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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EMMANUEL SALINAS, on behalf of himself
and the Class members,

Plaintiff,

v.

NESTLÉ PURINA PETCARE COMPANY;

Defendant.

Case No.: 1:21-cv-01140-JLT-CDB

Hon. Jennifer L. Thurston
Magistrate: Hon. Christopher D. Baker

**DECLARATION OF CAROLYN H.
COTTRELL IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: May 1, 2023
Time: 10:30 a.m.
Ctrm.: 4, 7th Floor

Filed: July 26, 2021
Trial Date: None Yet Set

DECLARATION OF CAROLYN H. COTTRELL

I, Carolyn H. Cottrell, hereby declare as follows:

1. I am an attorney at law duly licensed and in good standing to practice law in the courts of California (State Bar No. 166977) and am admitted to practice law before this Court, the United States District Court Eastern District of California.

2. I am a partner at the law firm of Schneider Wallace Cottrell Konecky LLP (“SWCK”). SWCK specializes in class, collective, and PAGA litigation in state and federal court.

3. I am lead counsel of record for Plaintiff Emmanuel Salinas on behalf of himself and all others similarly situated (“Plaintiff”), in the above-captioned case. I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. I am familiar with the file, the documents, and the history related to these cases. The following statements are based on my personal knowledge and review of the files. If called to do so, I could and would testify competently thereto.

4. A true and correct copy of the fully-executed Joint Stipulation of Settlement and Release (the “Settlement Agreement” or the “Settlement”) is attached hereto as **Exhibit 1**. The Notice of Class Action and PAGA Representative Action Settlement (“Class Notice”) is attached to the Settlement as **Exhibit A**.

QUALIFICATIONS, EXPERIENCE, AND EXPERTISE

5. SWCK is regarded as one of the leading private plaintiff’s firms in wage and hour class actions and employment class actions. In November 2012, the Recorder listed the firm as one of the “top 10 go-to plaintiffs’ employment firms in Northern California.” The partners and attorneys have litigated major wage and hour class actions, have won several prestigious awards, and sit on important boards and committees in the legal community. SWCK was founded by Todd Schneider in 1993, and I have been a member of the firm since 1995.

6. SWCK has acted or is acting as class counsel in numerous cases. A partial list of cases which have been certified and/or settled as class actions includes: *Wright, et al. v. Frontier Management LLC, et al.*, (Case No. 2:19-cv-01767-JAM-CKD) (Eastern District of California, March 13, 2023) (final approval of California, Illinois, Oregon, and Washington class and FLSA

collective action settlement); *Campos v. Extra Express (Cerritos) Inc.*, (Case No. BC715057) (Los Angeles Superior Court, Jan. 18, 2023) (final approval of California law wage and hour class action settlement alleging misclassification of short haul delivery drivers); *Huddleston v. John Christner Trucking, LLC*, (Case No. 4:17-cv-00549-GKF-CDL) (Northern District of Oklahoma, October 31, 2022) (final approval of California and Oklahoma class and FLSA collective action settlement where Plaintiff obtained class certification on behalf of misclassified truck drivers); *Tinaco v. Quik Stop Markets, Inc.* (Case No. RG20061119) (Alameda County Superior Court, June 23, 2022) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, waiting time penalties, and failure to provide itemized wage statements, under California law); *Ramirez, et al. v. Rite Aid Corp., et al.*, (Case No. CV 20-3531-GW-SKx) (Central District of California, May 19, 2022) (final approval of California class action and PAGA representative action settlement); *Madrigal v. Mission Lakes Country Club, Inc.* (Case No. RIC2003428) (Riverside County Superior Court, May 18, 2022) (final approval of California class action and PAGA representative action); *Hazel v. Himage Solutions, Inc.* (Case No. RG20068159) (Alameda County Superior Court, November 2, 2021) (final approval of a California class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to reimburse necessary business expenditures, waiting time penalties, and failure to provide itemized wage statements); *Pine Manor Investors, LLC v. FPI Management, Inc.* (Case No. 34-2018-00237315) (Sacramento County Superior Court, October 20, 2021) (final approval of a California class action settlement in action that alleged improper billing for workers compensation charges by an apartment complex management company); *Etcheverry v. Franciscan Health System, et al.* (Case No. 3:19-cv-05261-RJB-MAT) (Western District of Washington, October 19, 2021) (final approval of hybrid Fair Labor Standards Act and Washington class action); *Jean-Pierre, et al. v. J&L Cable TV Services, Inc.* (Case No. 1:18-cv-11499-MLW) (District of Massachusetts, August 31, 2021) (final approval of hybrid Fair Labor Standards Act and Massachusetts, New Hampshire, Maine, and Pennsylvania class action); *Amaraut, et al. v. Sprint/United Management Co.* (Case No. 19-cv-411-WQH-AHG) (Southern District of California, August 5, 2021) (final approval of hybrid Fair Labor Standards Act

and California Labor Code Rule 23 action); *Diaz, et al. v. TAK Communications CA, Inc., et al.* (Case No. RG20064706) (Alameda Superior Court, July 27, 2021) (final approval of hybrid Fair Labor Standards Act and California Labor Code class action); *Villafan v. Broadspectrum Downstream Services, Inc., et al.* (Case No. 3:18-cv-06741-LB) (Northern District of California, April 8, 2021) (final approval of hybrid Fair Labor Standards Act and California law class action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements); *Jones, et al. v. CertifiedSafety, Inc., et al.* (lead Case No. 3:17-cv-02229-EMC) (Northern District of California, June 1, 2020) (final approval of hybrid Fair Labor Standards Act and California, Washington, Illinois, Minnesota, Alaska, and Ohio class action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements); *El Pollo Loco Wage and Hour Cases* (Case No. JCCP 4957) (Orange County Superior Court, January 31, 2020) (final approval of a class action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements, under California law); *Soto, et al. v. O.C. Communications, Inc., et al.* (Case No. 3:17-cv-00251-VC) (Northern District of California, Oct. 23, 2019) (final approval of a hybrid Fair Labor Standards Act and California and Washington law Rule 23 action with joint employer allegations); *Manni v. Eugene N. Gordon, Inc. d/b/a La-Z-Boy Furniture Galleries* (Case No. 34-2017-00223592) (Sacramento Superior Court) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, waiting time penalties, and failure to provide itemized wage statements, under California law); *Van Liew v. North Star Emergency Services, Inc., et al.* (Case No. RG17876878) (Alameda County Superior Court) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to reimburse for necessary business expenditures, waiting time penalties, and failure to provide itemized wage statements, under federal law); *Asalati v. Intel Corp.* (Case No. 16cv302615) (Santa Clara Superior Court) (final approval of a class and collective action

1 settlement for failure to pay for all hours worked, failure to pay overtime, failure to provide meal
2 and rest breaks, failure to reimburse for necessary business expenditures, failure to adhere to
3 California record keeping requirements, waiting time penalties, and failure to provide itemized
4 wage statements, under federal and California law); *Harmon, et al. v. Diamond Wireless, LLC*,
5 (Case No. 34-2012-00118898) (Sacramento Superior Court) (final approval of a class action
6 settlement for failure to pay wages free and clear, failure to pay overtime and minimum wages,
7 failure to provide meal and rest breaks, failure to pay full wages when due, failure to adhere to
8 California record keeping requirements, and failure to provide adequate seating, under California
9 law); *Aguilar v. Hall AG Enterprises, Inc., et al.*, (Case No. BCV-16-10994-DRL) (Kern County
10 Superior Court) (final approval of a class action settlement for failure to provide meal and rest
11 periods, failure to compensate for all hours worked, failure to pay minimum and overtime wages,
12 waiting time penalties, failure to provide itemized wage statements, and failure to pay undiscounted
13 wages, under California law); *Viceral and Krueger v. Mistras Group, Inc.*, (Case No. 3:15-cv-
14 02198-EMC) (Chen, J.) (Northern District of California) (final approval of a class and collective
15 action settlement for failure to compensate for all hours worked, including overtime, under federal
16 and California law); *Jeter-Polk, et al. v. Casual Male Store, LLC, et al.*, (Case No. 5:14-CV-00891)
17 (Central District of California) (final approval of a class action settlement for failure to provide
18 meal and rest periods, failure to compensate for all hours worked, failure to pay overtime wages,
19 unpaid wages and waiting time penalties, and failure to provide itemized wage statements); *Meza,*
20 *et al. v. S.S. Skikos, Inc., et al.*, (Case No. 15-cv-01889-TEH) (Northern District of California) (final
21 approval of class and collective action settlement for failure to compensate for all hours worked,
22 including overtime, under federal and California law, failure to provide meal and rest breaks, failure
23 to reimburse for necessary business uniforms, failure to pay full wages upon termination to, and
24 failure to provide accurate itemized wage statements); *Holmes, et al v. Xpress Global Systems, Inc.*,
25 (Case No. 34-2015-00180822) (Sacramento Superior Court) (final approval of a class action
26 settlement for failure to provide meal and rest breaks and failure to provide accurate itemized wage
27 statements); *Guilbaud, et al. v. Sprint Nextel Corp. et al.*, (Case No. 3:13-cv-04357-VC) (Northern
28 District of California) (final approval of a class and collective action settlement for failure to

compensate for all hours worked, including overtime, failure to provide meal and rest breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Molina, et al. v. Railworks Track Systems, Inc.*, (Case No. BCV-15-10135) (Kern County Superior Court) (final approval of a class action settlement for failure to provide meal and rest breaks, unpaid wages, unpaid overtime, off-the-clocker work, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Allen, et al. v. County of Monterey, et al.*, (Case No. 5:13-cv-01659) (Northern District of California) (settlement between FLSA Plaintiffs and Defendant to provide relief to affected employees); among many others.

7. Nearly my entire legal career has been devoted to advocating for the rights of individuals who have been subjected to illegal pay policies, discrimination, harassment and retaliation and representing employees in wage and hour and discrimination class actions. I have litigated hundreds of wage and hour, employment discrimination and civil-rights actions, and I manage many of the firm's current cases in these areas. I am a member of the State Bar of California, and have had memberships with Public Justice, the National Employment Lawyers Association, the California Employment Lawyers Association, and the Consumer Attorneys of California. I served on the Board of Directors for the San Francisco Trial Lawyers Association and co-chaired its Women's Caucus. I was named one of the "Top Women Litigators for 2010" by the Daily Journal. In 2012, I was nominated for Woman Trial Lawyer of the Year by the Consumer Attorneys of California. I have been selected as a Super Lawyer every year since 2014. I earned my Bachelor's degree from the University of California, and I am a graduate of the University of the Pacific, McGeorge School of Law.

CASE SUMMARY AND PROCEDURAL HISTORY

The State Action and This Action

8. On July 26, 2021, Plaintiff filed this Action against Nestlé Purina Petcare Company ("Defendant") and Nestlé USA, Inc., alleging violations under California wage and hour laws on behalf of a putative California Class. ECF 1.

9. On July 30, 2021, Plaintiff submitted a California Labor Code Private Attorneys

1 General Act of 2004 (“PAGA”) notice to the California Labor and Workforce Development Agency
2 (“LWDA”). Once the 65-day exhaustion period passed pursuant to the PAGA without response
3 from the LWDA, on September 8, 2021, Plaintiff filed a separate complaint pursuant to the PAGA
4 in the California Superior Court of Alameda County (“State Action”) against Defendant and Nestlé
5 USA, Inc. (Case No. 21CV00012), a copy of which Plaintiff submitted to the LWDA on October
6 19, 2021. After Plaintiff received a conformed copy of the State Action complaint, Plaintiff
7 submitted that copy to the LWDA on October 27, 2021.

8 10. Following the Parties meet and confer efforts, in both actions on June 2, 2022, the
9 Parties stipulated to dismiss Nestlé USA, Inc., without prejudice, based on Nestlé USA, Inc.’s
10 representations that it did not employ or control, direct, or create policies for aggrieved employees
11 in California for Defendant. The superior court granted the Parties’ stipulation that same day. The
12 district Court granted the Parties’ stipulation the next day.

13 **The Operative Complaint Filed Pursuant to the Parties’ Settlement**

14 11. For purposes of the Settlement, the Parties agreed that Plaintiff will submit an
15 amended PAGA notice, and that the Parties would stipulate to amend the Complaint in this Action
16 to include the PAGA claims asserted in the State Action and the claims released in the Settlement.

17 12. On February 28, 2023, Plaintiff submitted an amended PAGA notice to the LWDA,
18 pursuant to the Parties’ agreement.

19 13. The Parties filed their stipulation for leave to file the First Amended Complaint
20 (“FAC”) on March 22, 2023, which was granted by the Court on March 23, 2023. *See* ECF 48-49.
21 On March 23, 2023, Plaintiff filed the FAC and submitted a copy of the FAC to the LWDA. *See*
22 ECF 50.

23 14. For purposes of the Settlement, the Parties further agreed that Plaintiff will dismiss
24 the State Action without prejudice immediately after Plaintiff files the FAC. *See* Settlement, ¶ XV.

25 **Mediation Efforts**

26 15. On April 19, 2022, the Parties participated in an early, full-day mediation regarding
27 both the State Action and this Action before respected wage and hour mediator, Scott Slater Markus,
28 of Signature Resolution Mediation Services. The mediation was ultimately unsuccessful, and the

1 Parties continued pursuing formal discovery.

2 16. Following that mediation, Defendant engaged in a campaign of acquiring individual
3 *Pick-Up Stix* settlements with putative Class members. These individual releases purported to
4 provide Defendant releases of all claims in this Action along with a Section 1542 waiver, in
5 exchange for \$1,500 minus taxes and other wage withholdings. On June 13, 2022, Plaintiff
6 requested that Defendant cease from demanding that putative class members sign individual general
7 releases of their claims in this Action. I am informed by Defendant's counsel that a total of 54 such
8 individual releases were executed, for a total monetary settlement of \$81,000.

9 17. On November 4, 2022, the Parties participated in a second, full-day mediation with
10 mediator Deborah Crandall Saxe, another well-respected wage and hour mediator. The case did
11 not settle that day; however, the Parties accepted a mediator's proposal soon thereafter, and
12 executed a memorandum of understanding regarding the major terms of the Parties' agreement on
13 December 5, 2022.

14 18. Throughout the mediation process, the Parties engaged in serious and arm's-length
15 negotiations, culminating in the mediator's proposal.

16 **Discovery Practice**

17 19. On May 4, 2022, Plaintiff propounded written discovery requests, including 47
18 requests for production of documents and 19 special interrogatories to Defendant. Defendant
19 responded to these requests on June 30, 2022.

20 20. Plaintiff propounded an additional 47 requests for production of documents and 19
21 special interrogatories in the State Action, on May 9, 2022. Defendant responded to these requests
22 on June 30, 2022.

23 21. Lengthy meet and confer efforts between the Parties, including Plaintiff's meet and
24 confer letters and emails, followed in both actions. During these meet and confer efforts, the Parties
25 were in the process of agreeing to a *Belaire-West* notice process to facilitate notice to putative class
26 members and aggrieved employees of both actions and their right to opt-out of providing their
27 contact information to Plaintiff's counsel.

28 22. Prior to mediation, Defendant produced several documents, including a 20%

1 sampling of contact information, pay records, and time records for putative Class members, general
2 policies, and job descriptions. Defendant further provided class-wide figures, including the total
3 number of putative Class members, separated putative Class members, putative Class members who
4 signed a \$1,500 release, as well as their associated workweeks and pay periods. Plaintiff's counsel
5 completed an exhaustive review of the documents and information provided by Defendant, and
6 used the information and data to prepare for mediation.

7 23. Following the Parties' execution of the December 5, 2022 memorandum of
8 understanding and pursuant to that agreement, the Parties engaged in additional confirmatory
9 discovery, which included: the contact information of putative Class members, exemplars and
10 documents regarding putative Class members who were paid salaries but classified by Defendant
11 as non-exempt, and the Rule 30(b)(6) deposition of Chord Fonvielle, the Human Resources
12 Manager for Defendant's Maricopa, California facility, which took place on February 8, 2023.

13 24. Based on the Rule 30(b)(6) deposition of Chord Fonvielle, Plaintiff's Counsel
14 confirmed that the evidence shows the following:

- 15 a. Putative Class members mine, manufacture, package, and ship Defendant's
16 products, and in particular, kitty litter for Defendant's customers.
- 17 b. Putative Class members share common duties, including operating and working
18 in a safe manner, which includes donning appropriate personal protective
19 equipment ("PPE"). Such PPE includes steel-toed shoes, safety glasses, gloves,
20 hard hats, and earplugs, which would be required in certain locations in
21 Defendant's facility.
- 22 c. All putative Class members undergo the same training in California, and work in
23 the same Maricopa, California facility.
- 24 d. All putative Class members are subject to the same handbook, which includes
25 Defendant's written policies and practices.
- 26 e. Up until August 2022, during which Defendant initiated a change in policy, likely
27 in response to Plaintiff's claims regarding this issue, Defendant required hourly,
28 non-exempt employees to arrive at work up to 15 minutes before their shifts were

1 scheduled to start, during which such employees could don their PPE, prepare
2 their workstations, and after March 2020, undergo a temperature check. Although
3 such employees were expected to clock in during this time, Defendant
4 automatically changed their time punches to their scheduled start time to avoid
5 paying for this work time.¹

6 f. Defendant's timekeeping system, Kronos, was subject to a ransomware attack in
7 December 2021 to the beginning of 2022, during which Defendant reverted to the
8 use of paper time sheets or other non-Kronos timekeeping records for several
9 months.

10 g. Not until around April 2021 did Defendant begin tracking meal period times at
11 all.

12 h. Defendant paid, and continues to pay, all putative Class members 30 minutes at
13 their hourly rate for each shift, for meal periods.

