

MEMORANDUM OF UNDERSTANDING

1. This Memorandum of Understanding (“MOU”) is entered into for the case of *Ramiro Guevara v Bunge Oils, Inc.*, Stanislaus County Superior Court Case No. CV-21-004207 (the “Action”) by and between the named Plaintiff Ramiro Guevara (“Plaintiff”), on behalf of himself, the Class (defined below) and the California Labor Workforce and Development Agency, on the one hand, and Defendant Bunge Oils, Inc. (“Defendant”) a Delaware corporation, on the other hand, (Plaintiff and Defendant are collectively referred to as the “Parties”), for the purpose of memorializing their agreement to the principal terms of a settlement of this action.
2. This MOU will serve as a placeholder and will be followed up with a formal settlement agreement. Nevertheless, the Parties intend that this MOU be enforceable pursuant to the provisions of California Code of Civil Procedure § 664.6.
3. The Settlement Class is defined as: “All non-exempt employees who work or worked for Defendant in California at any time during the period from February 10, 2017 to June 30, 2022, or the date of preliminary approval, whichever comes first (the “Class Period”) (“Class Members”). The Parties agree that a Class Member is presumed to reside in California if he or she worked for Defendant in California during the Class Period. Defendant estimates that there are approximately 63 individuals who satisfy the definition of Class Members between August 17, 2017 and February 28, 2022, who, collectively worked as many as 7,500 workweeks during that time period, assuming that each Class Member worked two weeks during each bi-weekly pay period for which he or she received a paycheck. The long-form settlement agreement will include a representation by Defendant as to the weeks worked by the Class Members during the Class Period. In the event that the actual number of workweeks worked by all Class Members during the Class Period increases by 5% or more, then Defendant shall increase the maximum settlement amount on a proportional basis.
4. The Aggrieved Employees are defined as: “All non-exempt employees who work or worked for Defendant in California at any time during the period from April 6, 2020 to July 1, 2022, or the date of preliminary approval, whichever comes first (the “PAGA Period”).
5. Defendant will provide class contact information (names, addresses, phone numbers, social security numbers, pay periods worked during the Class Period and/or dates of employment) for the Class Members who were paid through Defendant’s payroll to the Settlement Administrator to assist the settlement process within fourteen (14) calendar days of the court signing the preliminary approval order.
6. If the Court does not approve the settlement, the Parties agree to work diligently and cooperatively to have this matter presented anew to the Court for preliminary approval and final approval.
7. The settlement will be on a common fund basis, there will be no claim form or claims process, and there will be no reversion to Defendant.

8. Defendants shall pay \$500,000, the Gross Settlement Amount ("GSAGSA"), in settlement of all claims pleaded in the First Amended Complaint. In addition to this amount, Defendant shall pay Defendant's share of payroll taxes on the wages distributed to Class Members separately from the GSA. No provision herein shall be construed or applied in such a manner as to require Defendants to pay more than such amount as a result of this settlement (except its own attorney fees and costs). The payment of the Settlement Funds shall be made as follows:
9. Plaintiffs will request that the Court approve an award of attorney's fees to Plaintiff's counsel in an amount of one third of the GSA, actual costs to Plaintiff's counsel not to exceed \$15,000 and verified by declaration, and Incentive Award/General Release Payment to the Plaintiff of not to exceed \$10,000, all to be paid from the GSA. Defendant shall not oppose these requests. In the event the Court reduces or does not approve these payments, neither Plaintiff nor his counsel will be entitled to revoke this settlement, and it shall remain binding. In addition, \$10,000 of the GSA will be allocated for PAGA penalties, of which 75% shall be paid to the California LWDA and 25% shall be paid to the Aggrieved Employees, as required by PAGA.
10. Payment will be made to the Class Members based on the number of work weeks during which they were employed by Defendant during the Class Period. Payment will be made to the Aggrieved Employees based on the number of work weeks during which they were employed by Defendant during the PAGA Period.
11. Settlement payments made to eligible Class Members will be attributed 33% wages, 67% penalties and interest. For each Class Member, the wages will be reported on Form W-2 and the remainder on Form 1099. Class Members are responsible for their share of the payroll taxes, which shall be deducted from their individual settlement payments. Defendant is responsible for its share of the payroll taxes, and these taxes will not be deducted from the Maximum Settlement Amount. The class representative enhancement payments shall be reported on IRS Form 1099.
12. Settlement payments from the GSA allocated for PAGA penalties and paid to each eligible Aggrieved Employee will be attributed as 100% penalties, and will be reported on Form 1099
13. Defendant shall fully discharge its obligations to those Class Members to whom they will pay a Settlement Award through the mailing of a Settlement check, regardless of whether such checks are actually received and/or negotiated by Class Members. All funds represented by uncashed checks remaining in the Qualified Settlement Fund shall be distributed to the Controller of the State of California to be held pursuant to the Controller of the State of California, California Civil Code § 1500 et seq., for the benefit of those Settlement Class members who did not cash their checks until such time that they claim their property. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Settlement Class members, whether or not they all cash their Settlement Checks. Therefore, Defendant will not be required to pay any interest on said amounts.

