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SUNRISE FOODS, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

HECTOR LOPEZ, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

SUNRISE FOODS, LLC dba JACK IN THE BOX a
California limited liability company, and DOES 1 to
10, inclusive

Defendants.

CASE NO. 21STCV37647

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

This Settlement Agreement and Release of Claims ("Agreement") is between Plaintiff Hector Lopez ("Plaintiff"), on behalf of himself and other aggrieved employees, and Defendant Sunrise Foods, LLC dba Jack in the Box, ("Defendant" or "Sunrise") (collectively, with Plaintiff, the "Parties"). By executing this Agreement, the Parties intend to settle the lawsuit entitled *Hector Lopez, on behalf of himself and all others similarly situated, v. Sunrise Foods, LLC dba Jack in the Box, a California limited liability company, and DOES 1 to 10, inclusive.*, Case No. 21STCV37647 (Los Angeles County Superior Court, filed October 12, 2021) (the "Action") involving claims brought under the California Labor Code Private Attorneys General Act of 2004 ("PAGA").

I. DEFINITIONS

1. "Administration Fees" refers to the amount to be paid to ILYM (or any other third-party settlement administrator approved by the Parties ("Settlement Administrator")) for costs associated with administration of the settlement contemplated by this Agreement, including costs for, among other things, printing, copying, formatting, translation of materials, postage, envelopes, computer searches to locate addresses, calculation of payments to individual class members, calculation of applicable withholdings and taxes (if required by law), costs associated with the process for any uncashed settlement checks, and any other expenses the Settlement Administrator incurs to complete the settlement process according to the terms of this Agreement. The Settlement Administrator will be responsible for establishing a qualified settlement account, and issuing all payments and appropriate tax forms (if required by law). The Parties agree that Administration Fees will not exceed \$11,000, all of which are to be taken from the PAGA Gross Settlement Amount (as defined below).

2. "Aggrieved Employees" consists of all non-exempt employees of Defendant employed in California at any time between October 12, 2020, and January 12, 2023.

3. "Attorneys' Fees and Costs" means the amount of money to be paid from the PAGA Gross Settlement Amount (as defined below) to Bradley/Grombacher LLP and Capstone Law, APC ("Plaintiff's Counsel") in full satisfaction of all claims Plaintiff may have for reasonable attorneys' fees, litigation costs, and expenses incurred in the Action. The amount of attorneys' fees awarded to Plaintiff's Counsel may not exceed 35% of the PAGA Gross Settlement Amount, and the amount of

1 litigation costs and expenses (combined) may not exceed \$12,000. Defendant will not object to or
2 otherwise oppose requests consistent with this paragraph.

3 4. "Effective Date" shall be the date on which the Court approves this Agreement and
4 dismisses the Action with prejudice through entry of the Order (as defined herein). No money will
5 be distributed unless and until the Effective Date occurs.

6 5. "Individual Settlement Payments to Aggrieved Employees" means the individual
7 payments that shall be made to each Aggrieved Employee under this Agreement, which in the
8 aggregate shall total 25% of the PAGA Net Settlement Amount (as defined below).

9 6. "PAGA Gross Settlement Amount" means \$135,000.00. This amount shall be used
10 to satisfy all liabilities arising from this Agreement, including Attorneys' Fees and Costs, Plaintiff's
11 Individual Claim Payment (as defined below), Individual Settlement Payments to Aggrieved
12 Employees, Administration Fees, and payment to the Labor and Workforce Development Agency
13 ("LWDA"). Defendant shall pay exactly the PAGA Gross Settlement Amount to fulfill all of its
14 obligations under this settlement.

15 7. "PAGA Net Settlement Amount" means the amount, as approved by the Court, after
16 Attorneys' Fees and Costs, Plaintiff's Individual Claim Payment, and Administration Fees are
17 subtracted from the PAGA Gross Settlement Amount.

18 8. "Plaintiff's Individual Claim Payment" means the amount to be paid to Plaintiff
19 Hector Lopez in consideration for his general release of all claims, as set forth in Paragraph 22
20 below. Plaintiff's Individual Claim Payment shall be in addition to the amount payable to Plaintiff
21 as the Individual Settlement Payments to Aggrieved Employees. Plaintiff's Individual Claim
22 Payment shall not exceed \$7,500.00. Plaintiff will receive an IRS Form 1099 from the Settlement
23 Administrator and will be solely responsible for reporting and paying all applicable federal, state
24 and local tax. Defendant will not object to or otherwise oppose requests consistent with this
25 paragraph.