14 25. Plaintiff additionally completed extensive outreach with putative Class members,
15 including dozens of in-depth interviews, which covered topics including dates and locations of
16 work, hours of work, pre-shift and post-shift off the clock work, potential timekeeping and rounding
17 issues, meal and rest breaks, and Defendant's *Pick-Up Stix* settlements. Such interviews covered a
18 gamut of job titles, including those in Defendant's departments of quality assurance, packaging,
19 and shipping/receiving. Multiple putative Class members further provided additional documents to
20 Plaintiff's counsel, which Plaintiff's counsel methodically reviewed in advance of mediation.
21 Through this process, Plaintiff garnered substantial factual background regarding the alleged
22 violations, which Plaintiff's counsel utilized to build their case and to assess Defendant's potential
23 exposure in this Action.

24 26. Ultimately, through the formal and informal discovery process in advance of
25 mediation, Defendant produced over 4,240 documents and several class-wide figures in this Action.
26 This process enabled Plaintiff's counsel to evaluate damages on a class-wide basis. Plaintiff's
27

28 ¹ I am informed that Defendant denies that such employees were required to engage in work until the start of their shifts.

counsel completed an exhaustive review of these documents, and used the information and data from them to prepare for mediation, and, following mediation, to confirm that the exposure analysis Plaintiff's counsel had had conducted for purposes of mediation were accurate and to confirm that the Settlement is fair, adequate, and reasonable.

Settlement

27. Following acceptance of the mediator's proposal, the Parties extensively met and conferred over the detailed terms of the settlement over the next couple of months of intensive, arm's-length negotiations, and eventually executed the finalized long-form settlement agreement on March 27, 2023.

TERMS OF THE SETTLEMENT

28. Defendant has agreed to pay a non-reversionary, Maximum Settlement Amount of \$3,000,000 to settle all aspects of this Action. Settlement, ¶ IV.

29. The Net Settlement Amount, which is the amount available to pay settlement awards to Participating Class Members – i.e., Settlement Class Members who do not exclude themselves from the Settlement – is defined as the Maximum Settlement Amount less: Class Counsel's attorneys' fees (not to exceed \$1,050,000), Class Counsel's attorneys' costs (not to exceed \$30,000), costs of settlement administration (estimated at \$10,500), Class Representative Enhancement Fees to Plaintiff (not to exceed \$7,500), payments under the PAGA (\$100,000) to PAGA Employees,² and individual payments to Class Members. *Id.*, ¶¶ II.12, IV, VI, VII, VIII, IX.

30. I am informed by Defendant's counsel that there are approximately 146 Settlement Class Members and 105 PAGA Employees.

31. The Net Settlement Amount to Participating Class Members, plus the PAGA Settlement Amount allocated to the PAGA Employees (i.e., \$25,000), is currently estimated to be \$1,827,450. This amount does not include the \$81,000 in *Pick-Up Stix* releases some Class Members have already received, but are credited in the Settlement. The total amount of the

² The parties have agreed that the PAGA Settlement Amount of \$100,000 will be allocated to the resolution of the PAGA claims. Pursuant to PAGA, 75%, or \$75,000, of the PAGA Settlement Amount will be paid to the California Labor Workforce and Development Agency ("LWDA"), and 25%, or \$25,000, of the PAGA Settlement Amount shall be distributed to PAGA Employees. *Id.*

1 individual releases already paid to such Class Members, in addition to the calculated Net Settlement
2 Amount, is \$1,908,450.

3 32. From the Net Settlement Amount, each Participating Class Member will receive a
4 “Class Member Allocation Amount,” which includes *pro rata* shares called a “First Pro Rata
5 Allocation Amount” and a “Second Pro Rata Allocation Amount.” *Id.*, ¶ IX.2.

6 a. The First Pro Rata Allocation Amount will be calculated based on the number of
7 pay periods worked by a Participating Class Member during the Class Period,
8 divided by the aggregate number of pay periods worked by all Participating Class
9 Members during the Class Period, then multiplied by the Net Settlement Amount.
10 *Id.*, ¶ IX.2. To avoid providing those Participating Class Members who previously
11 signed releases in exchange for \$1,500 with a double recovery, each such
12 Participating Class Member’s First Pro Rata Allocation Amount will be reduced
13 by \$1,500, and will total \$0 if the resulting amount is calculated to be \$0 or less.
14 *Id.*

15 b. The Second Pro Rata Allocation Amount will be calculated based on the number
16 of pay periods worked by a Participating Class Member during the Class Period,
17 divided by the aggregate number of pay periods worked by all Participating Class
18 Members during the Class Period, then multiplied by the Net Settlement Amount
19 less the total First Pro Rata Allocation Amount calculated for all Participating
20 Class Members. *Id.*, ¶ IX.2.b.

21 33. Any funds from checks that are not negotiated within 180 calendar days after issuance
22 will remit the funds to the Unclaimed Property Fund maintained by the State Controller’s Office in
23 the name of the Participating Class Member and/or PAGA Employee who failed to cash his or her
24 check. *Id.*, ¶ IX.10.

25 **PRELIMINARY APPROVAL OF THE SETTLEMENT**

26 **Certification**

27 34. There are approximately 146 members of the combined Settlement Class, thereby
28 rendering the classes so large as to make joinder impracticable. The Settlement Class Members may

1 be readily identified from Defendant's payroll records.

2 35. Defendant's uniform policies apply to all non-exempt employees, including: the
3 requirement that all non-exempt employees use the Kronos timekeeping system, Defendant's policy
4 of paying 30 minutes each day for meal breaks, Defendant's failure to track meal periods until April
5 2021, Defendant's policy of COVID-19 checks following March 2020, Defendant's policy of
6 requiring employees to use written time sheets during the Kronos breach in late 2021 to early 2022,
7 Defendant's policy that employees don PPE, and Defendant's policy of not providing off-duty meal
8 periods or rest breaks. Plaintiff alleges that the wage and hour violations are in large measure borne
9 of Defendant's standardized policies, practices, and procedures, creating pervasive issues of fact
10 and law that are amenable to resolution on a class-wide basis. These issues include: whether
11 Defendant's practice prior to August 2022, of not paying employees for undergoing COVID-19
12 checks and donning PPE among other job duties, was improper; whether Defendant's failure to
13 track meal breaks until April 2021 was improper; whether Defendant provided compliant meal and
14 rest breaks; and whether Defendant's payment of 30 minutes each day were sufficient to satisfy
15 Defendant's meal and rest break violations.

16 36. Interviews with putative Class members and review of timekeeping and payroll data
17 further confirm that Plaintiff and other putative Class members were subjected to the same alleged
18 illegal policies and practices to which Plaintiff was subjected.

19 37. Plaintiff's claims are in line with the claims of the Class, and Plaintiff's claims are
20 not antagonistic to the claims of Class Members. Plaintiff has prosecuted this case with the interests
21 of the Class Members in mind. Moreover, Plaintiff's Counsel has extensive experience in class
22 action and employment litigation, including wage and hour class actions, and do not have any
23 conflict with the class.

24 38. Plaintiff contends the common questions raised in this action predominate over any
25 individualized questions concerning the Settlement Class. Resolution of Plaintiff's claims hinges
26 on the uniform policies and practices of Defendant, rather than the treatment the putative Class
27 Members experienced on an individual level. As a result, the resolution of these alleged class claims
28 would be achieved through the use of common forms of proof, such as Defendant's uniform

1 policies, and would not require inquiries specific to individual class members.

2 39. Further, Plaintiff contends the class action mechanism is a superior method of
3 adjudication compared to a multitude of individual suits. The action involves over a hundred
4 workers with very similar, but relatively small, claims for monetary injury. If the putative Class
5 Members proceeded on their claims as individuals, their many individual suits would require
6 duplicative discovery and duplicative litigation, and each putative Class Member would have to
7 personally participate in the litigation effort to an extent that would never be required in a class
8 proceeding. Thus, the class action mechanism would efficiently resolve numerous substantially
9 identical claims at the same time while avoiding a waste of judicial resources and eliminating the
10 possibility of conflicting decisions from repetitious litigation and arbitrations.

11 40. The issues raised by the present case are much better handled collectively by way of
12 a settlement. The Settlement presented by the Parties provides finality, ensures that workers receive
13 redress for their relatively modest claims, and avoids clogging the legal system with numerous
14 cases.

15 41. In the FLSA context, Defendant maintains various common policies and practices as
16 to what work they compensate and what work they do not compensate, and apply these policies and
17 practices to the Collective Members, there are no individual defenses available to Defendant.

18 42. I am informed that Defendant does not oppose certification of the Collective for
19 settlement purposes and agree to seek this Court's approval thereon.

20 **The Proposed Settlement is Fair, Reasonable, and Adequate**

21 43. A review of the Settlement Agreement reveals the fairness, reasonableness, and
22 adequacy of its terms.

23 44. The Gross Settlement Amount is a negotiated amount that resulted only after over 3
24 months of substantial arm's-length negotiations following two, full-day mediation sessions with
25 two well-respected mediators, and significant investigation and analysis by Plaintiff's counsel.
26 Plaintiff's counsel based their damages analysis and settlement negotiations on formal and informal
27 discovery (including the payroll and timekeeping data), and dozens of interviews with putative
28 Class members. Plaintiff's counsel obtained average rates of pay, which was approximately \$25 for

1 all putative Class members, which were then used in conjunction with amounts of unpaid time to
2 determine estimated damages for off-the-clock violations.

3 45. Based on interview analysis and cross-checked with Defendant's data, Plaintiff
4 applied a high-end, damage assumptions that each employee worked 1.33 hours off-the-clock per
5 week prior to August 2022 (and 1 minute per day following August 2022), worked approximately
6 9.4 hours per shift and 5 shifts per week, was subject to noncompliant meal periods 53% of the
7 time, and was subject to noncompliant rest periods 37% of the time. *Id.* Plaintiff's counsel further
8 accounted for the paid meal and rest break premiums—approximately \$20,489.86—and deducted
9 this and 30 minutes at the calculated regular rate for each noncompliant meal period, given that
10 Defendant paid all putative Class members 30 minutes each shift for meal periods, whether or not
11 compliant, throughout the Class Period.

12 46. Using these assumptions and further assuming that Plaintiff and the Class members
13 would certify all of their claims and prevail at trial, Plaintiff's counsel calculated the total potential
14 substantive exposure if Plaintiff fully prevailed on all of his claims at approximately \$3,625,283.75
15 and the total exposure of \$5,050,460.81.

16 47. This total exposure is further broken down as follows: approximately \$1,227,367.95
17 for unpaid meal break premiums; approximately \$1,198,150.55 for unpaid rest break premiums;
18 approximately \$1,199,765.26 for unpaid off-the-clock work at the overtime rate; approximately
19 \$182,500 for failure to maintain requisite records (calculated as \$1,250 times 146 putative Class
20 members); approximately \$584,000 for failure to provide accurate wage statements (calculated as
21 \$4,000 times 146 putative Class members); approximately \$299,224.56 for waiting time penalties
22 (calculated as 30 days times 9.4 hours per day at the average regular rate for 41 estimated former
23 employees); and approximately \$1,316,160 for PAGA penalties (calculated at \$100 per pay period
24 for 105 PAGA Employees).

25 48. These figures are based on Plaintiff's assessment of a best-case-scenario. To obtain
26 such a result at trial, Plaintiff would have to, at the minimum: (1) withstand any motion to strike
27 Plaintiff's PAGA claims for lack of manageability; (2) certify all claims and withstand any
28 decertification motions; (3) prevail on the merits on all claims; (4) prove that Defendant acted

1 knowingly or in bad faith; and (5) prove that all putative Class members experienced the violations
2 at the levels described above for every shift. These figures would of course be disputed and hotly
3 contested.

4 49. The negotiated non-reversionary Maximum Settlement Amount of \$3,000,000.00, in
5 addition to the \$81,000 credited under the Settlement for prior *Pick-Up Stix* settlements, represents
6 approximately 85% of the \$3,625,283.75 total that Plaintiff calculated for core claims for unpaid
7 meal and rest premiums and unpaid wages. When adding the calculated derivative penalties, this
8 settlement amount represents approximately 61% of Defendant's total potential exposure of
9 \$5,050,460.81.

10 50. The Net PAGA Amount of \$100,000.00 also represents 3.3% of the Maximum
11 Settlement Amount.

12 51. Plaintiff and his counsel considered the significant risks of continued litigation when
13 considering the proposed Settlement. These risks were front and center, particularly given the nature
14 of the off-the-clock work, that the putative Class members work in different departments and are
15 paid either salary or hourly, and certain putative Class members allegedly released their claims in
16 this Action pursuant to *Pick-Up Stix* settlements, which could invariably complicate certification
17 efforts and proving the claims on the merits. In contrast, the Settlement will result in immediate and
18 certain payment to Settlement Class members of meaningful amounts.

19 52. The average recovery is approximately \$13,071 per Settlement Class Member. The
20 average provided here assumes all Settlement Class Members participate in the Settlement and that
21 each member worked identical lengths of employment. This average was calculated based on the
22 Net Settlement Amount (estimated at \$1,802,450) plus the \$25,000 allocated for payment to PAGA
23 Employees and the \$81,000 in releases already paid to certain Class Members (totaling \$1,908,450),
24 divided by the total number of Settlement Class Members (i.e., 146).

25 53. This amount provides significant compensation to the Participating Individuals, and
26 the Settlement provides an excellent recovery well within the reasonable standard when considering
27 the difficulty and risks presented by expanding and uncertain litigation.

28

1 54. The final settlement amount takes into account the substantial risks inherent in any
2 class action wage-and hour case, as well as the procedural posture of the Actions and the specific
3 defenses asserted by Defendant, many of which are unique to this case.

4 55. Moreover, in an effort to ensure fairness, the Parties have agreed to allocate the
5 settlement proceeds amongst Class Members in a manner that recognizes that amount of time that
6 the particular Class Member worked for Defendant in the applicable limitations period. The
7 allocation method, which is based on the number of workweeks, will ensure that longer-tenured
8 workers receive a greater recovery. Moreover, for Settlement Class Members who were already
9 compensated through separate *Pick-Up Stix* settlements, such individuals will receive a share of the
10 Settlement reduced by the \$1,500 individual settlement they already received. The allocation was
11 made based on Class Counsel's assessment to ensure that employees are compensated accordingly
12 and in the most equitable manner.

13 56. To the extent that any Class Member opts in to the FLSA component of the
14 Settlement, these workers will only receive a recovery based on their workweeks as a Class Member
15 for their work in California. Such workers will not receive a "double recovery."

16 57. The Parties engaged in extensive formal and informal discovery, including thousands
17 of pages of documents, a Rule 30(b)(6) deposition, and dozens of class interviews that enabled
18 Plaintiff to assess the claims and potential defenses in this action. Plaintiff was able to assess the
19 legal and factual issues that would arise if the cases proceeded to trial(s). In addition, in reaching
20 this Settlement, Plaintiff's counsel relied on their substantial litigation experience in similar wage
21 and hour class and collective actions. Plaintiff's counsel's liability and damages evaluation was
22 premised on a careful and extensive analysis of the effects of Defendant's compensation policies
23 and practices on Settlement Class Members' pay. Ultimately, facilitated by well-respected
24 mediators Scott Markus and Deborah Saxe, the Parties used this information and discovery to fairly
25 resolve the litigation.

26 58. The monetary value of the proposed Settlement represents a fair compromise given
27 the risks and uncertainties posed by continued litigation. If this Action were to go to trial(s) and
28 through appeals as class, representative, and collective actions (which Defendant would vigorously

1 oppose if this Settlement Agreement were not approved), Plaintiff's Counsel estimates that fees and
2 costs would well exceed \$2,000,000.00.

3 59. Litigating the class, representative, and collective action claims would require
4 substantial additional preparation and discovery. Plaintiff would need to complete fact and expert
5 discovery. This would include: (1) written discovery to and depositions of putative Class members;
6 (2) depositions of Defendant's 30(b)(6) witnesses, managers, and executives; (3) third party
7 discovery to Defendant's timekeeping and payroll custodians of records, and (4) expert discovery.
8 Finally, Plaintiff would need to prepare for trial, which would require the presentation of percipient
9 and expert witnesses, as well as the consideration, preparation, and presentation of voluminous
10 documentary evidence and the preparation and analysis of expert reports.

11 60. Even if Plaintiff successfully overcame these procedural obstacles, recovery of the
12 damages and penalties previously referenced would also require complete success and certification
13 of all of Plaintiff's claims, a questionable feat in light of developments in wage and hour and class
14 and collective action law as well as the legal and factual grounds that Defendant has asserted to
15 defend this action. While Plaintiff is confident that they would establish that common policies and
16 practices give rise to the off-the-clock work for putative Class members, Plaintiff acknowledged
17 that the work was performed by hourly employees holding various job titles and differing pay
18 structures. Plaintiff thus recognized that obtaining class certification would present a significant
19 obstacle, with the risk that the putative Class members could only pursue individual actions in the
20 event that certification was denied. Certification of off-the-clock work claims is complicated by the
21 lack of documentary evidence and reliance on employee testimony, and Plaintiff would likely face
22 motions for decertification as the case progressed.

23 61. Plaintiff also recognized similar obstacles may hinder class certification and proving
24 their claims on the merits of Plaintiff's class claims regarding putative Class members' meal and
25 rest breaks. Given that until April 2021, Defendant did not record meal breaks taken by putative
26 Class members, much of Plaintiff's evidence would need to rely on testimonial evidence. Even
27 beyond this time period, Defendant used Kronos' attestation options to ensure that all putative Class
28 members record whether and why not such employees took their meal and rest periods, creating

1 another hurdle Plaintiff would need to face. Further, Defendant has produced documents and data
2 supporting its the defense that Defendant has paid 30 minutes of work each day for meal periods,
3 whether compliant or not, throughout the Class Period. In the event Defendants' evidence proved
4 to be true and Plaintiff is unable to gather sufficient testimonial evidence otherwise, Plaintiff's meal
5 and rest break claims could have potentially failed at the class certification stage. Given that the
6 substantive damages are largely driven by the alleged off-the-clock work and meal and rest breaks,
7 and that the derivative and penalty claims are tethered to off-the-clock claims, Plaintiff recognized
8 that their potential failure to obtain class certification on the off-the-clock work and meal rest breaks
9 could potentially result in the death knell of their derivative claims.

