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15 Attorneys for Defendant LION FOODS LLC

17 **SUPERIOR COURT OF CALIFORNIA**

18 **COUNTY OF SANTA CLARA**

19 EDY RUIZ, individually and on behalf of
20 all others similarly situated,

21 Plaintiff,

22 v.

23 LION FOODS LLC, a California limited
24 liability company; and DOES 1 through 50,
inclusive,

25 Defendants.
26 ,

Case No. 21CV386961

Assigned for All Purposes to:

Hon. Patricia M. Lucas

Dept. 3

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

Action Filed: September 22, 2021

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

2 It is stipulated and agreed by and between Plaintiff Edy Ruiz (“Plaintiff”) and Defendant
3 Lion Foods LLC (“Defendant”) (collectively, the “Parties”), subject to the approval of the Court
4 pursuant to the California Rules of Court, that the Settlement of this Action shall be effectuated upon
5 and subject to the following terms and conditions. Capitalized terms used herein shall have the
6 meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of Class Action and
7 PAGA Settlement (“Settlement”).

8 This Settlement is made by and between the Parties following a full day mediation session on
9 November 29, 2022 with Henry Bongiovi, Esq.

10 The Parties agree that the Action shall be, and is, ended, settled, resolved, and concluded by
11 agreement of Defendant to pay the settlement amount of One Hundred and Ninety Thousand Dollars
12 and zero cents (\$190,000.00), as provided in Section III(D)(7)(a) below (“Gross Settlement
13 Amount”) pursuant to the terms and conditions of this Settlement and for the consideration set forth
14 herein, including but not limited to, a release of all claims by Plaintiff, Class Members, and
15 Aggrieved Employees as set forth herein.

16 **I. DEFINITIONS**

17 Unless otherwise defined herein, the following terms used in this Settlement shall have the
18 meanings ascribed to them as set forth below:

19 A. “Action” means the action filed on September 22, 2021 in the Santa Clara Superior
20 Court, titled *Ruiz v. Lion Foods LLC*, Case No. 21CV386961.

21 B. “Aggrieved Employees” means all persons currently or formerly employed as non-
22 exempt employees in California by Defendant at any time during the PAGA Period (defined below).
23 Aggrieved Employees may not exclude themselves from the PAGA release and will be bound by the
24 PAGA Released Claims, as set forth in Section V(B) below.

25 C. “Class” or “Class Members” means all persons currently or formerly employed as
26 non-exempt employees in California by Defendant at any time during the Class Period (defined
27 below).

28 D. “Class Counsel” means the attorneys for the Class, as follows:

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249 E. Ocean Blvd. #814
Long Beach, CA 90802
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E. "Class Notice" means the Notice of Proposed Class Action Settlement in a form substantially similar to the notice attached hereto as **Exhibit A**, subject to Court approval, which shall be mailed to Class Members, in English and Spanish.

F. "Class Period" means June 2, 2018 through the Preliminary Approval Date of the Settlement or an earlier date at Defendant's discretion per Section III(D)(5).

G. "Court" means the Santa Clara Superior Court, where the Action is pending.

H. "Effective Date" means the later of the following: (1) the date the Final Approval Order is signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no appeal is taken of the Final Approval Order, sixty (60) days after the Final Approval Order is signed; or (3) if an appeal is taken from the Court's overruling of objections to the Settlement, ten (10) days after the appeal is withdrawn or after an appellate decision affirming the final approval decision becomes final.

I. "Defendant" means Lion Foods LLC.

J. "Defense Counsel" means counsel for Defendant, who are:

Catherine M. Lee
Catherine.Lee@aallrr.com
Geoffrey D. La Val
Geoffrey.LaVal@aallrr.com
Atkinson, Andelson, Loya, Ruud & Romo
1050 Northgate Drive, Suite 520
San Rafael, California 94903
Telephone: (628) 234-6200

K. "Disposition" means the method by which the Court approves the terms of the Settlement and retains jurisdiction over its enforcement, implementation, construction,

1 administration, and interpretation.

2 L. "Enhancement Award" means an amount of up to Five Thousand Dollars and Zero
3 Cents (\$5,000.00) for Plaintiff EDY RUIZ, subject to Court approval, in exchange for his general
4 release and in recognition of Plaintiff's effort prosecuting the Action on behalf of all Class
5 Members.

6 M. "Exclusion Form" means a timely and valid letter submitted by a Class Member
7 indicating a request to be excluded from the Class Settlement. To be valid, the Exclusion Form
8 must: (a) contain the case name and number of the Action; (b) contain the full name, signature, and
9 the last four digits of the Social Security Number of the Class Member requesting exclusion; (c)
10 clearly state that the Class Member does not wish to be included in the Class Settlement; and (e) be
11 submitted by mail to the Settlement Administrator at the specified address, postmarked on or before
12 the Response Deadline set forth in Section III(D)(2).

13 N. "Final Approval Order" means the final formal court order signed by the Court and
14 entering a judgment approving this Settlement on substantially the terms provided herein or as the
15 same may be modified by subsequent written agreement of the Parties as approved by the Court
16 following the Final Approval Hearing in accordance with the terms herein.

17 O. "Gross Settlement Amount" means One Hundred and Ninety Thousand Dollars and
18 Zero Cents (\$190,000.00), unless increased on a pro rata basis pursuant to Section III(D)(5) to be
19 paid by Defendant pursuant to the terms of this Settlement to settle this Action. All claims of the
20 Settlement Class, including all wages, damages, interest, penalties, and all administration costs,
21 attorney's fees and costs, Enhancement Award, and LWDA Payment (defined below) pursuant to
22 Section III(D)(7) below, shall be paid out of the Gross Settlement Amount. The employer's share of
23 payroll taxes arising from the payments made under this settlement shall be paid by Defendant
24 separate from and in addition to the Gross Settlement Amount. No part of the Gross Settlement
25 amount shall revert to Defendant.

26 P. "Individual Settlement Payment" means the *pro rata* share of the Net Settlement
27 Amount that shall be paid to Participating Class Members less the employee's portion of required
28 federal and state withholdings. Individual Settlement Payments will be each Participating Class

1 Member's proportional share of the Net Settlement Amount (which shall be determined by the
2 calculations provided in this Settlement).

3 Q. "Individual PAGA Payment" means each Aggrieved Employee's *pro rata* share of
4 25% of the PAGA Penalties, which shall be calculated in accordance with the Individual PAGA
5 Payment calculations described below.

6 R. "Judgment" refers to the judgment entered by the Court in conjunction with the Final
7 Approval Order.

8 S. "LWDA Payment" means 75% of the PAGA Penalties that will be paid to the Labor
9 and Workforce Development Agency ("LWDA") pursuant to Section III(D)(7)(e) of this Settlement.

10 T. "Net Settlement Amount" means the Gross Settlement Amount less the Court-
11 approved settlement administration costs, attorney's fees and costs, Enhancement Award, and
12 PAGA Penalties, pursuant to Section III(D)(7) below.

13 U. "Non-Participating Class Member(s)" means those Class Members who submit to the
14 Settlement Administrator a valid and timely Exclusion Form pursuant to Section III(D)(2) below.

15 V. "Objection" means a signed written objection to the Settlement by a Class Member,
16 that is submitted by mail to the Settlement Administrator at the specified address, postmarked on or
17 before the Response Deadline, as set forth in Section III(D)(3), which sets forth the grounds for the
18 objection, along with any supporting documents, the Class Member's address, telephone number,
19 reference to the Action, and whether they intend to appear at the Final Approval Hearing.

20 W. "PAGA Penalties" means the Three Thousand Eight Hundred Dollars and Zero Cents
21 (\$3,800.00) portion of the Gross Settlement Amount allocated to settlement of all PAGA claims in
22 the Action, subject to Court approval.

23 X. "PAGA Period" means September 21, 2020 through the Preliminary Approval Date
24 of the Settlement or an earlier date at Defendant's discretion per Section III(D)(5).

25 Y. "Participating Class Member(s)" means those Class Members who do not submit to
26 the Settlement Administrator a valid and timely Exclusion Form pursuant to Section III(D)(2) below
27 and will therefore receive his or her share of the Settlement proceeds automatically without the need
28 to return a claim form to be paid his/her Individual Settlement Payment.

1 Z. “Plaintiff” means EDY RUIZ.

2 AA. “Preliminary Approval Date” means the date the Court preliminarily approves the
3 Settlement.

4 BB. “Qualifying Pay Periods” means any pay period during which an Aggrieved
5 Employee was employed by Defendant in a non-exempt position and performed work during the
6 PAGA Period.

7 CC. “Qualifying Workweeks” means any week during which a Class Member worked at
8 least one shift for Defendant in a non-exempt position during the Class Period.

9 DD. “Response Deadline” means the date by which Class Members must submit to the
10 Settlement Administrator a Request for Exclusion, Notice of Objection, and/or Workweek Dispute,
11 which shall be the date that is forty-five (45) calendar days from the initial mailing of the Class
12 Notice by the Settlement Administrator (or fifteen (15) calendar days after the Settlement
13 Administrator re-mails the Class Notice to the Class Member, whichever is later). If the date of the
14 Notice Deadline falls on a Sunday or federal holiday, the Response Deadline will be extended to the
15 next calendar day on which the U.S. Postal Service is open.

16 EE. “Request for Exclusion” means the Exclusion Form that will be enclosed with the
17 Class Notice that Class Members can use to opt out or exclude themselves from the Settlement. In
18 order for a Request for Exclusion to be valid, the Exclusion Form must be signed and postmarked by
19 the Response Deadline, as provided for in Sections III(C) and III(D)(2) below, and mailed to the
20 Settlement Administrator at the address specified in the Class Notice.

21 FF. “Settlement” means this Joint Stipulation of Class Action Settlement, including the
22 Class Notice attached as Exhibit A.

23 GG. “Settlement Administration Costs” means an amount of up to Eight Thousand and
24 Five Hundred Dollars and Zero Cents (\$8,500.00), subject to Court approval, for all costs incurred
25 by the Settlement Administrator in administration of the Settlement, including, but not limited to,
26 mailing of notice to the class, calculation of Individual Settlement Payments, generation of
27 Individual Settlement Payment checks and related tax reporting forms, administration of unclaimed
28 and/or uncashed checks to the California State Controller’s Office’s Unclaimed Property Division,

1 and distribution of checks to Class Counsel for attorneys' fees and costs, to Plaintiff for his
2 Enhancement Award, and to the LWDA. The Settlement Administration Costs shall be paid from
3 the Gross Settlement Amount.

4 HH. "Settlement Administrator" means Phoenix Class Action Administration Solutions,
5 which the Parties have agreed will be responsible for the administration of the Individual Settlement
6 Payments to be made by Defendant from the Gross Settlement Amount and related matters under
7 this Settlement.

