Arby Aiwazian (SBN 269827)
arby@calljustice.com
Joanna Ghosh (SBN 272479)
joanna@calljustice.com
Tara Zabehi (SBN 314706)
tara@calljustice.com
Connie Lee (SBN 357364)
connie@calljustice.com
LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020 / Fax: (818) 265-1021

S. Emi Minne (SBN 253179)
emi@parkerminne.com
Jill J. Parker (SBN 274230)
jill@parkerminne.com
PARKER & MINNE, LLP
700 South Flower Street, Suite 1000
Los Angeles, California 90017
Telephone: (310) 882-6833 / Fax: (310) 889-0822

Attorneys for Plaintiff
DAMIAN TINOCO

Additional Counsel Listed on Next Page

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DAMIAN TINOCO, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act; Plaintiff, vs. VITCO DISTRIBUTORS, INC., a California limited liability company; KOSTAS VITAKIS, an individual; and DOES 1 through 100, inclusive, Defendants.	Case No.: CIVSB2133154 *Assigned for all purposes to the Honorable Christian Towns. S26* **JOINT STIPULATION OF PAGA SETTLEMENT** Complaint Filed: November 29, 2021 Trial Date: Not Set

AKILEE CHILDRESS on behalf of himself and all others similarly situated, Plaintiff, vs. VITCO DISTRIBUTORS, INC., a California corporation; and DOES 1 through 50, inclusive, Defendants.	Case No.: CIVSB2127492 *Assigned for all purposes to the Honorable Joseph T. Ortiz, Dept. S17* Complaint Filed: September 27, 2021 FAC Filed: January 7, 2022 Trial Date: Not Set

James R. Hawkins (SBN 192925)
james@jameshawkinsaplc.com
Isandra Fernandez (SBN 220482)
isandra@jameshawkinsaplc.com
Lance Dacre (SBN 190305)
lance@jameshawkinsaplc.com
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200 / Fax: (949) 387-6676

Attorneys for Plaintiff
AKILEE CHILDRESS

A. Nicholas Georggin
nick@georgginandgeorggin.com
Steven D. Sperling
steve@georgginandgeorggin.com
GEORGGIN & GEORGGIN
20212 Tomas, Suite 365
Rancho Santa Margarita, California 92688
Telephone: (949) 713-1610

Attorneys for Defendants
VITCO DISTRIBUTORS and KOSTAS VITAKIS

This Joint Stipulation of PAGA Settlement ("Agreement" or "Settlement") is made and entered into between Plaintiffs Damian Tinoco ("Plaintiff Tinoco") and Akilee Childress ("Plaintiff Childress") (collectively, "Plaintiffs"), on their own behalf, on behalf of the State of California, and on behalf of other Aggrieved Employees as defined below, and Defendants Vitco Distributors, Inc. dba Vitco Foods ("Vitco") and Kostas Vitakis (collectively, "Defendants").

DEFINITIONS

1. "Actions" refers collectively to the court actions entitled *Damian Tinoco v. Vitco Distributors, Inc., et al.*, San Bernardino County Superior Case No. CIVSB2133154, and *Akilee Childress v. Vitco Distributors, Inc.,* San Bernardino County Superior Case No. CIVSB2127492.

2. "Aggrieved Employee List" means a complete list of all Aggrieved Employees, formatted as a readable Microsoft Excel spreadsheet, that Defendants will diligently and in good faith compile from their records, which shall include the following information for all Aggrieved Employees: (1) full name; (2) last known home address; (3) last known telephone number; (4) social security number; (5) start and end dates of active employment as a non-exempt employee of Vitco in the State of California; (6) total Pay Periods worked during the PAGA Period as a non-exempt employee of Vitco; and (7) any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement

3. "Aggrieved Employees" means all current and former non-exempt and/or hourly-paid employees who were employed by Vitco in the State of California at any time during the PAGA Period.

4. "Aggrieved Employees' Fund" means twenty-five percent (25%) of the Net Settlement Amount, which shall be distributed to Aggrieved Employees.

5. "Agreement" means this Joint Stipulation of PAGA Settlement.

6. "Attorneys' Fees and Costs" means attorneys' fees for Plaintiffs' Counsels' litigation and resolution of this Action and their expenses and costs incurred in connection with the Action, which shall be paid from the Gross Settlement Amount.

7. "*Childress* Action" refers to the court action entitled *Akilee Childress v. Vitco Distributors, Inc.,* San Bernardino County Superior Case No. CIVSB2127492

8. "Complaints" means the operative complaints in the *Tinoco* Action and the *Childress* Action.

9. "Court" means the Superior Court for the County of San Bernardino.

10. "Defendants' Counsel" means A. Nicholas Georggin and Steven D. Sperling of Georggin & Georggin.