10 62. Plaintiff would also encounter difficulties in proving Defendant's liability on the
11 merits for similar reasons. From 2021 to 2022, due to the breach of Defendant's timekeeping
12 processor, Kronos, Defendant relied on handwritten timesheets. Plaintiff would face fundamental
13 logistical difficulties in reviewing and analyzing the massive amounts of hard copy records to
14 provide evidence that Defendant, indeed, failed to pay putative Class members wages for all worked
15 hours during that time period.

16 63. As to Plaintiff's PAGA claims, Plaintiff would first need to overcome similar
17 procedural hurdles, including completing substantial amounts of written discovery and depositions.
18 Unique to PAGA as a result of developing case law, however, Defendant would also likely move to
19 strike Plaintiff's PAGA claims for lack of manageability.

20 64. Plaintiff would further likely need to move for and defend against motions for
21 summary judgment or adjudication, and would have been further required to take their claims to
22 trial. Trials are inherently risky for all parties. Although Plaintiff believes that he could have been
23 successful in proving these claims, and that Defendant's evidence would not have been as
24 persuasive, a trial on the off-the-clock claims and meal and rest periods would have carried a high
25 degree of risk.

26 65. In contrast to litigating, resolving this case by means of the Settlement will yield a
27 prompt, certain, and very substantial recovery for the Class Members. Such a result will benefit the
28 Parties and the court system. In light of all of the risks, the proposed settlement is fair, reasonable,

1 and adequate under both Rule 23 and the FLSA approval standards.

2 66. Here, the Settlement was a product of non-collusive, arm's-length negotiations. The
3 Parties participated in two, full-day mediations before mediators Scott Marcus and Deborah Saxe,
4 both skilled mediators with many years of experience mediating employment matters. The Parties
5 then spent over three months negotiating the long form settlement agreement over numerous drafts,
6 with several rounds of meet and confer and correspondence related to the terms and details of the
7 Settlement.

8 67. Plaintiff is represented by experienced and respected litigators of representative wage
9 and hour actions. I feel strongly that the proposed Settlement achieves an excellent result for the
10 Settlement Class Members.

11 **SERVICE AWARD**

12 68. The enhancement payments of up to \$7,500 for Plaintiff Salinas is intended to
13 compensate him for the broader release to which he agreed and for the critical roles he played in
14 this case, and the time, effort, and risks – including risks to future employment – he undertook in
15 helping secure the result obtained on behalf of the Class.

16 69. Plaintiff's proposed enhancement payment represents only 0.25% of the Maximum
17 Settlement Amount.

18 70. In agreeing to serve as a Class representative, Plaintiff formally agreed to accept the
19 responsibilities of representing the interests of all Class Members.

20 71. Plaintiff agreed to a general release, unlike other Class Members.

21 72. Defendant indicated they do not oppose the requested payment to the Plaintiff as a
22 reasonable service award.

23 **ATTORNEYS' FEES AND COSTS**

24 73. In their fee motion to be submitted with the final approval papers, Plaintiff's Counsel
25 will request up to a maximum of \$1,050,000.00 in fees, representing 35% of the Maximum
26 Settlement Amount, plus reimbursement of costs up \$30,000.

27 74. Plaintiff's Counsel will provide their lodestar information with their fee motion,
28 which will demonstrate the reasonableness of Class Counsel's rates.

1 75. There was no guarantee of compensation or reimbursement. Rather, counsel
2 undertook all the risks of this litigation on a completely contingent fee basis. These risks were front
3 and center. Defendant's vigorous and skillful defense further confronted Plaintiff's counsel with the
4 prospect of recovering nothing or close to nothing for their commitment to and investment in the
5 case. Nevertheless, Plaintiff and his counsel committed themselves to developing and pressing
6 Plaintiff's legal claims to enforce the employees' rights and maximize the class and collective
7 recovery. During the litigation, counsel had to turn away other less risky cases to remain sufficiently
8 resourced for this one. The challenges that Plaintiff's Counsel had to confront and the risks they
9 had to fully absorb on behalf of the Class Members here are precisely the reasons for multipliers in
10 contingency fee cases.

11 76. Attorneys who litigate on a wholly or partially contingent basis expect to receive
12 significantly higher effective hourly rates in cases where compensation is contingent on success,
13 particularly in hard-fought cases where, like in the case at bar, the result is uncertain. This does not
14 result in any windfall or undue bonus. In the legal marketplace, a lawyer who assumes a significant
15 financial risk on behalf of a client rightfully expects that his or her compensation will be
16 significantly greater than if no risk was involved (*i.e.*, if the client paid the bill on a monthly basis),
17 and that the greater the risk, the greater the "enhancement." Adjusting court-awarded fees upward
18 in contingent fee cases to reflect the risk of recovering no compensation whatsoever for hundreds
19 of hours of labor simply makes those fee awards consistent with the legal marketplace, and in so
20 doing, helps to ensure that meritorious cases will be brought to enforce important public interest
21 policies and that clients who have meritorious claims will be better able to obtain qualified counsel.

22 77. Plaintiff's Counsel's lodestar amount will increase with preparation of the final
23 approval papers, preparation and attendance at remaining hearings, correspondence and
24 communications with Class Members, and settlement administration and oversight.

25
26
27
28 ///

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and is based on my own personal knowledge.

/s/ Carolyn Hunt Cottrell
Carolyn Hunt Cottrell

EXHIBIT 1

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BAKERSFIELD DIVISION

EMMANUEL SALINAS, on behalf of himself
and the Class members,

Plaintiff,

v.

NESTLÉ PURINA PETCARE COMPANY,

Defendant.

CASE NO. 1:21-CV-01140-JLT-CDB

Magistrate Judge Christopher D. Baker

**JOINT STIPULATION OF SETTLEMENT
AND RELEASE**

1 This Joint Stipulation of Settlement and Release (the “Joint Stipulation of Settlement”) is
 2 made and entered into by and among: (a) Plaintiff Emmanuel Salinas (“Plaintiff” or “Salinas”), on
 3 behalf of himself and each member of the “Settlement Class” and on behalf of all of the “PAGA
 4 Employees” (each as defined below); and (b) Defendant Nestlé Purina PetCare Company.
 5 (“Defendant”).

6 **I. BACKGROUND; DENIALS OF LIABILITY**

7 On July 26, 2021, Plaintiff filed a class action complaint in the United States District Court
 8 for the Eastern District of California, now bearing Case No. 1:21-CV-01140-JLT-CDB, against
 9 Defendant and against Nestle USA, Inc. (the “Action”).

10 In the Action, Plaintiff alleges, among other things, claims on behalf of a class of non-
 11 exempt employees who worked for Defendant in California. More particularly, Plaintiff alleges,
 12 among other things, that Defendant had, with respect to such employees, failed to provide required
 13 meal or rest periods or to pay wage premiums for missing, short or late meal or rest periods; failed
 14 to provide complete and accurate wage statements; failed to pay all regular wages, minimum
 15 wages, and/or premium or overtime wages owed; failed to timely pay all earned wages and final
 16 pay due at the time of separation of employment; and failed to maintain proper time records of
 17 meal periods and work hours. In the Action, Plaintiff seeks on behalf of these employees monetary
 18 relief (including damages, restitution, and penalties) and other relief.

19 On September 8, 2021, Plaintiff filed a complaint in the Superior Court of the State of
 20 California for the County of Alameda against Defendant and Nestle USA, Inc. as Case No.
 21 21CV00012 (the “PAGA Action”). The PAGA Action alleges claims under the Private Attorneys
 22 General Act, Labor Code section 2698 et. seq. (“PAGA”). Plaintiff filed the PAGA Action on
 23 behalf of himself and other allegedly aggrieved non-exempt California employees of Defendant.
 24 On behalf of such allegedly aggrieved employees, Plaintiff sought to recover PAGA penalties
 25 based on the same kinds of wage and hour violations alleged in the Action.

26 Since filing the Action and the PAGA Action, Defendant has dismissed without prejudice
 27 Nestle USA, Inc., which originally was a defendant in both of the cases.

1 On November 4, 2022, the Parties participated in a full-day mediation before Mediator
2 Deborah Crandall Saxe, which followed an earlier unsuccessful mediation with another mediator.
3 After the mediation, the Parties reached a settlement of the Action and PAGA Action on behalf of
4 the Settlement Class and the PAGA Employees. This Joint Stipulation of Settlement, among other
5 things, resolves and settles on behalf of the Settlement Class and the PAGA Employees: (a) all
6 claims asserted in the original complaints in the Action and PAGA Action; and (b) additional
7 claims that could have been asserted in the original complaints, and that are being asserted in an
8 agreed-upon Amended Complaint in the Action for the complete the release and resolution of such
9 additional claims.

10 Defendant denies, on behalf of itself and each of the “Released Parties” as defined below,
11 each and all such claims whether asserted or to be asserted by Plaintiff individually or on behalf of
12 any putative class or represented group. Also, Defendant, on behalf of itself and each of the
13 Released Parties: denies that any Released Party is liable in any way to Plaintiff or any putative
14 member of any class or any represented group; denies that Plaintiff or any putative member of any
15 class or any represented group is entitled to any monetary compensation or payment of any kind
16 (or any other form of relief) under California, federal, or any other law; and denies that Plaintiff or
17 any putative member of any class or any represented group are, were, or could have been harmed
18 by any conduct, acts, or omissions by Defendant or any Released Party. Defendant also denies that
19 any of the settled and released claims could ever properly be certified as a class in any contested
20 certification proceedings or could proceed as a collective or representative action. However,
21 Defendant has concluded that further litigation would be uncertain, protracted, and expensive, and
22 therefore desires to settle all the claims being released in order to limit further cost, inconvenience,
23 uncertainty, and distraction.

24 This Joint Stipulation of Settlement and all related documents, any action taken to
25 implement this Joint Stipulation of Settlement, and any statements, discussions, communications,
26 or materials prepared, exchanged, or used during the course of the negotiations leading to this
27 Joint Stipulation of Settlement, are “Settlement Documents and Information.” Settlement
28 Documents and Information are not discoverable and may not be used or admitted in any action or

proceeding, including any wage-and-hour or other proceeding against Defendant or the other Released Parties, for any purpose, except in a proceeding to enforce the terms of this Joint Stipulation of Settlement. In particular and without limitation, Settlement Documents and Information may not be used or admitted during any later contested certification or representative action proceedings to argue that Defendant admitted liability, that certification of a class or other representative proceedings may be appropriate, or that any action can proceed as a collective or representative action. Nothing in this Joint Stipulation of Settlement is an admission of any liability or wrongdoing by any Released Party.

II. DEFINITIONS

As used in this Joint Stipulation of Settlement, the following terms have the meanings specified below. Terms or phrases defined elsewhere in this Joint Stipulation of Settlement are incorporated into this Definitions section by reference:

1. “Class Counsel” refers to Schneider Wallace Cottrell Konecky LLP.
2. “Class Member Allocation Amount” means the amount to be allocated under this Settlement to individual Participating Class Members as calculated below.
3. “Class Notice” means the notice of this Settlement, substantially in the form of Exhibit A and pursuant to Section XVII below, to be sent to Settlement Class Members to notify them of this Settlement and their right to Opt Out.
4. The “Class Period” means the time period from and including January 29, 2017 through and including February 5, 2023.
5. The “Deadline Date” means the last date for Settlement Class Members to postmark, for return to the Settlement Administrator, Requests for Exclusion or Objections. The Deadline Date shall be sixty (60) days after the Settlement Administrator has postmarked the Class Notice for mailing to Settlement Class Members, subject to adjustment in the case of re-mailings, as specified in Section XVI below.
6. “Defendant” means Nestlé Purina PetCare Company.
7. “District Court” means the United States District Court for the Eastern District of California.

1 8. “Effective Date” means the date on which the District Court’s judgment approving
2 this Joint Stipulation of Settlement becomes “Final.” The judgement becomes “Final” when the
3 period for appealing or seeking higher court review of the settlement approval and Final Class
4 Judgement has expired, or that any filed appeals or other requests for review have been resolved
5 without right to further appeals or review.

6 9. “Final Class Judgment” means the judgment be entered by the District Court, in the
7 form of Exhibit C and pursuant to Section XVII below, approving this Joint Stipulation of
8 Settlement, confirming the releases of claims by Participating Class Members and by PAGA
9 Employees, and finally resolving the Action.

10 10. “Job Position” means any non-exempt hourly or non-exempt salaried California job
11 position with Defendant.

12 11. “Maximum Settlement Amount” means the amount defined in Section IV below.

13 12. “Net Settlement Amount” means the amount specified in Section IX below.

14 13. “Opt Out(s)” means any Settlement Class Member who submits a complete and
15 timely request to be excluded from this Settlement, by submitting a Request for Exclusion under
16 the procedures set forth below.

17 14. The “PAGA Employees” are defined in Section VIII below.

18 15. The “PAGA Period” means the time period from and including January 29, 2020
19 through and including February 5, 2023.

20 16. “Participating Class Member” means any Settlement Class Member who does not
21 submit a timely Request for Exclusion under the procedures set forth below.

22 17. The “Parties” means Defendant and Plaintiff, on behalf of himself, the Settlement
23 Class and the PAGA Employees.

24 18. “Plaintiff” means Emmanuel Salinas, the plaintiff in the Action and the PAGA
25 Action.

26 19. The “Preliminary Approval Order” means the order to be entered by the District
27 Court in the form of Exhibit B and pursuant to Section XVII below, preliminarily approving this
28 Joint Stipulation of Settlement.

20. The “Released Parties” means: (a) Defendant Nestle Purina PetCare Co. and each and all past or present partners, parents, subsidiaries, or affiliates (regardless whether such partners, parents, subsidiaries, or affiliates are individuals, corporations, partnerships, limited partnerships, limited liability companies, or other forms of entity) of Nestle Purina PetCare Co., including but not limited to Nestle USA, Inc.; (b) each and all of the predecessor or successor entities of any of those entities identified in subparagraph (a); (c) any other individuals or entities of any kind, including but not limited to any payroll companies, which have been or could be alleged to be in any manner responsible (whether on an alter ego, joint employer, integrated enterprise, or any other theory) for any violations described in the “Released Claims” (defined below) and occurring as a result of employment by Defendant; and (d) all past and present directors, officers, representatives, insurers, agents, shareholders, limited or general partners, members, lawyers, and employees of any of the individuals or entities identified in subparagraphs (a), (b), or (c).

21. “Request for Exclusion” means a Settlement Class Member’s request, in writing, for exclusion from the Settlement.

22. “Settlement” means the settlement reflected in and to be effectuated through this Joint Stipulation of Settlement.

23. “Settlement Administrator” refers to ILYM Group, Inc. that will be engaged by Class Counsel and paid out of the Maximum Settlement Amount, as described below, to perform the notice, settlement administration, and distribution functions further described in this Joint Stipulation of Settlement.

24. “Settlement Class” means the Settlement Class as defined below in Section III.

25. “Settlement Class Members” means all members of the Settlement Class, including any Opt Outs.

III. THE SETTLEMENT CLASS

For purposes of this Joint Stipulation of Settlement only, the Parties agree to seek, under the procedures described below, the District Court’s approval in the Action of certification of the following “Settlement Class”: All persons employed by Defendant in a Job Position at any time

1 during the Class Period. The Settlement Class shall include any heirs, successors, or assigns of the
2 above-described persons.

3 **IV. MAXIMUM SETTLEMENT AMOUNT**

4 The maximum amount to be paid under this Settlement is Three Million Dollars and No
5 Cents (\$3,000,000.00) (the “Maximum Settlement Amount”). This Settlement is based on
6 approximately 25,075 pay periods for Settlement Class Members from January 29, 2017 through
7 November 4, 2022. If it is determined that the number of pay periods for Settlement Class
8 Members between January 29, 2017 and the end of the Class Period exceeds 29,583, the
9 Maximum Settlement Amount will be increased by the same number of percentage points above
10 ten percent (10%) by which the actual number of pay periods exceeds 25,075. For instance, if the
11 actual number of pay periods at the end of the Class Period is determined to be higher than 29,583,
12 and 18% higher than 25,075, the Maximum Settlement Amount will be increased by 8%. For
13 purposes of this paragraph, workweeks and pay periods will be calculated by reducing the weeks
14 employed during the Class Period by 47/52 to reflect five average annual weeks of holidays and
15 vacation.

16 The Maximum Settlement Amount shall be used to pay all of Class Counsel’s attorneys’
17 fees and costs, all costs of settlement administration, all class representative enhancement fees
18 paid to Plaintiff, all payments to the California Labor Workforce and Development Agency, all
19 settlement payments to Participating Class Members, all settlement payments to the PAGA
20 Employees, and the employee’s share of all “Wage Withholdings” (as defined below) on such
21 payments. No Released Party shall be required to pay anything above or beyond the Maximum
22 Settlement Amount, under any circumstance, as a result of this Settlement, except Defendant’s
23 obligation to pay the employer’s share of taxes with respect to the wage portions of Participating
24 Class Members’ settlement payments.

25 **V. PAYMENT TO PLAINTIFF OF CLASS REPRESENTATIVE ENHANCEMENT**
26 **AWARD AND TO PLAINTIFF FOR A GENERAL RELEASE**

27 Plaintiff will apply to the District Court for approval of a class representative enhancement
28 award in the amount of no more than Seven Thousand Five Hundred Dollars and No Cents

1 (\$7,500.00) (“Class Representative Enhancement Fee”). Defendant will not oppose Class
 2 Counsel’s request of a Class Representative Enhancement Award up to this specific amount, and
 3 the Settlement Administrator will pay Plaintiff (from the Maximum Settlement Amount) the Class
 4 Representative Enhancement Award awarded by the District Court. Plaintiff understands and
 5 agrees that the District Court may in its discretion award a lesser amount as enhancement fees, and
 6 Plaintiff agrees that he will accept whatever amount, if any, the District Court may in its discretion
 7 award as Class Representative Enhancement Award. If Plaintiff receives an enhancement award of
 8 less than the specified amount, any such reduction shall constitute part of the amount to be
 9 distributed pursuant to Section IX as described below, and shall not be a basis for nullification of
 10 this Settlement. Nor shall a reduction in the Class Representative Enhancement Award in any way
 11 delay or preclude the Final Class Judgment from becoming a final judgment or the Settlement
 12 from being effective.

