in an amount not to exceed One Hundred Twenty Thousand Dollars and Zero Cents (\$120,000.00). No fees were discussed prior to the class benefits being fully negotiated. If the Court does not grant both Preliminary and Final Approval of the Class Action and Representative Settlement, Defendant's agreement not to oppose Plaintiff's application for a fee and cost award does not constitute an admission by Defendant that Plaintiff is the prevailing party in the FCRA Action and this conditional agreement will be of no force or effect.

Class Counsel agrees to apply for an award of attorneys' fees and costs in an amount not to exceed One Hundred Twenty Thousand Dollars and Zero Cents (\$120,000.00). This fee request shall be subject to a Motion and will be supported by documented hours worked and costs incurred. Any amounts awarded by the Court shall be paid separate, apart, and in addition to the Gross Settlement Amount. The "future" aspect of the amounts stated herein includes, without limitation, all time and expenses expended by Class Counsel (including through final judgment and distribution, and any appeals therein). There will be no additional charge of any kind to either the FCRA Settlement Class Members and BTB Settlement Class Members or request for additional consideration from Defendant for such work unless, Defendant materially breaches this Agreement, including any term regarding funding, and further efforts are necessary from Class

Counsel to remedy said breach, including, without limitation, moving the Court to enforce the Agreement. Defendant reserves the right to oppose any additional fees and costs sought exceeding \$120,000.00. Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be diverted towards the Net Settlement Amount.

12. SERVICE AWARD TO PLAINTIFF

Named Plaintiff shall seek, and Defendant shall not oppose, a Service Award in an amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff, for participation in and assistance with the FCRA Action and Labor Code and PAGA Action. Any Service Award and additional consideration awarded and/or paid to Plaintiff shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves the Service Award in less than the amounts sought herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

13. TAXATION AND ALLOCATION

a. Each Individual FCRA Settlement Share and Individual BTB Settlement Share shall be allocated as follows: 100% as interest and penalties (to be reported on an IRS Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties.

b. Forms 1099 will be distributed by the Settlement Administrator 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, is 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.

c. Neither Plaintiff's Counsel nor Defendant's Counsel intend anything contained in this Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.

14. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION

The Parties have agreed that Five Thousand Dollars and Zero Cents (\$5,000.00) shall be allocated toward PAGA civil penalties, of which Three Thousand Seven Hundred and Fifty Dollars and Zero Cents (\$3,750.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and One Thousand Two Hundred and Fifty Dollars and Zero Cents (\$1,250.00) will be paid to Aggrieved Employees on a *pro rata* basis. Plaintiff shall give the appropriate notice to the LWDA of the settlement terms, pursuant to Code.

15. COURT APPROVAL

This Agreement is contingent upon an order by the Court granting Final Approval of the Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it becomes impossible to secure approval of the Settlement by the Court and the LWDA or the Court grants final approval conditioned on any material change to the Settlement that is not agreed to by one of the Parties, then either Party will have the right to void the Settlement. If the Settlement is voided in this manner, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay any amounts that otherwise would have been payable under this Settlement, and the Parties shall be restored to their respective positions in the FCRA Action prior to entry of this Settlement. If this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal, it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a) the Court reserves any authority to issue any appropriate orders when denying approval; and/or (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive the Settlement Agreement being voided or not approved, and which control in such an event. However, an award by the Court of a lesser amount than that sought by Plaintiff and Class Counsel for attorneys' fees and costs and/or the Service Award will not constitute a material change to the Settlement within the meaning of this paragraph.

Provided that the Judgment is consistent with the terms and conditions of this Settlement, Plaintiff, Participating FCRA Class Members, Participating BTB Class Members, Defendant, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all

rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, a motion under Code of Civil Procedure Section 473, and any extraordinary writ, and the Judgment therefore will become non-appealable by them at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment, consistent with the terms of this Settlement, becomes Final.

If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, writ, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then either Party will have the right to void the Settlement, which the Party must do by giving written notice to the other Party, the reviewing court, and the Court, not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment becomes final. A vacation, reversal, or modification of the Court's award of Class Counsel's attorneys' fees and costs and/or of the Service Award will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph.

16. INCREASE IN FCRA AND BTB CLASS SIZE

Based on its records and research, Defendant estimates that there are 112 FCRA Class Members and 90 BTB Class Members (202 total FCRA Class Members and BTB Class Members). In the event the number of FCRA Class Members and BTB Class Members increases by more than 10% (i.e., 223 total FCRA Class Members and BTB Class Members), then the Gross Settlement Amount shall be increased proportionally by the number of FCRA Class Members and BTB Class Members in excess of 223 multiplied by the FCRA and BTB Value. The FCRA and BTB Value shall be the originally agreed-upon GSA (\$75,00.00) divided by 202, which amounts to a FCRA

and BTB Value of \$371.29. Thus, for example, should there be 230 FCRA Class Members and BTB Class Members , then the GSA shall be increased by \$2599.03 $[(230-223 -) \times \$371.29]$.

17. NOTICE OF JUDGMENT

In addition to any duties set out herein, the Settlement Administrator shall provide notice of the Final Judgment entered in the FCRA Action by posting the same on its website for a period of no less than 90 days.

18. MISCELLANEOUS PROVISIONS

A. Interpretation of the Agreement

This Agreement constitutes the entire agreement between the Parties with respect to its subject matter. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary, or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Central District Court of California, and Plaintiff and Defendant hereby consent to the personal jurisdiction of the Court in the FCRA Action over it solely in connection therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties, and each of them, participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendant may claim that any ambiguity in this Agreement should be construed against the other. The Agreement may be modified only by a writing signed by the Parties and/or counsel for the Parties, as authorized, and approved by the Court.

B. Further Cooperation

The Parties and their respective attorneys shall proceed diligently to prepare and execute all documents, to seek the necessary approvals from the Court, and to do all things reasonably necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they will not take any action inconsistent with this Agreement, including, without limitation, encouraging FCRA Class Members or BTB Class Members to opt out of the Settlement. In the event the Court finds that any Party has taken actions inconsistent with the Settlement, including, without limitation, encouraging FCRA Class Members or BTB Class Members to opt out of the Settlement, the Court may take any corrective actions, including enjoining any Party from communicating regarding the Settlement on an *ex parte* basis, issuing corrective notice(s), awarding monetary, issue, evidentiary and/or terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of opt-outs and/or objections. If five percent (5%) or more of the number of FCRA Class Members or BTB Class Members respectively submit a complete, valid, and timely Request for Exclusion from the Settlement, then Defendant shall have the unilateral right to void this Settlement. Defendant may do so by giving notice to Plaintiff and the Court of its election to void the Settlement not later than fourteen (14) days after the Settlement Administrator issues its declaration attesting to the completion of the notice process, including the number of attempts to obtain valid mailing addresses for and re-sending of any returned Class Notices, as well as the name, number of, and copies of all Requests for Exclusion and Objections received by the Settlement Administrator as described in Paragraph 9(A)(4). Notwithstanding any other provisions in this Settlement, no sums shall be payable by Defendant in the event that this Settlement is voided as provided for herein.

C. Counterparts

The Agreement may be executed in one or more actual or non-original counterparts, all of which will be considered one and the same instrument and all of which will be considered duplicate originals.

D. Authority

Each individual signing below warrants that he or she has the authority to execute this Agreement on behalf of the Party for whom or which that individual signs.

E. No Third-Party Beneficiaries

Plaintiff, Participating FCRA Class Members, Participating BTB Class Members, Aggrieved Employees, the State of California, the LWDA, Class Counsel, and Defendant are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

F. Deadlines Falling on Weekends or Holidays

To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

G. Jurisdiction of the Court

The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Settlement Agreement and all orders and judgments entered in connection therewith.