8 II. "Workweek Dispute" means a written letter submitted by a Class Member that: (a)
9 contains the case name and number of the Action; (b) contains the full name, address, telephone
10 number, signature, and the last four digits of the Social Security Number of the disputing Class
11 Member; (c) clearly states that the Class Member disputes the number of Qualifying Workweeks or
12 Qualifying Pay Periods credited to him or her and what he or she contends is the correct number to
13 be credited to him or her during the applicable timeframe; (d) includes information and/or attaches
14 documentation demonstrating the correct number of Qualifying Workweeks or Qualifying Pay
15 Periods that he or she contends should be credited to him or her; and (e) is submitted by mail to the
16 Settlement Administrator at the specified address postmarked on or before the Response Deadline.

17 **II. CONTINGENT NATURE OF THE AGREEMENT**

18 Because the Parties have stipulated to the certification of the Class with respect to all causes
19 of action alleged in the Action for settlement purposes only, this Settlement requires preliminary and
20 final approval by the Court. Accordingly, the Parties enter into this Settlement on a conditional
21 basis. This Settlement is contingent upon the approval and certification by the Court. If the
22 Effective Date does not occur, the fact that the Parties were willing to stipulate for the purposes of
23 this Settlement shall have no bearing on, nor be admissible in connection with, the issue of
24 certification of the Class with respect to all causes of action alleged in the Action, and this
25 Settlement shall not be referred to or used for any purpose whatsoever. Defendant does not consent
26 to certification of the Class for any purpose other than to effectuate settlement of the Action. If the
27 Effective Date does not occur, or if disposition of this Action is not effectuated, any certification of
28 the Class as to Defendant will be vacated and Plaintiff, Defendant, and the Class will be returned to

1 their respective positions in the Action as if the Settlement had not been executed. In the event that
2 the Effective Date does not occur: (a) any Court orders preliminarily or finally approving
3 certification of any class contemplated by this Settlement shall be null, void, and vacated, and shall
4 not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in
5 this Settlement, the fact that Defendant did not oppose the certification of a Class under this
6 Settlement, or that the Court preliminarily approved the certification of the Class, shall not be used
7 or cited thereafter by any person or entity, including in any manner whatsoever, including without
8 limitation any contested proceeding relating to the certification of any class. If the Effective Date
9 does not occur, this Settlement shall be deemed null and void, shall be of no force or effect
10 whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendant expressly
11 reserves the right to challenge the propriety of class certification in the Action for any purpose if the
12 Effective Date does not occur.

13 The Parties and their respective counsel shall take all steps that may be requested by the
14 Court relating to the approval and implementation of this Settlement and shall otherwise use their
15 respective best efforts to obtain Court approval and implement this Settlement. If the Court does not
16 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree to
17 meet and confer in good faith to address the Court's concerns. If the Parties are unable to agree
18 upon a resolution, the Parties agree to seek guidance from the Court to resolve the dispute.

19 **III. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

20 The procedure for obtaining Court approval of and implementing this Settlement shall be as
21 follows:

22 **A. Motion for Conditional Class Certification and Preliminary Approval**

23 Promptly after execution of this Settlement Agreement, Plaintiff shall move the Court for
24 preliminary approval of the Settlement and obtain entry of an order accomplishing the following:

- 25 a. Provisionally certifying the Action under California law as a class action for
26 purposes of this Settlement only;
- 27 b. Preliminarily approving the Settlement subject only to objections of
28 Participating Class Members to the Class Settlement, and final approval by the

1 Court;

2 c. Approving as to form and content the proposed Class Notice attached hereto
3 as **Exhibit A**;

4 d. Directing the mailing of the Class Notice by first-class mail to the Class
5 Members;

6 e. Preliminarily appointing Plaintiff as Class Representative and Plaintiff's
7 Counsel as Class Counsel (only for purposes of effectuating and implementing
8 this Settlement Agreement);

9 f. Preliminarily approving the application for Attorney Fees and Costs to Class
10 Counsel;

11 g. Preliminarily approving the Service Award to the Class Representative;

12 h. Preliminarily approving the Settlement Administration Costs to the Settlement
13 Administrator.

14 i. Preliminarily approving the PAGA Payment; and

15 j. Scheduling a hearing for Final Approval on the question whether the proposed
16 Settlement should be finally approved as fair, reasonable, and adequate to
17 Class Members

18 The date that the Court grants preliminary approval of this Agreement will be the
19 "Preliminary Approval Date." Pursuant to California Labor Code § 2699(l)(1), Plaintiff shall submit
20 to the LWDA a copy of this Agreement and all supporting approval documents required by the
21 LWDA at the same time that Plaintiff submits them to the Court for approval.

22 **B. The Settlement Administrator**

23 The Parties have chosen Phoenix Class Action Administration Solutions to administer this
24 Settlement and to act as the Settlement Administrator, including but not limited to distributing and
25 responding to inquiries about the Class Notice, determining the validity of exclusions/opt-outs,
26 calculating the Net Settlement Amount and the Individual Settlement Payments, issuing the
27 Individual Settlement Payment checks and distributing them to Participating Class Members,
28 administering and making payment of unclaimed and/or uncashed checks to the California State

1 Controller's Office's Unclaimed Property Division, issuing the payment to Class Counsel for
2 attorneys' fees and costs, the Enhancement Award check to Plaintiff, the LWDA Payment, and the
3 employer payroll taxes to the appropriate taxing authorities. The Settlement Administrator shall
4 expressly agree to all of the terms and conditions of this Settlement.

5 All costs of administering the Settlement, including but not limited to all costs and fees
6 associated with preparing, issuing and mailing any and all notices to Class Members and/or
7 Participating Class Members, all costs and fees associated with computing, processing, reviewing,
8 and mailing the Individual Settlement Payments, all costs and fees administering and making
9 payment of unclaimed and/or uncashed checks to the California State Controller's Office's
10 Unclaimed Property Division, all costs and fees associated with preparing any tax returns and any
11 other filings required by any governmental taxing authority or agency, all costs and fees associated
12 with preparing any other checks, notices, reports, or filings to be prepared in the course of
13 administering disbursements from the Net Settlement Amount, and any other costs and fees incurred
14 and/or charged by the Settlement Administrator in connection with the execution of its duties under
15 this Settlement ("Settlement Administration Costs"), shall be paid to the Settlement Administrator
16 from the Gross Settlement Amount.

17 **C. Notice to Class Members**

18 No later than fifteen (15) business days after the Preliminary Approval Date, Defendant will
19 provide the Settlement Administrator with a "Class List" based on its business records, identifying
20 the names of the Class Members, their last known home addresses, Social Security numbers or, as
21 applicable, other taxpayer identification number, and their Qualifying Workweeks worked during the
22 Class Period and Qualifying Pay Periods worked during the PAGA Period, respectively. This
23 information shall be treated as confidential and shall not be disclosed to Plaintiff, Class Counsel or
24 any other person without prior approval from Defendant's Counsel.

25 Following Defendant's delivery of the Class List to the Settlement Administrator after
26 Preliminary Approval, the Settlement Administrator shall calculate: (a) the Net Settlement Amount,
27 (b) the Individual Settlement Payment for each Participating Class Member based on the formula
28 specified above, (c) the amount of the Individual Settlement Payments to be allocated to wages,

1 statutory damages/interest, penalties, and reimbursements, (d) the employer share of the payroll
2 taxes applicable to the Net Settlement Amount allocated to wages, and (e) the employee tax
3 withholding amount based on the allocation of each Individual Settlement Payment to wages.

4 Within ten (10) business days of receiving the Class List from Defendant, the Settlement
5 Administrator will send Class Members, by first-class mail, at their last known address, the Court
6 approved Class Notice, including notice of this settlement and of the opportunity to opt out of the
7 Settlement Class or object to the Settlement, translated into Spanish. The Class Notice will include a
8 calculation of the Class Member's estimated share of the Net Settlement Amount. Class Members
9 will have forty-five (45) days from the date of mailing in which to postmark Requests for Exclusion
10 or Objections. Prior to the initial mailing, the Settlement Administrator will check all Class Member
11 addresses against the National Change of Address database and shall update any addresses before
12 mailing. The Settlement Administrator will skip trace and re-mail all returned, undelivered mail
13 within five (5) days of receiving notice that a Class Notice was undeliverable. If a Class Member's
14 Class Notice is re-mailed, the Class Member shall have fifteen (15) days from the re-mailing, or
15 forty-five (45) days from the date of the initial mailing, whichever is later, in which to postmark a
16 Request for Exclusion or Objection. Class Members shall not be required to submit claim forms in
17 order to receive their Individual Settlement Payments.

18 If a Class Notice is returned with a forwarding address, the Settlement Administrator shall re-
19 mail the Class Notice to the forwarding address. With respect to those Class Members whose Class
20 Notice is returned to the Settlement Administrator as undeliverable, the Settlement Administrator
21 shall promptly attempt to obtain a valid mailing address by performing a skip trace or mass search
22 on LexisNexis databases based on set criteria and, if another address is identified, shall mail the
23 Class Notice to the newly identified address. It is the intent of the Parties that reasonable means be
24 used to locate Class Members and that the Settlement Administrator be given discretion to take steps
25 in order to facilitate notice of this Settlement and delivery of the Individual Settlement Payments to
26 the Settlement Class. If no address can be determined by the Settlement Administrator after these
27 efforts, no further efforts to determine an address shall be required.

28 If the Class Notice is re-mailed, the Settlement Administrator will note for its own records

1 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a
2 weekly status report provided to the Parties.

3 In the event a Class Member's Class Notice remains undeliverable sixty (60) days after the
4 Class Notice was initially mailed, the Settlement Administrator will not mail the Class Member's
5 Individual Settlement Payment. The Settlement Administrator will hold the Class Member's
6 Individual Settlement Payment during the check cashing period on behalf of the Class Member. If at
7 the conclusion of the check cashing period the Class Member's Class Notice and Individual
8 Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
9 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
10 procedures set forth in Section III(D)(7)(f) below.

11 No later than twenty (20) business days prior to the Final Approval Hearing, the Settlement
12 Administrator shall provide Defense Counsel and Class Counsel with a declaration attesting to
13 completion of the notice process, including any attempts to obtain valid mailing addresses for and re-
14 sending of any returned Class Notices, as well as the number of valid Requests for Exclusion and
15 Objections that the Settlement Administrator received.

16 Compliance with the procedures described in this section shall constitute due and sufficient
17 notice to Class Members of this proposed Settlement and the Final Approval Hearing and shall
18 satisfy the requirements of due process. Nothing else shall be required of the Parties, Class Counsel,
19 Defense Counsel, or the Settlement Administrator to provide notice of the proposed Settlement and
20 the Final Approval Hearing. However, if any Class Member objects to the Settlement and the Final
21 Approval Hearing is continued as a result, the Settlement Administrator shall provide notice to the
22 objecting party of the continuance.