13 Plaintiff agrees that the Class Representative Enhancement Award awarded to Plaintiff is
 14 not a wage payment. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff for
 15 his Class Representative Enhancement Award. Plaintiff shall be solely and legally responsible to
 16 pay any and all applicable taxes on his Class Representative Enhancement Award. Plaintiff agrees
 17 to indemnify the Released Parties and Class Counsel for any tax obligations arising out of
 18 payments to him of his class representative enhancement fees. The Class Representative
 19 Enhancement Award is in addition to the Class Member Allocation Amount and Individual PAGA
 20 Payment to be paid to Plaintiff. The Class Representative Enhancement Award represents payment
 21 for the time incurred and services rendered by Plaintiff on behalf of the Settlement Class in
 22 obtaining this Settlement and a payment for his general release.

23 **VI. ATTORNEYS’ FEES AND COSTS**

24 Class Counsel will apply to the District Court for approval of reasonable attorneys’ fees
 25 incurred for representing Plaintiff, the Settlement Class, and the PAGA Employees in an amount
 26 not to exceed One Million Fifty Thousand Dollars and No Cents (\$1,050,000.00) (“Attorneys’
 27 Fees”). Class Counsel will also apply to the District Court for an award of actual costs in an
 28 amount of not more than Thirty Thousand Dollars and No Cents (\$30,000.00) (together,

1 “Attorneys’ Fees and Costs”). Defendant will not oppose Class Counsel’s request for an award of
2 Attorneys’ Fees and Costs up to the specified amounts, and the Settlement Administrator will pay
3 Class Counsel (from the Maximum Settlement Amount) the Attorneys’ Fees and Costs awarded
4 by the District Court up to the specified amounts.

5 Class Counsel and Plaintiff understand and agree that the District Court may in its
6 discretion award lesser amounts in Attorneys’ Fees and Costs than requested by Class Counsel. If
7 Class Counsel receive Attorneys’ Fees and Costs in less than the specified amounts, any such
8 reduction shall not revert to Defendant, but shall instead constitute part of the amount to be
9 distributed pursuant to Section IX below.

10 The amounts so awarded shall be for and in complete satisfaction of all attorneys’ fees and
11 costs incurred to date by Plaintiff and/or Class Counsel on behalf of Plaintiff, the Settlement Class,
12 and the PAGA Employees, and of all such future fees and costs, including, but not limited to, fees
13 and costs incurred in documenting this Settlement, securing approval of this Settlement,
14 monitoring this Settlement, reviewing and participating in the settlement administration process,
15 and obtaining the Final Class Judgment and addressing any appeals. While these amounts are all
16 that can be awarded against or will be paid by Defendant or any other Releasing Party, this
17 limitation will not preclude Plaintiff from seeking additional fees or costs from any third-party
18 objectors, provided no Released Party has any responsibility for any such fees or costs.

19 The Settlement Administrator will give Class Counsel an IRS Form 1099 for the
20 Attorneys’ Fees and Costs awarded. Class Counsel understand and agree that they shall be solely
21 responsible for any and all taxes and/or penalties arising from payment of the Attorney’s Fees and
22 Costs. Not later than the Effective Date, Class Counsel shall provide a fully and properly executed
23 IRS Form W-9 for purposes of these payments.

24 **VII. SETTLEMENT ADMINISTRATION AND EXPENSES**

25 Class Counsel will apply to the District Court for an award of the Settlement
26 Administrator’s actual costs of not more than Ten Thousand Fifty Dollars and No Cents
27 (\$10,050.00) to pay of costs for administration which will be paid from the Maximum Settlement
28 Amount (“Settlement Administration Costs”). The Settlement Administrator has agreed to perform

1 the claims administration duties set forth in this Joint Stipulation of Settlement for that flat
 2 amount. The Settlement Administrator shall send the Class Notice to Settlement Class Members
 3 and prepare and issue the checks (1) to Participating Class Members for their Class Member
 4 Allocation Amounts, (2) to PAGA Employees for their Individual PAGA Payment, (3) to Class
 5 Counsel for Attorneys' Fees and Costs, (4) to Plaintiff for the Class Representative Enhancement
 6 Fee and the general release payment, and (5) to the California Labor Workforce Development
 7 Agency ("LWDA") (all as specified above or below).

8 The Settlement Administrator shall establish a Qualified Settlement Fund, pursuant to
 9 Treasury Regulations section 1.468B, for purposes of distributing these amounts. The Settlement
 10 Administrator shall file all required tax returns for the Qualified Settlement Fund, and shall
 11 calculate, and then remit to appropriate taxing and other governmental authorities, all amounts to
 12 be deducted or paid on account of the Class Member Allocation Amounts, including the
 13 employee's and employer's share of "Wage Withholdings," as more specifically described and
 14 defined below. The Settlement Administrator shall provide appropriate indemnities against
 15 mistakes or inaccuracies in such tasks and against any misuse or breach of confidentiality for
 16 Settlement Class Members' social security numbers, telephone numbers, addresses, or other
 17 private information. The Settlement Administrator shall set up a toll-free number and a dedicated
 18 email address for any settlement inquiries. The Settlement Administrator shall perform all other
 19 tasks necessary to administer the Settlement, including those provided for in Section XVI. All
 20 disputes relating to the Settlement Administrator's performance of its duties shall be referred to
 21 the District Court for a final and binding determination, not subject to further review or appeal of
 22 any kind.

23 **VIII. PAYMENTS TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY**

24 The Parties have agreed that a total of One Hundred Thousand Dollars and No Cents
 25 (\$100,000.00) of the Maximum Settlement Amount will be allocated to the resolution of
 26 Settlement Class Members' claims arising under PAGA for the PAGA Period ("PAGA Settlement
 27 Amount"). Pursuant to PAGA, Seventy-Five Percent (75%), or Seventy Five Thousand Dollars
 28 and No Cents (\$75,000.00), of the PAGA Settlement Amount will be paid to the LWDA ("LWDA

1 Payment”), and Twenty-Five Percent (25%), or Twenty Five Thousand Dollars and No Cents
2 (\$25,000.00), of the PAGA Settlement Amount shall be distributed to Settlement Class Members
3 (including any Opt Outs) who were employed in a Job Position during any part of the PAGA
4 Period (the “PAGA Employees”) as specified below. This \$25,000 shall be referred to as the
5 “PAGA Portion.”

6 The Settlement Administrator will pay to the LWDA, in accordance with California Labor
7 Code section 2699(i), the amount of Seventy Five Thousand Dollars and No Cents (\$75,000.00).
8 The Settlement Administrator will advise Class Counsel when this payment is made.

9 **IX. PAYMENTS TO PARTICIPATING CLASS MEMBERS**

10 1. After the Class Representative Enhancement Fees, Attorneys’ Fees and Costs,
11 Settlement Administration Costs, and the PAGA Settlement Amount (as specified above) have
12 been satisfied from the Maximum Settlement Amount, the remainder (i.e., the “Net Settlement
13 Amount”) shall be available to pay Settlement Class Members who did not Opt Out (i.e.,
14 Participating Class Members) their share of the Net Settlement Amount and to satisfy those
15 employees’ shares of Wage Withholdings.

16 2. Under this Joint Stipulation of Settlement, each Participating Class Member shall
17 receive a “First Pro Rata Allocation Amount” and a “Second Pro Rata Allocation Amount.” The
18 combined payments of the First Pro Rata Allocation Amount and Second Pro Rata Allocation
19 Amount to be paid to each Participating Class Member is such Participating Class Member’s
20 “Class Member Allocation Amount.” The *pro rata* payments for the First and Second Pro Rata
21 Allocation Amounts shall be calculated as follows:

22 a. A preliminary *pro rata* share, the First Pro Rata Allocation Amount, will be
23 calculated for each Participating Class Member as follows: (i) the number of pay
24 periods each respective Participating Class Member worked in a Job Position
25 during the Class Period; divided by (ii) the aggregate number of pay periods
26 worked by all Participating Class Members in a Job Position during the Class
27 Period; then multiplied by (iii) the Net Settlement Amount, and (iv) if applicable,
28 then subtracting \$1,500. Certain Settlement Class Members signed releases

1 solicited by Defendant in exchange for a payment of One Thousand Five Hundred
 2 Dollars and No Cents (\$1,500.00) each. For such Participating Class Member who
 3 signed such a release, step (iv) in this subparagraph (a) will be performed. If after
 4 performing step (iv) in this subparagraph (a), such a Participating Class Member
 5 has a preliminary pro rata calculation of \$0 or less, Such Participating Class
 6 Member's First Pro Rata Allocation Amount shall be \$0.

7 b. A second preliminary *pro rata* share, the Second Pro Rata Allocation
 8 Amount, will be calculated for each Participating Class Member as follows: (i) the
 9 number of pay periods each respective Participating Class Member worked in a Job
 10 Position during the Class Period; divided by (ii) the aggregate number of pay
 11 periods worked by all Participating Class Members in a Job Position during the
 12 Class Period; and then multiplied by (iii) the Net Settlement Amount less the total
 13 First Pro Rata Allocation Amount calculated for all Participating Class Members
 14 pursuant to subparagraph (a) above.

15 3. Because PAGA Employees cannot opt out of the PAGA claims, each PAGA
 16 Employee, whether or not a Participating Class Member, shall receive his or his share of the
 17 PAGA Portion ("Individual PAGA Payment") calculated as follows: (a) the number of pay periods
 18 each PAGA Employee worked in a Job Position during the PAGA Period; divided by (b) the
 19 aggregate number of pay periods worked by all PAGA Employees in a Job Position during the
 20 PAGA Period; and then multiplied by (c) the PAGA Portion. Participating Class Members who
 21 are also PAGA Employees will receive their Individual PAGA Payments in addition to their Class
 22 Member Allocation Amount. PAGA Employees who opt out, and therefore are not Participating
 23 Class Members, will receive only their Individual PAGA Payments.

24 4. Subject to the following paragraph, the Parties agree that the Class Member
 25 Allocation Amounts shall constitute 25% wages and 75% penalties and interest. Each Individual
 26 PAGA Payment shall be treated as 100% penalties. The Settlement Administrator shall calculate
 27 and deduct from the wage portion of each Participating Class Member's Class Member Allocation
 28 Amount the employee's share of required state, federal, and local tax, and other wage obligations

1 or withholdings. These shall include, without limitation, all federal, state, and local employment
2 taxes (such as Social Security Taxes, Federal Unemployment Taxes, and California
3 Unemployment and Training Taxes) and all state and federal income taxes (collectively, the
4 “Wage Withholdings”). The Settlement Administrator shall remit these amounts to the appropriate
5 authorities.

6 5. Where a Participating Class Member previously received \$1,500 for signing a
7 release solicited by Defendant as described in paragraph IX.2.a above, that payment was treated as
8 and shall be deemed a wage payment. Accordingly, when subtracting that amount from the Class
9 Member Allocation Amount, the \$1,500 shall be applied to reduce the wage portion of the Class
10 Member Allocation Amount otherwise to be paid that Participating Class Member. For example, if
11 a Participating Class Member who signed such a release has a calculated First Pro Rata Allocation
12 Amount of \$4,500 pursuant to paragraph IX.2, his or her wage portion would be \$1,500 which has
13 already been paid to such Participating Class Member, and thus the Participating Class Member
14 would only receive \$4,500 as interest and penalty income.

15 6. The Settlement Administrator shall pay to each Participating Class Member his or
16 her share of the Class Member Allocation Amount (after any Wage Withholdings), in the manner
17 and on the schedule set forth below, and shall make remittances of Wage Withholdings to the
18 required authorities as and when required.

19 7. The Settlement Administrator shall issue to each Participating Class Member an
20 IRS Form W-2 to report the wage portion of his or her Class Member Allocation Amount and the
21 withheld taxes. The Settlement Administrator shall issue to each Participating Class Member and
22 PAGA Employee an IRS Form 1099 for the non-wage portion of his or her Class Member
23 Allocation Amount and/or his or her Individual PAGA Payment.

24 8. Defendant, Defense counsel, and Class Counsel make no representation as to the
25 tax treatment or legal effect of the payments called for hereunder, and Plaintiff and Settlement
26 Class Members are not relying on any statement, representation, or calculation by Defendant,
27 Defense counsel, Class Counsel, or the Settlement Administrator in this regard. Plaintiff and
28 Settlement Class Members understand and agree that they will be solely responsible for the

1 payment of any taxes and penalties assessed on the payments described herein. Each of the
2 Participating Class Members and PAGA Employees agrees to indemnify the Released Parties for
3 any tax obligations arising out of payments to him or her of any portion of a Class Member
4 Allocation Amount or Individual PAGA Payment.

5 9. Settlement Class Members and PAGA Employees shall not, on account of
6 receiving any Class Member Allocation Amount or Individual PAGA Payment, be entitled to any
7 other or additional compensation, benefits, contributions, or matching employer funding of any
8 kind under any agreement or plan governing benefits or compensation (such as but not limited to
9 any agreements or plans for incentives, stock options, retirement, deferred compensation)
10 regardless of any contrary language or provisions in any such agreement or plan. The Class
11 Member Allocation Amount and/or Individual PAGA Payment shall be the sole compensation and
12 benefit to the Participating Class Members and PAGA Employees under this Joint Stipulation of
13 Settlement.

14 10. Participating Class Members and PAGA Employees will have one hundred eighty
15 (180) calendar days from the date of issuance of the check to cash their check. For any check not
16 cashed after 180 calendar days, the Settlement Administrator shall stop payment on such check
17 and remit the funds to the Unclaimed Property Fund maintained by the State Controller's Office in
18 the name of the Participating Class Member and/or PAGA Employee who failed to cash his or her
19 check. The Settlement Administrator shall inform the Parties regarding the status of any uncashed
20 checks at the conclusion of the 180 calendar day check cashing period, including the amounts at
21 issue and the identity of any affected Participating Class Member and/or PAGA Employee. The
22 funds remitted to the Unclaimed Property Fund will remain the affected Participating Class
23 Members' and/or PAGA Employees' property. This will allow Participating Class Members
24 and/or and PAGA Employees who did not cash their checks to collect their Class Member
25 Allocation Amounts and/or Individual PAGA Payment at any time in the future.

26 11. The Settlement Administrator shall send a reminder notice to any PAGA Employee
27 or Participating Class Member who has not cashed his or her checks for proceeds under this Joint
28 Stipulation of Settlement within 90 days after such checks have been mailed.

X. TIMING OF PAYMENT OBLIGATIONS

Defendants shall electronically wire the Maximum Settlement Amount and an amount sufficient to pay the employer's share of taxes on the wage portion of the Class Member Allocation Amounts to the Settlement Administrator within ten (10) business days after the Effective Date.

The Settlement Administrator shall place the funds in an interest bearing account, and any interest earned shall be added to the Maximum Settlement Amount.

The Settlement Administrator shall make each of the payments set forth above (including, Class Member Allocation Amounts to Participating Class Members, Individual PAGA Payments to PAGA Employees, Attorneys' Fees and Costs to Class Counsel, Class Representative Enhancement Fee to Plaintiff, the LWDA payment to the LWDA, and Settlement Administration Costs to itself) within twenty (20) business days after the Effective Date.

XI. NO OTHER PAYMENTS

Except for the payments and obligations provided above, all of which shall be satisfied from the Maximum Settlement Amount, no Released Party shall have any obligation to make any payment to Plaintiff, to the Settlement Class, to the PAGA Employees, or to any other person or entity as a result of the Action, the PAGA Action, or this Joint Stipulation of Settlement, other than the employer's share of taxes on the wage portion of Class Member Allocation Amounts. Except as set forth herein, the Parties shall bear all their own costs and attorneys' fees in connection with this Joint Stipulation of Settlement, the Action, and the PAGA Action.

XII. RELEASES BY PARTICIPATING CLASS MEMBERS AND PAGA EMPLOYEES

As of the Effective Date, each Participating Class Member hereby fully, finally, and forever releases and discharges each and every one of the Released Parties from all claims, demands, rights, liabilities, and causes of action arising in whole or in part, for any of the following arising from employment by Defendant during the Class Period: (a) any alleged or actual failure to provide proper, accurate, timely, adequately descriptive, or complete wage statements or pay stubs; any alleged or actual failure to timely, properly, or fully or completely pay, or any alleged or actual failure to properly calculate, any wages including but not limited to

1 any minimum wages, regular wages, overtime premium wages, or meal or rest period premium
 2 wages; any alleged or actual failure to comply with meal or rest period requirements or
 3 requirements for recording meal or rest periods or work hours; any actual or alleged failure to
 4 timely pay all wages or compensation owed to a fired, quitting, or otherwise departing employee;
 5 or any alleged or actual failure to pay any interest or penalties owed as a result of any of the
 6 foregoing; or (b) in any manner arising out of any of the other facts or legal theories alleged or
 7 asserted in: (i) the original complaints in the Action or PAGA Action or in the Amended
 8 Complaint to be filed under this Settlement, including, but not limited to, claims arising under or
 9 out of any unfair competition laws as defined in California Business and Professions Code Section
 10 17200 et seq., and claims for declaratory or injunctive relief or for monetary compensation,
 11 whether in the form of wages, damages, liquidated damages, penalties, restitution, costs,
 12 attorneys' fees, interest, or otherwise; or (ii) Plaintiff's PAGA letters to the LWDA, including the
 13 amended PAGA Letter to be sent under this Settlement (the "Released Class Claims").