H. Severability

In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant's Counsel and Class Counsel, on behalf of the Parties and the FCRA Settlement Class and BTB Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

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IT IS SO AGREED:

Dated: 03/13/2024, 2024

Irving Carlos
Irving Carlos (Mar 13, 2024 15:17 EDT)

IRVING CARLOS ZUNIGA
Plaintiff and Class Representative

Dated: _____, 2024

HOUSE FOODS AMERICA CORPORATION
Defendant
By: _____
Its: _____

AGREED AS TO FORM:

Dated: _____, 2024

DAVID D. BIBIYAN
VEDANG J. PATEL
Co-Counsel for Plaintiff

Dated: _____, 2024

TODD M. FRIEDMAN
Co-Counsel for Plaintiff

Dated: _____, 2024

CLINT D. ROBISON
MICHAEL I. KESSLER
Counsel for Defendant

IT IS SO AGREED:

Dated: _____, 2024

IRVING CARLOS ZUNIGA
Plaintiff and Class Representative

Dated: _____, 2024

HOUSE FOODS AMERICA CORPORATION
Defendant
By: _____
Its: _____

AGREED AS TO FORM:

Dated: March 13, 2024

Vedang J. Patel

DAVID D. BIBIYAN
VEDANG J. PATEL
Co-Counsel for Plaintiff

Dated: _____, 2024

TODD M. FRIEDMAN
Co-Counsel for Plaintiff

Dated: _____, 2024

CLINT D. ROBISON
MICHAEL I. KESSLER
Counsel for Defendant

IT IS SO AGREED:

Dated: _____, 2024

Dated: 3/17, 2024

IRVING CARLOS ZUNIGA
Plaintiff and Class Representative



HOUSE FOODS AMERICA CORPORATION
Defendant

By: Tsuyoshi Kido
Its: President

AGREED AS TO FORM:

Dated: _____, 2024

DAVID D. BIBIYAN
VEDANG J. PATEL
Co-Counsel for Plaintiff

Dated: _____, 2024

TODD M. FRIEDMAN
Co-Counsel for Plaintiff

Dated: March 18, 2024



CLINT D. ROBISON
MICHAEL I. KESSLER
Counsel for Defendant

EXHIBIT A

June 3, 2021

PAGA NOTICE FILED ELECTRONICALLY

Re: Notice Letter of Irving Oliver Carlos Zuniga on Behalf of Himself and Aggrieved Employees Under California Labor section 2699.3

Employer:	House Foods America Corporation	House Foods Holding USA Inc.
	7351 Orangetown Avenue	7351 Orangetown Avenue
	Garden Grove, California 92841	Garden Grove, California 92841

To Whom It May Concern:

This letter shall constitute notice under Labor Code section 2699.3 (hereinafter "PAGA Notice"). The \$75 filing fee for the PAGA Notice was paid online by credit card at the time this PAGA Notice was submitted online to the Department of Industrial Relations.

This PAGA Notice concerns Irving Oliver Carlos Zuniga's ("Employee") employment with Employee's former employer: House Foods America Corporation and House Foods Holding USA Inc. ("Employer"). Employee was employed as a non-exempt employee of Employer, with duties that included, but were not limited to, industrial machine maintenance and repair from approximately January of 2019 and through approximately March of 2021. In connection with the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech, Employee seeks to represent all employees of Employer(s, and each of them). With all other claims mentioned herein, Employee seeks to represent only non-exempt employees of Employer.

Employee and other aggrieved employees are covered by Labor Code section 510 and applicable Wage Orders. Employee is informed and believes, and based thereon alleges, that Employer had and has a policy or practice of requiring its employees to work more than eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock, and/or go through security screenings and/or

temperature checks off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, and for paying straight pay instead of overtime pay to the detriment of Employee and other aggrieved employees. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code sections 510, 1194, and applicable Wage Orders based on its practice of providing total compensation that is less than the required legal overtime compensation for the overtime worked, entitling Employee and other aggrieved employees to damages. Employer would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of conducting unlawful background checks on prospective and current employees prior to making a conditional offer. Employee is informed and believes, and based thereon alleges, that Employer violated applicable laws by, without limitation: requiring job applicants and employees to disclose their conviction history before Employer made a conditional offer of employment; inquiring into or considering the conviction history of applicants before Employer made any conditional offers of employment; considering, distributing, or disseminating information about arrests not followed by conviction, referrals to or participation in a pretrial or posttrial diversion program, convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law, or any conviction for which the convicted person has received a full pardon or has been issued a certificate of rehabilitation, while conducting conviction history background checks in connection with any applications for employment; intending to deny an applicant a position of employment solely or in part because of the applicant's conviction history; and asking applicants for employment to disclose, through any written form or verbally, information concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of the juvenile court, to the detriment of Employee and other aggrieved employees. As such, Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code section 432.7 and Government Code section 12952, entitling Employee and other aggrieved employees to damages. Employer would also be liable for civil penalties pursuant to Labor Code sections 432.7, 432.8, and 2699.

Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of failing to compensate Employee and other aggrieved employees with minimum wages for all hours worked or otherwise under Employer's control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or safety

equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding of employee time entries; editing and/or manipulation of time entries to show less hours than actually worked; and failing to pay split shift premiums. In addition, Employee and other aggrieved employees were required to report to work, and did report, but were not put to work and/or were furnished less than half their usual or scheduled day's work without being paid for half the usual or scheduled work at their regular rate of pay. As such, Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code sections 221, 223, 1197, 1182.12, Cal. Code Regs, title 8, section 110404(5)(A), and applicable Wage Orders based on its continued failure to pay minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual and liquidated damages under, without limitation, Labor Code sections 1194 and 1194.2. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

Employee is informed and believes, and based thereon alleges, that Employer had and has a policy or practice of compelling its employees to work in excess of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal periods or compensation in lieu thereof including, without limitation: by interrupting meal periods; not providing timely meal periods; failing to provide first and second meal periods; providing short meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal periods; and auto-deducting meal periods that could not be auto-deducted by law or during which employees worked. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code section 512, entitling Employee and other aggrieved employees to premium payments under Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant meal periods. Employer would thus be liable for civil penalties pursuant to Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant meal periods, as well as for failing to provide premium pay under Labor Code section 226.7.

Employee is informed and believes, and based thereon alleges, that Employer maintains policies or practices of compelling its non-exempt employees, including, without limitation, Employee, to work over four-hour periods (or major fractions thereof) without authorizing and permitting Employee and other aggrieved employees to take uninterrupted, timely, and complete ten-minute rest periods in which the employees are completely relieved of all of their duties, including, without limitation: by failing to provide rest periods all together; requiring that they be bundled together and/or with meal periods; interrupting them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not providing them in a timely fashion; and not permitting employees to leave the premises; and otherwise requiring on-duty/on-call rest periods. As such, Employee is informed and believes, and based thereon alleges, that Employee and other aggrieved employees are entitled to relief under, without limitation, Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant rest periods. Employer would thus be liable for civil penalties pursuant to Labor Code sections 558 and 2699 for both failing to

authorize the taking of compliant rest periods, as well as for failing to provide premium pay under Labor Code section 226.7.

Employee is informed and believes, and based thereon alleges, that Employer maintains policies or practices of failing to permit Employee and other aggrieved employees from taking cooldown rest periods in the shade as required under California Code of Regulations, Title 8, Section 3395 and premium pay in lieu thereof under Labor Code section 226.7. As a result, Employer would be liable for civil penalties under Labor Code sections 558 and 2699.

In addition to the above, Employee is informed and believes, and based thereon alleges that Employer failed and continue to fail to keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174, making it difficult for Employee and other aggrieved employees to calculate their unpaid wages and/or premium payments. Employer also failed to provide these documents to Employee and other aggrieved employees upon request. This would entitle Employee and other aggrieved employees to penalties prescribed by Labor Code sections 226 and 1198.5. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1174.5 and 2699.

As a result of, among other things, Employer's herein-described policy or practice of failing to: accurately record time; failing to pay overtime and minimum wages; provide meal periods; provide rest periods; and provide compensation in lieu of meal or rest periods; as described above, Employee is informed and believes, and based thereon alleges, that Employer also intentionally failed and continues to fail to furnish aggrieved employees, including, without limitation, Employee, with itemized wage statements that accurately reflect: gross wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; the legal name and address of the other; and other such information as required by Labor Code section 226, subdivision (a). Specifically, Employer intentionally failed to furnish employees with itemized wage statements that accurately reflect the hours worked by Mr. Carlos Zuniga and other aggrieved employees and the rates of pay at which they were or should have been paid, thus resulting in a failure to reflect gross and net wages earned and paid at each rate, as well. Consequently, since Employer would have failed to comply with Labor Code section 226, subdivision (a), Employee and other aggrieved employees would be entitled to recover penalties under, without limitation, Labor Code section 226, subdivision (e). Employer would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558, and 2699.