26 9. "Settlement Period" means October 12, 2020, through January 12, 2023.

27 **II. RECITALS AND PROCEDURAL HISTORY**

28 10. Allegations in the Complaint and Amendment Thereto. On October 12, 2021, ,

1 Plaintiff Lopez filed the Action in the Superior Court of California, County of Los Angeles,
2 individually and on behalf of all "aggrieved employees" pursuant to Labor Code §§ 2698 *et seq.* In
3 the operative Complaint, Plaintiff alleges a single claim for penalties under PAGA.

4 **11. Defendant's Denials.** Nothing in this Agreement, or in the Memorandum of
5 Understanding executed by the Parties at mediation, shall constitute an admission on behalf of
6 Defendant of any form of liability or the accuracy of any allegation against it. Defendant denies (1)
7 all the material allegations in the Action; (2) that it violated any applicable laws; and (3) that it is
8 liable for damages, penalties, attorneys' fees, costs, or any other form of compensation or remedy
9 with respect to the claims asserted in the Action. Nevertheless, without admitting any liability or
10 wrongdoing, Defendant has agreed to settle the Action on the terms set forth in this Agreement to
11 avoid the burden, expense, and uncertainty of litigation. Any statements by Defendant in this
12 Agreement are made for settlement purposes only.

13 **12. Counsel's Investigation.** Plaintiff's Counsel has investigated the facts relating to the
14 claims alleged in the Action and also has analyzed all defenses. Plaintiff's Counsel also engaged in
15 informal discovery and obtained the production of relevant documentation and data from Defendant
16 prior to mediation on January 12, 2023, to allow Plaintiff's Counsel to further investigate and
17 evaluate the claims and defenses in this Action.

18 **13. Negotiation of Settlement.** Plaintiff's Counsel engaged in arms-length negotiations
19 with Defendant at a mediation on January 12, 2023, with experienced mediator Steve Pearl, Esq.
20 with a view toward achieving substantial benefits for the Aggrieved Employees and the State of
21 California, while avoiding the cost, delay, and uncertainty of further litigation.

22 **III. TERMS OF THE AGREEMENT**

23 **14. Court Approval of the Settlement.** The Parties will present this Agreement to the
24 Court and will request that the Court issue an order approving and incorporating by reference the
25 terms and conditions of this Agreement and dismissing the Action with prejudice (the "Order").
26 Plaintiff's Counsel will be responsible for drafting and filing all documents necessary to obtain the
27 Order.

28 ///

1 **15. Delivery of the List of Aggrieved Employees.** As soon as practicable, but no later
2 than 15 calendar days after the Effective Date, Defendant will provide the Settlement Administrator
3 with a confidential list containing the Aggrieved Employees' names, last known addresses, last
4 known telephone numbers, and social security numbers, which will be used to send the Individual
5 Settlement Payments to Aggrieved Employees. Defendant will also provide the Settlement
6 Administrator with the number and date ranges of the pay periods worked by each Aggrieved
7 Employee in a non-exempt position in California during the Settlement Period. Data provided by
8 Defendant shall be kept confidential by the Settlement Administrator except for purposes of
9 administering the settlement. The Settlement Administrator shall not share any personally-
10 identifying Aggrieved Employee data with Plaintiff's Counsel, but may disclose the number of
11 Aggrieved Employees, the date ranges of the pay periods worked by each Aggrieved Employee
12 during the Settlement Period (with names redacted), and their Individual Settlement Payments (with
13 names redacted).

14 **16. Funding of the Settlement.** Within 15 calendar days after the Effective Date,
15 Defendant will deposit the PAGA Gross Settlement Amount into a Qualified Settlement Account
16 ("QSA") to be established by the Settlement Administrator.

17 **17. Settlement Payments.** Within 21 calendar days of the funding of the QSA, the
18 Settlement Administrator shall issue the following payments from the QSA: (a) the Individual
19 Settlement Payments to Aggrieved Employees (including Plaintiff); (b) the LWDA PAGA Payment
20 (as defined below) to the LWDA; (c) Plaintiff's Individual Claim Payment to Plaintiff; (d)
21 Attorney's Fees and Costs to Plaintiff's Counsel; and (e) the Administration Fees to itself. The
22 Settlement Administrator, and not Defendant, will issue appropriate tax forms for all payments
23 issued under this Settlement, if and as required by law as determined by the Settlement
24 Administrator. Because the payments made under this Agreement will be made with respect to only
25 the PAGA claims for all Aggrieved Employees and the individual claims for Plaintiff, this
26 Agreement is not subject to the rules governing the settlement of class or collective actions.
27 Accordingly, the settlement payments shall be distributed without a claims process or an opportunity
28 to object or opt out.