11. "Effective Date" means the later date of the following: (a) if no timely objections are filed or if all objections are withdrawn, the date upon which the Court enters an order approving the Settlement; (b) the date when the time filing an appeal has expired and not appeal was filed; or (c) if any timely appeals are filed, the date of the resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the Settlement.

12. "Eligible Pay Periods" means the total number of pay periods that each Aggrieved Employee worked for Vitco in the State of California during the PAGA Period.

13. "Gross Settlement Amount" means the settlement amount of Four Hundred Five Thousand Dollars and Zero Cents ($405,000.00) to be paid by Defendants in full satisfaction of all Released Claims, which includes Individual PAGA Payments to be paid to Aggrieved Employees, LWDA Payment to the LWDA, Attorneys' Fees and Costs to Plaintiffs' Counsel, and Settlement Administration Costs.

14. "Individual PAGA Payment" means the portion of the Net Settlement Amount to be allocated and paid to each Aggrieved Employee as provided in this Agreement. Each Individual PAGA Payment shall be calculated by multiplying the Aggrieved Employee's number of total Eligible Pay Periods by the Pay Period Value.

15. "LWDA" means the California Labor and Workforce Development Agency.

16. "LWDA Payment" means seventy-five percent (75%) of the Net Settlement Amount, which shall be paid to the LWDA.

17. "Net Settlement Amount" means the sum remaining after the Court-approved deductions from the Gross Settlement Amount for: (1)) Attorneys' Fees and Costs to Plaintiffs' Counsel, and (2) Settlement Administration Costs.

18. "PAGA" means the Labor Code Private Attorneys General Act of 2004, California

Labor Code sections 2698, et seq.

19. "PAGA Notices" collectively refers to the September 20, 2021 written notice submitted by Plaintiff Damian Tinoco to Defendants and the LWDA and the September 24, 2021 written notice submitted by Plaintiff Akilee Childress to Vitco, pursuant to California Labor Code section 2699.3, in which Plaintiffs provided notice of the specific provisions of the California Labor Code alleged to have been violated by Defendants, including the facts and theories to support the alleged violations.

20. "PAGA Period" means the period commencing on September 20, 2020, and ending on the date the Court grants approval of the Settlement.

21. "Parties" means the parties to the Agreement, specifically, Plaintiffs and Defendants.

22. "Pay Periods" means the total number of pay periods during the PAGA period in which an Aggrieved Employee was employed by, and actively worked for, Vitco in an hourly-paid, non-exempt position in the State of California. The Settlement Administrator will calculate the total number of Pay Periods worked by all Aggrieved Employees during the PAGA Period, the Pay Period Value, and the Individual PAGA Payments payable to each Aggrieved Employee. The Settlement Administrator will calculate the number of Pay Periods worked by each Aggrieved Employee based upon Vitco's payroll records. Vitco's payroll data will be presumed correct.

23. "Pay Period Value" means the amount of the Aggrieved Employees' Fund divided by the total number of Pay Periods. The Pay Period Value shall be calculated by the Settlement Administrator.

24. "Plaintiffs' Counsel" means Parker & Minne, LLP, Lawyers *for* Justice, PC, and James Hawkins APLC

25. "Released Claims" means any and all claims under PAGA arising during the PAGA Period for the recovery of civil penalties, attorneys' fees, and costs, which Plaintiffs, the LWDA, and/or the Aggrieved Employees had, or may claim to have, against Released Parties, arising out of the violations alleged in the operative complaints in the Actions, Plaintiff Damian Tinoco's September 20, 2021 PAGA Notice to the LWDA, and/or Plaintiff Akilee Childress's September 24, 2021 PAGA Notice to the LWDA, including, but not limited to, claims based on alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194,

1197, 1197.1, 1198, 2800, and 2802, and the Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 4-2001, 7-2001, and 9-2001. This release shall apply to all Released Claims arising during the PAGA Period.

26. "Released Parties" means Defendants Vitco Distributors, Inc. dba Vitco Foods and Kostas Vitakis, as named by Plaintiffs in the Complaint, and their past, present, future, direct, and/or indirect officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

27. "Settlement" means the agreement to settle the claims as set forth and embodied in this Agreement.

28. "Settlement Administration Costs" means the reasonable fees and costs payable from the Gross Settlement Amount to the Settlement Administrator for performing the settlement administration functions expressly required by this Agreement to administer the Settlement.

29. "Settlement Administrator" means Phoenix Settlement Administrators. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

30. "Settlement Approval Order and Judgment" means an order from the Court granting approval of the Settlement and entering judgment thereon.

31. "Settlement Cover Letter" means the cover letter to be mailed by the Settlement Administrator to each Aggrieved Employee along with Individual PAGA Payment checks, substantially in the form attached hereto as **Exhibit A**.