Employee is informed and believes, and based thereon alleges, that Employer also failed and refused, and continue to fail and refuse, to timely pay compensation to Employee and other terminated or resigned employees, including but not limited to, all overtime wages owed; all minimum wages owed; and all premium pay owed as set out above. Consequently, Employer would be liable for waiting time penalties for having violated California Labor Code sections 201,

202, and 203. Employer would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is further informed and believes, and based thereon alleges that Employer failed and refused, and continues to fail and refuse, to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing to provide Employee and other aggrieved employees with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employer, the name of the employer, including any “doing business as” names used, the name, address and telephone number of the workers’ compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employer under Labor Code section 2810.5. Employee is informed and believes that failure to provide such information, including rates of pay that are in effect, has permitted Employer to pay employees at rates of pay that were not agreed upon and violate minimum wage and overtime wage laws in California. Among other relief, employees may collect from Employer in connection with these violations’ civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer also failed and refused, and continues to fail and refuse, to reimburse employees, including, without limitation, Employee and other aggrieved employees, with their costs incurred for driving personal vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits, separately laundering mandatory uniforms, for the purchase of tools and safety equipment, and for the purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the discharge of their duties, or of their obedience to the directions of Employer, as required by Labor Code section 2802, and other statutory and common law offenses. As a result, Employer are liable to reimburse Employee and other aggrieved employees for these costs incurred in furtherance of work duties. In addition, Employer would be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is further informed and believes, and based thereon alleges, that Employer has or had a policy or practice of failing to reimburse deposits made, including uniform deposits together with all interest owed at the separation of employment in violation of Labor Code section 404, entitling Employee and other aggrieved employees to damages in the amount of the deposit and accrued interest. Employer would also be liable for civil penalties under Labor Code sections 558 and 2699.

Employee is further informed and believes, and based thereon alleges, that Employer has or had a policy or practice of failing to provide Employee and other aggrieved employees with the amount of paid sick leave required to be provided pursuant to California and local laws (including, without limitation, Labor Code section 246, *et seq.*) Employee is further informed and believes that Employer also did not permit its use upon request by Employee and other aggrieved employees as contemplated under California and local laws. As such, Employer would be liable for civil penalties for violation of the paid sick leave regulations under Labor Code sections 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to pay aggrieved employees their paid time off and vacation time owed upon separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3 and applicable Wage Orders. As such, Employer would be liable for civil penalties for violation of Labor Code section 227.3 under Labor Code section 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to pay aggrieved employees their wages in accordance with Labor Code Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Employee is informed and believes and based thereon alleges that Employer did not and do not pay Employee and other aggrieved employees in accordance with Labor Code Section 204. As such, Employee is informed and believes, and based thereon alleges that Employer violated Labor Code section 204. Employer would be liable for civil penalties pursuant to Labor Code sections 210, 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy of failing to provide all temporary workers with owed wages weekly by not later than the regular payday of the following week. As a result, pursuant to Labor Code section 201.3, Employer would be liable for civil penalties pursuant to Labor Code sections 201.3.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to provide all working employees with suitable seats when the nature of the work reasonably permits the use of seats. Employee is further informed and believes, and based thereon alleges that Employer has failed to place an adequate number of seats in reasonable proximity to the work area and/or permitted employees to use such seats when it does not interfere with the performance of their duties when employees are not engaged in the active duties of their employment and the nature of their work requires standing.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of preventing Employee and/or other aggrieved employees from using or disclosing the skills, knowledge and experience they obtained at Employer for purposes of competing with Employer, including, without limitation, preventing Employees from disclosing their wages in negotiating a new job with a prospective employer, and from disclosing who else works at Employer and under what circumstances that they might be receptive to an offer from a rival employer. As such, Employee is informed and believes that this violates Business and Professions Code sections 17200, 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor Code sections 232, 232.5, and 1197.5, subdivision (k). Employer would be liable for civil penalties pursuant to Labor Code section 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of preventing Employee and/or other aggrieved employees from disclosing

violations of state and federal law, either within Employer to their managers or outside Employer to private attorneys or government officials, among others, in violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5. In addition, Employee is informed and believes that these policies and/or practices prevent Employee and/or other aggrieved employees from disclosing information about unsafe or discriminatory working conditions, or about wage and hour violations in violation of Labor Code section 232 and 232.5. These violations of the Labor Code would expose Employer to liability for civil penalties pursuant to Labor Code section 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of preventing Employee and/or other aggrieved employees from engaging in lawful conduct during non-work hours, thus violating state statutes entitling employees to disclose wages, working conditions, and illegal conduct, including, without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5, subdivision (k). Employee is informed and believes that this lawful conduct includes the exercise of Employee and/or other aggrieved employee's constitutional rights of freedom of speech and economic liberty and would thus expose Employer to liability for civil penalties pursuant to Labor Code section 2699.

Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), please advise within sixty-five (65) calendar days of the postmarked date of this notice whether the LWDA intends to investigate the violations alleged above. Our office understands that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this PAGA Notice that the LWDA intends to investigate these allegations, Employee may immediately thereafter file a civil complaint against Employer to allege causes of action for civil penalties under the Private Attorney General Act for the herein-described alleged violations of the Labor Code.

Very truly yours,

BIBIYAN LAW GROUP, P.C.

/s/ David D. Bibiyan

David D. Bibiyan

cc: House Foods America Corporation (via U.S. Certified Mail, Return Receipt Requested)
House Foods Holding USA Inc. (via U.S. Certified Mail, Return Receipt Requested)

EXHIBIT B

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

IRVING CARLOS ZUNIGA, individually and
on behalf of all others similarly situated,

Case No.: 8:22-cv-00372-CJC-
JDE

Plaintiff,

v.

*[Assigned for all purposes to the Hon. Cormac J.
Carney, Dept. 9B]*

HOUSE FOODS AMERICA CORPORATION,
et. al.,

Defendant.

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT

I. WHY DID I GET THIS NOTICE?

You are receiving this notice because our records indicate that you are or were either: (a) a current, former, or prospective employee of House Foods America Corporation (“Defendant”) who applied for a position with Defendant and had a background check performed during the period from October 15, 2019 through June 16, 2023 or (b) a current or former employee of Defendant in the State of California who applied for a position with Defendant and had a background check performed during the period from November 19, 2018 through June 16, 2023. This Notice explains that the Central District Court of California has granted preliminary approval of a class action settlement that may affect you. You have legal rights and options that you may exercise at this time, so please read this Notice carefully.

II. WHAT IS THIS CLASS ACTION LAWSUIT ABOUT?

Plaintiff Irving Carlos Zuniga (“Plaintiff”) filed a lawsuit against Defendant in this Court, Case No. 8:22-cv-00372-CJC-JDE, (the “Action”), alleging that he and other employees were 1) subjected to background checks without clear and conspicuous disclosure and authorization and 2) subject to otherwise unlawful background checks by requiring applicants for employment to disclose information concerning an arrest or detention that did not result in conviction and utilizing that information as a factor in a condition of employment. By doing so, Plaintiff claimed that Defendant violated the Fair Credit Reporting Act and Labor Code § 432.7 otherwise known as the California Ban The Box statute and that Plaintiff and other similarly situated employees were entitled to recover penalties under these laws as well as California’s Private Attorneys General Act of 2004 (“PAGA”). Plaintiff alleged further that he, on behalf of all such employees, was entitled to damages, penalties, and attorneys’ fees and costs, among other remedies.

Defendant vigorously denied, and continues to deny, all allegations and contends that it conducted background checks in compliance with all state and federal laws. However, Defendant has agreed to settle the Action to avoid the expense of litigation.