1 **18. Calculation of Individual Settlement Payments to Aggrieved Employees.** The
2 PAGA Net Settlement Amount will be distributed as follows:

3 a. 75% of the PAGA Net Settlement Amount shall be paid to the LWDA (the
4 “LWDA PAGA Payment”); and

5 b. The remaining 25% of the PAGA Net Settlement Amount (the “Aggrieved
6 Employee Settlement Amount”) shall be distributed to all Aggrieved Employees, with each
7 Aggrieved Employee receiving an Individual Settlement Payment based on the number of pay
8 periods he or she worked for Defendant in a non-exempt position in California during the Settlement
9 Period. The Aggrieved Employee Settlement Amount will be divided by the total number of such
10 pay periods to yield the Pay Period Value. Each Aggrieved Employee shall be paid an Individual
11 Settlement Payment equal to their individual number of pay periods multiplied by the Pay Period
12 Value.

13 **19. Distribution of Individual Settlement Payments to Aggrieved Employees.** The
14 Settlement Administrator will issue to each Aggrieved Employee a check in the amount of his or
15 her Individual Settlement Payment, along with an explanatory letter in the form attached hereto as
16 Exhibit A, within the time parameters set forth in paragraph 17 above. Checks shall remain
17 negotiable for 180 days. Any checks returned as non-deliverable on or before the check cashing
18 deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed
19 thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt
20 to determine the correct address using a skip-trace, or other search using the name, address, or Social
21 Security number of the Aggrieved Employee, and will then perform a single re-mailing. Funds
22 contained in the settlement checks that are returned as undeliverable and in settlement checks
23 uncashed for more than 180 days after issuance will be tendered to the California State Controller’s
24 Office - Unclaimed Property Fund, to be held in the name of the Aggrieved Employee. All
25 settlement payments to Aggrieved Employees will be treated as miscellaneous income for which a
26 1099 will be issued to the extent required by law.

27 **20. Attorneys’ Fees and Costs.** As referenced above, Plaintiff’s Counsel intends to
28 request, and Defendant agrees not to oppose, that the Court award Plaintiff’s Counsel, (a) attorneys’

1 fees in an amount up to 35% of the PAGA Gross Settlement Amount, and (b) costs and expenses
2 incurred in representing the interests of the Aggrieved Employees up to \$12,000. These amounts
3 shall be paid from the PAGA Gross Settlement Amount. Defendant shall have no liability for any
4 other attorneys' fees or costs. If the Court approves a lesser amount for either fees or costs and
5 expenses, this will not impact the enforceability of this Agreement and the difference will remain
6 part of the PAGA Net Settlement Amount. The Settlement Administrator shall issue Plaintiff's
7 Counsel the Attorneys' Fees and Costs within the time parameters set forth in paragraph 17 above,
8 together with Forms 1099. Plaintiff's Counsel agree that they are solely responsible for paying all
9 applicable taxes on any payments they receive hereunder.

10 **21. Release of PAGA Claims.** Upon Court approval of the Settlement, dismissal of the
11 Action with prejudice, and subject to Defendant's full payment of the PAGA Gross Settlement
12 Amount, Plaintiff and Aggrieved Employees will fully and finally release and discharge Defendant
13 and its former, present and future owners, parents, and subsidiaries, and all of their current, former
14 and future officers, directors, members, managers, employees, consultants, partners, shareholders,
15 joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives
16 ("Released Parties"), from all claims, rights, demands, liabilities and causes of action for civil
17 penalties under the PAGA that arose during employment in a non-exempt position in California
18 during the Settlement Period, that were brought or could have been brought based on the factual
19 allegations pled in the operative complaint in the Action. These include, but are not limited to the
20 following claims: (a) failure to provide proper meal periods or to pay premium wages for missed
21 meal periods; (b) failure to authorize and permit rest periods or to pay premium wages for missed
22 rest periods; (c) failure to furnish accurate wage statements; and (d) failure to timely pay wages at
23 separation of employment.