32. "*Tinco* Action" refers to the court action entitled *Damian Tinoco v. Vitco Distributors, Inc., et al.*, San Bernardino County Superior Case No. CIVSB2133154.

RECITALS

33. On September 20, 2021, Plaintiff Tinoco submitted the PAGA Notice to the LWDA and to Defendants, alleging that Defendants violated California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 4-2001, 7-

2001, and 9-2001.

34. On September 24, 2021, Plaintiff Childress submitted the PAGA Notice to the LWDA and to Vitco, alleging that Vitco violated California Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, and 1199 and Industrial Welfare Commission Wage Order No. 4.

35. On September 27, 2021, Plaintiff Childress filed a putative class action complaint against Vitco entitled *Akilee Childress v. Vitco Distributors, Inc.,* San Bernardino County Superior Case No. CIVSB2127492, which alleged the following seven (7) causes of action: (1) Failure to pay Lawful Wages; (2) Failure to Provide Lawful Meal Periods or Compensation in Lieu Thereof; (3) Failure to Provide Lawful Rest Periods or Compensation in Lieu Thereof; (5) Failure to Timely Pay Wages During Employment; (6) Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement Provisions; and (7) Violations of the Unfair Competition Law.

36. On November 29, 2021, Plaintiff Tinoco filed a representative civil complaint against Defendants entitled *Damian Tinoco v. Vitco Distributors, Inc., et al.*, San Bernardino County Superior Case No. CIVSB2133154, which alleged a single cause of action pursuant to PAGA seeking civil penalties for Defendants' alleged violations of California Labor Code §§ 201, 202, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.

37. On January 7, 2022, Plaintiff Childress filed a First Amended Complaint in the *Childress* Action adding an additional representative cause of action seeking civil penalties pursuant to PAGA.[1]

38. Defendants deny the allegations in the operative complaints in the Actions and PAGA Notices, deny any failure to comply with the laws identified in the Actions and PAGA Notice, and deny any and all liability for any of the causes of action pled and facts asserted in the Actions and PAGA Notice.

39. Following the filing of the Actions, the Parties met and conferred with respect to potential resolution of the Actions and agreed to engage in private mediation. Prior to mediation,

[1] On January 11, 2023, the San Bernardino County Superior Court entered an order compelling Plaintiff Childress' individual claims to arbitration, dismissing Plaintiff Childress' potential class claims without prejudice, and staying Plaintiff Childress' representative PAGA claims.

Plaintiffs' Counsel diligently investigated the claims against Defendants, including any and all applicable defenses and the applicable law. This investigation included, *inter alia,* the exchange of extensive informal discovery, review of numerous corporate policies and practices, and analysis of a random sampling of the time and payroll records for the Aggrieved Employees.

40. On August 8, 2024, the Parties participated in a private mediation with Steven Rottman, Esq., a respected mediator with extensive experience in complex wage and hour litigation. Mr. Rottman's supervision of the mediation and negotiations was critical in managing the expectations of the Parties, and in providing a useful and neutral analysis of the case to both Parties. The Parties engaged in a full day of negotiations during the mediation but were unable to reach an agreement to resolve the Action at the mediation. Following mediation, Mr. Rottman continued to facilitate ongoing negotiations between the Parties, which ultimately resulted in the acceptance of a mediator's proposal on August 28, 2024. On or about December 11, 2024, the Parties executed a Memorandum of Understanding, the material terms of which are now fully memorialized in this Agreement.

41. The settlement discussions during and after mediation were conducted at arms-length, and this Agreement is the result of an informed and detailed analysis of Defendants' potential liability in relation to the costs and risks associated with continued litigation.

42. Based on Plaintiffs' Counsels' investigation, Plaintiffs' Counsel believes that the Settlement for the consideration and on the terms set forth in this Agreement is fair, reasonable, and adequate and is in the best interest of Plaintiffs, the Aggrieved Employees, and the State of California in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation and various defenses asserted by Defendants.

43. This Agreement is made and entered into by and between Plaintiffs, individually and on behalf of the State of California and Aggrieved Employees, Defendants, and is subject to the terms and conditions hereof, and to the Court's approval. The Parties expressly acknowledge that this Agreement is entered solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendants. However, in order to avoid additional cost and the uncertainty of litigation, the Parties desire to resolve the Action.