The Court has not determined whether allegations against Defendant have merit. However, after good faith negotiations and for the purpose of avoiding the significant time and expense of further litigation, the outcome of which is uncertain, and providing a fair and reasonable resolution of this legal dispute, Plaintiff and Defendant have agreed to settle the lawsuit by paying a Gross Settlement Amount of Seventy-Five Thousand Dollars (\$75,000) to resolve the claims described above. Defendant has also agreed to separately not to oppose a motion requesting attorneys' fees and costs to Plaintiff's Counsel not to exceed \$120,000.00, subject to Court approval.

Nothing in the Settlement is intended, or should be construed, as an admission by Defendant that the Action has merit or that it has any liability to Plaintiff or other class members. The parties and their counsel have determined that the Settlement is fair, reasonable, and adequate and is in the best interests of the class as a whole.

III. WHO IS INCLUDED IN THE CLASS ACTION?

You are included in the Settlement Class if you were employed by or a prospective employee of House Foods America Corporation and applied for a position and were subject to a background check during the Applicable Class Periods. FCRA Class Members are defined as "all current, former, and prospective employees of Defendant who applied for a position with Defendant and had a Background Check performed during the FCRA Class Period." The FCRA Class Period means October 15, 2019 through June 16, 2023. BTB Class Members are defined as "all current and former employees of Defendant in the State of California who applied for a position with Defendant and had a Background Check performed during the BTB Class Period." The BTB Class Period is November 19, 2018 through June 16, 2023.

IV. WHAT DOES THE PROPOSED SETTLEMENT PROVIDE?

Defendant has agreed to pay a Gross Settlement Amount of \$75,000 ("Settlement Fund"). A Settlement Administrator has been appointed to administer the Settlement and facilitate all payments. The Settlement Administrator will pay sums from the Settlement Fund as follows: 1) the Class Representative Payment to Irving Carlos Zuniga in the amount of up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00); 2) costs of the Claims Administrator, estimated at Ten Thousand Dollars and Zero Cents (\$8,250.00) and subject to reduction or increase to correspond with the actual costs incurred; 3) Five Thousand Dollars and Zero Cents (\$5,000.00) allocated toward PAGA civil penalties, 75% of which (\$3,750) designated to go to the California Labor and Workforce Development Agency, and 25% (\$1,250) to Aggrieved Employees; and 4) the remainder of approximately Fifty Two Thousand Five Hundred (\$54,500.00), which is the estimated Net Settlement Amount to all Class Members. Any unclaimed settlement payments will be paid to the California Controller's Unclaimed Property Fund in the name of the Class Member.

1. **Settlement Payments:** Your individual share of the Settlement will be paid on a pro rata basis, and will be based on whether you were employed by Defendant in California, or in another state during the Class Periods. FCRA Class Members will receive one settlement share, BTB Class Members will receive one settlement share, and Class Members who fall into both definitions will receive two settlement shares. Defendant's records indicate that you were a Member of (FCRA/BTB/Both) classes and will receive (one/two) settlement share(s). If you dispute the accuracy of this, please contact the Claims Administrator identified below.

Release of Claims: If you do not exclude yourself from the Settlement (according to the procedures explained below), you, on behalf of yourself and your current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, will fully and finally release

Defendant, and its related entities, and their past, present and/future, direct and/or indirect, owners, officers, directors, members, shareholders, partners, managers, employees, agents, representatives, attorneys, assigns, subsidiaries, O'Hagan Meyer, insurers, investors, administrators, parent companies, House Foods Holding USA Inc., subsidiaries, affiliates, divisions, predecessors, successors, and joint venturers (collectively hereinafter the "Released Parties"), from all causes of action and claims that were alleged in the Operative Complaint in the FCRA Action or reasonably could have been alleged by reason of or in connection with any matter or fact set forth or referred to in the Operative Complaint in the FCRA Action. For FCRA Class Members it includes claims for violation of the Fair Credit Reporting Act (15 U.S.C. section 1681 et seq.), violation of the California Investigative Consumer Reporting Agencies Act (California Civil Code section 1786 et seq.), and violation of the Consumer Credit Reporting Agencies Act (California Civil Code section 1785 et seq.), that arose during the FCRA Class Period. For BTB Class Members, it includes claims for violation of California Labor Code sections 432.7, 432.8 during the BTB Class Period. For Aggrieved Employees it includes all claims for civil penalties, costs, and attorneys' fees and expenses pursuant to the California Labor Code Private Attorneys General Act of 2004 based upon all causes of actions and claims alleged in the Operative Complaint in the FCRA Action, Second Amended Complaint in the Labor Code and PAGA Action, and PAGA Notice or reasonably could have been alleged by reason of or in connection with any matter or fact set forth or referred to in the Operative Complaint in the FCRA Action, Second Amended Complaint in the Labor Code and PAGA Action, and PAGA Notice, including claims for violation of Labor Code sections 432.7, and 432.8 that arose during the PAGA Period. This release expressly excludes all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, and workers' compensation.

V. WHAT ARE MY OPTIONS?

A. You May Accept Your Share of the Settlement

You will receive a Settlement Share and will be bound by the terms of the Settlement and any final Judgment that may be entered by the Court. You will be considered to have released the claims against Defendant and the other released parties described in the Settlement **unless you submit a timely request to be excluded as described below.**

Please note that you are responsible for keeping the Settlement Administrator informed of any changes in your mailing address until your Settlement Share is received, should final approval of the Settlement be granted. Changing your mailing address and failing to inform the Settlement Administrator of the change may prevent you from receiving your Settlement Share.

B. You May Exclude Yourself from the Settlement

If you do not wish to participate in the Settlement and wish instead to be excluded from the Settlement, including any final judgment that may be entered by the Court, **you must mail a Request for Exclusion to the Settlement Administrator postmarked on or before [REDACTED], 2024] to the following address:**

Zuniga v. House Foods America Corporation – Settlement Administrator
c/o Phoenix Settlement Administrators
[ADDRESS]
[CITY, STATE, ZIP]
1 (800) 000-0000

The Request for Exclusion must include your (1) name, (2) address, (3) signature and date, (4) last four digits of your social security number, and (5) the following statement or a similar statement: “I wish to exclude myself from the settlement reached in the matter of *Zuniga v. House Foods America Corporation*. I understand that by excluding myself, I will not receive any money from the Class settlement reached in this matter.”. Any Class Member who properly submits a valid and timely request to be excluded from the Settlement will 1) not receive any payment of any kind in connection with this Settlement (with the exception of their Individual PAGA Payment if they are an Aggrieved Employee), 2) not be bound by the Settlement Agreement or receive any benefit of this Settlement (with the exception of the impact of the release of the PAGA Released Claims), and 3) have no right to object to the Settlement, appeal, or be heard at any hearing scheduled for the Court’s consideration of the Settlement. Any request for exclusion must be mailed by no later than _____, 2024 **[forty five (45) days after Phoenix mails Class Notice, or sixty (60) days in the case of a remailed notice]**.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Settlement will received their Individual PAGA Payments and will be bound by the release of the PAGA Released Claims.

C. You May Object to the Settlement

If you do not request to be excluded from the Settlement but believe that the Settlement it not fair, reasonable, and adequate, you may object to the terms of the Settlement before final Court approval by filing a written objection. If the Court rejects your objection, however, you will remain bound by the Settlement terms.

To object, you must send the objection to the Settlement Administrator, at the address listed below:

To Settlement Administrator

Zuniga v. House Foods America Corporation
Settlement Administrator
c/o Phoenix Settlement Administrators
[ADDRESS]
[CITY, STATE ZIP]

Any written objection must state your (1) name, (2) address, (3) signature, (4) the last four digits your social security number, (5) the case name and case number, (6) a statement of whether you plan to appear at the Final Approval Hearing, and (7) the reason(s) for the objection, along with whatever legal authority, if any, you assert in support of the objection. To be valid and effective, the Administrator must receive any written objection and notice of intent to appear at the Final Approval Hearing no later than _____, 2023 **[forty five (45) days after Phoenix mails Class Notice, or sixty (60) days in the case of a remailed notice]**. If the Court denies your objection, you will be bound by any Judgment with respect to the Settlement, and you will release the Defendant from legal claims as described above and in the Class and PAGA Settlement Agreement on file with the Court.