14. The Parties agree that the consideration, above, constitutes adequate consideration for the settlement and release described immediately below.

- a. *Release by Plaintiff:* Plaintiff shall be bound by a complete Civil Code Section 1542 release and waiver of all claims known and unknown, with the exception of any pending workers' compensation claims any claims which cannot be released as a matter of law.
- b. *Release by Settlement Class Members:* All Class Members who do not opt out of the Settlement and the State of California, and any person acting on its behalf, will be bound by a release of all claims and causes of action falling within the definition of "Released Class Claims" (below), whether known or unknown. However, to be clear, the scope of the release is limited to the Released Class Claims.
 - i. *Definition of "Released Class Claims":* All claims, demands, rights, liabilities causes of action, and factual or legal theories that were alleged in the Second Amended Complaint or that could have been alleged in the Second Amended Complaint against Defendant (and its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys) [collectively, the "Released Parties"] based on the facts contained in the in the Second Amended Complaint, including all of the following claims for relief: (a) failure to pay all minimum wages due; (b) failure to pay all overtime wages due (c) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (d) failure to provide proper rest breaks, and to properly provide premium pay in lieu thereof; (e) failure to provide complete, accurate or properly formatted wage statements; (f) failure to pay all wages due at termination of employment; (g) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint; (h) all that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint; (i) any other claims or penalties under the wage and hour laws pleaded in the Action, including, but not limited to, Labor Code sections 201-203, 204, 210, 226(a), 226.3, 226.7, 512, 516, 558, 1182.12, 1194, 1194.2, 1197 and 1199, Cal. Business & Professions Code section 17200 *et seq.*, and applicable Industrial Welfare Commission Wage Orders; (j) all damages, penalties, interest and other amounts recoverable under said claims, causes of action or legal theories of relief, (collectively, the "Released Class Claims"). The Released Parties shall be entitled to a release of Released Claims which occurred during the Class

Period.

- c. *Release by LWDA:* The California Labor Workforce Development Agency, and any person acting on its behalf, will be bound by a release of all claims and causes of action falling within the definition of “Released PAGA Claims” (below), whether known or unknown.

- i. *Definition of Released PAGA Claims:* All claims, demand, rights or causes of action for civil penalties under PAGA arising from each of the violations of the Labor Code alleged in the Second Amended Complaint, including all of the following alleged violations of the Labor Code: (a) failure to pay all minimum wages due; (b) failure to pay all overtime wages due (c) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (d) failure to provide proper rest breaks, and to properly provide premium pay in lieu thereof; (e) failure to provide complete, accurate or properly formatted wage statements; (f) failure to pay all wages due at termination of employment; (g) all that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint; (h) any other claims or penalties under the wage and hour laws pleaded in the Action, including, but not limited to, Labor Code sections 201-03, 204, 210, 226(a), 226.3, 226.7, 512, 516, 558, 1182.12, 1194, 1194.2, 1197 and 1199, and applicable Industrial Welfare Commission Wage Orders; (j) all penalties recoverable under said claims, causes of action or legal theories of relief, (collectively, the “Released PAGA Claims”). The Released Parties shall be entitled to a release of Released PAGA Claims which occurred during the PAGA Period.