///

///

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

44. Gross Settlement Amount. Defendants shall pay the Gross Settlement Amount of Four Hundred Five Thousand Dollars and Zero Cents ($405,000.00) to resolve the Action and Released Claims. No portion of the Gross Settlement Amount shall revert to Defendants. Subject to approval by the Court, the Gross Settlement Amount shall be allocated as follows:

a. Attorneys' fees of up to thirty-five percent (35%) of the Gross Settlement Amount, i.e., One Hundred Forty-One Thousand Seven Hundred Fifty Dollars and Zero Cents ($141,750.00), and reimbursement of litigation costs and expenses not to exceed Forty Thousand Dollars and Zero Cents ($40,000.00) to Plaintiffs' Counsel, which Defendants will not contest. Any portion of the requested Attorneys' Fees and Costs that are not awarded to the Plaintiffs' Counsel shall be reallocated to the Net Settlement Amount.

b. Settlement Administration Costs, estimated not to exceed Four Thousand Dollars and Zero Cents ($4,000.00), to the Settlement Administrator. Any portion of the requested Settlement Administration Costs that are not awarded to the Settlement Administrator or which are not ultimately required to complete administration of the Settlement shall be reallocated to the Net Settlement Amount.

c. LWDA Payment consisting of seventy-five percent (75%) of the Net Settlement Amount shall be distributed to the LWDA.

d. Aggrieved Employees' Fund consisting of twenty-five percent (25%) of the Net Settlement Amount shall be distributed to the Aggrieved Employees, in accordance with the formula set forth in paragraph 51, below.

45. Escalator Clause. The Gross Settlement Amount is based on Defendants' representation that Aggrieved Employees worked a total of 14,062 pay periods during the PAGA Period ("Certified Pay Period Count"). If it is determined by the Settlement Administrator that the

final number of Pay Periods during the PAGA Period exceeds the Certified Pay Period Count by more than 10% (i.e., an increase of more than 1,406 Pay Periods), the Gross Settlement Amount shall be increased in the amount of $27.48 for each pay period above the 10% threshold. For example, if the number of Pay Periods increases by 11% to 15,609 Pay Periods, the Gross Settlement Amount will increase by $3,874.68 (i.e., 141 additional pay periods x $27.48 per additional pay period).

46. Tax Allocation. Because this is a settlement of PAGA claims for civil penalties only, no portion of the Settlement is allocated to unpaid wages. One hundred percent (100%) of the payments for Attorneys' Fees and Costs, and the Net Settlement Amount to be paid to the LWDA and Aggrieved Employees as described in Paragraph 44 will be treated and reported for tax purposes as non-wage payments and will not be subject to local, state or federal payroll tax withholdings. The Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.

47. No Credit Toward Benefit Plans: The Individual PAGA Payments made to Aggrieved Employees under this Settlement, as well as any other payments made pursuant to this Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Aggrieved Employees may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Agreement will not affect any rights, contributions, or amounts to which any Aggrieved Employees may be entitled under any benefit plans.

48. Motion or Application for Approval of the Settlement. Promptly upon execution of this Agreement, Plaintiffs shall file a motion or application requesting entry of an on order as follows:

a. Granting approval of the Settlement and entering judgment thereon;

b. Approving, as to form and content, the proposed Settlement Cover Letter attached hereto as **Exhibit A**;

c. Approving Plaintiffs' Counsels' application for an award of attorneys' fees and costs;

d. Directing the funding and disbursement of the Gross Settlement Amount in accordance with the terms of this Agreement; and

e. Setting a final compliance hearing date when the parties shall report to the Court that the Gross Settlement Amount has been funded and disbursed in accordance with the terms of this Agreement.

Defendants agree that they will not oppose Plaintiffs' motion or application for approval of the Settlement or delay the hearing thereon, and that they will coordinate and will cooperate with Plaintiffs in obtaining an order from the Court approving this Agreement, as described herein. The Parties further agree to cooperate in the drafting and/or filing of any further documents and/or filings reasonably necessary to be prepared and/or filed, and to take all steps that may be requested by the Court in order to obtain approval and implementation of this Agreement, and the payments described in Paragraph 40. The Parties expressly acknowledge that the Court's approval of the Settlement is a condition precedent to any payments described in this Agreement. Therefore, the Parties further acknowledge that, should the Court not grant approval of this Agreement, the entirety of this Agreement shall be null and void.

49. Settlement Administration Process. The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement. The Settlement Administrator will provide the following services:

a. Establish and maintain a Qualified Settlement Fund ("QSF").
b. Calculate the Individual PAGA Payment each Aggrieved Employee is eligible to receive.
c. Print and mail the Settlement Cover Letter in both Spanish and English.
d. Print and issue and issue Settlement payment checks.
e. Conduct additional address searches for mailed Settlement Cover Letter and Settlement payment checks that are returned as undeliverable.
f. Field inquiries from Aggrieved Employees.
g. Prepare IRS 1099 Tax Forms and any other filings required by any governmental taxing authority.
h. Provide declarations and/or other information to this Court as requested by the Parties and/or the Court.
i. Provide a final accounting declaration confirming completion of the funding and

distribution of the Gross Settlement Amount in accordance with the terms of this Agreement.