D. You Can Do Nothing

If you do nothing in response to this Class Notice, you will receive your Settlement Share of the Settlement, and you will be bound by any Judgment entered with respect to the Settlement, including by

releasing Defendant from legal claims as explained above and in the Class and PAGA Settlement Agreement on file with the Court.

VI. FINAL SETTLEMENT APPROVAL HEARING

To determine whether the Settlement should be finally approved as fair, reasonable, and adequate, the Court will hold a Final Approval Hearing on **[date]**, 2024, at **[time]** in Dept. 9B of the Central District Court of California, located at 411 West Fourth Street Santa Ana, CA, 92701-4516. The Court will also be asked to approve the requests for payment of the following: all Class Members' Individual Settlement Shares; the PAGA allocation to the California Labor and Workforce Development Agency and Aggrieved Employees; the Class Representative's service award; Class Counsel's Attorneys' Fees and Expenses Payment; and administrative costs to the Settlement Administrator.

The hearing may be continued without further notice to the Settlement Class. **It is not necessary for you to appear at this hearing, but you may appear and be heard at your option.**

VII. ADDITIONAL INFORMATION

This Notice contains a summary of the basic Settlement terms. For the precise terms and conditions of the Settlement, you should read the Class and PAGA Settlement Agreement on file with the Clerk of the Court.

CLASS MEMBERS WILL BE ABLE TO ACCESS DOCUMENTS RELATING TO THIS SETTLEMENT, OR BE INFORMED ABOUT ANY CONTINUANCES OF THE HEARINGS OR OF THE FINAL JUDGMENT VIA THE ADMINISTRATOR'S WEBSITE, WHICH CAN BE ACCESSED AT [REDACTED].

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS. ANY QUESTIONS SHOULD BE DIRECTED TO CLASS COUNSEL OR THE SETTLEMENT ADMINISTRATOR LISTED ABOVE.

APPROVED BY ORDER OF THE COURT

EXHIBIT C

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Attorneys for Plaintiff, IRVING CARLOS ZUNIGA

on behalf of himself and all others similarly situated and aggrieved

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

IRVING CARLOS ZUNIGA, on behalf of
himself and all others similarly situated,

Plaintiffs,

v.

HOUSE FOODS AMERICA
CORPORATION, a California corporation;
HOUSE FOODS HOLDING USA INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 8:22-cv-00372-CJC-JDEx

FOURTH AMENDED COMPLAINT FOR:

1. VIOLATION OF THE FAIR CREDIT REPORTING ACT;
2. VIOLATION OF CALIFORNIA LABOR CODE SECTION 432.7; and
3. CIVIL PENALTIES FOR VIOLATIONS OF CALIFORNIA LABOR CODE, PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.* (PAGA)

COMES NOW plaintiff IRVING CARLOS ZUNIGA (“Plaintiff”), on behalf of himself and all others similarly situated, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382 against HOUSE FOODS AMERICA CORPORATION, a California corporation, and any of its respective subsidiaries or affiliated companies (“HOUSE FOODS”), and collectively with DOES 1 through 100, as further defined below, “Defendants”) on behalf of Plaintiff and all other current, former, or prospective employees of Defendants (“Class Members”) for, among other things, alleged violations of the Fair Credit Reporting Act (“FCRA”) and similar California laws.

2. This is also a representative action brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, against HOUSE FOODS AMERICA CORPORATION, a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“HF AMERICA”), and DOES 1 through 100, as further defined below, “Defendants”) to recover civil penalties and any other relief available on behalf of Plaintiff, the State of California, and other current and former employees who worked for Defendants in California, within the Civil Penalty Period, as further defined herein, as employees and against whom one or more violations of any provision, as set forth in this complaint (“collectively aggrieved employees”).

3. Venue is proper in this Court because Defendants employ persons in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county. Code Civ. Proc. § 395. Plaintiff is informed and believes and thereon alleges that Defendants conduct business and employ aggrieved employees in Orange County; the events complained of occurred in this county; this county is where the employment relationship began; this is the county in which performance of the employment contract, or part of it, between Plaintiff and Defendants was due to be performed as well as the county in which the employment contract, or part of it, between Plaintiff and Defendants was actually performed.

4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by

1 Defendants during the applicable statutory period and suffered one or more of the Labor Code
2 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties under the Labor
3 Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”)
4 plus reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
5 employees of Defendants during the Civil Penalty Period.

6 5. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
7 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
8 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
9 PAGA allegations described herein is not required.

10 6. During the period beginning one (1) year preceding the provision of notice to the
11 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
12 Defendants violated, *inter alia*, Labor Code sections 432.7, and 432.8, among others.

13 7. California Labor Code §§ 2698, *et seq.*, the “Labor Code Private Attorneys Generals
14 Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private Attorneys General their
15 current or former employers for various civil penalties for violating the California Labor Code.

16 8. On or around June 3, 2021, Plaintiff provided written notice pursuant to Labor Code
17 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation
18 of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as
19 by certified mail, with return receipt requested to Defendants, and each of them.

20 **PARTIES**

21 **A. Plaintiff**

22 9. Plaintiff, IRVING CARLOS ZUNIGA, is a resident of the State of California. At all
23 relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants
24 employed Plaintiff as an employee. Plaintiff applied for work with Defendants in or about January
25 of 2020 and stopped working for Defendants in or about March 2021. At all relevant times herein,
26 Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as
27 a non-exempt employee, with duties that included, but were not limited to, industrial machine
28 maintenance and repair.

10. Plaintiff is a natural person, and at all times relevant to this Complaint was a “consumer” as defined by the Fair Credit Reporting Act, at 15 U.S.C. § 1681a.

B. Defendants

11. Plaintiff is informed and believes and based thereon alleges that defendant HOUSE FOODS AMERICA CORPORATION (“HF AMERICA”) is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of California and doing business in the County of Orange, State of California.

12. Plaintiff is informed and believes Defendants are “persons” as those terms are defined under the FCRA at 15 U.S.C. § 1681a(b).

13. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall include HOUSE FOODS, and any of their parent, subsidiary, or affiliated companies within the State of California, as well DOES 1 through 100 identified herein.

JOINT LIABILITY ALLEGATIONS

14. Plaintiff is informed and believes, and based thereon alleges that all of the acts and conduct described herein of each and every corporate defendant was duly authorized, ordered, and directed by the respective and collective defendant corporate employers, and the officers and management-level employees of said corporate employers. In addition thereto, said corporate employers participated in the aforementioned acts and conduct of their said employees, agents, and

1 representatives, and each of them; and upon completion of the aforesaid acts and conduct of said
2 corporate employees, agents, and representatives, the defendant corporation respectively and
3 collectively ratified, accepted the benefits of, condoned, lauded, acquiesced, authorized, and
4 otherwise approved of each and all of the said acts and conduct of the aforementioned corporate
5 employees, agents and representatives.

6 15. Plaintiff is informed and believes that Defendants' policies regarding the disclosures,
7 authorizations, background checks, and consumer reports mentioned herein were done for the
8 benefit of all Defendants, and at times, expressly named in said disclosures, authorizations,
9 background checks, and consumer reports. As a result of the aforementioned facts, Plaintiff is
10 informed and believes, and based thereon alleges that Defendants, and each of them, are jointly
11 liable for the violations that form the basis of this complaint.

12 **JURISDICTION**

13 16. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
14 of Civil Procedure section 410.10. Defendant removed this action to Federal Court and Defendant
15 contends there is jurisdiction.

16 17. Venue is proper in Orange County, California pursuant to Code of Civil Procedure
17 sections 392, et seq. because, among other things, Orange County is where the causes of action
18 complained of herein arose; the county in which the employment relationship began; the county in
19 which performance of the employment contract, or part of it, between Plaintiff and Defendants was
20 due to be performed; the county in which the employment contract, or part of it, between Plaintiff
21 and Defendants was actually performed; the unlawful acts alleged herein have a direct effect on
22 Plaintiff and those similarly situated within the county and the State of California, and because
23 Defendants employ numerous Class Members in Orange County and the State of California.