23 **D. Responses to Notice**

24 **1. Qualifying Workweek/Pay Period Disputes**

25 If any Class Member disagrees with Defendant's records as to his or her Qualifying
26 Workweeks during the Class Period or Qualifying Pay Periods during the PAGA Period, as reflected
27 in the Class Notice, the Class Member shall set forth the Qualifying Workweeks or Qualifying Pay
28 Periods he or she claims to have worked during the Class Period and submit to the Settlement

1 Administrator along with any supporting documentation no later than the Response Deadline. The
2 Notice will also provide a method for the Class Member to challenge the employment data on which
3 his or her Individual Settlement Payment is based. The Settlement Administrator shall contact the
4 Parties regarding the dispute and the Parties will work in good faith to resolve it. If the Parties are
5 unable to resolve the dispute, the Settlement Administrator will be the final arbiter of the Qualifying
6 Workweeks or Qualifying Pay Periods for each Class Member during the Class Period and PAGA
7 Period, respectively, based on the information provided to it. Any dispute not otherwise resolved by
8 the Administrator and the Parties shall be resolved by the Court.

9 2. Requests for Exclusion from the Class

10 The Plaintiff may not request exclusion from the Class. In order for any Class Member to
11 validly exclude himself or herself from the Class and this Settlement (*i.e.*, to validly opt out), the
12 Exclusion Form must be completed and signed by the Class Member or his or her authorized
13 representative, and must be mailed to the Settlement Administrator, postmarked by no later than the
14 Response Deadline, which is forty-five (45) days after the date the Settlement Administrator initially
15 mails the Class Notice to the Class Members (or fifteen (15) days after the Settlement Administrator
16 re-mails the Class Notice to the Class Member, whichever is later). The Class Notice shall contain
17 instructions that the Exclusion Form must be mailed, the date by which it must be mailed, and state
18 the name and address of the Settlement Administrator. The date of the initial mailing of the Class
19 Notice, and the date the signed Exclusion Form was postmarked, shall be conclusively determined
20 according to the records of the Settlement Administrator. Any Class Member who timely and
21 validly requests exclusion from the Class and this Settlement will not be entitled to any Individual
22 Settlement Payment arising from the Class claims, will not be bound by the terms and conditions of
23 this Settlement as to the Class claims, and will not have any right to object, appeal, or comment
24 thereon. However, the Parties' Settlement includes the settlement of claims for civil penalties under
25 PAGA. Class Members may not request exclusion from the settlement of the release of a PAGA
26 claim in the Action. Thus, if the Court approves the Settlement, even if a Class Member requests
27 exclusion from the Settlement, the Class Member will still receive an individual settlement share for
28 the PAGA claims pursuant to the terms in Section III(D)(7)(e) below, and will be deemed to have

1 released the PAGA claims.

2 Any Class Member who fails to timely submit a Request for Exclusion shall automatically be
3 deemed a Class Member whose rights and claims with respect to the issues raised in the Action are
4 determined by the Court's Final Approval Order, and by the other rulings in the Action.

5 **3. Objections to Settlement**

6 The Plaintiff may not object to the Settlement. For any Class Member to object to this
7 Settlement, or any term of it, the Class Member making the objection must not submit a Request for
8 Exclusion (*i.e.*, must not opt out), and should complete, sign and send the Objection using the
9 instructions provided in the Class Notice to the Settlement Administrator, postmarked no later than
10 the Response Deadline, which is forty-five (45) calendar days after the Class Notice was initially
11 mailed to the Class Members (or fifteen (15) calendar days after the Settlement Administrator re-
12 mails the Notice to the Class Member, whichever is later), along with all supporting papers. The
13 date of the initial mailing of the Class Notice, and the date the signed Objection was postmarked,
14 shall be conclusively determined according to the records of the Settlement Administrator. The
15 Settlement Administrator shall send any Objections it receives to Defense Counsel and Class
16 Counsel within three (3) business days of receipt. The Court retains final authority with respect to
17 the consideration and admissibility of any Class Member objections.

18 **4. Encouragement of Class Members**

19 The Parties to this Settlement and the counsel representing such Parties shall not, directly or
20 indirectly, through any person, encourage or solicit any Class Member to exclude himself or herself
21 from this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries
22 from Class Members.

23 **5. Plaintiff's Right to Adjust Gross Settlement Amount**

24 When the Parties agreed to settle this matter, Defendant estimated the number of putative
25 Class Members as 266. If the number of Class Members increases by more than 12.5% (which is
26 more than 299 Class Members) as of the end of the Class Period, Defendant will have the option to
27 either (a) accept the pro rata increase by the gross average recovery by Class Members for each
28 additional Class Member over 299, or (b) cut off the Class Period at the day before the pro rata

1 increase would be triggered.

2 **6. Final Approval Hearing**

3 On the date set forth in the Order for Preliminary Approval and Class Notice, a Final
4 Approval Hearing shall be held before the Court in order to (1) review this Settlement and determine
5 whether the Court should give it final approval, and (2) consider any objections made and all
6 responses by the parties to such objections. At the Final Approval Hearing, the Parties shall ask the
7 Court to give final approval to this Settlement and shall submit to the Court a Proposed Final
8 Approval Order.

9 a. Waiver of Right to Appeal

10 Provided that the Final Approval Order is consistent with the terms and conditions of this
11 Settlement, all Class Members who do not submit timely written objections to the Settlement or
12 orally object at the Final Approval Hearing shall have waived any and all rights to appeal from the
13 Final Approval Order and Judgment, including all rights to any post-Final Approval Order
14 proceeding and appellate proceeding, such as a motion to vacate or set-aside the Final Approval
15 Order and Judgment, a motion for new trial, and any extraordinary writ, and the Final Approval
16 Order and Judgment therefore shall become final and non-appealable at the time it is entered. This
17 waiver does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-
18 Final Order proceedings. A modification by the Court of the requested amount of the Enhancement
19 or Class Counsel's fees or costs shall not constitute a basis for appeal of the Final Approval Order
20 within the meaning of this paragraph.

21 b. Vacation, Reversal, or Material Modification of Final Order and
22 Judgment on Appeal or Review

23 If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition,
24 or application, the reviewing court vacates, reverses, or modifies the Final Approval Order such that
25 there is a material modification to the Settlement and the Court's decision is not completely
26 reversed, and the Final Approval Order is not fully affirmed on review by a higher court, then
27 Plaintiff and Defendant shall each have the right, but not the obligation, to void the Settlement,
28 which either Party must do by giving written notice to the other Party, the final reviewing court, and

1 the Court no later than thirty (30) court days after the final reviewing court's decision vacating,
2 reversing, or materially modifying the Final Order becomes final and non-appealable. A vacation,
3 reversal, or modification of the Court's award of the Enhancement or Class Counsel's fees or costs
4 shall not constitute a vacation, reversal, or material modification of the Final Order and Judgment
5 within the meaning of this paragraph.

6 **7. Settlement Payment Procedures**

7 a. Gross Settlement Amount

8 In exchange for the releases set forth in this Agreement, Defendant agrees to pay the Gross
9 Settlement Amount in the amount of One Hundred and Ninety Thousand Dollars and Zero Cents
10 (\$190,000.00), subject to a pro rata increase under the condition set forth in Section III(D)(5). The
11 Gross Settlement Amount includes all claims of the Settlement Class and all Settlement
12 Administration costs, Class Counsel's attorney's fees and costs, LWDA Payment, and the
13 Enhancement Award.

14 No later than ten (10) calendar days after the Court's final approval of the Settlement (i.e.,
15 the date the final approval order is signed and served on Defense Counsel), Defendant will transfer
16 the Gross Settlement Amount into an account established by the Settlement Administrator either
17 directly or by sending the funds to the Settlement Administer to be deposited and distributed. All of
18 Defendant's obligations under this Settlement are deemed to be satisfied upon Defendant's timely
19 deposit of the entire Gross Settlement Amount and acknowledgement of receipt of said funds and
20 Defendant shall have no further obligations to the Class including, without limitation, any further
21 obligations to make any other payments of any kind to, or on behalf of, the Class (except for the
22 employer's share of payroll taxes).

23 The Settlement Administrator will use these funds to issue the Individual Settlement
24 Payments to Participating Class Members, Class Counsel's attorneys' fees and costs, LWDA
25 Payment, the Enhancement Award, and employer and employee tax withholdings applicable to the
26 Net Settlement Amount allocated to wages. Ten (10) calendar days after Defendant fully funds the
27 Settlement, the Settlement Administrator will distribute Participating Class Members' Individual
28 Settlement Payments, Court-approved attorney's fees and costs, settlement administration costs,

Enhancement Award, and LWDA Payment.

b. Payment of Attorneys' Fees and Costs

Class Counsel shall submit an application for an award of attorneys' fees of up to one-third of the Gross Settlement Amount (which may increase pursuant to Section III(D)(5), i.e., pro rata increase provision), which, based on the current Gross Settlement Amount, is Sixty-Three Thousand Three Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$63,333.33). Class Counsel shall submit an application for an award of costs not to exceed Twenty Thousand Dollars (\$20,000). Such application for attorneys' fees and costs shall be heard by the Court at the Final Approval Hearing. Defendant shall not object to or oppose any such application in these amounts.

Any fees and costs awarded by the Court shall be paid from the Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys' fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs, and expenses related to the investigation, prosecution, and settlement of the Action incurred through the Effective Date. To the extent that the Court approves less than the amount of attorney's fees and/or costs requested by Class Counsel, the difference between the requested and awarded amounts will be retained in the Net Settlement Amount for distribution to Participating Class Members.

Any award of attorneys' fees and costs shall include and satisfy all past and future attorneys' fees and costs incurred to prosecute, settle, and participate in administering the Settlement, including obtaining the Final Approval Order. Defendant shall have no obligation to Class Counsel for any attorneys' fees and costs incurred in prosecuting this Action other than as stated herein, provided that Defendant fully complies with the terms of this Settlement, including but not limited to timely payment of the Gross Settlement Amount.

c. Payment of Settlement Administration Costs

The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and shall not constitute payment to any Participating Class Member(s). The amount shall not exceed Eight Thousand and Five Hundred Dollars and Zero Cents (\$8,500.00).

d. Payment of Enhancement Award to Named Plaintiff

Subject to Court approval, Plaintiff will request an Enhancement Award of up to Five

1 Thousand Dollars and Zero Cents (\$5,000.00), the request for which Defendant will not object to or
2 oppose. The Enhancement Award shall be paid out of the Gross Settlement Amount and shall not
3 constitute payment to any Participating Class Member(s). To the extent that the Court approves less
4 than the amount of Enhancement Award that Class Counsel requests, the difference between the
5 requested and awarded amounts will be retained in the Net Settlement Amount for distribution to
6 Participating Class Members.