50. Funding of the Gross Settlement Amount. Within sixty (60) calendar days (the "Settlement Funding Due Date") of the Effective Date, Defendants shall deposit the Gross Settlement Amount into the QSF established by the Settlement Administrator. If the Settlement Funding Due Date falls on a Saturday, Sunday, or legal holiday in the State of California, then the due date shall be extended to the next following day which is not a Saturday, Sunday, or legal holiday in the State of California. The Settlement Administrator shall provide Defendants' Counsel and Plaintiffs' Counsel with a report detailing all payments to be made under the Settlement prior to disbursement of the Gross Settlement Amount.

51. Calculation of Individual PAGA Payments. Each Aggrieved Employee will be entitled to a *pro rata* share of the Aggrieved Employees' Fund based upon the number of Eligible Pay Periods that they worked. The Eligible Pay Periods are the number of pay periods that each Aggrieved Employee worked during the PAGA Period, as established by Defendants' payroll records. Each Aggrieved Employee will be credited with at least one (1) Eligible Pay Period.

a. To calculate each Aggrieved Employee's Individual PAGA Payment, the Settlement Administrator shall divide the number of Eligible Pay Periods an Aggrieved Employee is credited by the total aggregate number of Pay Periods credited to all Aggrieved Employees and then multiply this amount by the Aggrieved Employees' Fund to arrive at each Aggrieved Employee's Individual PAGA Payment.

b. Aggrieved Employees will not be required to submit any claim form or other documentation to receive their Individual PAGA Payment.

c. One hundred percent (100%) of all Individual PAGA Payments are to be considered penalties for tax purposes.

d. Aggrieved Employees may not opt out or object to the Settlement.

52. Delivery of the Aggrieved Employee List. No later than fourteen (14) calendar days after the court enters an order granting approval of the Settlement, Defendants will provide the Aggrieved Employee List to the Settlement Administrator. This is a material term of the Agreement,

and if Defendants fail to comply, Plaintiffs shall have the right to void the Agreement. Prior to mailing the Individual PAGA Payments and Settlement Cover Letters, the Settlement Administrator shall provide Plaintiffs' Counsel with an anonymized version of the Aggrieved Employee List that shall only disclose an identification number attributed to each Aggrieved Employee and their respective Pay Periods during the PAGA Period. Prior to mailing Settlement Cover Letters and Individual PAGA Letters, the Settlement Administration shall conduct one (1) National Change of Address ("NCOA") search for all individuals identified on the Aggrieved Employee List to update and correct any known or identifiable address changes.

53. Distribution of Individual PAGA Payments. No later than fourteen (14) calendar days after the Settlement Administrator's receipt of the Gross Settlement Amount and the Effective Date, the Settlement Administrator shall mail the Settlement Cover Letter and Individual PAGA Payment checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail.

a. For each PAGA Settlement Package that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate an alternate updated address for the Aggrieved Employee by performing a skip trace within three (3) business days of receipt of the returned mail; the Settlement Administrator shall then attempt one (1) re-mailing of the PAGA Settlement Package. Further, any PAGA Settlement Package returned with a forwarding address to the Settlement Administrator shall be re-mailed to the forwarding address affixed thereto within three (3) business days.

b. The Individual PAGA Payment checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) calendar days, and, thereafter, shall be cancelled. If any Aggrieved Employee does not cash his or her Individual PAGA Payment check within 180 calendar days, the uncashed funds shall be sent to the Controller for the State of California to be held pursuant to California's Unclaimed Property Law, California Civil Code §1500, *et. seq*. for the benefit of those Aggrieved Employees who did not cash their checks until such time that they claim their property.

54. Distribution of Attorneys' Fees and Costs, Settlement Administration Costs, and

<u>LWDA Payment</u>. No later than fourteen (14) calendar days after the Settlement Administrator receives the Gross Settlement Amount, the Settlement Administrator shall distribute payments for Attorneys' Fees and Costs to Plaintiffs' Counsel, Settlement Administration Costs to the Settlement Administrator, and the LWDA Payment to the LWDA.

55. <u>Final Distribution Report and Declaration by Settlement Administrator</u>: Within 10 calendar days after the Settlement Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Plaintiffs' Counsel and Defendants' Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 14 calendar days before any deadline set by the Court, the Settlement Administrator will prepare, and submit to Plaintiffs' Counsel and Defendants' Counsel, a signed compliance declaration under oath suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Plaintiffs' Counsel is responsible for filing the Settlement Administrator's compliance declaration with the Court.