24 **FACTUAL BACKGROUND**

25 18. Plaintiff is informed and believes, and based thereon alleges that on or about January
26 of 2020, Defendants purported to provide consumer report disclosures and requested from Plaintiff
27 authorization to procure consumer reports and background checks for employment purposes.

28 19. Plaintiff is informed and believes and based thereon alleges that on or around January

1 2020, Defendants, procured a consumer report from PeopleG2 about Plaintiff as part of an
2 employment background screening without providing Plaintiff with the appropriate, applicable
3 disclosures and without the appropriate, applicable authorization in compliance with state and
4 federal laws.

5 20. PeopleG2 provides “screening services for every business” that procures credit
6 reports on behalf of employers, such as Defendants, that include “things like open lines of credit
7 (mortgages and credit cards), outstanding balances, and student or auto loans . . . [as well as] late or
8 missed payments, foreclosures, bankruptcies and collection accounts.”

9 21. The report Defendants procured from PeopleG2 about Plaintiff included Plaintiff’s
10 credit history as obtained from a third-party consumer reporting agency. This report included
11 information regarding Plaintiff’s outstanding balances and loans and payment history. This report
12 also included information about Plaintiff’s employment history. Thus, the report encompassed
13 information bearing on Plaintiff’s credit worthiness, credit standing, credit capacity, character, and
14 reputation and was a “consumer report.”

15 22. Plaintiff is informed and believes and based thereon alleges that Defendants did not
16 provide legally compliant disclosure and authorization forms to Plaintiff and Class Members as they
17 failed to contain, among other things, a “clear and conspicuous” disclosure, made in writing prior
18 to the report being procured or caused to be procured, in a document that consisted “solely” of the
19 disclosure, that a consumer report may be obtained for employment purposes as well as an
20 authorization, in writing, for the procurement of the report, which are in violation of 15 U.S.C. §§
21 1681b(b)(2)(A) and 1681d(a). Specifically, Plaintiff is informed and believes the disclosures did
22 not comply as a result of, without limitation: including superfluous information within the
23 disclosure, such as identifying information of third-party consumer reporting agencies, which may
24 not have been the reporting agencies used to obtain or procure the consumer report for Plaintiff and
25 Class members from a surplusage of other states; and/or failing to obtain proper authorization before
26 procuring a consumer report, including by either obtaining consumer reports without authorization
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1 or when such authorization had expired. Furthermore, Defendants' disclosures included state-
2 specific disclosures and authorizations for applicants from New York, New York City, Washington,
3 Minnesota, and Oklahoma, violating the requirement that the authorization consist "solely" of the
4 disclosure. A true and correct copy of the applicable disclosure documents are attached hereto as
5 Exhibit A.

6
7 23. Specifically, Exhibit A states as follows:

8
9
10 New York applicants only: Upon request, you will be informed whether or not a consumer report was requested by
11 the Employer, and if such report was requested, informed of the name and address of the consumer reporting
12 agency that furnished the report. You have the right to inspect and receive a copy of any investigative consumer
13 report requested by the Employer by contacting the consumer reporting agency identified above directly. By
14 signing below, you acknowledge receipt of Article 23-A of the New York Correction Law.

15
16 New York City applicants only: You acknowledge and authorize the Employer to provide any notices required by
17 federal, state or local law to you at the address(es) and/or email address(es) you provided to the Employer.

18
19 Washington State applicants only: You also have the right to request from the consumer reporting agency a
20 written summary of your rights and remedies under the Washington Fair Credit Reporting Act.

21
22 Minnesota and Oklahoma applicants only: Please check this box if you would like to receive a copy of a consumer
23 report if one is obtained by the Employer. ☐

24
25 Authorization shall be as valid as the original. The scope of this disclosure is all-encompassing, however, allowing
26 the Company to obtain from any outside organization all manner of investigative consumer reports throughout the
27 course of your employment to the extent permitted by law.

28
29 24. In *Gilberg v. California Check Cashing Stores, LLC*, 913 F.3d 1169 (9th Cir. 2019),
30 which provided further analysis in conjunction with *Syed v. M-I, LLC*, 853 F.3d 492 (9th Cir. 2017),
31 the Ninth Circuit held as follows:

32 "Consistent with *Syed*, we now hold that a prospective employer violates FCRA's
33 standalone document requirement by including extraneous information relating to
34 various state disclosure requirements in that disclosure. We also hold that the
35 disclosure at issue here is conspicuous but not clear."

36 CheckSmart contends *Syed* is not applicable here, because the surplusage in *Syed*
37 was a liability waiver, which did "not comport with the FCRA's basic purpose"
38 because it pulled "the applicant's attention away from his privacy rights protected
39 by the FCRA by calling his attention to the rights he must forego if he signs the
40 document." *Id.* at 502. CheckSmart argues its disclosure is distinguishable because
41 all of the extraneous information consists of other, state mandated disclosure
42 information, which furthers rather than undermines FCRA's purpose. We disagree.

1 Syed's holding and statutory analysis were not limited to liability waivers; Syed
2 considered the standalone requirement with regard to any surplusage. See *id.* at 501.
3 Syed grounded its analysis of the liability waiver in its statutory analysis of the
4 word "solely," noting that FCRA should not be read to have implied exceptions,
5 especially when the exception – in that case, a liability waiver – was contrary to
6 FCRA's purpose. See *id.* at 501– 03. Syed also cautioned "against finding
7 additional, implied exceptions" simply because Congress had created one express
8 exception. *Id.* at 501.2 Consistent with Syed, we decline CheckSmart's invitation
9 to create an implied exception here.

10 Although CheckSmart contends its disclosure form is consistent with the
11 congressional purpose of FCRA because it helps applicants understand their state
12 and federal rights, purpose does not override plain meaning. As Syed explained,
13 congressional intent "has been expressed in reasonably plain terms" and "that
14 language must ordinarily be regarded as conclusive." *Id.* at 500 (quoting Griffin,
15 458 U.S. at 570). The ordinary meaning of "solely" is "[a]lone; singly" or
16 "[e]ntirely; exclusively." The American Heritage Dictionary of the English
17 Language 1666 (5th ed. 2011). Because CheckSmart's disclosure form does not
18 consist solely of the FCRA disclosure, it does not satisfy FCRA's standalone
19 document requirement. CheckSmart, moreover, fails to explain how the surplus
20 language in its disclosure form comports with FCRA's purpose. Its disclosure refers
21 not only to rights under FCRA and under ICRAA applicable to Gilberg, but also to
22 rights under state laws inapplicable to Gilberg and to extraneous documents that
23 are not part of the FCRA-mandated disclosure – e.g., a "Notice Regarding
24 Background Investigation" and a "Summary of Your Rights Under the Fair Credit
25 Reporting Act." Because the presence of this extraneous information is as likely to
26 confuse as it is to inform, it does not further FCRA's purpose.

27 ...

28 CheckSmart's disclosure form is not reasonably understandable for two distinct
reasons. First, the disclosure form contains language that a reasonable person would
not understand. It says: The scope of this notice and authorization is all-
encompassing; however, allowing CheckSmart Financial, LLC to obtain from any
outside organization all manner of consumer reports and investigative consumer
reports now and, if you are hired, throughout the course of your employment to the
extent permitted by law. The beginning of this sentence does not explain how the
authorization is all-encompassing and how that would affect an applicant's rights.
The second half of the sentence, following the semicolon, lacks a subject and is
incomplete. It suggests that there may be some limits on the all encompassing
nature of the authorization, but it does not identify what those limits might be.
Second, the disclosure would confuse a reasonable reader because it combines
federal and state disclosures. The disclosure, for example, states: "New York and
Maine applicants or employees only: You have the right to inspect and receive a
copy of any investigative consumer report requested by CheckSmart Financial,
LLC by contacting the consumer reporting agency identified above directly." A
reasonable reader might think that only New York and Maine applicants could
contact the consumer reporting agency to get a copy of the report. Such an

1 understanding would be contrary to both FCRA and ICRAA. See 15 U.S.C. §
2 1681m(3)–(4); Cal. Civ. Code § 1786.22. We hold, therefore, that the district court
3 erred by deeming CheckSmart’s disclosure form clear.