7 Because it is the intent of the Parties that the Enhancement Award represents payment to
8 Plaintiff for his service to Class Members, and not wages, the Settlement Administrator will not
9 withhold any taxes from the Enhancement Award. The Enhancement Award will be reported on a
10 Form 1099, which the Settlement Administrator will provide to Plaintiff and to the pertinent taxing
11 authorities as required by law.

12 Although it is the contemplation of the Parties that the Enhancement Award does not
13 represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other
14 taxing authority may take the position that some or all of the Enhancement Award constitutes wages
15 for income tax and withholding purposes. Plaintiff agrees to assume the responsibility of remitting
16 to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing
17 authority the amounts required by law, if any, to be withheld by Defendant from the Enhancement
18 Award paid under this Settlement. In addition, Plaintiff shall hold Defendant, Released Parties and
19 Class Counsel harmless and indemnify Defendant, Released Parties and Class Counsel for all taxes,
20 interest, penalties, other payments and costs, incurred by Defendant by reason of any valid claims by
21 taxing authorities relating to the non-withholding of taxes from the Enhancement Award.

22 e. Payment to the Labor and Workforce Development Agency and the
23 Class for Settlement of PAGA Claims

24 In consideration of claims made under the California Private Attorneys General Act
25 ("PAGA"), Cal. Labor Code §§ 2698 et seq. and the release obtained therefor by virtue of this
26 Settlement, Class Counsel will request that the Court approve allocation of Three Thousand Eight
27 Hundred Dollars and Zero Cents (\$3,800.00) of the Gross Settlement Amount to these claims
28 ("PAGA Penalties"). Seventy-five percent (75%) of the PAGA Penalties will be paid to the

1 California Labor and Workforce Development Agency ("LWDA Payment") and twenty-five percent
2 (25%) will be paid, on a pro rata basis, to all Aggrieved Employees based on the individual
3 Qualifying Pay Periods worked during the PAGA Period by each Aggrieved Employee, regardless of
4 whether or not they opt out of this Settlement ("Individual PAGA Payment"). Defendant will not
5 oppose this request for PAGA Penalties. The LWDA Payment and Individual PAGA Payments will
6 be paid out of the Gross Settlement Amount. The Court's adjustment, if any, of the amount
7 allocated to Plaintiff's PAGA claim will not invalidate this Settlement and the difference between
8 the requested and awarded amounts will be retained in the Net Settlement Amount for distribution to
9 Participating Class Members.

10 f. Calculating Individual Settlement Payments and Individual PAGA
11 Payments

12 The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement
13 Payments. After final approval by the Court, the Net Settlement Amount will be distributed to
14 Participating Class Members and Aggrieved Employees as follows:

15 *Individual PAGA Payments.* The Settlement Administrator will calculate the total number of
16 Qualifying Pay Periods for all Aggrieved Employees worked during the PAGA Period. The
17 Individual PAGA Payment that each Aggrieved Employee will be eligible to receive will be
18 calculated by dividing each Aggrieved Employee's individual number of Qualifying Pay Periods
19 worked during the PAGA Period by the total number of Qualifying Pay Periods of all Aggrieved
20 Employees worked during the PAGA Period, and multiplying the resulting fraction by the 25%
21 portion of the PAGA Penalties (\$950) payable to Aggrieved Employees. The Settlement
22 Administrator will determine the total number of Qualifying Pay Periods worked during the PAGA
23 Period for each Aggrieved Employee.

24 *Individual Settlement Payments.* The Settlement Administrator will calculate the total
25 number of Qualifying Workweeks for all Participating Class Members worked during the Class
26 Period. The Individual Settlement Payment that each Participating Class Member will be eligible to
27 receive will be calculated by dividing each Participating Class Member's individual number of
28 Qualifying Workweeks by the total number of Qualifying Workweeks of all Participating Class

Members worked during the Class Period, and multiplying the resulting fraction by the Net Settlement Amount. The Settlement Administrator will determine the total number of qualifying Workweeks worked during the Class Period for each Participating Class Member.

g. Distribution of Individual PAGA Payments and Individual Settlement Payments

No later than ten (10) business days after receiving the entire Gross Settlement Amount from Defendant, the Settlement Administrator shall prepare and mail the checks for the Individual Settlement Payments to Participating Class Members. Defendant shall not bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Individual Settlement Payments paid from the Net Settlement Amount allocated to wages will be reduced by applicable employer and employee tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of the Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 to the extent required by law for the non-wage statutory damages and interest portions of the Individual Settlement Payments. Participating Class Members shall have 180 days from the date their Individual Settlement Payment checks are issued to cash their settlement checks. Any amounts from checks that remain unclaimed and/or uncashed after 180 days of issuance will be disbursed to the California State Controller's Office's Unclaimed Property Division.

If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or a mass search on LexisNexis databases based on set criteria and, if another address is identified, shall mail the check to the newly identified address. If the Settlement Administrator is unable to obtain a valid mailing address through this process, the Settlement Administrator will also transfer the amount represented by the check to California State Controller's Office's Unclaimed Property Division.

h. Allocation and Tax Treatment of Individual PAGA Payments and Individual Settlement Payments

Each Individual Settlement Payment will represent wages and penalties allocated using the following formula: 80% allocated to wages and 20% allocated to non-wage statutory damages and

1 interest. Each Individual PAGA Payment will be allocated as follows: 100% as civil penalties. The
2 amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's
3 wages and all other authorized and required withholdings and shall be reported by W-2 forms. The
4 employer-side taxes (including employer's portion of FICA, FUTA, SUTA, and all other applicable
5 payroll taxes) will be paid by Defendant separate from and in addition to the Gross Settlement
6 Amount. The amounts paid as non-wage statutory damages, interest, and/or civil penalties shall be
7 subject to all authorized and required withholdings other than the tax withholdings customarily made
8 from employees' wages and shall be reported by IRS 1099 forms. Defendant shall not make as part
9 of this Settlement, nor be required to make, any deductions, nor pay any monthly contributions for
10 any insurance, retirement, 401(k) or profit-sharing plans, or any benefit plans related to monies paid
11 as a result of this Settlement.

12 i. No Credit Toward Benefit Plans

13 The Individual Settlement Payments made to Participating Class Members under this
14 Agreement, as well as any other payments made pursuant to this Agreement, shall have no effect on,
15 nor will they be utilized to calculate, any additional benefits under any benefit plans to which any
16 Class Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans,
17 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other
18 benefit plan. Rather, it is the Parties' intention that this Settlement will not affect any rights,
19 contributions, or amounts to which any Class Members may be entitled under any benefit plans.

20 j. No Effect on Regular Rate or Overtime Compensation

21 Participating Class Members will receive payment under the Settlement as determined by the
22 Settlement Administrator in accordance with this Agreement. The Parties agree that this payment is
23 not viewed as additional compensation for purposes of calculating a "regular rate" of pay under
24 California or federal law for the period during which it is received, and no additional overtime
25 compensation is required as a result of such payment.

26 k. Tax Liability

27 The Parties and counsel for the Parties make no representation as to the tax treatment or legal
28 effect of the payments called for hereunder. Plaintiff and Participating Class Members are not

relying on any statement, representation, or calculation by the Parties, counsel for the Parties, or the Settlement Administrator in this regard. Plaintiff, Participating Class Members, and Plaintiff's Counsel understand and agree that they will be solely responsible for the payment of their own portion of any taxes and penalties assessed on the payments that they receive.

I. No Additional Contribution by Defendant

Other than as set forth above, Defendant shall not be called upon or required to contribute additional monies above the Settlement under any circumstances whatsoever except as specifically set forth herein. In the event that this Settlement is canceled, rescinded, terminated, voided, or nullified, however that may occur, or the Settlement of the Action is barred by operation of law, or invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendant shall cease to have any obligation to pay any portion of the Settlement to anyone under the terms of this Settlement, except for costs already incurred by the Settlement Administrator, and this action shall resume as though no Settlement had occurred with the Action proceeding in the Santa Clara County Superior Court.

IV. LIMITATIONS ON USE OF THIS SETTLEMENT

A. No Admission

Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with the law in any respect, that it has any liability to anyone under the claims asserted in the Action, and that, but for this Settlement, a class should not and could not be certified in this Action. This Settlement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Settlement is intended or will be construed as an admission of liability or wrongdoing by Defendant.

B. Non-Evidentiary Use

Whether or not the Effective Date occurs, neither this Settlement nor any of its terms will be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or

1 offered in evidence against any of the Released Parties in any further proceeding in the Action,
2 except for the purposes of effectuating the Settlement pursuant to the terms herein or for Defendant
3 to establish that a Class Member has resolved any of his/her claims released through this Settlement.

4 **C. Defendant's Right to Terminate Settlement**

5 Defendant shall have the right at their sole discretion to terminate the Settlement if Class
6 Members holding 10% or more of the Class, timely elect to opt out of the Settlement. If Defendant
7 elects to exercise their right under this paragraph, Defendant shall be liable solely for administrative
8 costs of the third-party claims administrator selected by the parties. The Parties agree that they will
9 not in any manner take any actions to encourage Class Members to opt-out.

10 **D. Nullification**

11 The Parties have agreed to the certification of the Class encompassing all claims alleged in
12 the Action for the sole purpose of effectuating this Settlement. If (a) the Court should for any reason
13 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this
14 Settlement, or (c) the Court should for any reason fail to enter the Final Approval Order, or (d) the
15 Final Approval Order is reversed, or declared or rendered void, or (e) the Court should for any
16 reason fail to dispose of the action in its entirety, then (1) this Settlement shall be considered null
17 and void; (2) neither this Settlement nor any of the related negotiations or proceedings shall be of
18 any force or effect; (3) all Parties to this Settlement shall stand in the same position, without
19 prejudice, as if the Settlement had been neither entered into nor filed with the Court; and (4) the fact
20 that the Parties were willing to stipulate to class certification of all causes of action pled in the
21 Action as part of the Settlement will have no bearing on, and will not be admissible in connection
22 with, the issue of whether the Class should be certified by the Court in a non-settlement context in
23 this Action or any other action, and in any of those events, Defendant expressly reserves the right to
24 oppose certification of the Class.

25 Invalidity of any material portion of this Settlement shall invalidate this Settlement in its
26 entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall
27 remain in full force and effect.