56. <u>Release of PAGA Claims</u>. Upon the complete funding of the Gross Settlement Amount by Defendants, and except as to the rights and obligations created by this Agreement, Plaintiffs, Aggrieved Employees, and the LWDA will be deemed to have knowingly and voluntarily released and forever discharged the Released Parties from any and all claims under PAGA arising during the PAGA Period for the recovery of civil penalties, attorneys' fees, and costs, which Plaintiffs, the LWDA, and/or the Aggrieved Employees had, or may claim to have, against Released Parties, arising out of the violations alleged in the operative complaints in the Actions, Plaintiff Damian Tinoco's September 20, 2021 PAGA Notice to the LWDA, and/or Plaintiff Akilee Childress's September 24, 2021 PAGA Notice to the LWDA, including, but not limited to, claims based on alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 4-2001, 7-2001, and 9-2001. The Release of PAGA Claims is limited to claims arising during the PAGA Period.

This release specifically excludes any claims that do not arise under PAGA, including but not limited to, Plaintiff's individual claims for unpaid minimum wages, unpaid overtime wages, meal period violations, rest period violations, failure to timely pay wages upon termination, failure to reimburse business expenses, wage statement violations, and claims for retaliation, harassment, discrimination, and wrongful termination, which are the subject of a separate general release agreement between the Parties.

57. No Prior Assignments. Plaintiffs warrant and represent that Plaintiffs have not assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim released under this Agreement. Plaintiffs are solely responsible for the satisfaction of any assignment or lien to any lien holder and will indemnify and hold the Released Parties harmless against any liens, damages, penalties, fines, fees, assessments, taxes or attorneys' fees that may be imposed against or incurred by any of the Released Parties as a result of the action of any lien holder or any lien claimant or any court in relation to any interest which any third party may have in any claim which Plaintiffs are releasing under this Agreement or any interest in any of the proceeds paid to Plaintiffs or Plaintiffs' Counsel under this Agreement.

58. Neutral Employment Reference. Defendants agree that they will adopt a neutral reporting policy regarding any future employment references related to Plaintiffs. In the event that any potential future employers of Plaintiffs seek a reference regarding Defendants' employment of Plaintiffs, Defendants shall only provide Plaintiffs' dates of employment, job titles during employment, and final rate of pay. Defendants shall not refer to the Actions or this Settlement, and no characterization of Plaintiffs employment with Defendants or termination of employment with Defendants will be provided.

59. Nullification of Agreement: The Parties and their counsel expressly acknowledge that the Court's approval of the Settlement is a condition precedent to any payments described in this Agreement and pledge their good faith and fair dealing in supporting the approval of the Settlement by the Court. In the event that: (a) the Court does not grant approval of the Settlement as provided herein; (b) the Court strikes or does not approve any material term of this Agreement; or (c) the Settlement does not become final as written and agreed to by the Parties for any other reason, then this Agreement, and any documents generated to bring it into effect, will be null and void, all amounts deposited into the QSF will be returned to Defendants, and the Parties shall be returned to their original

respective positions prior to the Settlement and shall proceed in all respects as if this Agreement had not been executed. Any order or judgment entered by the Court in furtherance of this Agreement will likewise be treated as void from the beginning. Notwithstanding this provision, the Parties agree that they shall make a good faith effort to resolve any issues raised by the Court prior to invoking their right to nullify the Settlement under this provision.

60. Exhibits Incorporated by Reference: The terms of this Agreement include the terms set forth in any attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Agreement.

61. Entire Agreement: This Agreement and any attached exhibits constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

62. Amendment or Modification: This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest, and as applicable, approved by the Court.

63. Authorization to Enter Into Agreement: Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court and/or Mediator Rotman to resolve such disagreement.

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

65. Governing Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of California without regard to the principles of conflict of laws provided, however, that parole evidence shall not be admissible to alter, vary or supplement the term of this

Agreement.

66. Execution and Counterparts: This Agreement is subject to the execution of all Parties. However, the Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

67. Acknowledgement that the Settlement is Fair and Reasonable: The Parties believe this Agreement is a fair, adequate, and reasonable settlement of the Actions and have arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

68. 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.

69. Non-Admission of Liability: The Parties enter into this Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Agreement, the Parties do not admit, and specifically deny, that they have violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by the Parties of any such violations or failure to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding, whether in a court of law, arbitration, or administrative agency, to establish any liability or admission on the part of the Parties or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state,

local or other applicable law.

70. Captions: The captions and section numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Agreement.

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

72. Enforcement Action. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Agreement, or to declare rights and/or obligations under this Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties their reasonable attorneys' fees and costs, including expert witness fees incurred in connection therewith.

73. Mutual Preparation: The Parties have had a full opportunity to negotiate the terms and conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Agreement.

74. Representation By Counsel: The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel after the opportunity to review and comment on the Agreement.

75. All Terms Subject to Final Court Approval: All amounts and procedures described in this Agreement herein are expressly conditioned on final Court approval.