4 25. Exhibit A contains a nearly verbatim disclosure in two key areas, both of which were
5 unlawful by the Ninth Circuit in *Gilberg*. The highlighted language from Gilbert above is nearly
6 verbatim to the language in the disclosures in Plaintiff’s background check authorization form.
7 Accordingly, for similar reasons as stated by the Ninth Circuit, Defendant’s background check
8 disclosures are not “clear” or “conspicuous” within the requirements of the FCRA. The form is also
9 not reasonably understandable for the same reasons as held by the Ninth Circuit in *Gilberg* because
10 it too contains the same extraneous information about state law disclosures that does not apply to
11 Plaintiff, who was a California employee. This language is highlighted above as well for
12 comparison purposes.

13 26. Defendants’ failure to provide a legally compliant disclosure and authorization form
14 deprived Plaintiff of meaningfully authorization the procurement of a consumer report because it
15 improperly confused Plaintiff about the purpose of the form and obscured Plaintiff’s rights. Plaintiff
16 had a substantive right to information and the right to privacy guaranteed by Section
17 1681b(b)(2)(A)(i)-(ii) which was denied by Defendants’ failure. *See, e.g., Bassett v. ABM Parking*
18 *Servs., Inc.*, 883 F.3d 776, 782 n.3 (9th Cir. 2018); *Patel v. Facebook, Inc.*, 932 F.3d 1264, 1274
19 (9th Cir. 2019)). Defendants’ failure to accommodate that right constitutes a concrete injury.

20 27. Defendants’ violation of FCRA was willful and/or reckless because the Ninth Circuit
21 had specifically ruled that this language was non-complaint in 2019 in *Gilberg v. California Check*
22 *Cashing Stores, LLC*, 913 F.3d 1169 (9th Cir. 2019) and in 2017 in *Syed v. M-I, LLC*, 853 F.3d 492
23 (9th Cir. 2017). In drafting and preparing the authorizations attached as Exhibit A, Defendants
24 consulted with lawyers who were knowledgeable and sophisticated in the area of employment law,
25 including the requirements for obtaining disclosures. Despite this and despite there being binding
26 case law stating that the language used in their authorization forms were inadequate as of 2017,
27 Defendants did use and continued to use this inadequate disclosure language in obtaining
28 authorizations from potential employees, such as Plaintiff, including in 2020 when they had Plaintiff

1 sign the authorization.

2 28. To the extent Defendants' interpretation of the law provided for it to use language
3 explicitly rejected by the Courts in *Gilberg* and *Syed*, such interpretation is objectively unreasonable
4 given those two decisions are not unclear about the requirements for obtaining authorization. Thus,
5 Defendants' use of non-compliant language was willful as well as reckless.

6 29. At all times herein mentioned, Plaintiff and aggrieved employees were employees of
7 Defendants in the State of California. As such, Plaintiff and aggrieved employees were the type of
8 persons contemplated by the California Labor Code, and said laws and regulations were intended to
9 apply to Defendants and to prevent the type of injury and damage alleged herein.

10 30. On information and belief, and at all relevant times, Defendants had and have a
11 practice or policy of conducting unlawful background checks on prospective and current employees
12 prior to making a conditional offer. Plaintiff is informed and believes, and based thereon alleges,
13 that Defendant violated applicable laws by, without limitation: requiring applicants for employment
14 to disclose information concerning an arrest or detention that did not result in conviction or
15 information concerning a referral to and participation in any pretrial or posttrial diversion program
16 concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law; requiring
17 applicants for employment to disclose information concerning an arrest, detention, processing,
18 diversion, supervision, adjudication, or court disposition that occurred while the person was subject
19 to the jurisdiction of the juvenile courts; requiring applicants for employment to disclose information
20 concerning a conviction for the Health and Safety Code as they related to marijuana; seeking records
21 of arrest or detention that did not result in conviction or records regarding a referral to and
22 participation in a pretrial or posttrial diversion program or concerning a conviction that had been
23 judicially dismissed or ordered sealed and utilizing that information as a factor in a condition of
24 employment; seeking records concerning an arrest, detention, processing, diversion, supervision,
25 adjudication, or court disposition that occurred while the person was subject to the jurisdiction of
26 the juvenile courts and utilizing that information as a factor in a condition of employment; and
27 seeking records of convictions for the Health and Safety Code as they related to marijuana and
28 utilizing that information as a factor in a condition of employment.

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CLASS ACTION ALLEGATIONS

31. Plaintiff brings this action on behalf of himself and all others similarly situated, as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current, former, and prospective employees of Defendants who applied for a position with Defendants and had a background check performed beginning two (2) years preceding the filing of Plaintiff’s complaint up until the date that final judgment is entered in this action (collectively referred to as “Background Check Class Members”).

32. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

33. Pursuant to Code of Civil Procedure section 382, Plaintiff also seeks to represent a class of all current and former employees of Defendants in the State of California who applied for a position with Defendants and had a background check performed beginning four (4) years preceding the filing of Plaintiff’s complaint up until the date that final judgment is entered in this action (collectively referred to as “BTB Class Members”).

34. The Background Check Members and BTB Class Members are referred to herein collectively as the “Class Members.” Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b) to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

A. Numerosity

35. The potential Class Members as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined yet, Plaintiff is informed and believes that there are at least seventy-five (75) Class Members within the State of California.

36. Accounting for employee turnover during the relevant periods necessarily increases this number substantially. Plaintiff alleges Defendants’ employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

1 **B. Commonality**

2 37. There are questions of law and fact common to Class Members. These common
3 questions include, but are not limited to:

4 (a) Whether Defendants failed to comply with the requirements of the FCRA
5 under 15 U.S.C. § 1681, *et seq.*, including by failing to include the proper
6 disclosures and proper authorizations required by law?

7
8 (b) Whether Defendants willfully failed to comply with the FCRA?

9 (c) Did Defendants violate Labor Code sections 432.7 and 432.8 by asking Class
10 Members to disclose information concerning an arrest or detention that did
11 not result in conviction, prior to an offer of employment?

12 (d) Did Defendants violate Labor Code sections 432.7 and 432.8 by asking Class
13 Members to disclose information concerning a referral to, and participation
14 in, any pretrial or posttrial diversion program, prior to an offer of
15 employment?

16 (e) Did Defendants violate Labor Code sections 432.7 and 432.8 by asking Class
17 Members to disclose information concerning a conviction that has been
18 judicially dismissed or ordered sealed pursuant to law, prior to an offer of
19 employment?

20 (f) Did Defendants violate Labor Code sections 432.7 and 432.8 by seeking or
21 utilizing as a factor in determining any condition of employment any record
22 of arrest or detention that did not result in a conviction?

23 (g) Did Defendants violate Labor Code sections 432.7 and 432.8 by seeking or
24 utilizing as a factor in determining any condition of employment any record
25 regarding a referral to, and participation in, any pretrial or posttrial diversion
26 program?

27 (h) Did Defendants violate Labor Code sections 432.7 and 432.8 by seeking or
28 utilizing as a factor in determining any condition of employment any record

concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law?

(i) Did Defendants violate Labor Code sections 432.7 and 432.8 by asking Class Members to disclose information concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of the juvenile court?

(j) Did Defendants violate Labor Code sections 432.7 and 432.8 by seeking or utilizing as a factor in determining any condition of employment any record concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while a person was subject to the process and jurisdiction of the juvenile court?

(k) Did Defendants intentionally violate Labor Code sections 432.7 and/or 432.8?

(l) Are Class Members entitled to costs and attorneys' fees?

(m) Are Class Members entitled to actual damages?

(n) Are Class Members entitled to punitive damages?

(o) Are Class Members entitled to interest?

C. Typicality

38. The claims of Plaintiff herein alleged are typical of those claims which could be alleged by any Class Members, and the relief sought is typical of the relief which would be sought by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws and regulations that have the force and effect of law and statutes as alleged herein.