28 ///

1 **V. RELEASES**

2 **A. Releases by Participating Class Members**

3 Upon the Effective Date and full payment of the Gross Settlement Amount by Defendant,
4 Plaintiff and all Participating Class Members will release Defendant, together with its past, present,
5 and/or future parents, subsidiaries, affiliated or related entities, fictitious business names,
6 franchisors, owners, boards, officers, directors, trustees, shareholders, members, managers, partners,
7 managing agents, employees, agents, payroll processors, independent contractors, insurers,
8 attorneys, representatives, heirs, executors, administrators, successors, predecessors, and assigns and
9 each of their owners, officers, directors, managing agents, trustees, payroll processors, independent
10 contractors, members, managers, employees, attorneys, insurers, assigns, shareholders, successors,
11 predecessors, and agents (collectively, the "Released Parties") from any and all claims, debts,
12 liabilities, demands, actions, or causes of action of every nature and description that accrued during
13 the Class Period, under state law and the Wage Orders of the California Industrial Welfare
14 Commission, that were alleged or which could have been alleged based on the factual allegations in
15 the First Amended Complaint in the Action, including, but not limited to, claims for unpaid wages
16 (including, *inter alia*, in connection with off-the-clock work and rounding of time), claims for the
17 failure to pay minimum wages, claims for the failure to pay overtime wages, claims related to non-
18 compliant meal and rest breaks or periods and nonpayment of premium pay for such, failure to
19 comply with itemized employee wage statement provisions, failure to pay wages due at separation
20 and associated waiting time penalties, failure to timely pay wages during employment, failure to
21 maintain compliant time and payroll records, the failure to reimburse for business expenses, and
22 unfair or unlawful business practices pursuant to California Business and Professions Code § 17200,
23 *et seq.* based on the aforementioned, declaratory relief, statutory and civil penalties, and attorney
24 fees and costs. The Released Claims specifically include, but are not limited to, all claims arising
25 under California Labor Code Sections 201-204, 206, 218.6, 226, 226.7, 510, 512, 1182.12, 1194,
26 1194.2, 1197, 1198, 2800, 2802, and/or those arising under the Industrial Welfare Commission
27 Wage Orders; and/or those arising under the Industrial Welfare Commission Wage Orders;
28 California Business and Professions Code section 17200 *et seq.*; California Code of Regulations,

1 title 8, Section 11160; the California Civil Code sections 3287, 3289, and 3294; and California Code
2 of Civil Procedure section 1021.5 ("Released Claims").

3 The above release language shall also be included in the Class Notice. Plaintiff and
4 Participating Class Members will release these Released Claims from June 2, 2018 through the
5 Preliminary Approval Date of the Settlement or an earlier date at Defendant's discretion per Section
6 III(D)(5).

7 Class Members who endorse their settlement checks waive and release the Released Claims
8 and any claims under the Fair Labor Standards Act ("FLSA") (29 U.S.C. §§ 201, *et seq.*) arising
9 during the Class Period and based on the factual allegations alleged or which could have been
10 alleged in the Action, including the claims noted above.

11 This release excludes the release of claims not permitted by law.

12 **B. Releases by Aggrieved Employees and the State of California**

13 Any Aggrieved Employee who is also a Non-Participating Class Member will still receive
14 their Individual PAGA Payment. Upon the Effective Date and full payment of the Gross Settlement
15 Amount by Defendant, the State of California and Aggrieved Employees will release the Released
16 Parties from the PAGA Released Claims. Defendant, including its present and former parents,
17 subsidiaries, affiliated and related entities, present and former owners, boards, officers, directors,
18 trustees, shareholders, members, partners, employees, agents, insurers, attorneys, representatives,
19 heirs, executors, administrators, successors and assigns (collectively, the "PAGA Released Parties")
20 from any and all claims, debts, liabilities, demands, actions, or causes of action of every nature and
21 description that accrued during the PAGA Period, under state law and the California Labor Code,
22 that were alleged or which could have been alleged based on the exhausted claims and factual
23 allegations in Plaintiff's notices sent to the LWDA and alleged in the operative complaint, regardless
24 of whether the Aggrieved Employees opt-out of the Settlement Agreement, including claims for civil
25 penalties based on unpaid wages, including but not limited to failure to pay minimum wages, straight
26 time compensation, and overtime compensation, and interest; failure to timely pay regular and final
27 wages; failure to reimburse business expenses; missed meal period and rest period wages and
28 premiums; meal period waivers and on-duty meal period waivers; payment for all hours worked;

1 wage statements and paystubs, including wage statements and paystubs furnished or available in
2 physical, electronic, or other forms; failure to keep accurate records; penalties, including
3 recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time
4 penalties; statutory penalties and civil penalties; and attorneys' fees and costs. Without limiting the
5 foregoing, the PAGA Released Claims include claims for civil penalties arising under California
6 Labor Code Sections 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,
7 1194, 1197, 1197.1, 1198, 2800, 2802, 2698 *et seq.*, and 2699 *et seq.* and/or those arising under the
8 Industrial Welfare Commission Wage Orders; PAGA; and/or those arising under the Industrial
9 Welfare Commission Wage Orders; California Code of Regulations, title 8, Section 11160; and
10 California Code of Civil Procedure section 1021.5 ("PAGA Released Claims").

11 The above release language shall also be included in the Class Notice. Plaintiff, the State of
12 California, and Aggrieved Employees will release these PAGA Released Claims from September 21,
13 2020 through the Preliminary Approval Date of the Settlement or an earlier date at Defendant's
14 discretion per Section III(D)(5).

15 This release excludes the release of claims not permitted by law.

16 **C. Plaintiff's General Release**

17 Plaintiff does hereby, for himself, and for his heirs, successors, predecessors, attorneys,
18 agents, representatives and assigns, forever release the Released Parties from any and all charges,
19 complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions,
20 causes of action, injuries, suits, rights, demands, costs, losses, debts, judgments, accounts, attorneys'
21 fees, interest, expenses (including back wages, penalties, liquidated damages, and attorneys' fees
22 and costs actually incurred), and other legal responsibilities arising in law, equity or otherwise, of
23 any kind, nature, and character whatsoever, from the beginning of time through the date of his
24 signature on this Settlement, whether known or unknown, suspected or unsuspected, unforeseen, or
25 unanticipated including but not limited to all claims arising out of, based upon, or relating to his
26 employment with Defendant, the termination or resignation of his employment with Defendant, or
27 the remuneration for such employment, including, but not limited to all claims that were brought, or
28 which could have been brought, in the Action under California Labor Code sections 201, 202, 203,

204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2698 *et seq.*, 2800 and 2802, the applicable Wage Orders of the California Industrial Welfare Commission, including IWC Wage Orders 5-2001. Without limiting the generality of the foregoing, Plaintiff expressly releases all claims which were or could have been raised in the Action and all claims or rights arising out of alleged violations of any contracts, express or implied (including but not limited to any contract of employment); any contract or covenant of good faith or fair dealing (express or implied); any tort, including negligence, fraud, misrepresentation under California Labor Code § 970, negligent infliction of emotional distress, intentional infliction of emotional distress, and defamation; any other common law claim; any “retaliation” claims; any claims relating to any breach of public policy; any claim for costs, fees, interest, or other expenses including attorneys’ fees; any legal restrictions on Defendant’s right to discharge employees or refuse to hire applicants; and any federal, state, or other governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII of the Civil Rights Act of 1964, as amended (race, color, religion, sex, and national origin discrimination or harassment, including retaliation for reporting discrimination or harassment); (2) The Civil Rights Act of 1991, as amended; (3) Sections 1981 through 1988 of Title 42 of the United States Code, as amended; (4) The Age Discrimination in Employment Act of 1967, as amended; (5) The Employee Retirement Income Security Act of 1974, as amended; (6) The Immigration Reform and Control Act, as amended; (7) The Americans with Disability Act, as amended; (8) Sections 503 and 504 of the Rehabilitation Act of 1973 (disability discrimination); (9) The Workers Adjustment and Retraining Notification Act, as amended; (10) The Occupational Safety and Health Act, as amended; (11) California Equal Pay Law, as amended; (12) Equal Pay Act, 29 U.S.C. § 209(4)(1) (equal pay); (13) Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability discrimination); (14) Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical leave); (15) California Fair Employment and Housing Act [*Gov. Code*, §§ 12900, *et seq.*] (discrimination or harassment in employment and/or housing, including discrimination or harassment based on race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, sex (including pregnancy), sexual orientation, genetic, or age, including retaliation for reporting discrimination or harassment); (16) California Family Rights Act, [*Gov. Code*, §§ 12945.1, *et seq.*] (family/medical

1 leave); (17) California Labor Code or any Industrial Welfare Commission Wage Order; (18) FLSA;
2 (19) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or
3 harassment); (20) Executive Order 11141 (age discrimination); (21) California health and safety
4 laws and regulations; and (22) any other federal, state, or local law, regulation or ordinance,
5 including those regulating compensation, and those prohibiting discrimination, harassment, or
6 retaliation of any kind. This release excludes the release of claims not permitted by law.

7 **D. Plaintiff's General Release of Unknown Claims**

8 Plaintiff, in his individual capacity, also expressly waives, as to the Released Claims any and
9 all provisions, rights and benefits conferred by any law or principle of common law or equity, that is
10 similar, comparable, or equivalent, in whole or in part, to California Civil Code § 1542. For the
11 purpose of implementing a full and complete release, Plaintiff expressly acknowledges that the
12 release given in this Settlement is intended to include in its effect, without limitation, claims that
13 each did not know or suspect to exist in his favor at the time of the effective date of this Settlement,
14 regardless of whether the knowledge of such claims, or the facts upon which they might be based,
15 would materially have affected the settlement of this matter, and that the consideration given under
16 the Settlement was also for the release of those claims and contemplates the extinguishment of any
17 such unknown claims. Plaintiff expressly waives the provisions of section 1542 of the Civil Code of
18 California, which provides:

19 **A general release does not extend to claims that the creditor or**
20 **releasing party does not know or suspect to exist in his or her**
21 **favor at the time of executing the release and that, if known by**
him or her, would have materially affected his or her settlement
with the debtor or released party.

22 Thus, subject to and in accordance with this Agreement, even if Plaintiff may hereafter discover
23 facts in addition to or different from those he now knows or believes to be true, Plaintiff, upon the
24 Effective Date, shall be deemed to have fully, finally, and forever settled and released any and all
25 claims against the Released Parties that were alleged or could have been alleged in the Action, as
26 well as any other claims, whether known or unknown, suspected or unsuspected, contingent or non-
27 contingent, that now exist, upon any theory of law or equity, including without limitation, conduct
28 which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without

1 regard to the subsequent discovery or existence of such different or additional facts.

2 **E. No Additional Attorneys' Fees or Costs**

3 Except for the attorneys' fees and costs set forth in this Settlement, the Parties agree to bear
4 their own attorneys' fees and costs related to this Action and this Settlement.

5 **VI. MISCELLANEOUS PROVISIONS**

6 **A. Amendments or Modification**

7 The terms and provisions of this Settlement may be amended or modified only by an express
8 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel
9 and approval by the Court.

10 **B. Assignment**

11 None of the rights, commitments, or obligations recognized under this Settlement may be
12 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express
13 written consent of each other Party and their respective counsel. The representations, warranties,
14 covenants, and agreements contained in this Settlement are for the sole benefit of the Parties under
15 this Settlement, and shall not be construed to confer any right or to avail any remedy to any other
16 person.