76. Cooperation and Execution of Necessary Documents: The Parties agree to cooperate to promote participation in the Agreement, and in seeking court approval of the Agreement, including working cooperatively to address any questions raised by the Court and making any amendments to the Agreement required by the Court. The Parties will work in good faith to reach an agreement approved by the Court. Defendants further agree that they will reasonably provide Plaintiffs' Counsel

with any declarations or other evidence in order to obtain preliminary and final approval of the Agreement, if required by the Court.

77. Confidentiality: The Parties and their counsel agree to keep the terms of the Agreement confidential until the filing of Plaintiffs' motion or application for approval of the Settlement. Plaintiffs, Plaintiffs' Counsel, Defendants, and Defendants' Counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about the fact, amount or terms of the Agreement. Nothing in this Agreement shall limit Defendants' ability to fulfill disclosure obligations reasonably required by law or in furtherance of business purposes, including the fulfillment of obligations stated in this Agreement or limit Plaintiffs' Counsel's communications with the Aggrieved Employees in furtherance of approval of this Settlement. Furthermore, nothing in this provision shall be construed as preventing Plaintiffs' Counsel from referring to the Settlement or the Action in support of their adequacy as counsel in a representative action or to justify an award of attorneys' fees in other proceedings.

78. Binding Agreement: The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality provisions that otherwise might apply under federal or state law.

79. Stay of Proceedings Pending Approval of Settlement: The Parties stipulate and agree that all proceedings and deadlines in the Action, other than proceedings necessary to carry out and/or enforce the terms of the Settlement and to obtain approval of the Agreement, shall be stayed pending completion of the approval of the Settlement. The stay on the Action shall include, without limitation, a stay on the five-year limitations period to bring the Action to trial under Code of Civil Procedure section 583.310, as well as any and all discovery and motion deadlines

[*Remainder of page intentionally left blank – signatures on following page.*]

HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE CONSIDERATION SET FORTH ABOVE, PLAINTIFFS AND DEFENDANTS, FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS AGREEMENT AS OF THE DATE(S) SET FORTH BELOW:

Dated: 03/07/2025

By: DTinoco
Damian Tinoco (Mar 7, 2025 13:36 PST)
Damian Tinoco
Individually and on Behalf of the State of California and Aggrieved Employees

Dated: ____________

By: ____________
Akilee Childress
Individually and on Behalf of the State of California and Aggrieved Employees

Dated: ____________

By: Kostas Vitakis
Vitco Distributors, Inc.
Name: KOSTAS VITAKIS
Title: PRESIDENT

Dated: ____________

By: Kostas Vitakis
Kostas Vitakis

APPROVED AS TO FORM AND CONTENT:

PARKER & MINNE, LLP

Dated: 03/07/2025

By: S. Emi Minne
S. Emi Minne
Attorneys for Plaintiff Damian Tinoco

HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE CONSIDERATION SET FORTH ABOVE, PLAINTIFFS AND DEFENDANTS, FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS AGREEMENT AS OF THE DATE(S) SET FORTH BELOW:

Dated: ____________________ By: ______________________________
Damian Tinoco
Individually and on Behalf of the State of California and Aggrieved Employees

Dated: 3/7/2025 By: DocuSigned by: Akilee Childress
44C84428833F4D6...
Akilee Childress
Individually and on Behalf of the State of California and Aggrieved Employees

Dated: 4/10/25 By: Kostas Vitakis
Vitco Distributors, Inc.
Name: KOSTAS VITAKIS
Title: PRESIDENT

Dated: 4/10/25 By: Kostas Vitakis
Kostas Vitakis

APPROVED AS TO FORM AND CONTENT:

PARKER & MINNE, LLP

Dated: ____________________ By: ______________________________
S. Emi Minne
Attorneys for Plaintiff Damian Tinoco

JAMES HAWKINS, APLC

Dated: 03/07/2025

By: ______________________________

Isandra Fernandez
Lance Dacre
Attorneys for Plaintiff Akilee Childress

GEORGGIN & GEORGGIN

Dated: 4/14/25

By: ______________________________

A. Nicholas Georggin
Attorneys for Defendants Vitco Distributors, Inc. and Kostas Vitakis

EXHIBIT A

Damian Tinoco v. Vitco Distributors, Inc., et al.
San Bernardino County Superior Court Case No. CIVSB2133154

Akilee Childress v. Vitco Distributors, Inc., et al.
San Bernardino County Superior Court Case No. CIVSB2127492

NOTICE OF REPRESENTATIVE ACTION SETTLEMENT

If you are or were an hourly-paid, non-exempt employee of Vitco Distributors, Inc. at any time between September 20, 2020 to [PAGA Period End Date], you are entitled to receive money from a Settlement brought under the Labor Code Private Attorneys General Act of 2004 ("PAGA").