15. *Amending the Complaint:* Plaintiff will file a Second Amended Complaint, provides additional factual allegations that Plaintiff and Class Members were not compensated for work performed off-the-clock, that Plaintiff and Class Members were not allowed to leave the work premises during meal periods, that Plaintiff and Class Members were unable to take meal periods and/or rest breaks due to Defendant’s productivity requirements and instructions from their managers to continue working rather than taking meal periods, or to delay taking meal periods until later in the shift. Plaintiff shall submit the proposed Second Amended Complaint to Defendant’s counsel for review and approval prior to filing and shall not file them without such approval.
16. The Parties agree to use a mutually agreeable third-party settlement administrator. Costs of settlement administration shall be paid from the GSA.
17. Class Members shall have forty-five (45) days to opt out or object to the settlement, in writing. Defendant will provide class contact information (names, addresses, phone numbers, social

security numbers, pay period information and/or dates of employment) to the Settlement Administrator to assist the settlement process within fourteen (14) calendar days of the court signing the preliminary approval order.

- a. Aggrieved Employees, and those Class Members who are also Aggrieved Employees, will be unable to opt-out of their PAGA allocation.
18. Class Members will be excluded from the settlement if (i) they opt out of the settlement within the time provided, or (ii) a current address for those Class Members cannot be obtained after exhausting reasonable efforts, as further defined above. If the total number of Class Members who are excluded from the settlement for either of these reasons reduces the total weeks worked by the settlement class by more than 10% of the total weeks worked by the Class during the Class Period, then Defendant will have the right to revoke this settlement.
19. Neither this MOU, nor final form of settlement, shall constitute an admission on behalf of Defendant of any form of liability or the accuracy of any allegation made by Plaintiff, Plaintiff's Counsel, or Class Counsel.
20. The parties to this MOU agree that it reflects their good faith compromise of the claims raised in this action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.
21. The parties to this MOU are represented by competent counsel, and they have had an opportunity to consult with counsel prior to its execution.
22. The parties pledge their good faith and dealing in support the approval of this Settlement by the Court. Nonetheless, if despite their best efforts, the court declines to approve the Settlement, then it shall be void and the Parties shall return to their positions as of the date of this Memorandum of Understanding, as if it had never been agreed to.
23. Motion for Preliminary Approval. Plaintiff's counsel shall prepare a long-form settlement agreement within five (5) days of the date of this Memorandum of Understanding. The parties will cooperate in finalizing the language of that agreement and Plaintiff's counsel shall prepare and submit the Motion for Preliminary Approval as ordered by the Court. Plaintiffs' counsel shall also prepare the Motion for Final Approval, to be filed at the time set by the court.
24. Standstill in Litigation. The Parties agree to stay litigation activities pending approval of the settlement with the except of seeking approval of the settlement and the amendment as set forth above.
25. Limitations on Statements Made About the Action. The Parties and their counsel agree that they will not issue any press releases or press statements, post any internet disclosures, have any communications with the press or media about the Action or this settlement, or otherwise publicize the terms of this MOU or the settlement. Notwithstanding the foregoing: (a) Class Counsel shall be allowed to refer to the settlement in support of other court filings in other

litigation; (b) the Parties shall have the right to disclose the settlement as may be required under federal or state tax and/or securities laws or under Generally Accepted Accounting Principles; and (c) the Parties shall have the right to disclose the settlement to third parties without identifying the case name, case number, or names of any of the Parties or Released Parties.

DATE: ^{May 2}~~April~~ __, 2022

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: Christopher W Decker
Christopher W. Decker
Attorneys for Defendant, Bunge Oils, Inc.

5/9/2022

DATE: April __, 2022

BOKHOUR LAW GROUP, P.C.

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Mehrdad Bokhour, Esq.
Attorney for Plaintiff Ramiro Guevara and all
others similarly situated

5/9/2022

DATE: April __, 2022

FALAKASSA LAW, P.C.

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Joshua Falakassa
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5/2/2022

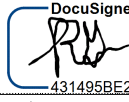
DATE: April __, 2022

BUNGE OILS, INC.

By: Robert Farr
ITS: VP NA Operations

DATE: May 2, 2022

PLAINTIFF

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Ramiro Guevara