17 **C. Governing Law**

18 This Settlement shall be governed, construed, and interpreted, and the rights of the Parties
19 shall be determined, in accordance with the laws of the State of California, irrespective of the State
20 of California's choice of law principles.

21 **D. Entire Agreement**

22 This Settlement, including Exhibit A referred to herein, which form an integral part hereof,
23 contains the entire understanding of the Parties hereto with respect of the subject matter contained
24 herein. In case of any conflict between text contained in Articles I through VI of this Settlement and
25 text contained in Exhibit A to this Settlement, the former (*i.e.*, Articles I through VI) shall be
26 controlling, unless Exhibit A is changed by or in response to a Court order. There are no
27 restrictions, promises, representations, warranties, covenants, or undertakings governing the subject
28 matter of this Settlement other than those expressly set forth or referred to herein. This Settlement

1 supersedes all prior agreements, except for the Individual Confidential Settlement Agreement
2 between Plaintiff and Defendant, and all understandings among the Parties hereto with respect to the
3 settlement of the Action, including correspondence between Class Counsel and Defense Counsel and
4 drafts of prior agreements or proposals.

5 **E. Waiver of Compliance**

6 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
7 obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the
8 extent permitted under applicable law, by the Party or Parties and their respective counsel hereto
9 entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to
10 insist upon strict compliance with any representation, warranty, covenant, agreement, or condition
11 shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

12 **F. Counterparts and Fax/PDF Signatures**

13 This Settlement, and any amendments hereto, may be executed in any number of
14 counterparts and any Party and/or their respective counsel hereto may execute any such counterpart,
15 each of which when executed and delivered shall be deemed to be an original and all of which
16 counterparts taken together shall constitute one instrument. A fax, electronic, or PDF signature on
17 this Settlement shall be as valid as an original signature, provided sufficient verification is provided
18 to authenticate the signature.

19 **G. Meet and Confer Regarding Disputes**

20 Should any dispute arise among the Parties or their respective counsel regarding the
21 implementation or interpretation of this Settlement, a representative of Class Counsel and a
22 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
23 to submitting such disputes to the Court.

24 **H. Agreement Binding on Successors**

25 This Agreement will be binding upon, and inure to the benefit of, the successors in interest of
26 each of the Parties.

27 **I. Cooperation in Drafting**

28 The Parties have cooperated in the negotiation and preparation of this Settlement. This

Settlement will not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Settlement.

J. Fair Settlement

Plaintiff, Defendant, Class Counsel, and Defense Counsel believe that this Settlement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Settlement through arm's-length negotiations, taking into account all relevant factors, current and potential, and is consistent with public policy, and fully complies with applicable provisions of law.

K. Headings

The descriptive heading of any section or paragraph of this Settlement is inserted for convenience of reference only and does not constitute a part of this Settlement and shall not be considered in interpreting this Settlement.

L. Notice

All notices, demands, or other communications given under this Settlement must be in writing and addressed as follows:

To Plaintiff and the Class:

Jose R. Garay
JOSE GARAY, APLC
249 E. Ocean Blvd. #814
Long Beach, CA 90802
Telephone: (949) 208-3400
Facsimile: (562) 590-8400

Daniel J. Hyun
LAW OFFICE OF DANIEL J. HYUN
1100 West Town and Country Road, Suite 1250
Orange, California 92868
Telephone: (949) 596-4782
Facsimile: (949) 528-2596

and

To Defendant:

Catherine M. Lee
Catherine.Lee@aalrr.com
Geoffrey D. La Valr
Geoffrey.LaVal@aalrr.com
Atkinson, Andelson, Loya, Ruud & Romo
1050 Northgate Drive, Suite 520
San Rafael, California 94903
Telephone: (628) 234-6200

1 **M. Enforcement of Settlement and Continuing Court Jurisdiction**

2 To the extent consistent with class action procedure, this Settlement shall be enforceable by
3 the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court
4 3.769(h). The disposition entered by the Court will not adjudicate the merits of the Action or the
5 liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the
6 terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall
7 retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest
8 extent to enforce and effectuate the terms and intent of this Settlement.

9 **N. Mutual Full Cooperation**

10 The Parties agree fully to cooperate with each other to accomplish the terms of this
11 Settlement, including but not limited to execution of such documents, and to take such other action
12 as may reasonably be necessary to implement the terms of this Agreement. The Parties to this
13 Settlement shall use their best efforts, including all efforts contemplated by this Settlement, to
14 effectuate this Settlement and the terms set forth herein. In the event the Parties are unable to reach
15 agreement on the form or content of any document needed to implement the Settlement, or on any
16 supplemental provisions that may become necessary to effectuate the terms of the Settlement, the
17 Parties agree to seek the assistance of the Court.

18 **O. Authorization to Act**

19 Class Counsel warrants and represents that they are authorized by Plaintiff, and Defense
20 Counsel warrants that they are authorized by Defendant, to take all appropriate action required to
21 effectuate the terms of this Settlement, except for signing the documents, including but not limited to
22 this Settlement, that are required to be signed by the Parties.

23 **P. No Reliance on Representations**

24 The Parties have made such investigation of the facts and the law pertaining to the matters
25 described herein and to this Settlement as they deem necessary, and have not relied, and do not rely,
26 on any statement, promise, or representation of fact or law, made by any of the other parties, or any
27 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
28 rights, or with regard to the advisability of making and executing this Settlement, or with respect to

any other matters. No representations, warranties, or inducements have been made to any party concerning this Settlement.

Q. No Collateral Attack

This Settlement shall not be subject to collateral attack by any Class Member or any recipient of the Class Notice after the Effective Date. Such prohibited collateral attacks shall include but not be limited to claims that the Class Member failed for any reason to receive timely notice of the procedure for disputing the calculation of his or her Individual Settlement Payment.

R. Invalidity of Any Provision

Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provisions or application and, to this end, the provisions of this Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable party.

S. Confidentiality/Non-Publicity

Plaintiff and his counsel will keep the First Amended Complaint, PAGA Letter, and this Agreement confidential through preliminary approval. Thereafter, Plaintiff and his counsel will further agree to keep this Agreement, First Amended Complaint, and the PAGA Letter confidential, including without limitation no disclosures to current or former employees of the Defendant, to the media, or on any websites, blogs, social media, and/or online platforms. Exceptions to the obligation of confidentiality in this section are: (i) disclosures necessary to comply with the law, judicial process, or for financial planning or tax preparation purposes; (ii) to obtain and seek approval of this settlement in court and as is necessary to provide settlement information to Class Members, and (iii) if any party seeks to enforce any term or condition of this Agreement against any other party.

///

///

EXECUTION BY PARTIES

The Parties hereby execute this Settlement.

Dated: 3/22/2023

EDY RUIZ

By:

(Signature)

DocuSigned by:

EDY RUIZ

Dated: March 31, 2023

LION FOODS LLC

By:

(Signature)

Alexander Chan

(Printed Name)

(Title)

Manager / CFO

Approved as to form only:

Dated: March 21, 2023

JOSE GARAY, APLC &
LAW OFFICE OF DANIEL J. HYUN &

By:

Jose R. Garay
Daniel J. Hyun
Attorneys for Plaintiff EDY RUIZ

Dated:

3/28/23

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By:

Catherine M. Lee
Geoffrey D. La Val
Attorneys for Defendant Lion Foods LLC

EXHIBIT A

THIS IS AN IMPORTANT COURT APPROVED NOTICE. READ CAREFULLY.

Ruiz v. Lion Foods LLC
Santa Clara County Superior Court
Case No. 21CV386961

If you worked as a non-exempt hourly employee for Lion Foods LLC (“Defendant”) in California at any time from June 2, 2018 through INSERT PRELIM APPROVAL DATE, you are eligible to receive compensation from a class action settlement.

- You have been identified as a Class Member (defined below) in a Lawsuit (defined below) brought by a former employee of Defendant. Defendant denies all allegations in the Lawsuit and contends it fully complies with California law. However, to avoid the continuing expense of litigation, the Parties have reached a settlement of highly disputed claims (the “Settlement”). The Court has preliminarily approved the Settlement, finding it to be fair, reasonable, adequate, and in the best interests of the Class Members.
- The Class Settlement will affect all of Defendant’s non-exempt hourly California employees who were employed from June 2, 2018 through INSERT PRELIM APPROVAL DATE (the “Class Period”). The PAGA Settlement will affect all of Defendant’s non-exempt hourly California employees from September 21, 2020 through INSERT PRELIM APPROVAL DATE (the “PAGA Period”).
- If the Court grants final approval of the Settlement, you will receive a settlement payment.

*A court authorized this notice. This is not an advertisement.
You are not being sued. Your rights will be affected by this notice and settlement.*

YOUR LEGAL RIGHTS AND OPTIONS	
<u>PARTICIPATE IN THE SETTLEMENT – NO ACTION REQUIRED</u>	Stay in this Lawsuit. Receive a payment. Give up certain rights. By doing nothing, you become part of the Settlement Class (defined below), will receive a settlement payment, and will give up certain rights to sue Defendant separately about the legal claims raised in this Lawsuit.
<u>OBJECT TO THE SETTLEMENT – ACTION REQUIRED</u>	Stay in this Lawsuit. May give up certain rights. If you object to the Settlement, you will remain a member of the Class (defined below), and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object.
<u>ASK TO BE EXCLUDED – ACTION REQUIRED</u>	Opt out of the Settlement. Receive no payment from the settlement for the Class claims, but receive an individual settlement share for civil penalties under the California Private Attorneys General Act of 2004 (“PAGA”). Keep rights to individually pursue only the Class claims. If you opt out of the Settlement, you won’t receive any share of the Class payment, but you retain the right to sue Defendant separately about the Class claims in this Lawsuit. However,

	even if you opt out, you will still receive an individual settlement share for claims for civil penalties pursuant to PAGA and will be deemed to have released the PAGA claims.
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- To object to the Settlement or to ask to be excluded, you must act before [DATE], 2023.
- **Any questions?** Read on or contact Class Counsel (defined below) or the Settlement Administrator (defined below).

WHAT THIS NOTICE CONTAINS

BASIC INFORMATIONPAGE 3-5

1. Why did I get this notice?
2. What is the Lawsuit about?
3. What is a class action and who is involved?
4. Why is this Lawsuit a class action?
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8. What is my approximate Individual Settlement Payment?
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10. How do I object to the Settlement?
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THE LAWYERS REPRESENTING YOUPAGE 9

13. Do I have a lawyer in this case?
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THE SETTLEMENT, APPROVAL, AND PAYMENT PROCESSPAGE 9-10

15. Who is handling the settlement administration process?
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17. When will I get money after the hearing?