24 **22. Additional Release of Claims by Plaintiff.** In addition to the release given by each
25 Aggrieved Employee, Plaintiff Lopez fully releases and discharges the Released Parties from any
26 and all claims, demands, obligations, causes of action, rights, or liabilities of any kind, known or
27 unknown, arising out of any acts or omissions by Defendant or any of the Released Parties through
28 the Effective Date. This release by Plaintiff specifically includes, but is not limited to, any and all

1 claims, demands, obligations, causes of action, rights, or liabilities under any federal, state, or local
2 laws, statutes, or regulations (including, but not limited to, the California Labor Code, the California
3 Fair Employment and Housing Act, Title VII of the Civil Rights Act, the Equal Pay Act, and the
4 Fair Labor Standards Act), whether or not known or suspected to exist, and whether or not
5 specifically or particularly described herein. Specifically, because he is releasing claims that they
6 may not know about, Plaintiff waives all rights and benefits afforded to him by California Civil
7 Code Section 1542, which provides:

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

13 **23. No Credit Toward Benefit Plan.** Payments to Aggrieved Employees, including
14 Plaintiff, as referenced herein will not be utilized to calculate any additional benefits under any
15 benefit plans to which any Aggrieved Employee may be eligible, including, but not limited to profit-
16 sharing plans, bonus plans, 401(k) or 403(b) plans, vacation plans, sick leave plans, PTO plans, and
17 any other benefit plan. Rather, it is the Parties' intention that this Agreement will not affect any
18 rights, contributions, or amounts to which any Aggrieved Employee may be entitled under any
19 benefit plans.

20 **24. Circular 230 Disclaimer.** Each Party to this Settlement Agreement acknowledges
21 and agrees that (1) no provision of this Agreement, and no written communication or disclosure
22 between or among the Parties or their attorneys or other advisors, is or was intended to be, nor will
23 any such communication or disclosure constitute or be construed or be relied upon as, tax advice
24 within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as
25 amended); (2) each Party (a) has relied exclusively upon her or its own, independent legal and tax
26 counsel for advice (including tax advice) in connection with this agreement, (b) has not entered into
27 this Agreement based upon the recommendation of any other Party or any attorney or advisor to any
28 other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or
29 advisor to any other Party to avoid any tax penalty that may be imposed on the Party; and (3) no
30 attorney or advisor to any other Party has imposed any limitation that protects the confidentiality of

1 any such attorney's or advisor's tax strategies (regardless of whether such limitation is legally
2 binding) upon disclosure by the Party of the tax treatment or tax structure of any transaction,
3 including any transaction contemplated by this Agreement.

4 **25. No Prior Assignment.** Plaintiff represents and warrants that he has not assigned or
5 transferred any portion of any claims, demands, obligations, causes of action, rights, or liabilities
6 that, but for such assignment or transfer, would be released under this Agreement.

7 **26. Nullification of Settlement Agreement.** Unless otherwise noted herein, if (i) the
8 Court does not approve the settlement as provided or (ii) the settlement does not become final for
9 any other reason, then this Agreement, the Memorandum of Understanding, and any documents
10 generated to bring it into effect will be null and void, and the Parties will be returned to their original,
11 respective positions.

12 **27. No Publicity; Confidentiality.** No party hereto (including the Parties' attorneys)
13 shall publicize this settlement, this Agreement, any terms of this Agreement (including, but not
14 limited to, the PAGA Gross Settlement Amount), or any information about the negotiations leading
15 to the execution of this Agreement. This includes, but not limited to, communications through any
16 social media, unless so ordered by the Court. Nothing herein limits or purports to limit Plaintiff's
17 Counsel's ability or right to respond to Aggrieved Employee inquiries about this Settlement or to
18 submit this Settlement to the LWDA and the Court for the purpose of obtaining approval of the
19 Settlement and in compliance with the requirements of PAGA.

20 **28. Continued Jurisdiction.** After entry of the Order, the Court shall retain, and will
21 have continuing, jurisdiction solely for purposes of addressing: (i) the interpretation and
22 enforcement of the terms of this Agreement; (ii) settlement administration matters; and (iii) such
23 matters as may be appropriate under court rules or as set forth in this Agreement, as permitted by
24 Code of Civil Procedure section 664.6 and any other applicable law.

25 **29. Entire Agreement.** This Agreement constitutes the entirety of the Parties' settlement
26 terms. No other prior or contemporaneous written or oral agreements may be deemed binding on
27 the Parties.

28 **30. Amendment or Modification.** This Agreement may be amended or modified only

1 by a written instrument, signed by both Parties, their successors-in-interest, or their counsel.