D. Adequacy of Representation

39. Plaintiff will fairly and adequately represent and protect the interest of Class Members. Counsel who represents Plaintiff is competent and experienced in litigating class actions and has no interests adverse to, or otherwise conflict with, the interests of the absent Class Members.

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41. Class action treatment will allow those similarly situated to litigate their claims in a manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

(Violation of the Fair Credit Reporting Act – Against All Defendants)

43. Defendants are “persons” as defined by section 1681a(b) of the FCRA;

45. Pursuant to 15 U.S.C. section 1681b(b)(2)(A), an employer may not procure, or cause to be procured, consumer reports for employment purposes without providing the [employee] with “a clear and conspicuous disclosure... made in writing... in a document that consists solely of the disclosure that a consumer report may be obtained for employment purposes” and which the consumer has “authorized in writing” the procurement of the report by that person.

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1 that is not necessary to clearly and conspicuously advise an applicant or employee of FCRA rights,
2 should be excluded.

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4 47. Plaintiff is informed and believes, and based thereon alleges, that during the relevant
5 time periods alleged herein, Defendants have, at times, obtained and used information in consumer
6 reports to conduct background checks on prospective and existing employees which failed to comply
7 with the “standalone” document and “clear and conspicuous” requirements under the FCRA because
8 they, among other things, included superfluous information within the disclosure, such as
9 identifying information of a third party consumer reporting agency, which may not have been the
10 reporting agency used to obtain or procure the consumer report for Plaintiff and Class Members
11 and/or failed to obtain proper authorization before procuring a consumer report, including by either
12 obtaining consumer reports without authorization or when such authorization had expired.
13 Specifically, Defendants authorization forms included detailing information applicable to New York
14 State, New York City, Washington State employees, Minnesota State, and Oklahoma State
15 applicants.
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18 48. Plaintiff is informed and believes, and based thereon alleges, that Defendants’
19 violations of the FCRA were willful. Defendant knew or should have known about its obligations
20 under the FCRA as a result of the plain language of the statutes.

21 49. Plaintiff, on behalf of himself and Class Members, seeks all statutory remedies
22 available under the FCRA, including statutory penalties, actual damages, punitive damages, and
23 attorneys’ fees and costs pursuant to, without limitation, 15 U.S.C. §§ 1681n.

24 **SECOND CAUSE OF ACTION**

25 **(Violation of Labor Code § 432.7 – Against All Defendants)**

26 50. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
27 and incorporates each by reference as though fully set forth hereat
28

1 51. At all times mentioned herein, California Labor Code sections 432.7, subdivision
2 (a)(1) has stated prospective employers “shall not ask an applicant for employment to disclose ...
3 information concerning an arrest or detention that did not result in conviction, or information
4 concerning a referral to, and participation in, any pretrial or posttrial diversion program, or
5 concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law....[and]
6 also shall not seek from any source whatsoever, or utilize, as a factor in determining any condition
7 of employment including hiring, promotion, termination, or any apprenticeship training program
8 or any other training program leading to employment, any record of arrest or detention that did not
9 result in conviction, or any record regarding a referral to, and participation in, any pretrial or
10 posttrial diversion program, or concerning a conviction that has been judicially dismissed or
11 ordered sealed pursuant to law”

12 52. At all times mentioned herein, California Labor Code sections 432.7, subdivision
13 (a)(2) has stated prospective employers “shall not ask an applicant for employment to disclose,
14 through any written form or verbally, information concerning or related to an arrest, detention,
15 processing, diversion, supervision, adjudication, or court disposition that occurred while the person
16 was subject to the process and jurisdiction of the juvenile court. An employer also shall not seek
17 from any source whatsoever, or utilize, as a factor in determining any condition of employment
18 including hiring, promotion, termination, or any apprenticeship training program or any other
19 training program leading to employment, any record concerning or related to an arrest, detention,
20 processing, diversion, supervision, adjudication, or court disposition that occurred while a person
21 was subject to the process and jurisdiction of the juvenile court.”

22 53. At all times mentioned herein, California Labor Code section 432.8 is incorporated
23 into California Labor Code section 432.7 and restricts asking applications to disclose and seeking
24 o considering as a factor in employment “a conviction for violation of subdivision (b) or (c) of
25 Section 11357 of the Health and Safety Code or a statutory predecessor thereof, or subdivision (c)
26 of Section 11360 of the Health and Safety Code, or Section 11364, 11365, or 11550 of the Health
27 and Safety Code as they related to marijuana prior to January 1, 1976, or a statutory predecessor
28 thereof, two years from the date of such a conviction.”

54. Pursuant to Labor Code section 432.7, subdivision (c), any person who violates this section may be subject to “actual damages or two hundred dollars (\$200), whichever is greater, plus costs, and reasonable attorney’s fees. An intentional of violation of this section shall entitle the applicant to treble actual damages, or five hundred dollars (\$500), whichever is greater, plus costs, and reasonable attorney’s fees...”

55. Defendants violation of California Labor Code section 432.7 was intentional and thus Plaintiff seeks, on behalf of himself and the Class, statutory damages of \$200 to \$500 plus reasonable attorney's fees and costs.

THIRD CAUSE OF ACTION

(Civil Penalties Under the Private Attorneys' General Act (2004) – Against All Defendants)

56. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

57. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

58. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor Code except those for which a civil penalty is specifically provided, the established civil penalty for a violation of those provisions is as follows: if, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

59. During the relevant time period, Plaintiff is informed and believes and thereon alleges that Defendants had and has a practice or policy of conducting unlawful background checks on prospective and current employees as part of their employment. Plaintiff is informed and believes, and based thereon alleges, that Defendant violated applicable laws by, without limitation:

1 requiring applicants for employment to disclose information concerning an arrest or detention that
2 did not result in conviction or information concerning a referral to and participation in any pretrial
3 or posttrial diversion program concerning a conviction that has been judicially dismissed or ordered
4 sealed pursuant to law; requiring applicants for employment to disclose information concerning an
5 arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred
6 while the person was subject to the jurisdiction of the juvenile courts; requiring applicants for
7 employment to disclose information concerning a conviction for the Health and Safety Code as
8 they related to marijuana; seeking records of arrest or detention that did not result in conviction or
9 records regarding a referral to and participation in a pretrial or posttrial diversion program or
10 concerning a conviction that had been judicially dismissed or ordered sealed and utilizing that
11 information as a factor in a condition of employment; seeking records concerning an arrest,
12 detention, processing, diversion, supervision, adjudication, or court disposition that occurred while
13 the person was subject to the jurisdiction of the juvenile courts and utilizing that information as a
14 factor in a condition of employment; and seeking records of convictions for the Health and Safety
15 Code as they related to marijuana and utilizing that information as a factor in a condition of
16 employment all to the detriment of Plaintiff and Aggrieved Employees.

17 60. As a direct and proximate result of the herein-described Labor Code violations,
18 Plaintiff and other aggrieved employees are entitled to recover attorney's fees, and civil penalties
19 from Defendants pursuant to Labor Code sections 2699(f)(2).

20 **DEMAND FOR JURY TRIAL**

21 61. Plaintiff demands a trial by jury on all causes of action contained herein.

22 **PRAYER**

23 WHEREFORE, on behalf of himself and all others similarly situated, Plaintiff prays for
24 judgment against Defendants as follows:

25 A. An order certifying this case as a Class Action;

26 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
27 counsel as class counsel;

- 1 C. For penalties pursuant to Labor Code sections 432.7 and 432.8;
2 D. For all penalties permitted by Labor Code section 2698, et seq.;
3 E. Punitive damages;
4 F. Statutory penalties;
5 G. Declaratory relief;
6 H. Injunctive relief;
7 I. For attorneys' fees in prosecuting this action;
8 J. For interest accrued to date;
9 K. Costs of suit incurred herein; and
10 L. For such other relief as the Court deems just and proper.
11

12 Dated: March 15, 2024

BIBIYAN LAW GROUP, P.C.

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BY: _____

VEDANG J. PATEL

15

Attorneys for Plaintiff IRVING CARLOS ZUNIGA,
on behalf of himself and all others similarly situated
and aggrieved

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