GETTING MORE INFORMATION.....PAGE 10-11

18. Are more details available?

BASIC INFORMATION

1. Why did I get this notice?

Records show that you are a potential member of the Class because you worked for Defendant in California as a non-exempt employee during the Class Period. The Court granted preliminary approval of the Settlement of a class action lawsuit that may affect your legal rights and ordered that this Notice be sent to you to explain your rights in connection with the Settlement. The Court determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable; however, the Court has not made any ruling on the merits of Plaintiff's claims or Defendant's defenses.

The lawsuit is known as *Ruiz v. Lion Foods LLC*, Case No. 21CV386961 (the "Lawsuit"). You can view the Lawsuit's records online by visiting the Court's website (<https://portal.scsccourt.org/search>), entering the Case Number in the search box for the section titled "Case Number Search," and selecting "Search."

2. What is this Lawsuit about?

The Lawsuit is about whether Defendant failed to pay minimum, regular, and overtime wages for all hours worked, failed to provide proper meal and rest breaks, failed to provide accurate itemized wage statements, failed to pay all wages timely upon separation of employment, and failed to reimburse business expenses to its non-exempt employees as required by applicable California laws. Based on these alleged violations, the Lawsuit also alleges violations of California's Labor Code and Unfair Competition Law ("UCL") and seeks penalties under California's Private Attorneys General Act.

Defendant denies any liability or wrongdoing associated with the claims alleged in the Lawsuit.

3. What is a class action and who is involved?

In an employment class action lawsuit such as this, a person called the "Class Representative" sues his or her employer or former employer on behalf of other current or former employees who may have similar claims. The people who may have similar claims are called "Class Members," and Class Members are collectively referred to as "the Class." The Class Representative is also called the Plaintiff. There is one Plaintiff/Class Representative in this Action, Edy Ruiz. The company that was sued (in this case Lion Foods LLC) is called the Defendant. In class action litigation, one Court resolves the issues for everyone in the Class in one lawsuit, except for those people who choose to exclude themselves from the Class.

4. Why is this Lawsuit a class action?

As part of the Settlement, Plaintiff and Defendant agreed to conditionally certify the Lawsuit as a class action for all of Plaintiff's alleged claims for settlement purposes only and to ask the Court to approve the Settlement.

By agreeing to the terms of the settlement, Defendant does not admit to any of the allegations of wrongdoing in this Action or that any Class Member has suffered any damages. Defendant settled the Lawsuit to avoid additional expense, inconvenience, and interference with their business operations. The Court has not ruled on the merits of Plaintiff's claims or the defenses of Defendant. Defendant retains

the right to defend themselves against any of the allegations involved in the Lawsuit if for any reason the Settlement is not approved by the Court.

5. What are the terms of the proposed Settlement?

The major terms of the Settlement are as follows:

1. Defendant has agreed to pay \$190,000. This \$190,000 total settlement figure is known as the “Gross Settlement Amount,” unless increased on a pro rata basis according to the terms of the Settlement Agreement.
2. Plaintiff Edy Ruiz has agreed to a general release of all of his claims against Defendant.
3. Plaintiff seeks the following allocation of the Gross Settlement Amount:
 - a. Up to one-third (1/3) of the Gross Settlement Amount (or currently approximately \$63,333.33) for Class Counsel’s attorneys’ fees;
 - b. Up to \$20,000 for reimbursement of Class Counsel’s litigation costs;
 - c. An enhancement award of up to \$5,000 for Plaintiff Edy Ruiz for dedicating personal time and performing work in connection with the Lawsuit, assisting Class Counsel in investigating the alleged claims, being available to answer Class Counsel’s questions, providing a general release of claims, and undertaking the risks of filing the Lawsuit;
 - d. All costs of the Settlement Administrator, which are currently estimated to be no more than \$8,500; and
 - e. \$3,800 as PAGA civil penalties. Per Labor Code Section 2699(i), seventy-five percent (75%) of this amount (\$2,850) will be payable to the California Labor and Workforce Development Agency (“LWDA”). The remaining twenty-five percent (25%), or \$950, will be payable to certain employee in the Class as the “PAGA Amount.”
4. After the above deductions from the Gross Settlement Amount, the remaining funds will be distributed to Class Members on a pro rata basis. To ensure timely payment, please contact and inform the Settlement Administrator listed in Section 18, below, of any changes to your mailing address.

If the Court approves this proposed allocation, the Parties estimate that \$90,316.67 (the “Net Settlement Amount”) will be distributed to Class Members who do not request exclusion (the “Participating Class Members”) according to the following formula:

The Settlement Administrator will calculate the total number of Qualifying Workweeks for all Participating Class Members worked during the Class Period. The Individual Settlement Payment that each Participating Class Member will be eligible to receive will be calculated by dividing each Participating Class Member’s individual number of Qualifying Workweeks by the total number of Qualifying Workweeks of all Participating Class Members worked during the Class Period, and multiplying the resulting fraction

by the Net Settlement Amount.

“Qualifying Workweeks” means the weeks that a Class Member worked at least one shift for Defendant in non-exempt position during the Class Period.

The PAGA Amount will be distributed to Aggrieved Employees according to the following formula:

The Settlement Administrator will calculate the total number of Qualifying Pay Periods for all Aggrieved Employees worked during the PAGA Period. The Individual PAGA Payment that each Aggrieved Employee will be eligible to receive will be calculated by dividing each Aggrieved Employee’s individual number of Qualifying Pay Periods worked during the PAGA Period by the total number of Qualifying Pay Periods of all Aggrieved Employees worked during the PAGA Period, and multiplying the resulting fraction by the PAGA Settlement Payment.

Your estimated Individual Settlement Payment is listed in Section 8 of this Notice. Employee-side payroll deductions will be made to your Individual Settlement Payment for state and federal withholding taxes and any other applicable payroll deductions owed by you as a result of the payment, with 80% allocated to wages, which will be subject to W-2 reporting, and 20% allocated to non-wage statutory damages and interest, which will be subject to 1099 reporting. Each Individual PAGA Payment will be allocated as follows: 100% as civil penalties, which will be subject to 1099 reporting. Defendant will pay employer-side taxes separate and apart from the Gross Settlement Amount.

Nothing in this Notice or the Settlement is intended to be tax advice. You should consult your tax advisor for any tax issues pertaining to this Settlement.

WHO IS IN THE CLASS?

6. Am I part of this Class?

The “Settlement Class” consists of all persons who worked as non-exempt, hourly employees in California for Defendant at any time from June 2, 2018 through **[INSERT PRELIM APPROVAL DATE]**.

7. I’m still not sure if I am included.

If you still are not sure whether you are included in the Class, you can get free help by contacting Phoenix Class Action Administration Solutions, the “Settlement Administrator,” at the designated phone number for this matter at **[insert telephone number]**, or by calling or writing the lawyers representing the Class in this case (“Class Counsel”), at (949) 208-3400.

YOUR RIGHTS AND OPTIONS

You have to decide whether to stay in the Class, object to the Settlement, or ask to be excluded from the Settlement. These options are further explained below, including the dates by which you need to take any action.

8. What is my approximate Individual Settlement Payment?

According to payroll records maintained by Defendant, your total number of Qualifying Workweeks during the Class Period is [REDACTED] and Qualifying Pay Periods during the PAGA Period is [REDACTED]. As a result, your estimated Individual Settlement Payment will be \$[REDACTED]. [Where applicable for Aggrieved Employees: Your estimated Individual PAGA Payment will be \$_____.]

You do not need to do anything further to receive your Individual Settlement Payment, other than to ensure that the Settlement Administrator has an accurate mailing address for you. It is important that you contact and inform the Settlement Administrator listed in Section 18, below, of any changes to your mailing address for timely payment.

If you believe your total number of Qualifying Workweeks or Qualifying Pay Periods (shown above) are not accurate, you may submit a signed written dispute to the Settlement Administrator, indicating what you believe is the correct number of Qualifying Workweeks or Qualifying Pay Periods. To submit a Workweek Dispute, a Class Member must submit a written letter that: (a) contains the case name and number of the Action (*Ruiz v. Lion Foods LLC*, Case No. 21CV386961); (b) contains the full name, address, telephone number, signature, and the last four digits of the Social Security Number of the disputing Class Member; (c) clearly states that the Class Member disputes the number of Qualifying Workweeks or Qualifying Pay Periods credited to him or her and what he or she contends is the correct number to be credited to him or her during the applicable timeframe; (d) includes information and/or attaches documentation demonstrating the correct number of Qualifying Workweeks or Qualifying Pay Periods that he or she contends should be credited to him or her; and (e) is submitted by mail to the Settlement Administrator at the address listed below in Section 18 postmarked on or before [DATE], 2023.

Please be advised that your number of Qualifying Workweeks and Qualifying Pay Periods is presumed to be correct, unless you submit documents to support your contention to the Settlement Administrator no later than [DATE], 2023.

9. What rights am I releasing if I participate in the Settlement?

If the Court grants final approval of the Settlement, each Class Member who does not validly opt-out will be mailed an Individual Settlement Payment. In addition, each Class Member who does not validly opt-out, on behalf of themselves, and on behalf of all those who claim by and through them, or in their stead, including, but not limited to agents, attorneys, representatives, predecessors, successors and assigns will be deemed to forever release, acquit, and discharge, and covenant not to sue, Defendant, together with its past, present, and/or future parents, subsidiaries, affiliated or related entities, fictitious business names, franchisors, owners, boards, officers, directors, trustees, shareholders, members, managers, partners, managing agents, employees, agents, payroll processors, independent contractors, insurers, attorneys, representatives, heirs, executors, administrators, successors, predecessors, and assigns and each of their owners, officers, directors, managing agents, trustees, payroll processors, independent contractors, members, managers, employees, attorneys, insurers, assigns, shareholders, successors, predecessors, and agents (collectively, the “Released Parties”) from any and all claims, debts, liabilities, demands, actions, or causes of action of every nature and description that accrued during the Class Period, under state law and the Wage Orders of the California Industrial Welfare Commission, that were alleged or which could have been alleged based on the factual allegations in the

First Amended Complaint in the Action, including, but not limited to, claims for unpaid wages (including, *inter alia*, in connection with off-the-clock work and rounding of time), claims for the failure to pay minimum wages, claims for the failure to pay overtime wages, claims related to non-compliant meal and rest breaks or periods and nonpayment of premium pay for such, failure to comply with itemized employee wage statement provisions, failure to pay wages due at separation and associated waiting time penalties, failure to timely pay wages during employment, failure to maintain compliant time and payroll records, the failure to reimburse for business expenses, and unfair or unlawful business practices pursuant to California Business and Professions Code § 17200, *et seq.* based on the aforementioned, declaratory relief, statutory and civil penalties, and attorney fees and costs. Without limiting the foregoing, the Released Claims include those claims arising under California Labor Code Sections 201-204, 206, 218.6, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198, 2800, 2802, and/or those arising under the Industrial Welfare Commission Wage Orders; and/or those arising under the Industrial Welfare Commission Wage Orders; California Business and Professions Code section 17200 *et seq.*; California Code of Regulations, title 8, Section 11160; the California Civil Code sections 3287, 3289, and 3294; and California Code of Civil Procedure section 1021.5 (“Released Claims”).