14 Participating Class Members who cash, deposit, or otherwise negotiate checks or otherwise
 15 obtain the proceeds for their Class Member Allocation Amount shall be deemed to have opted into
 16 a collective action under the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. ("FLSA"), and to
 17 have released each of the Released Parties from any and all claims, penalties, costs, expenses,
 18 attorneys' fees, liabilities, damages, and actions or causes of action of whatever kind or nature
 19 under the FLSA, known and unknown, which derive from any of the foregoing Released Class
 20 Claims. Checks to Participating Class Members shall include a notation that the cashing of the
 21 checks constitutes such an opt-in and effectuates these FLSA releases.

22 As of the Effective Date, each PAGA Employee hereby fully, finally, and forever releases
 23 and discharges each and every one of the Released Parties on behalf of the LWDA from all Labor
 24 Code or Wage Order violations under the PAGA, arising in whole or in part, during the PAGA
 25 Period, which in any manner which (a) derive from any of the foregoing Released Class Claims;
 26 or (b) are or could have been alleged or asserted under the PAGA in: (i) the original complaints in
 27 the Action or PAGA Action, or in the Amended Complaint to be filed pursuant to this Settlement;
 28 or (ii) Plaintiff's PAGA letters to the LWDA, including the amended PAGA Letter to be sent

1 under this Settlement (the “Released PAGA Claims”). The Parties agree that there shall be no right
2 for any PAGA Employee to opt out or otherwise exclude himself or herself from the Released
3 PAGA Claims.

4 The Released Class Claims and Released PAGA Claims are collectively the “Released
5 Claims.” Each Participating Class Member and PAGA Employee, or his or her attorneys, may
6 hereafter discover facts in addition to or different from those which he or she or his or her counsel
7 now knows or believes to be true with respect to the subject matter of the Released Claims, but
8 each Participating Class Member and PAGA Employee, upon the Effective Date, shall be deemed
9 to have, and by operation of the Final Class Judgment in the Action shall have, fully, finally, and
10 forever settled and released any and all Released Claims known or unknown, suspected or
11 unsuspected, described above. The releases contained in this Joint Stipulation of Settlement shall
12 be deemed to, and by operation of the Final Class Judgment in the Action shall, remain in effect as
13 full and complete releases without regard to the subsequent discovery or existence of any such
14 different or additional facts.

15 All Participating Class Members and PAGA Employees shall be bound by the releases
16 they provide under this Joint Stipulation of Settlement and by the other terms of this Joint
17 Stipulation of Settlement, whether or not they actually receive or cash their checks for their Class
18 Member Allocation Amounts or Individual PAGA Amounts. All PAGA Employees shall be
19 bound by the releases of the Released PAGA Claims even if they are Opt Outs.

20 **XIII. PLAINTIFF’S FURTHER RELEASE**

21 In partial consideration for the Class Representative Enhancement Fee and other benefits
22 under this Joint Stipulation of Settlement, Plaintiff provides the following additional releases: as
23 of the Effective Date, Plaintiff shall fully, finally, and forever release and discharge each and
24 every one of the Released Parties from all claims, demands, rights, liabilities, and causes of action
25 of every nature and description whatsoever, whether known or unknown, whether sounding in tort,
26 in contract, in law, in equity or otherwise, and including but not limited to all claims for violation
27 of any local, state, or federal statute, rule, or regulation, which Plaintiff now has, owns, or holds,
28 or claims to have, own, or hold, or which he ever had, owned or held, whether known or unknown,

1 suspected or unsuspected, at any time prior to the date he executes this Joint Stipulation of
2 Settlement (collectively “Plaintiff’s Released Claims”). Plaintiff’s Released Claims include,
3 without limitation, any claims under Title VII of the Civil Rights Act of 1964, any claims for
4 fraud, promises without the intent to perform, intentional or negligent misrepresentation, breach of
5 contract, breach of the implied covenant of good faith and fair dealing, wrongful termination in
6 violation of public policy, retaliatory discharge, violations of the California Labor Code, violations
7 of the Fair Labor Standards Act, accounting, intentional or negligent infliction of emotional
8 distress, violations of California Business and Professions Code section 17200 *et seq.*, or
9 violations of the California Fair Employment and Housing Act.

10 With respect to Plaintiff’s Released Claims, Plaintiff stipulates and agrees that, upon the
11 Effective Date, he shall be deemed to have expressly waived and relinquished to the fullest extent
12 permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code
13 or any other similar provision under federal, state, or local law. Section 1542 provides:

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

21 Plaintiff may hereafter discover facts in addition to or different from those which he now
22 knows or believes to be true with respect to the subject matter of Plaintiff’s Released Claims, but
23 Plaintiff, upon the Effective Date and conditional upon Defendant’s funding of the Maximum
24 Settlement Amount, shall be deemed to have fully, finally, and forever settled and released any
25 and all of Plaintiff’s Released Claims, known or unknown, suspected or unsuspected, contingent
26 or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have
27 existed, upon any theory of law or equity now existing or coming into existence in the future,
28 including, without limitation, conduct which is negligent, intentional, with or without malice, or a
breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such
different or additional facts.

Plaintiff's Released Claims do not include the release of claims as prohibited by law, the Fair Credit Reporting Act, the Older Workers Benefit Protection Act, the Worker Adjustment and Retraining Notification Act, the Family and Medical Leave Act, the Sarbanes-Oxley Act of 2002, the Uniformed Services Employment and Reemployment Rights Act, as well as claims Plaintiff may have for: (a) unemployment, state disability and/or paid family leave insurance benefits pursuant to the terms of applicable law; (b) workers' compensation insurance benefits pursuant to applicable state law under the terms of any workers' compensation insurance policy or fund; (c) continued participation in Defendant's group medical benefits plans, if any, at Plaintiff's own expense pursuant to the terms and conditions of the federal law known as "COBRA" and/or any applicable state law counterpart; (d) benefits, to which Plaintiff would be entitled under any Released Parties' benefit plan subject to the provisions of the Employee Retirement Income Security Act of 1974 otherwise known as "ERISA" in which they participated during their employment with Defendant, such as any pension plans; (e) violation of any federal, state, or local statutory and/or public policy right or entitlement that, by applicable law, is not waivable; and (f) any wrongful act or omission occurring after the Effective Date. For the avoidance of doubt, the foregoing is a full and complete release to the maximum extent allowed by law except for the limited express exclusions above.

Plaintiff represents, covenants, and warrants that he is the owner of all of Plaintiff's Released Claims, and that he has not directly or indirectly assigned, transferred, or encumbered, or purported to assign, transfer or encumber to any person or entity, whether by operation of law or otherwise, any portion of Plaintiff's Released Claims.

Plaintiff shall not be permitted to seek any further payment or any personal relief of any kind, including any payment for damages, wages, fees, costs, penalties, or interest, other than the consideration he is receiving under this Joint Stipulation of Settlement, on account of Plaintiff's Released Claims.

XIV. PLAINTIFF'S COVENANT RE: OTHER CLAIMS

Plaintiff hereby warrants and represents that he has not filed any complaint, lawsuit, grievance, demand for arbitration, charge, and/or other claim against any of the Released Parties,

1 with any court, governmental or administrative agency or entity asserting any claim or claims
 2 based on any of Plaintiff's Released Claims, other than the Action, the PAGA Action, and his
 3 letters to the LWDA concerning the allegations in the Action or PAGA Action.

4 **XV. PROCEDURE FOR AMENDED COMPLAINT AND DISMISSAL OF PAGA**
 5 **ACTION**

6 Plaintiff shall promptly prepare, and the Parties shall stipulate to Plaintiff's filing of, an
 7 amended class action and PAGA representative complaint in the Action (the "Amended
 8 Complaint"). The Amended Complaint shall allege, on behalf of the Settlement Class (including
 9 the PAGA Employees, hourly non-exempt Settlement Class Members, and salaried non-exempt
 10 Settlement Class Members) all of the Class Released Claims and the PAGA Released Claims,
 11 including but not limited to claims for failure to record meal periods or for wages allegedly lost or
 12 other wage and hour violations due to improper rounding of work time or due to Kronos
 13 operational issues. The claims in the Amended Complaint shall be alleged in sufficient detail to
 14 give reasonable notice of the claims at issue and to be fully resolved by application of res judicata
 15 through the Final Judgment and by application of the releases in this Joint Stipulation of
 16 Settlement. Defendant's counsel shall have an opportunity to review and approve the Amended
 17 Complaint. Upon completion of the Amended Complaint to the satisfaction of both counsel for
 18 Defendant and Class Counsel, Plaintiff shall promptly file the Amended Complaint in District
 19 Court pursuant to an agreed stipulation. Plaintiff shall also prepare for approval of Defense
 20 Counsel a supplemental letter under Labor Code section 2699.3 describing in reasonable detail the
 21 PAGA claims to be released under this Joint Stipulation of Settlement which have not previously
 22 been described in the PAGA letter sent by Plaintiff, and in particular to include the claims
 23 identified above and the PAGA Employees who are salaried non-exempt, and after such approval
 24 Plaintiff shall send the supplemental letter to the LWDA. The Amended Complaint shall include
 25 the additional PAGA claims identified in the supplemental letter.

26 The Parties agree that final approval of this Settlement shall be obtained only after notice
 27 from the LWDA that it does not intend to act on the matters in the letter or after expiration of the

1 periods described in Labor Code section 2699.3 permitting a party sending an LWDA letter to file
2 suit absent a response from the LWDA.

3 The Parties agree that the filing of the Amended Complaint shall be solely for purpose of
4 obtaining approval of this Joint Stipulation of Settlement. Accordingly, the Parties shall cooperate
5 in limiting the District Court proceedings to those necessary for such preliminary and final
6 approval. In particular and without limitation, the Parties shall cooperate in ensuring that
7 Defendant need not file a response to the Amended Complaint. The Parties shall also cooperate in
8 ensuring that, promptly after the filing of the Amended Complaint, the District Court shall, as its
9 first and exclusive order of business, entertain briefing and conduct a hearing to provide
10 preliminary approval and eventually final approval of this Joint Stipulation of Settlement. As part
11 of the preliminary approval proceedings, the Parties agree that Plaintiff and Defendant will jointly
12 request that the District Court enter the Preliminary Approval Order in the form of Exhibit "B." As
13 required by Labor Code section 2699.3, Plaintiff shall file the Amended Complaint with the
14 LWDA and shall also file this Joint Stipulation of Settlement with the LWDA as part of the
15 preliminary approval proceedings.

16 Immediately upon the filing of the Amended Complaint, Plaintiff will dismiss the PAGA
17 Action without prejudice. All Parties shall bear their own costs and attorneys' fees in connection
18 with such dismissal, except as set forth otherwise herein. The dismissal shall be for the purpose of
19 permitting the claims previously asserted in the PAGA Action to be alleged in the Amended
20 Complaint in the Action.

21 Class Counsel shall prepare the Preliminary Approval Motion and related papers. Before
22 Class Counsel files such papers, Defendant will give Plaintiff the opportunity to conduct
23 confirmatory discovery regarding meal breaks, timekeeping, and recordkeeping, including, but not
24 limited to a deposition of up to four hours in length, for the purpose of obtaining information to
25 support court approval of the Settlement.

26 Within ten (10) days after filing the Preliminary Approval Motion and this Joint
27 Stipulation of Settlement with the District Court, Defendant shall cause the notice required under
28 28 U.S.C. §1715 to be sent to the appropriate state and federal officials.

XVI. PROCEDURES FOR NOTICE, SUBMITTING REQUESTS FOR EXCLUSION, OBJECTIONS, AND FINAL SETTLEMENT APPROVAL

A. Class Notices and Requests for Exclusion

1. Within ten (10) business days after entry of the Preliminary Approval Order, Defendants shall provide the Settlement Administrator the name, last known address, last known phone number, last known personal email address, and Social Security number of each Settlement Class Member, along with the information needed to calculate Class Member Allocation Amounts and Individual PAGA Payments. The Settlement Administrator will keep this information confidential and use it only for the purposes described herein. The Parties recognize that Defendant does not generally have any personal email addresses, but will supply any readily available.

2. Subject to the last sentence of this paragraph, within fifteen (15) business days after receipt of the class data, the Settlement Administrator shall mail the Class Notice to all Settlement Class Members via first-class U.S. mail. For that purpose, the Settlement Administrator shall use the most current mailing address information available for Settlement Class Members from records of Defendant. The Settlement Administrator shall take appropriate steps to identify a current proper address for that Settlement Class Member, including conducting a “standard search,” also known as a “skip trace” or “credit header” search. If the mailing of class information for any Settlement Class Member is returned as undeliverable, the Settlement Administrator shall take appropriate steps to identify a current proper address for that Settlement Class Member, and the Settlement Administrator shall then re-mail the Class Notice to the updated address. The Class Notice shall not be sent before the end of the Class Period, so that the notice to Settlement Class Members should provide notice of releases through a date that already has occurred.

3. The Class Notice shall provide that any Settlement Class Member may, by inquiry to the Settlement Administrator, receive details about the information used to calculate that Settlement Class Member’s Class Member Allocation Amount or Individual PAGA Payment. If any Settlement Class Member disputes the information used to calculate the Class Member Allocation Amount or Individual PAGA Payment, the Settlement Class Member may state the

1 basis of his or her disagreement and submit documentation supporting the Settlement Class
 2 Member's position, by not later than the Deadline Date. The Settlement Administrator shall notify
 3 Class Counsel and Defendant's counsel of any dispute so raised. Within ten (10) calendar days of
 4 notification, Class Counsel and Defendant's counsel shall be required to provide written notice
 5 and any additional documentation to the Settlement Administrator and the opposing counsel if
 6 either Class Counsel or Defendant's counsel disputes the position of the Settlement Class
 7 Member. After providing any such notice or documentation, the Settlement Administrator will
 8 notify Class Counsel and Defendant's counsel of any remaining discrepancy. If Class Counsel and
 9 Defendant's counsel are unable to agree on the resolution of any such disputed claim, then the
 10 Settlement Administrator shall make the determination. To the extent any challenge affects the
 11 calculation of Class Member Allocation Amounts or Individual PAGA Payments, such amounts
 12 shall be recalculated using the information resulting from the challenge.

13 4. The Class Notice, will provide instructions on what needs to be stated in the
 14 Request for Exclusion if the Settlement Class Member wants to opt-out of this Settlement. If a
 15 Settlement Class Member wishes to Opt-Out from this Settlement and from the release of class
 16 claims pursuant to this Settlement, he or she shall submit an "Opt-Out Letter" and/or "Request for
 17 Exclusion" directly to the Settlement Administrator that must be mailed and postmarked on or
 18 before the Deadline Date, or within fifteen (15) calendar days after the postmark of a Class Notice
 19 re-mailed to a corrected address for that Settlement Class Member, whichever is later. The written
 20 Request for Exclusion shall: (1) make the following statement or a similar statement: "I wish to
 21 exclude myself from the settlement reached in the matter of *Salinas v. Nestlé Purina PetCare*
 22 *Company*. I understand that, by excluding myself, I will not receive any money (other than the
 23 Individual PAGA Amount [if applicable]) from the settlement reached in this matter"; (2) contain
 24 the name, address, and the last four digits of the Social Security number of the person requesting
 25 exclusion; (3) be signed by the Settlement Class Member; and (4) be postmarked or fax stamped
 26 by the Deadline Date and returned to the Settlement Administrator at the specified address or fax
 27 telephone number stated in the Class Notice. The date of the postmark on the return mailing
 28 envelope or fax stamp on the Request for Exclusion shall be the exclusive means used to

1 determine whether the Request for Exclusion was timely submitted. Any Settlement Class
2 Member who requests to be excluded from the Settlement Class will not be entitled to any
3 recovery under the Settlement, will not be bound by the terms of the Settlement, and will not have
4 any right to object, appeal, or comment thereon, except he or she shall receive his or her Individual
5 PAGA Payment and if he or she is a PAGA Employee releasing his or her Released PAGA Claims
6 (since he or she cannot opt out of the PAGA settlement). Settlement Class Members who fail to
7 submit a valid and timely written Request for Exclusion on or before the Deadline Date shall be
8 bound by all the terms of the Settlement and the Final Class Judgment.

9 5. The Settlement Administrator shall maintain a list of persons who have excluded
10 themselves and shall include the names of the Settlement Class Members who Opt-Out in the
11 declaration in support of final approval. The Settlement Administrator shall retain the originals of
12 all Requests for Exclusion letters (including the envelopes with the postmarks) received, and shall
13 make copies or the originals available to Defendant's counsel or Class Counsel upon request.

14 6. The Settlement Administrator shall have responsibility for determining whether any
15 Settlement Class Member is a Participating Class Member. Any dispute or issues regarding
16 whether an individual should be a Participating Class Member shall be resolved by mutual
17 agreement of Class Counsel and Defendant's counsel. In the event counsel are unable to reach an
18 agreement, the District Court shall make the final determination.

19 **B. Procedure for Obtaining Final District Court Approval of Settlement;**
20 **Objections**

21 1. The Class Notice shall provide that any Participating Class Member who wishes to
22 object to this Joint Stipulation of Settlement must mail to the Settlement Administrator by first
23 class mail a written statement objecting to this Joint Stipulation of Settlement and setting forth the
24 legal and factual grounds for any objections and may appear at the final settlement hearing to
25 object, unless otherwise allowed by the Court. The written Objection must: (1) contain the name,
26 address, and the last four digits of the Social Security number of the objector; (2) set forth the
27 legal and factual grounds for the objections; and (3) be signed by the Settlement Class Member;.
28 Such written objections should be mailed and postmarked on or before the Deadline Date, or

1 within fifteen (15) calendar days after the postmark of a Class Notice re-mailed to a corrected
 2 address for that Settlement Class Member or the Deadline Date, whichever is later. The date of the
 3 postmark on the return mailing envelope or fax stamp on the Request for Exclusion shall be the
 4 exclusive means used to determine whether the Request for Exclusion was timely submitted. To
 5 the extent that the Participating Class Member is represented by counsel, his/her attorney shall file
 6 with the District Court a notice of appearance providing the attorney's contact information.