2 **31. Authorization to Enter into a Settlement Agreement.** Counsel for all Parties
3 warrant and represent they are expressly authorized by the Parties whom they represent to negotiate
4 this Agreement and to take all appropriate action required or permitted to be taken by such Parties
5 pursuant to this Agreement. The Parties and their counsel will cooperate with each other and use
6 their best efforts to effect the implementation of the settlement.

7 **32. Binding on Successors and Assigns.** This Agreement will be binding upon, and
8 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

9 **33. Governing Law.** All terms of this Agreement shall be governed by, and interpreted
10 according to, the laws of the State of California.

11 **34. Execution and Counterparts.** This Agreement is subject only to the execution of all
12 Parties. However, the Agreement may be executed in one or more counterparts. All executed
13 counterparts and each of them, including fax and scanned copies of the signature page, will be
14 deemed to be one and the same instrument.

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

19 **36. Construction and Interpretation.** Headings and paragraph titles are inserted as a
20 matter of convenience and for reference, and in no way define, limit, extend or describe the scope
21 of this Agreement or any of its provisions. Each term of the Agreement is contractual.

22 **37. Waiver.** No waiver of any condition or covenant contained in this Agreement or
23 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
24 constitute a further waiver by such party of the same or any other condition, covenant, right or
25 remedy.

26 **38. Enforcement Action.** In the event that one or more of the Parties institutes any legal
27 action or other proceeding against any other Party or Parties to enforce the provisions of this
28 Agreement or to declare rights and/or obligations under this Agreement, the successful Party will

1 be entitled to recover from the unsuccessful Party reasonable attorneys' fees and costs, including
2 expert witness fees incurred in connection with any enforcement action.

3 **39. Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms
4 and conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly
5 against one party merely by virtue of the fact that it may have been prepared by counsel for one of
6 the Parties, it being recognized that, because of the arm's-length negotiations between the Parties,
7 all Parties have contributed to the preparation of this Agreement.

8 **40. Representation by Counsel.** The Parties acknowledge that they have been
9 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
10 and that this Agreement has been executed with the consent and advice of counsel, and reviewed in
11 full.

12 **41. Cooperation and Execution of Necessary Documents; Stipulation/Motion for**
13 **Court Approval.** All Parties will cooperate in good faith and execute all documents to the extent
14 reasonably necessary to effectuate the terms of this Agreement. Plaintiff's Counsel shall prepare
15 and file a joint stipulation for Court approval of the Settlement (or a motion if required by the Court)
16 as soon as practicable. Plaintiff's Counsel shall submit the stipulation/motion to Defendant's
17 counsel for approval a reasonable time prior to filing.

18 **42. Binding Agreement.** The Parties warrant that they understand and have full authority
19 to enter into this settlement, and further intended that this Agreement will be fully enforceable and
20 binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding
21 to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might
22 apply under federal or state law.

23 **43. Compliance with PAGA Procedural Requirements.** Plaintiff agrees that Plaintiff's
24 Counsel will notify the LWDA of the Settlement at the same time this Settlement is submitted to
25 the Court for approval, and perform any and all statutory tasks as required by law necessary to
26 effectuate consummation and approval of this Settlement.

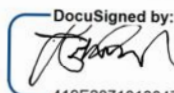
27 **44. Representation Regarding the Number of Aggrieved Employees.** Defendant
28 represents that there are no more than 837 Aggrieved Employees during the Settlement Period.

Should the number of Aggrieved Employee increase beyond 837 more than 10% by January 12, 2023, Plaintiff shall have the option to increase the total settlement amount by a proportionate amount beyond the initial 10%. (If the number of employees increases by 11%, the total increase to the settlement will be 1%.) Plaintiff shall have five (5) calendar days from the date the Administrator indicates an overage to inform Defendants' counsel in writing of his election of this option.

SO AGREED:

Dated: 3/22/2023

Plaintiff Hector Lopez

DocuSigned by:


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Hector Lopez

Dated:

Defendant Sunrise Foods, LLC

March 22, 2023

By: Riji Sood.

Its Franchise Operator.

APPROVED AS TO FORM, AND AGREED TO AS APPLICABLE:

Dated: 4/12/23

BRADLEY/GROMBACHER, LLP



Marcus Bradley
Counsel for Plaintiff

Dated: March 22, 2023

MARTIROSYAN LAW, P.C.



Edgar Martirosyan
Counsel for Defendant