Class Members who endorse their settlement checks waive and release any claims under the Fair Labor Standards Act (“FLSA”) (29 U.S.C. §§ 201, *et seq.*) arising during the Class Period and based on the factual allegations alleged or which could have been alleged in the Class Action Complaint, including the claims noted above.

This release excludes the release of claims not permitted by law.

For members of the Class who do not validly opt out, the release period shall run from June 2, 2018 through [INSERT PRELIM APPROVAL DATE] for non-exempt hourly employees.

The proposed Settlement includes the settlement of claims for civil penalties under PAGA. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the court approves this Settlement, then even if you request exclusion from the Settlement, you will still receive an individual settlement share for the PAGA claims and will be deemed to have released the PAGA claims. A request for exclusion will preserve your right to individually pursue only the remaining Class claims.

In addition, if the Court grants final approval of the Settlement, the State of California and Aggrieved Employees will be deemed to forever release, acquit, and discharge, and covenant not to sue, Defendant, together with its past, present, and/or future parents, subsidiaries, affiliated or related entities, fictitious business names, franchisors, owners, boards, officers, directors, trustees, shareholders, members, managers, partners, managing agents, employees, agents, payroll processors, independent contractors, insurers, attorneys, representatives, heirs, executors, administrators, successors, predecessors, and assigns and each of their owners, officers, directors, managing agents, trustees, payroll processors, independent contractors, members, managers, employees, attorneys, insurers, assigns, shareholders, successors, predecessors, and agents (collectively, the “PAGA Released Parties”) from any and all claims, debts, liabilities, demands, actions, or causes of action of every nature and description that accrued during the PAGA Period, under state law and the California Labor Code, that were alleged or which could have been alleged based on the exhausted claims and factual allegations in Plaintiff’s notices sent to the LWDA and alleged in the operative complaint, regardless of whether the Aggrieved Employees opt-out of the Settlement Agreement, including claims for civil penalties based on unpaid wages, including but not limited to failure to pay minimum wages, straight time compensation, and overtime compensation, and interest; failure to timely pay regular and final wages; failure to reimburse

business expenses; missed meal period and rest period wages and premiums; meal period waivers and on-duty meal period waivers; payment for all hours worked; wage statements and paystubs, including wage statements and paystubs furnished or available in physical, electronic, or other forms; failure to keep accurate records; penalties, including recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; statutory penalties and civil penalties; and attorneys' fees and costs. Without limiting the foregoing, the PAGA Released Claims include claims for civil penalties, attorneys' fees, and costs arising under California Labor Code Sections 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2800, 2802, 2698 *et seq.*, and 2699 *et seq.* and/or those arising under the Industrial Welfare Commission Wage Orders; PAGA; and/or those arising under the Industrial Welfare Commission Wage Orders; California Code of Regulations, title 8, Section 11160; and California Code of Civil Procedure section 1021.5 ("PAGA Released Claims").

Plaintiff, the State of California, and Aggrieved Employees will release these PAGA Released Claims from September 21, 2020 through **INSERT PRELIM APPROVAL DATE** ("PAGA Period").

"Aggrieved Employees" means all persons currently or formerly employed as non-exempt employees in California by Defendant at any time during the PAGA Period.

This release excludes the release of claims not permitted by law.

Any Aggrieved Employee who validly excludes himself or herself from the Settlement will still receive a PAGA Settlement Payment, and will be deemed to have released claims against the PAGA Released Parties for civil penalties pursuant to PAGA based on the PAGA Released Claims.

10. How do I object to the Settlement?

If you are a Class Member and would like to object to the Settlement, you must not submit a request for exclusion (*i.e.*, must not opt out).

If you submit both a request for exclusion and an objection, you will be excluded from the Settlement (see sections 11 and 12 below), and your objection will not be considered.

To object, you must either (1) mail a written objection to the Settlement Administrator (at the address in Section 18, below) setting forth the grounds of objection, along with any supporting documents postmarked no later than **DATE**, 2023, which is 45 days from the date that this Notice was mailed, or (2) appear and object at the Final Approval hearing.

All written objections must be signed and must contain your address, telephone number, and a reference to the Lawsuit and whether you intend to appear at the Final Approval Hearing. You may also appear personally or through an attorney, at your own expense, at the Final Approval Hearing to present your objection directly to the Court. If you object, but the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as a Class Member who does not object.

11. Why would I ask to be excluded?

You have the right to exclude yourself from the Settlement. If you exclude yourself from the Class — sometimes called "opting-out" of the Class — you will not receive any compensation from the Settlement for the Class claims. Even if you exclude yourself from the Settlement, you will still receive

your Individual PAGA Payment, but only if you have Qualifying Pay Periods in the PAGA Period. If you exclude yourself, you will not be legally bound by the Court's disposition of the Class claims, but you will still be deemed to have released the PAGA claims.

12. How do I ask to be excluded from the Class?

If you are a member of the Class described above and would like to exclude yourself from the Class, you need to submit an Exclusion Form, which means a timely and valid letter submitted by a Class Member indicating a request to be excluded from the Class Settlement. To be valid, the Exclusion Form must: (a) contain the case name and number of the Action (*Ruiz v. Lion Foods LLC*, Case No. 21CV386961); (b) contain the full name, signature, and the last four digits of the Social Security Number of the Class Member requesting exclusion; (c) clearly state that the Class Member does not wish to be included in the Class Settlement; and (d) be submitted by mail to the Settlement Administrator at the address below in Section 18, and it must be postmarked on or before [DATE], 2023. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Any Class Member who requests to be excluded from the Class will only receive an individual settlement share for the PAGA claims, will release only his or her PAGA claims, will not receive any compensation from the Settlement for the Class claims, and will not have any right to object, appeal, or comment thereon. Class Members who fail to submit a valid and timely request for exclusion on or before [DATE], 2023, will be bound by all terms of the Settlement and any final disposition entered in this Class Action if the Court approves the Settlement.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court preliminarily decided that Jose Garay, APLC and the Law Office of Daniel J. Hyun are qualified to represent you and all Class Members in this Lawsuit. These law firms are also called "Class Counsel" in the context of this case.

14. How will the lawyers be paid?

As part of the Settlement with Defendant, Class Counsel has requested one-third of the Gross Settlement Amount (currently, that is equal to approximately \$63,333.33) in attorneys' fees, plus costs not to exceed \$20,000 to be paid from the Gross Settlement Amount to compensate Class Counsel for their work on this matter. You will not have to pay Class Counsel's fees and costs from your Individual Settlement Payment.

THE SETTLEMENT, APPROVAL, AND PAYMENT PROCESS

15. Who is handling the Settlement Administration process?

The Settlement Administrator, Phoenix Class Action Administration Solutions, will handle the process. The Settlement Administrator's contact information is provided in Section 18, below.

16. When is the Final Approval Hearing and do I have to attend?

The Final Approval Hearing has been set for [DATE], 2023 at [TIME] in Department 19 of the

Superior Court of the State of California, County of Santa Clara, located at 191 N. First Street, San Jose, California 95113. You do not need to attend the hearing to be a part of the Settlement. However, if you wish to object to the Settlement, you may appear at the hearing. If physical access to the Court is restricted due to COVID-19 or other reasons, please contact the Settlement Administrator regarding alternative options to appear at the hearing.

17. When will I get money after the hearing?

Your Individual Settlement Payment from the Net Settlement Amount will be made within approximately [INSERT] days after the Court's final approval of the Settlement, or, if an objection is filed, then approximately [INSERT] days after the Court's final approval of the Settlement, or, if an appeal is filed, then after all rights to appeal expire (assuming that the Court's approval stands), whichever date is later.

GETTING MORE INFORMATION

18. Are more details available?

A copy of the entire Settlement Agreement was filed in this case as Exhibit 1 to the Declaration of Daniel J. Hyun in Support of Motion for Preliminary Approval, filed on [DATE], 2023.

You may contact the Settlement Administrator, whose contact information is below:

Phoenix Class Action Administration Solutions
[ADDRESS]
[PHONE]
[FAX]

You may also contact Class Counsel, whose contact information is below:

Jose R. Garay
JOSE GARAY, APLC
249 E. Ocean Blvd. #814
Long Beach, CA 90802
Telephone: (949) 208-3400
Facsimile: (562) 590-8400
Email: jose@garaylaw.com

Daniel J. Hyun
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Telephone: (949) 596-4782
Facsimile: (949) 528-2596
Email: dh@danielhyunlaw.com

Defendant is represented by:

Catherine M. Lee
Catherine.Lee@aalrr.com
Geoffrey D. La Val
Geoffrey.LaVal@aalrr.com
Atkinson, Andelson, Loya, Ruud & Romo
1050 Northgate Drive, Suite 520
San Rafael, California 94903
Telephone: (628) 234-6200

**PLEASE DO NOT CALL OR WRITE TO THE JUDGE OR TO THE COURT REGARDING
THIS NOTICE OR THE LAWSUIT.**

Ruiz v. Lion Foods LLC

Case No. 21CV386961

EXCLUSION FORM

MAIL OR FAX TO:

c/o [Administrator]

P.O. Box *****

***** , CA *****

Fax: (***) ***-****

COMPLETE THIS FORM **ONLY IF** YOU WISH TO EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS. IF YOU EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS, YOU **WILL NOT** RECEIVE COMPENSATION FROM THE SETTLEMENT FOR THE CLASS ACTION CLAIMS.

I, _____, request to be excluded from the Settlement Class in the matter of *Ruiz v. Lion Foods LLC*, Case No. 21CV386961 (Santa Clara County Superior Court). I understand that by submitting this Exclusion Form, I will no longer be eligible for compensation from the settlement for the class action claims.

Signature and last four digits of your social security number Date

Print your name here

By signing this form, I hereby certify that I request exclusion from the Settlement Class as specified above and that the last four digits of my social security number are true and accurate to the best of my knowledge.

Ruiz v. Lion Foods LLC

Case No. 21CV386961

EXCLUSION FORM

TO BE TIMELY, A REQUEST SUBMITTED BY FAX MUST BE SENT ON OR BEFORE _____, 2023. A REQUEST SUBMITTED BY MAIL MUST BE POSTMARKED ON OR BEFORE _____, 2023. IT MUST BE SENT TO THE FOLLOWING ADDRESS OR FAX NUMBER:

c/o [Administrator]

P.O. Box *****

*****, CA *****

Fax: (***) ***-*****

[BAR CODE OR CLASS MEMBER ID WILL BE INCLUDED HERE]