7 2. Approximately twenty-five (25) calendar days after the Deadline Date or as
 8 determined by the District Court, the District Court shall conduct a final settlement hearing to
 9 determine whether to finally approve this Joint Stipulation of Settlement and to determine Class
 10 Counsel's request for Attorneys' Fees and Costs and the Class Representative Enhancement Fee to
 11 Plaintiff. No later than fifteen (15) calendar days before that hearing, the Settlement Administrator
 12 shall provide each Party's counsel with a complete list of all Participating Class Members, of all
 13 Opt Outs, and of any written objections described above. Class Counsel shall prepare a
 14 memorandum of points and authorities in support of final approval of this Joint Stipulation of
 15 Settlement and request for Attorneys' Fees and Costs, Class Representative Enhancement Fee, and
 16 Settlement Administration Costs, and shall file them with the District Court, for purposes of the
 17 final settlement hearing.

18 3. Upon final approval of this Joint Stipulation of Settlement by the District Court, the
 19 Parties shall present the Final Class Judgment to the District Court for its approval and entry.

20 **XVII. TERMINATION OF SETTLEMENT**

21 In the event: (i) the District Court does not enter the Preliminary Approval Order without
 22 material change; (ii) the District Court does not finally approve this Joint Stipulation of Settlement
 23 without material change; (iii) the District Court does not enter the Final Class Judgment without
 24 material change; (iv) the Final Class Judgment is materially modified or reversed upon review by
 25 a higher court; or (v) this Settlement does not become final for any other reason, Plaintiff or
 26 Defendant may, each in his or its sole and absolute discretion, terminate this Joint Stipulation of
 27 Settlement. In the case of such a termination, this Joint Stipulation of Settlement shall be null and
 28 void as if it had never been executed, the Parties shall be returned to their respective statuses as of

the date and time immediately prior to the execution of this Joint Stipulation of Settlement, and Plaintiff and Defendant shall proceed with the Action in all respects as if this Joint Stipulation of Settlement had not been executed. Prior to either Party exercising an option to terminate the Settlement, the Parties agree to meet and confer in good faith in an effort to resolve the issue(s) and proceed in a manner most likely to result in approval of the Settlement. For purposes of this Section, a “material” change shall include but not be limited to: any change in the releases to be provided; any change that would increase the Maximum Settlement Amount (other than in the event of an increase of more than 10% in the pay periods worked by Settlement Class Members as stated above); any changes in the definition of the Settlement Class; or any changes to Section XVIII below. The parties acknowledge that the parties may agree to modifications to, or the Court may request or make modifications to, the proposed forms of the Preliminary Approval Order, Final Class Judgment, and Class Notice, attached as Exhibits B, C, and A, respectively. Non-material such modifications shall not trigger any rights to terminate under this provision nor will affect the effectiveness or enforceability of such documents pursuant to this Settlement. Also, as provided above, the District Court’s failure to award the Attorneys’ Fees and Costs or Class Representative Enhancement Fee shall not be a material change or entitle Plaintiff or Class Counsel to terminate this Settlement.

XVIII. DEFENDANT’S OPTION TO TERMINATE JOINT STIPULATION OF SETTLEMENT

If ten percent (10%) or more of the Settlement Class Members submit complete and timely Requests for Exclusion, Defendant shall have, in its sole and absolute discretion, the option to terminate this Joint Stipulation of Settlement. Defendant shall be entitled to exercise these termination rights by providing written notice to Class Counsel at any time within fourteen (14) calendar days of learning of the number of Requests for Exclusion. In the event that Defendant exercises this option, Defendant shall solely be responsible for Settlement Administration Costs.

In the case of a termination under this Section, this Joint Stipulation of Settlement shall be null and void as if it had never been executed, the Parties shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Joint Stipulation of

1 Settlement, and Plaintiff and Defendant shall proceed in all respects as if this Joint Stipulation of
2 Settlement had not been executed.

3 **XIX. MISCELLANEOUS**

4 1. The descriptive headings of any paragraphs or sections of this Joint Stipulation of
5 Settlement are inserted for convenience of reference only and do not constitute a part of this Joint
6 Stipulation of Settlement.

7 2. The Parties agree to hold in abeyance all proceedings in the Action, except such
8 proceedings necessary to implement and complete this Settlement, pending final approval of this
9 Joint Stipulation of Settlement. In the event an appeal is filed from the Final Class Judgment, or
10 any other appellate review is sought prior to the Effective Date, administration of this Joint
11 Stipulation of Settlement shall be stayed pending final resolution of the appeal or other appellate
12 review.

13 3. No waiver of any term or provision of this Joint Stipulation of Settlement shall be
14 binding unless in writing and signed by the Party waiving the breach. This Joint Stipulation of
15 Settlement may be amended or modified only by a written instrument signed by counsel for all
16 Parties or their successors-in-interest.

17 4. This Joint Stipulation of Settlement constitutes the entire agreement among the
18 Parties with respect to the subject matter hereof, and fully supersedes all prior agreements and
19 understandings between the Parties with respect thereto. No oral representations, warranties, or
20 inducements have been made to any Party concerning this Joint Stipulation of Settlement other
21 than the representations, warranties, and covenants contained and memorialized in such
22 documents.

23 5. In addition to the Parties, this Joint Stipulation of Settlement shall be binding upon,
24 and shall inure to the benefit of, the Parties' respective heirs, representatives, executors,
25 administrators, successors, and assigns.

26 6. This Joint Stipulation of Settlement is made and entered into in the State of
27 California and shall in all respects be interpreted, enforced, and governed under the laws of said
28

1 state as applied to transactions or events with contacts exclusively within California, and without
2 applying California's conflict of laws rules.

3 7. Counsel for all Parties warrant and represent that they are expressly authorized by
4 the Parties whom they represent to enter into this Joint Stipulation of Settlement, to take all
5 appropriate action required or permitted to be taken by such Parties pursuant to this Joint
6 Stipulation of Settlement to effectuate its terms, and to execute any other documents required to
7 effectuate the terms of this Joint Stipulation of Settlement. The Parties and their counsel will
8 cooperate with each other and use their best efforts to effect the implementation of this Joint
9 Stipulation of Settlement.

10 8. The Parties agree that neither they nor their counsel will solicit or otherwise
11 directly or indirectly encourage Settlement Class Members to request exclusion from the
12 Settlement Class, to object to this Joint Stipulation of Settlement, or to appeal from the Final Class
13 Judgment.

14 9. The Parties have cooperated in the drafting and preparation of this Joint Stipulation
15 of Settlement. This Joint Stipulation of Settlement shall not be construed against any Party on the
16 basis that such Party was the drafter.

17 10. This Joint Stipulation of Settlement may be executed in counterparts, and when
18 each Party has signed and delivered at least one such counterpart, each counterpart shall be
19 deemed an original, and, when taken together with other signed counterparts, shall constitute one
20 Joint Stipulation of Settlement, which shall be binding upon and effective as to all Parties. This
21 Joint Stipulation of Settlement may be signed through electronically exchanged documents (such
22 as PDFs) which shall be treated as original paper copy signatures.

23 11. The Parties believe that this is a fair, reasonable, and adequate Settlement and have
24 arrived at this Settlement through arms-length negotiations, taking into account all relevant
25 factors, present and potential.

26 12. Should any part, term or provision of this Joint Stipulation of Settlement, with the
27 exception of Sections IV, IX, XII, XIII, XVII, and XVIII, be declared or determined by any court
28 or other tribunal of appropriate jurisdiction to be invalid or unenforceable, any such invalid or

unenforceable part, term, or provision shall be deemed stricken and severed from this Joint Stipulation of Settlement and any and all of the other terms of the Joint Stipulation of Settlement shall remain in full force and effect to the fullest extent permitted by law. The Sections specified above in this paragraph are the essence of this Joint Stipulation of Settlement, and, should any term or provision of those Sections be deemed invalid or unenforceable, the court making such determination shall have the power to limit the term or provision, to delete or rewrite specific words or phrases in those terms or provisions, or to replace any invalid or unenforceable term or provision to make the term or provision valid and enforceable; provided that any such modification must come as close as possible to expressing the intention of the invalid or unenforceable term or provision and provided further that such changes may not eliminate or amend any Parties' termination rights under Sections XVII or XVIII, which shall include the right to terminate if the application of this severance provision materially changes the Joint Stipulation of Settlement as drafted before such application.

13. Nothing in this Joint Stipulation of Settlement shall restrict: (i) any right to file, testify, or otherwise cooperate in the investigation of an administrative charge or complaint with the Equal Employment Opportunity Commission, the National Labor Relations Board or other federal, state, or local administrative or law enforcement agency, although Plaintiff is waiving any right to monetary recovery related to such a charge or complaint; (ii) any right to report allegedly unlawful conduct pursuant to the "whistleblower" provisions of federal or state law or regulation, including the right to receive awards pursuant to Section 21F of the Securities Exchange Act; (iii) any right to communicate directly with, respond to an inquiry from, or provide testimony before, the Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA), any other self-regulatory organization or any other regulatory authority; or (iv) the Parties and their counsel from complying with a valid subpoena, court order, or any other legal process.

14. In any proceeding to enforce or construe this Joint Stipulation of Settlement, the prevailing Party shall be entitled to recover its costs and attorney's fees.

PLAINTIFF EMMANUEL SALINAS

Dated: 03 / 24 / 2023



DEFENDANT NESTLÉ PURINA PETCARE COMPANY

By: _____

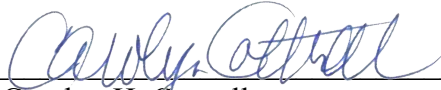
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Title:

APPROVED AS TO FORM:

SCHNEIDER WALLACE COTTRELL KONECKY LLP

Dated: March 27, 2023

By:  _____

Carolyn H. Cottrell

*Counsel for Plaintiff EMMANUEL SALINAS, on
behalf of himself and all others similarly situated*

MITCHELL SILBERBERG & KNUPP LLP

Dated: _____

By: _____

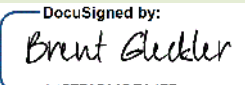
Kevin E. Gaut

*Counsel for Defendant NESTLÉ PURINA
PETCARE COMPANY.*

1 PLAINTIFF EMMANUEL SALINAS

2 Dated: _____

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4 DEFENDANT NESTLÉ PURINA PETCARE COMPANY

5 By: 
6 Dated: 3/25/2023
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Brent Glickler
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Name:
Title:

8 **APPROVED AS TO FORM:**

9 SCHNEIDER WALLACE COTTRELL KONECKY LLP

10 Dated: _____

11 By: _____

12 Carolyn H. Cottrell
13 Counsel for Plaintiff EMMANUEL SALINAS, on
14 behalf of himself and all others similarly situated

15 MITCHELL SILBERBERG & KNUPP LLP

16 By: 
17 Counsel for Defendant NESTLÉ PURINA
18 PETCARE COMPANY.
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EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA
BAKERSFIELD DIVISION

CASE NO. 1:21-CV-01140-JLT-CDB

Emmanuel Salinas v. Nestlé Purina Petcare Company (THE “ACTION”)

A court authorized this notice. This is not a solicitation from a lawyer.

NAME OF CLASS MEMBER OR AGGRIEVED EMPLOYEE: [NAME HERE]

ATTENTION: EMPLOYMENT RECORDS SHOW THAT YOU ARE OR WERE EMPLOYED IN CALIFORNIA BY NESTLE PURINA PETCARE COMPANY AT SOME TIME BETWEEN JANUARY 29, 2017 AND FEBRUARY 5, 2023 AND ARE A MEMBER OF THE BELOW-DESCRIBED SETTLEMENT OF A CLASS AND PAGA REPRESENTATIVE ACTION.

- You have been sent this Notice because there is a proposed settlement (the “Settlement”) of a class action lawsuit between Plaintiff Emmanuel Salinas (“Plaintiff”) and Defendant Nestlé Purina Petcare Company (“Defendant”), and because the records of Defendant show that you worked for Defendant in an hourly non-exempt or salaried non-exempt job in California at any time between January 29, 2017 through and including February 5, 2023.
- Because you fit this description, **you may be entitled to receive money from the Settlement in this case, as described below.**

The estimated amount you will receive from this settlement (unless you exclude yourself or “opt out,” as explained below) is \$[amount to be inserted] minus wage withholdings. [You will also receive an estimated \$ [amount to be inserted] for PAGA claims whether or not you opt out.] **Alternatively:** You are not eligible for the additional payment described below under the PAGA.] These amounts are approximate. We set forth in Section [] below more detail about how these amounts are calculated and what they mean.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT	
PARTICIPATE	To receive a settlement check under the Settlement, you need not take any action. If you do nothing, you will receive a settlement check from the Settlement Administrator and will give up your rights to be part of any other lawsuit involving the claims in this case, and will release all such claims as further provided in Section [] below. By cashing your settlement check, you will also release claims under federal law, as provided in Section [] below.
EXCLUDE YOURSELF	If you wish to be excluded from the Settlement, you may submit a Request for Exclusion to the Settlement Administrator postmarked no later than DATE. Instructions for submitting a Request for Exclusion are set forth below. If you submit a valid Request for Exclusion, you will not receive any money from the Settlement unless you are a PAGA Employee. If you are a PAGA Employee, you cannot opt out of those PAGA claims, and will be paid for and release those PAGA claims no matter what.
OBJECT	If you wish to object to the Settlement, you may submit a written Objection, and supporting papers, to the Settlement Administrator (who will send copies to the Court and counsel) postmarked no later than DATE . You may also appear in Court and explain why you object to the Settlement or use an attorney to appear for you. If you object, this does not mean you opt out of the Settlement (as explained below, if you opt out of the Settlement, you will not be permitted to object to the Settlement).

- These rights and options, and how to exercise them, are explained in more detail in this notice.
- The Court handling this case still has to decide whether to grant final approval of the Settlement. Payments will only be issued if the Court grants final approval of the Settlement and after the time for appeals has ended and any appeals are resolved, if applicable.
- Additional information regarding the Settlement is available through the Settlement Administrator or Class Counsel, whose contact information is provided in this notice.

1. Why should I read this notice?

You have received this notice because Defendant's records show that you are a member of the Settlement Class (a "Settlement Class Member"). This notice explains your right to share in the monetary proceeds of this Settlement, exclude yourself ("opt out") of the Settlement, or object to the Settlement. If you object to the Settlement, you cannot opt out of the Settlement, and you will be bound by the terms of Settlement in the event the Court denies your objection.

The United States District Court, Eastern District of California, has preliminarily approved the Settlement as fair and reasonable. The Court will hold a hearing to decide whether to finally approve the Settlement, in Department [REDACTED] of the Bakersfield Federal Courthouse located at Bakersfield Federal Courthouse, 510 19th Street, Suite 200, Bakersfield, CA 93301, on XXX at [REDACTED]:00 a.m. The hearing may be moved to a different date and/or time without additional notice. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will also decide how much Class Counsel will receive for fees and costs. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

2. What is the Action about?

This lawsuit alleges, among other things that Defendant has violated various wage and hour laws, among other things, failing to provide required meal or rest periods or to pay full wage premiums for missing, short or late meal or rest periods; failing to provide timely, complete and accurate wage statements; failing to pay all regular wages, minimum wages, meal or rest period premium payments, and/or overtime wages owed; failing to timely pay all earned wages during employment and final paychecks due at the time of separation of employment; and failing to maintain proper required time records, under the California Labor Code, including under the California Labor Code Private Attorneys General Act ("PAGA"). In the Action, Plaintiff seeks on behalf of himself and other Settlement Class Members monetary relief (including damages, restitution, and penalties) and other relief. Plaintiff in particular contends that some of these violations were due to improper rounding of time sheets, problems with the time-keeping systems at Defendant, and failure to maintain records of meal periods.

Defendant vigorously denies that Plaintiff's claims have any merit and contend that they complied with all wage and hour laws. Nevertheless, Defendant decided to settle the claims to avoid the time, expense, uncertainty, and distraction of fighting them. Plaintiff and Defendant believe that the Settlement is fair, adequate, and reasonable, and that it is in the best interest of the Settlement Class.

3. Who is in the Settlement Class and Who is A PAGA Employee?

The Settlement Class is defined as any persons who worked in any hourly non-exempt or salaried non-exempt California job position with Defendant (a "Job Position") at any time during the time period from and including January 27, 2017 through and including February 5, 2023 (the "Class Period").

The PAGA Employees are defined as any persons who worked in any Job Position during the time period from and including January 27, 2020 through and including February 5, 2023 (the "PAGA Period").

4. Why is there a settlement?

Both sides agreed to the Settlement to avoid the cost and uncertainty of further litigation. The Settlement is the result of good faith, arms' length negotiations between Plaintiff and Defendant, through their respective attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Settlement Class Members.

The Settlement does not mean that Defendant violated any law. Defendant denies all of the claims in the Action and denies that it should proceed as a class action or a representative PAGA action, and, by agreeing to this Settlement, does not admit that any of the claims have merit or could proceed as a class action or representative action without this Settlement. The Class Representative

and his lawyers believe the Settlement is fair, adequate and reasonable and in the best interests of all Settlement Class Members and PAGA Employees.

5. What does the settlement provide?

Under the terms of the Settlement, Defendant agrees to pay a maximum Settlement Amount of \$3,000,000.00. This amount will mostly be distributed to current and former employees who meet the definitions for participating in the Settlement, but it will also be used to pay for attorneys' fees and costs awarded by the Court, any enhancement payment to Plaintiff that is awarded by the Court, the Settlement Administrator's costs, and a payment to the California Labor and Workforce Development Agency (LWDA) that is required by the PAGA.

The attorneys for Plaintiff and the Settlement Class will ask the Court to award them attorneys' fees of not more than \$1,050,000.00 and costs of not more than \$30,000.00 incurred for representing Plaintiff, the Settlement Class, and the PAGA Employees in the Action. The named Plaintiff will ask the Court to award him not more than \$7,500 for his services as the named Plaintiff prosecuting this lawsuit on behalf of all Settlement Class Members and PAGA Employees. The Settlement Administrator costs are estimated to be \$10,050, and this payment will also come from the Settlement Amount. A payment of \$100,000 will be made from the Settlement Amount to the State of California Labor and Workforce Development Agency and to PAGA Employees for PAGA claims for alleged but contested penalties.

The remainder of the Settlement Amount after subtracting the amounts described above is the "Net Settlement Amount" that will be available to pay Settlement Class Members who are not Opt Outs and to pay their employees' share of tax and wage withholdings. The Net Settlement Amount will be distributed to Settlement Class Members who do not chose to Opt out as described in the following section.

6. If I choose to participate in the Settlement, how much can I expect to receive?

According to the records maintained by Defendant, your total estimated settlement payment will be approximately [REDACTED]. This amount is an estimated amount, and your final settlement payment is expected to differ from this amount (i.e., it could be higher or lower) and will be calculated as set forth below. All Settlement Award determinations will be based on Defendants' timekeeping, payroll, and/or other records for Settlement Class members. Based on Defendants' records, you are estimated to have worked [REDACTED] workweeks for Defendant during the Class Period and [REDACTED] workweeks for Defendant during the PAGA Period.

You do not need to do anything to be sent your settlement payment. Just watch your mail for a check and cash it when you get it. If you participate in the Settlement, you will have 180 days to cash the check. If at the conclusion of the 180-day check void period, there are any uncashed checks, those monies will be remitted to the Unclaimed Property Fund maintained by the State Controller's Office in your name, subject to the Court's approval in the Final Approval Order.

If you dispute the number of workweeks as shown on this Notice, you may produce evidence to the Settlement Administrator establishing the dates you contend to have worked for Defendant. To do so, send a letter to the Settlement Administrator explaining the basis for your dispute and attach copies of the supporting evidence. Unless you present convincing evidence proving you worked more workweeks than shown by Defendant's records, your Settlement Award will be determined based on Defendant's records. Any disputes must be postmarked by [REDACTED] and should be mailed to [REDACTED]. The Settlement Administrator will notify you of the decision on the dispute.

Payments to Settlement Class Members who do not choose to Opt Out ("Participating Class Member") will be calculated based on the number of eligible workweeks. Each such Settlement Class Member will be eligible to receive a *pro rata* share of the Net Settlement Amount, or "Class Member Allocation Amount," as follows:

- (a) A preliminary *pro rata* share, the First Pro Rata Allocation Amount, will be calculated for each Participating Class Member as follows: (i) the number of pay periods each respective Participating Class Member worked in a Job Position during the Class Period; divided by (ii) the aggregate number of pay periods worked by all Participating Class Members in a Job Position during the Class Period; then multiplied by (iii) the Net Settlement Amount, and (iv) for Participating Class Members who signed releases solicited by Defendant in exchange for a payment of One Thousand Five Hundred Dollars and No Cents (\$1,500.00) each, then subtracting \$1,500. .. If after performing step (iv) in this subparagraph (a), such a Participating Class Member has a preliminary *pro rata* calculation of \$0 or less, such Participating Class Member's First Pro Rata Allocation Amount shall be \$0.
- (b) A second *pro rata* share, the Second Pro Rata Allocation Amount, will be calculated for each Participating Class Member as follows: (i) the number of pay periods each respective Participating Class Member worked in a Job Position during the Class Period; divided by (ii) the aggregate number of pay periods worked by all Participating Class Members in a Job Position during the Class Period; and then multiplied by (iii) the Net Settlement Amount less the total First Pro Rata Allocation Amount calculated for all Participating Class Members pursuant to subparagraph (a) above.
- (c) Each Participating Class Member shall receive a "Class Member Allocation Amount," which is the combined amounts of their calculated First Pro Rata Allocation Amount and Second Pro Rata Allocation Amount.

Each PAGA Employee, regardless of whether they choose to Opt Out as a Settlement Class Member, will receive a share of \$25,000 from the total \$100,000 amount allocated to PAGA employees. The other \$75,000 shall be paid to the State of California Labor and Workforce Development Agency as required by the PAGA. Each PAGA Employee's share of the \$25,000 shall be calculated as follows: (a) the number of pay periods each PAGA Employee worked in a Job Position during the PAGA Period; divided by (b) the aggregate number of pay periods worked by all PAGA Employees in a Job Position during the PAGA Period; and then multiplied by (c) the \$25,000. Settlement Class Members who are also PAGA Employees will receive their Individual PAGA Payments in addition to their Class Member Allocation Amount. PAGA Employees who opt out will receive only their Individual PAGA Payments.

Class Member Allocation Amounts shall be allocated 25% to wages, and 75% to interest and penalties. Where a Participating Class Member previously received \$1,500 for signing a release solicited by Defendant as described above, that payment was treated as and shall be deemed a wage payment. Accordingly, when subtracting that amount from the Class Member Allocation Amount, the \$1,500 shall be applied to reduce the wage portion of the Class Member Allocation Amount otherwise to be paid that Participating Class Member. Individual PAGA Payments shall be allocated 100% to penalties. The Settlement Administrator shall deduct the tax and other wage withholdings from the wage portion of the Class Member Allocation Amount assigned to each Settlement Class Member who is not an Opt Out. Each Settlement Class Member will receive an IRS Form W-2 to report the wage portion of the amount paid to him or her and an IRS Form 1099 for the non-wage portion.

None of the settlement payments will be eligible for benefit contributions or employee matching.

If any Settlement Class Members choose to Opt Out from the Settlement, the total amount available for payment to Settlement Class Members will not change, but Opt Outs will not be paid any amount other than their PAGA payment as a PAGA Employee, if applicable.

7. What are the releases?

If you are a Participating Class Member, you release Defendant and all related parties or any other parties who could be responsible for any “Released Class Claims,” which are defined as all claims, demands, rights, liabilities, and causes of action arising in whole or in part during the Class Period and occurring as a result of employment by Defendant, for any of the following: (a) any alleged or actual failure to provide proper, accurate, timely, adequately descriptive, or complete wage statements or pay stubs; any alleged or actual failure to timely, properly, or fully or completely pay, or any alleged or actual failure to properly calculate, any wages including but not limited to any minimum wages, regular wages, overtime premium wages, or meal or rest period premium wages; any alleged or actual failure to comply with meal or rest period requirements or requirements for recording meal or rest periods or work hours; any actual or alleged failure to timely pay all wages or compensation owed to a fired, quitting, or otherwise departing employee; or any alleged or actual failure to pay any interest or penalties owed as a result of any of the foregoing; or (b) in any manner arising out of any of the other facts or legal theories, including but not limited to alleged improper rounding of time sheets, problems with the time-keeping systems, and failure to maintain records of meal periods, alleged or asserted in: (i) the Action, including, but not limited to, claims arising under or out of any unfair competition laws as defined in California Business and Professions Code Section 17200 et seq., and claims for declaratory or injunctive relief or for monetary compensation, whether in the form of wages, damages, liquidated damages, penalties, restitution, costs, attorneys’ fees, interest, or otherwise; or (ii) Plaintiff’s letters under PAGA to the California Labor Workforce Development Agency.

Each Participating Class Member who cashes, deposits, or otherwise negotiates a check, or otherwise obtains the proceeds for, their Class Member Allocation Amount shall be deemed to have opted into an a collective action under the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq., and to have also released any and all FLSA claims which derive from any of the Released Class Claims.

If you are a PAGA Employee, you release Defendant and all related parties or any other parties who could be responsible for any “Released PAGA Claims,” defined as any claims, arising in whole or in part, during the PAGA Period and occurring as a result of employment by Defendant, which in any manner: (a) derive from any of the foregoing Released Class Claims; or (b) are or could

have been alleged or asserted under the PAGA in: (i) the Action; or (ii) Plaintiff's letters under PAGA the to the California Labor Workforce Development Agency.

You may later discover new or currently unknown facts about the Released Class Claims or Released PAGA Claims, but your releases of these claims will remain in effect and valid even if you later discover such new or unknown facts. The Released Class Claims and Released PAGA Claims include a release of claims of the kind described even if you do not know about them or suspect their existence. You can talk to one of the lawyers listed below for free or you can talk to your own lawyer if you have questions about the Released Class Claims or Released PAGA Claims and what they mean. You may also get the full legal text of the releases by which you will bound by calling those lawyers or the Settlement Administrator. These releases apply to you, your heirs, successors, and assigns. If you are not an Opt Out, you represent and agree that you have not assigned any Released Class Claims. If you are a PAGA Employee, you represent and agree that you have not assigned any Released PAGA Claims.

8. What Are My Rights?

- **Do nothing and wait to receive your settlement check:** You are not required to take any action to receive a check. If you do nothing, a check for your share of the settlement proceeds will be mailed to you after the Court grants "final approval" of the Settlement, and, if applicable, after time for appeals has ended and any appeals have been resolved. You are not required to cash the settlement check, but, even if you do not cash or receive your check, you still will be bound by the releases described above.
- **Opt-Out:** Any Settlement Class Member who does not wish to participate in this Settlement may exclude himself or herself from the Settlement (i.e., be an "Opt Out") by completing and signing a Request for Exclusion and returning it by first class mail on or before [date] to:

SETTLEMENT ADMINISTRATOR

Address

Phone

Fax

E-mail

Your Request for Exclusion must include the following: (1) a statement with words to the effect that "I wish to exclude myself from the settlement reached in the matter of *Emmanuel Salinas v. Nestlé Purina Petcare Company, et al.* I understand that by excluding myself, I will not receive any money from the settlement reached in the matter other than the PAGA portion of the settlement, if I am eligible for a PAGA payment"; (2) your name, address, and the last four digits of your Social Security number; and (3) your signature. Your Request for Exclusion will not be valid if it is not timely submitted, if it is not signed, or if it does not contain the name and address of the Settlement Class Member. The date of the postmark on the return mailing envelope, the fax stamp, or the email receipt dates shall be the exclusive means used to determine whether the Request for Exclusion was timely submitted. **Any person who requests exclusion (opts out) of the settlement will not be entitled to any Settlement Award as a Settlement Class Member and will not be bound by the Settlement Agreement or have any right to object, appeal or comment thereon, except to the extent you are a PAGA Employee.** As a PAGA Employee, you will be bound by the PAGA component of the Settlement even if you request exclusion.

Settlement Class Members who fail to submit a valid and timely written Request for Exclusion shall be bound by all terms of the Settlement and any final judgment entered in the Action if the Settlement is approved by the Court.

- **Object:** If you received this Notice and wish to object to the Settlement, you must submit a written statement objecting to the Settlement by first class mail on or before [date] to the Settlement Administrator, at the address provided above in this Section. The statement must state the factual and legal grounds for your objection to the Settlement.

Your Objection must include the following: (1) your name, address, and the last four digits of your Social Security number; (2) the factual and legal grounds for your objection; and (3) your signature. Your Request for Exclusion will not be valid if it is not timely submitted, if it is not signed, or if it does not contain the name and address of the Settlement Class Member. The date of the postmark on the return mailing envelope, the fax stamp, or the email receipt dates shall be the exclusive means used to determine whether the Request for Exclusion was timely submitted.

If you mail a written objection, you or your attorney may also, if you wish, appear at the Final Approval Hearing to discuss your objection with the Court and the parties to the Lawsuit. Your written objection must state whether you will

attend the Final Approval Hearing, and your written notice of your intention to appear at the Final Approval Hearing must be filed with the Court and served upon Class Counsel and Defendants' counsel on or before the [date]. If you are represented by an attorney, your attorney must file a notice of appearance with the Court providing the attorneys' contact information. To be heard at the Final Approval Hearing you must also not opt out of the Settlement. If you wish to object to the Settlement but fail to return your timely written objection in the manner specified above, you shall be deemed to have waived any objection and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. Objections shall only be considered if the Settlement Class Member has not opted out of the Settlement. The failure to submit a written objection as a prerequisite to appearing in court to object to the settlement may be excused by the Court upon a showing of good cause.

9. Do I have a lawyer in this case?

The Court has preliminarily appointed the following lawyers to serve as Class Counsel for the Settlement Class. If you have any questions about the Settlement, please contact any of the attorneys listed below.

Carolyn H. Cottrell (SBN 166977), ccottrell@schneiderwallace.com
Ori Edelstein (SBN 268145), oedelstein@schneiderwallace.com
Michelle S. Lim (SBN 315691), mlim@schneiderwallace.com
SCHNEIDER WALLACE COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Telephone: (415) 421-7100 Facsimile: (415) 421-7105

10. How will the attorneys for the Settlement Class be paid?

Subject to court approval after motion by Class Counsel, Class Counsel will receive from the Settlement Administrator up to \$1,050,000 in attorneys' fees and up to \$30,000 in costs, but the Court may award less.

11. Can Defendant retaliate against me for participating in this Settlement?

No. Your decision as to whether or not to participate in this Settlement or lawsuit will in no way affect your work or employment with Defendant or future work or employment with Defendant. It is unlawful for Defendant to take any adverse action against you as a result of your participation in this Settlement or lawsuit. In fact, Defendant encourages you to participate in the Settlement.

12. Where can I get more information?

If you have any questions about this Notice, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Settlement Class, you should contact Class Counsel, as provided in Section 9 above.

This Notice is only a summary. For the precise terms and conditions of the Settlement, please contact Class Counsel toll-free at (800) 689-0024, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.caed.uscourts.gov>, or by visiting the office of the Clerk of the Court for the Sacramento Courthouse of the United States District Court, Eastern District of California at 501 I Street, Room 4-200, Sacramento, CA 95814, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT CONTACT THE COURT, THE CLERK OF THE COURT, THE JUDGE, OR NESTLÉ PURINA PETCARE COMPANY, FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

EXHIBIT B

SCHNEIDER WALLACE
COTTRELL KONECKY LLP
CAROLYN H. COTTRELL (SBN 166977), ccottrell@schneiderwallace.com
ORI EDELSTEIN (SBN 268145), oedelstein@schneiderwallace.com
MICHELLE S. LIM (SBN 315691), mlim@schneiderwallace.com
2000 Powell Street, Suite 1400
Emeryville, California 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105

Attorneys for Plaintiff and the Alleged Class

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BAKERSFIELD DIVISION

EMMANUEL SALINAS, on behalf of himself
and the Class members,

Plaintiff,

v.

NESTLÉ PURINA PETCARE COMPANY;
NESTLÉ USA, INC.,

Defendants.

CASE NO. 1:21-CV-01140-JLT-CDB

Judge Jennifer L. Thurston
Magistrate Judge Christopher D. Baker

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA REPRESENTATIVE
SETTLEMENT**

1 The Motion for Preliminary Approval of a Class Action and PAGA Representative Action
2 Settlement filed by Emmanuel Salinas in this Action, came on for hearing before this Court, the
3 Honorable [REDACTED] presiding, on [REDACTED], at [REDACTED]:00 [REDACTED].m. Defendants in this Action do not
4 oppose the motion. The Court, having considered the papers submitted in support of the motion
5 and having heard oral argument of the parties, HEREBY ORDERS THE FOLLOWING:

6 1. The Court GRANTS preliminary approval of the settlement based upon the terms
7 set forth in the “Joint Stipulation of Settlement and Release” as attached as Exhibit [REDACTED] to the
8 Declaration of [REDACTED] (the “Joint Stipulation of Settlement”) and as set forth herein.
9 Capitalized terms in this Order shall have the definitions set forth in the Joint Stipulation of
10 Settlement.

11 2. The Court hereby preliminarily certifies a Settlement Class, a representative action
12 on behalf of PAGA Employees as described in the Joint Stipulation of Settlement, pursuant to the
13 terms and conditions of the Joint Stipulation of Settlement and solely for the purposes set forth
14 therein. The “Settlement Class” is defined as: All persons employed by Defendant in a Job
15 Position at any time during the Class Period. The Settlement Class shall include any heirs,
16 successors, or assigns or purported assigns of the above-described persons. “Job Position” means
17 any non-exempt hourly or non-exempt salaried California job position with Defendant. The “Class
18 Period” means the time period from and including January 29, 2017 through and including
19 February 5, 2023. The “PAGA Employees” on whose behalf the claims under the Private
20 Attorneys General Act are resolved are defined as: all persons who worked in a Job Position at any
21 time from January 29, 2020 through and including February 5, 2023.

22 3. The Court hereby finds on a preliminary basis that: (1) the settlement amount is fair
23 and reasonable to the members of the Settlement Class when balanced against the probable
24 outcome of further litigation relating to class certification, liability and damages issues, and
25 appeals; (2) significant discovery, investigation, research, and litigation have been conducted such
26 that counsel for the Parties at this time are able to reasonably evaluate their respective positions;
27 (3) settlement at this time will avoid substantial costs, delay, and risks that would be presented by
28 the further prosecution of the litigation; and (4) the proposed Settlement has been reached as the

1 result of intensive, serious, and non-collusive, arms-length negotiations between the Parties.

2 Accordingly, the Court preliminarily finds that the Settlement was entered into in good faith.

3 4. The Court further preliminarily grants approval of the terms and conditions
4 contained in the Settlement as to Settlement Class Members “who cash, deposit, or otherwise
5 negotiate their checks or otherwise obtain the proceeds for their Class Member Allocation
6 Amounts,” under the Fair Labor Standards Act. The Court finds that the terms of the Settlement
7 are a fair and reasonable resolution of a *bona fide* dispute and that the terms of the Settlement are
8 within the range of possible approval pursuant to the Fair Labor Standards Act and applicable law.

9 5. The Court approves, as to form and content, the Notice of Class Action and PAGA
10 Representative Settlement (the “Class Notice”) in the form attached to the Joint Stipulation of
11 Settlement as Exhibit A. The Court finds that this document fully and accurately apprises
12 Settlement Class Members and PAGA Employees of the material elements of the proposed
13 Settlement, of their rights under the Settlement, including their right to be excluded from the
14 Settlement and their right and opportunity to object to the Settlement. The Court further finds that
15 the Class Notice constitutes the best notice practicable under the circumstances and is in full
16 compliance with the applicable laws and the requirements of due process.

17 6. The Court directs the distribution of the Notice of Class Action and PAGA
18 Representative Settlement in accordance with the schedule and procedures set forth in the Joint
19 Stipulation of Settlement. The Parties are authorized to make non-substantive changes to the
20 proposed Class Notice that are consistent with the terms of the Settlement and this Order.

21 7. The Court hereby approves the proposed procedure for Class Members to request
22 exclusion, which is to submit a written statement requesting exclusion to the Settlement
23 Administrator during the time period permitted pursuant to the Settlement. Any Class Member
24 who submits a written exclusion shall not be Participating Individual, shall be barred from
25 participating in the Rule 23 component of the Settlement, and shall receive no benefit from the
26 Rule 23 component of the Settlement. Settlement Class Members shall be given the full
27 opportunity to object to the Rule 23 component of the proposed Settlement and request for
28 attorneys’ fees, and to participate at the Final Approval Hearing.

8. The Court authorizes the retention of and appoints ILYM Services, Inc. as the Settlement Administrator for the purpose of the Settlement, with reasonable administration costs estimated to be \$10,050.

9. For purposes of settlement, the Court finds Carolyn H. Cottrell, Ori Edelstein, and Michelle S. Lim of Schneider Wallace Cottrell Konecky LLP have adequately represented the Settlement Class and are preliminarily appointed as Class Counsel and counsel for the PAGA Employees subject to the Final Approval Hearing.

10. For settlement purposes only, the Court preliminarily (and subject to the Final Approval Hearing) finds that Plaintiff Emmanuel Salinas ("Plaintiff") is an adequate representative of the Settlement Class and PAGA Employees and appoints him as such.

11. A Final Approval Hearing is scheduled for _____ at ____:____ a.m. at the Bakersfield Federal Courthouse, 510 19th Street, Suite 200, Bakersfield, CA 93301. The purpose of such hearing will be to: (a) determine whether the Joint Stipulation of Settlement should finally be approved by the Court as fair, reasonable and adequate; (b) determine the reasonableness of Class Counsel's request for attorneys' fees and costs; (c) determine the reasonableness of the class representative enhancement fee; and (d) order entry of Judgment in the Action.

12. Not later than _____ court days before the Final Approval Hearing, Class Counsel shall file brief(s) requesting final approval of the settlement, an award of reasonable attorneys' fees and costs, and an award of reasonable class representative enhancement fees to the representative of the Settlement Class. All other dates shall be as established by the Joint Stipulation of Settlement.

13. Class Counsel shall provide a copy of the Judgment of Final Approval of Class Action Settlement to the Labor and Workforce Development Agency within ten (10) days after entry of that Judgment.

14. Accordingly, GOOD CAUSE APPEARING, the Court hereby approves the proposed Class Notice and adopts the following dates and deadlines:

Deadline for Defendant to provide the Settlement Administrator with the Class List	Within ten (10) business days after entry of the Preliminary Approval Order.
Deadline for the Settlement Administrator to Mail the Class Notice to Settlement Class Members	Within fifteen (15) business days after the Settlement Administrator receives the Class List.
Deadline for Settlement Class Members to postmark requests to opt-out or file objections to the Settlement (the "Deadline Date")	Sixty (60) calendar days after the Settlement Administrator has postmarked the Class Notice for mailing to Settlement Class Members, or within fifteen (15) calendar days after the postmark of a Class Notice re-mailed to a corrected address for that Settlement Class Member, whichever is later.
Deadline for the Settlement Administrator to provide all counsel with a complete list of all Participating Class Members, of all Opt Outs, and of any written objections	No later than fifteen (15) calendar days before the Final Approval Hearing.
Deadline for filing of the Final Approval Motion	Approximately twenty-five (25) calendar days after the Deadline Date, as provided above.
Final Approval Hearing	As provided above.
Effective Date	The date on which the District Court's judgment approving the Joint Stipulation of Settlement becomes "Final." The judgement becomes "Final" when the period for appealing or seeking higher court review of the settlement approval and Final Class Judgement has expired, or that any filed appeals or other requests for review have been resolved without right to further appeals or review.
Deadline for Defendant to pay the Maximum Settlement Amount and Employer's Share of Taxes to the Settlement Administrator	Within ten (10) business days after the Effective Date.
Deadline for Settlement Administrator to make payments under the Settlement to Participating Individuals, the LWDA, Class Representative, Class Counsel, and itself	Within twenty (20) business days after the Effective Date.
Check-cashing deadline	One hundred eighty (180) calendar days from the date of issuance of the check.
Deadline for the Settlement Administrator to send a reminder notice to Participating Class Members and PAGA employees who have not cashed their checks	Within ninety (90) calendar days from the mailing of the check.
Deadline for the Settlement Administrator to provide written certification of completion of administration of the Settlement to counsel for all Parties and the Court	As soon as practicable.

Deadline for the Settlement Administrator to remit uncashed check funds to the Unclaimed Property Fund	As soon as practicable.
Deadline for Plaintiff to file a Post-Distribution Accounting Report	As soon as practicable.

15. The Court further ORDERS that, pending further order of this Court, all proceedings in the Action, except those contemplated herein and in the Settlement, are stayed, and all deadlines are vacated.

16. If for any reason the Court does not execute and file a Final Approval Order and Judgment, the proposed Settlement subject to this Order and all evidence and proceedings had in connection with the Settlement shall be null and void.

17. The Court may, for good cause, extend any of the deadlines set forth in this Order or adjourn or continue the final approval hearing without further notice to the Settlement Class.

Dated: _____
The Honorable Christopher D. Baker
U.S. Magistrate Judge
Eastern District of California

EXHIBIT C

SCHNEIDER WALLACE
COTTRELL KONECKY LLP
CAROLYN H. COTTRELL (SBN 166977), ccottrell@schneiderwallace.com
ORI EDELSTEIN (SBN 268145), oedelstein@schneiderwallace.com
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Telephone: (415) 421-7100
Facsimile: (415) 421-7105

Attorneys for Plaintiff and the Alleged Class

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BAKERSFIELD DIVISION

EMMANUEL SALINAS, on behalf of himself
and the Class members,

Plaintiff,

v.

NESTLÉ PURINA PETCARE COMPANY;
NESTLÉ USA, INC.,

Defendants.

CASE NO. 1:21-CV-01140-JLT-CDB

Judge Jennifer L. Thurston
Magistrate Judge Christopher D. Baker

**[PROPOSED] JUDGMENT OF FINAL
APPROVAL OF CLASS ACTION AND
PAGA REPRESENTATIVE ACTION
SETTLEMENT**

On [REDACTED], the Court heard the Parties' application for final approval of the Settlement and for attorneys' fees and costs and for service award, set forth in the "Joint Stipulation of Settlement and Release" (the "Joint Stipulation of Settlement"). Capitalized terms used in this Judgment are as defined in the Joint Stipulation of Settlement. The Court has separately entered orders awarding attorneys' fees and costs and service award, and granting final approval of the Parties' class action settlement pursuant to Federal Rule of Civil Procedure 23, which has settled this action in its entirety. The Court has considered all papers filed, and the other information presented, and based on those papers and information presented,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all members of the Settlement Class and all PAGA Employees.

2. The Settlement Class is defined as the following: All persons employed by Defendant in a Job Position during any portion of the Class Period. The Settlement Class shall include any heirs, successors, or assigns or purported assigns of the above-described persons. The "Job Position" means any salaried non-exempt or hourly non-exempt California job position with Defendant. The "Class Period" means the time period from and including January 29, 2017, through and including February 5, 2023. The "PAGA Employees" mean Settlement Class Members, including any Opt Outs, who were employed in a Job Position during any part of the PAGA Period. The "PAGA Period" means the time period from and including January 29, 2020, to February 5, 2023.

3. Pursuant to Federal Rule of Civil Procedure Rule 23(e), the Court grants final approval of the Settlement as set forth in the Joint Stipulation of Settlement. For settlement purposes only, the Court finds that Plaintiff Emmanuel Salinas is an adequate representative of the Settlement Class and appoints him as such. The Court also approves a representative action under the Private Attorneys General Act, California Labor Code section 2698 et. seq. ("PAGA") on behalf of the PAGA Employees and finds that Emmanuel Salinas is also an adequate representative of the PAGA Employees.

1 4. The Court finds that Carolyn H. Cottrell, Ori Edelstein, and Michelle S. Lim of
2 Schneider Wallace Cottrell Konecky LLP have adequately represented the Settlement Class and
3 the PAGA Employees and are appointed as Class Counsel for the Settlement Class and as counsel
4 for the represented PAGA Employees.

5 5. The Court finds that said Settlement is, in all respects, fair, reasonable, and
6 adequate to the Settlement Class and the PAGA Employees when balanced against the probable
7 outcome of extensive and costly litigation. Substantial investigation and research have been
8 conducted such that counsel for the Parties are reasonably able to evaluate their respective
9 positions. It appears to the Court that Settlement will avoid substantial additional costs by all
10 Parties, as well as the delay and uncertainties that would be presented by further prosecution of the
11 Action. The Court finds the Settlement that has been reached is the result of intensive, non-
12 collusive, arm's-length negotiations, mediation with an experienced, third-party neutral.

13 6. The Court determines that the Parties complied with the distribution of the Class
14 Notice to the Settlement Class and PAGA Employees in the manner and form set forth in the
15 Preliminary Approval Order, that the Class Notice provided to the Settlement Class and PAGA
16 Employees was the best notice practicable under the circumstances, and that the Class Notice
17 constituted due and sufficient notice to all persons entitled to such notice.

18 7. The procedures required by the Preliminary Approval Order have been carried out
19 and satisfy due process requirements such that all Settlement Class Members been given adequate
20 opportunity to participate fully in the exclusion and the approval process, and all PAGA
21 Employees have been given adequate opportunity to be heard and to participate in the approval
22 process.

23 8. There were [REDACTED] valid Requests for Exclusion to the Settlement in response to the
24 Class Notice. [The names of those Opt Outs are the following: [REDACTED]]

25 9. , Plaintiff and all the Settlement Class Members who are not Opt Outs, shall be
26 deemed conclusively to have made the following releases as set forth in the Joint Stipulation of
27 Settlement, which shall have the force and effect of res judicata as to each of them:

The “Released Parties” means: (a) Defendant Nestle Purina PetCare Co. and each and all past or present partners, parents, subsidiaries, or affiliates (regardless whether such partners, parents, subsidiaries, or affiliates are individuals, corporations, partnerships, limited partnerships, limited liability companies, or other forms of entity) of Nestle Purina Pet Care Co., including but not limited to Nestle USA, Inc.; (b) each and all of the predecessor or successor entities of any of those entities identified in subparagraph (a); (c) any other individuals or entities of any kind, including but not limited to any payroll companies, which have been or could be alleged to be in any manner responsible (whether on an alter ego, joint employer, integrated enterprise, or any other theory) for any violations described in the “Released Claims” (defined below) and occurring as a result of employment by Defendant and (d) all past and present directors, officers, representatives, insurers, agents, shareholders, limited or general partners, members, lawyers, and employees of any of the individuals or entities identified in subparagraphs (a), (b), or (c).

Each Settlement Class Member (except the Opt Outs identified in paragraph 8) fully, finally, and forever releases and discharges each and every one of the Released Parties from all claims, demands, rights, liabilities, and causes of action arising in whole or in part during the Class Period, for any of the following arising from employment by Defendant: (a) any alleged or actual failure to provide proper, accurate, timely, adequately descriptive, or complete wage statements or pay stubs; any alleged or actual failure to timely, properly, or fully or completely pay, or any alleged or actual failure to properly calculate, any wages including but not limited to any minimum wages, regular wages, overtime premium wages, or meal or rest period premium wages; any alleged or actual failure to comply with meal or rest period requirements or requirements for recording meal or rest periods or work hours; any actual or alleged failure to timely pay all wages or compensation owed to a fired, quitting, or otherwise departing employee; or any alleged or actual failure to pay any interest or penalties owed as a result of any of the foregoing; or (b) in any manner arising out of any of the other facts or legal theories alleged or asserted in: (i) the original or Amended Complaints in this Action or the PAGA Action, including, but not limited to, claims arising under or out of any unfair competition laws as defined in California Business and Professions Code Section 17200 et seq., and claims for declaratory or injunctive relief or for monetary compensation, whether in the form of wages, damages, liquidated damages, penalties, restitution, costs, attorneys’ fees, interest, or otherwise; or (ii) Plaintiff’s letters under the Private Attorney General Act, California Labor Code section 2699 et. seq. (“PAGA”), to the California Labor Workforce Development Agency (“Released Class Claims”).

Each Settlement Class Member (except the Opt Outs identified in paragraph 8) who cashes, deposits, or otherwise negotiates a check, or otherwise obtains the proceeds for, their Class Member Allocation Amount shall be deemed to have opted into an a collective action under the Fair Labor Standards Act, 29 U.S.C. §§

201, et seq. (“FLSA”, and to have released each of the Released Parties from any and all FLSA claims, penalties, costs, expenses, attorneys’ fees, liabilities, damages, actions or causes of action of whatever kind or nature, known and unknown, which derive from any of the foregoing Released Class Claims.

10. Each of the PAGA Employees, including Plaintiff and all Settlement Class Members who meet that definition even if they are Opt Outs identified in Paragraph 8 above, shall be deemed conclusively to have made the following releases as set forth in the Joint Stipulation of Settlement, which shall have the force and effect of res judicata as to each of them:

Each PAGA Employee fully, finally, and forever releases and discharges each and every one of the Released Parties from all PAGA claims, arising in whole or in part, during the PAGA Period, which in any manner which (a) derive from any of the foregoing Released Class Claims; or (b) are or could have been alleged or asserted under the PAGA in): (i) the original or Amended Complaints in this Action or the PAGA Action; or (ii) Plaintiff’s letters under the Private Attorney General Act, California Labor Code section 2699 et. seq. (“PAGA”), to the California Labor Workforce Development Agency (“Released PAGA Claims”).

11. The Released Class Claims and Released PAGA Claims are collectively the “Released Claims.” Each Settlement Class Member (except the Opt Outs identified in Paragraph 8 above) and each PAGA Employee acknowledges that he or she is aware that he or she or his or her attorneys may hereafter discover facts in addition to or different from those which he or she or his or her counsel now knows or believes to be true with respect to the subject matter of the Released Claims, but each Settlement Class Member and PAGA Employee (except the Opt Outs identified in Paragraph 8 above) shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, as described above. Those releases shall remain in effect as full and complete releases without regard to the subsequent discovery or existence of any such different or additional facts.

12. The Released Class Claims and Released PAGA Claims include any claim of the kind described in Paragraphs 9 through 11 above whether or not any Settlement Class Member or PAGA Employee has directly or indirectly assigned, transferred, encumbered, or purported to

1 assign, transfer, or encumber, to any person or entity, whether by operation of law or otherwise,
2 any portion of any Released Class Claims or Released PAGA Claims.

3 13. All Settlement Class Members (except any Opt Outs identified in Paragraph 8
4 above) and all PAGA Employees shall be bound by all of the releases and other terms of the Joint
5 Stipulation of Settlement and this Judgment, whether or not they actually receive or cash their
6 settlement checks for their Class Member Allocation Amount or Individual PAGA Payments, and
7 shall not be permitted to seek any further payment or any personal relief of any kind, including
8 any payment for damages, wages, compensation, fees, costs, penalties, or interest, other than their
9 respective Class Member Allocation Amount or Individual PAGA Payment on account of the
10 Released Class Claims or Released PAGA Claims.

11 14. Each Settlement Class Member (except any Opt Outs identified in Paragraph 8
12 above) and each PAGA Employee shall not hereafter, individually or as a member of any class or
13 representative proceeding, file any civil action, lawsuit, grievance, demand for arbitration, charge,
14 claim, and/or administrative complaint against Defendant or any of the Released Parties, based
15 upon any Released Class Claims or Released PAGA Claims.

16 15. The Settlement is not an admission by Defendant or any Released Party, nor is this
17 Judgment a finding of the validity of any wrongdoing by Defendant or any Released Party.
18 Neither the Joint Stipulation of Settlement, nor any document referenced therein, nor any action
19 taken to carry out the Joint Stipulation of Settlement: (a) will be construed as or used as an
20 admission of liability by Defendant or any Released Party or an admission that any of Defendant's
21 defenses in the Action are without merit; or (b) will be disclosed, referred to, or offered in
22 evidence against Defendant or any Released Party in any proceeding, except for purposes of
23 effectuating the Settlement; provided, however, the Settlement may be admitted in evidence and
24 otherwise used in any proceeding to enforce its terms, or in defense of any claims released or
25 barred by the Settlement or this Judgment.

16. The Court approves class representative enhancement fees to Plaintiff Emmanuel Salinas in the amount of _____ (\$ _____), which the Court determines to be fair and reasonable.

17. The Court awards attorneys' fees to Schneider Wallace Cottrell Konecky LLP, in the amount of _____ (\$ _____), which the Court determines to be fair and reasonable.

18. The Court awards costs to Schneider Wallace Cottrell Konecky LLP, in the amount of _____ (\$ _____), which the Court determines to be fair and reasonable.

19. The Court approves a payment of One Hundred Thousand Dollars and No Cents (\$100,000.00) to California's Labor and Workforce Development Agency.

20. The Court approves a payment of _____ (\$ _____) to _____ for services as claims administrator.

21. The Court directs the Parties to effectuate the Settlement according to the terms of the Joint Stipulation of Settlement, including payment to Participating Class Members and to PAGA Employees in accordance with the terms of the Joint Stipulation of Settlement.

Accordingly, good cause appearing, the Court hereby approves the following implementation schedule:

Effective Date	The date on which the District Court's judgment approving this Joint Stipulation of Settlement becomes "Final." The judgement becomes "Final" when the period for appealing or seeking higher court review of the settlement approval and Final Class Judgement has expired, or that any filed appeals or other requests for review have been resolved without right to further appeals or review.
Deadline for Defendant to pay the Maximum Settlement Amount and Employer's Share of Taxes to the Settlement Administrator	Within ten (10) business days after the Effective Date.
Deadline for Settlement Administrator to make payments under the Settlement to Participating Individuals, the LWDA, Class Representative, Class Counsel, and itself	Within twenty (20) business days after the Effective Date.