The Superior Court of California approved this notice. This is not a solicitation from a lawyer. You are not being sued.

1. Why Am I Getting This Notice?

A settlement (the "Settlement") has been reached in the representative action lawsuits entitled *Damian Tinoco v. Vitco Distributors, Inc., et al.,* San Bernardino County Superior Court Case No. CIVSB2133154 and *Akilee Childress v. Vitco Distributors, Inc.*, San Bernardino County Superior Court Case No. CIVSB2127492 (the "Actions"). The defendants in the Actions are Vitco Distributors, Inc. ("Vitco") and Kostas Vitakis (collectively, "Defendants"). The Actions were brought by Plaintiffs Damian Tinoco and Akilee Childress ("Plaintiffs"), former employees of Defendants, on behalf of the State of California and all alleged "Aggrieved Employees," who are defined as all current and former hourly-paid, non-exempt employees who were employed by Defendants in the State of California at any time between September 20, 2020 to [PAGA Period End Date] (the "PAGA Period").

The Court has granted approval of the settlement amount to be paid by Defendants for settlement of the Actions for civil penalties under PAGA. Vitco's employment records indicate that you meet the definition of an Aggrieved Employee. The Court directed that this Notice be sent to all Aggrieved Employees to inform you about the case and your rights.

This Notice explains the Actions, the Settlement, your legal rights, and what benefits are available to you.

2. What is This Lawsuit About?

On September 20, 2021, and September 24, 2021, Plaintiffs provided written notice to the California Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code that they contend were violated (the "PAGA Notice"). On November 29, 2021, Plaintiff Damian Tinoco filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, et seq. ("PAGA"). On January 7, 2022, Plaintiff Akilee Childress also initiated a civil claim under PAGA. Plaintiffs filed the Actions as a Private Attorney General on behalf of the State of California and sought penalties on behalf of themselves, the State, and all current and former hourly-paid, non-exempt employees of Vitco within the PAGA Period. Plaintiffs allege that Defendants owed penalties under California's Private Attorneys General Act of 2004, California Labor Code §§ 2698, et seq. ("PAGA"). In agreeing to this settlement, Defendants do not admit to any wrongdoing or that they are liable in any way for any damages or civil penalties under PAGA.

3. Why is There a Settlement?

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a Settlement. This allows the Parties to avoid the risk and uncertainty of trial and any subsequent appeal, and all affected employees will receive compensation. Plaintiffs and Plaintiffs' attorneys believe the Settlement is fair, reasonable and adequate, and in the best interests of the Aggrieved Employees.

4. What Are the Terms of the Settlement?

Defendants will pay Four Hundred Five Thousand Dollars and Zero Cents ($405,000.00) to settle the Actions (the "Gross Settlement Amount"). The Gross Settlement Amount includes: (a) all Individual PAGA Payments to be paid to Aggrieved Employees ("Aggrieved Employees' Fund"); (b) a payment to the LWDA for civil penalties brought under PAGA; (c) Plaintiffs' Counsel's reasonable attorneys' fees and costs as approved by the Court; and (d) the reasonable fees and costs of the Settlement Administrator.

After deductions are made from the Gross Settlement Amount for Plaintiffs' Counsel's attorneys' fees and costs and the reasonable fees and costs of the Settlement Administrator, the remaining money (the "Net Settlement Amount") will be split between the LWDA and the Aggrieved Employees. California law requires that 75% of the Net Settlement Amount be paid to the LWDA. The remaining 25% of the Net Settlement Amount will be paid to the Aggrieved Employees. No portion of the Gross Settlement Amount will be returned to Defendants.

5. How Much Am I Receiving?

Each Aggrieved Employee will receive a *pro rata* share of the PAGA Payment based on the number of pay periods they worked for Defendants as an hourly-paid, non-exempt employee during the PAGA Period. Any pay period in which an Aggrieved Employee worked at least one day shall be counted as a pay period.

To calculate each Aggrieved Employee's Individual PAGA Payment, the Aggrieved Employees' Fund was divided by the total number of Eligible Pay Periods of all Aggrieved Employees, resulting in the "Pay Period Value." Each Aggrieved Employee's Individual PAGA Payment was then calculated by multiplying his or her individual Eligible Pay Periods by the Pay Period Value.

Your Eligible Pay Periods are: ___________

Your Individual PAGA Payment is: $__________

The Settlement checks will be valid for 180 days after they are issued. After 180 days, the Settlement checks will be void. Any Settlement checks remaining uncashed for more than 180 days after issuance shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure Section 1500, *et seq*. in the names of those Aggrieved Employees who did not cash their Settlement checks until such time as they claim their funds.

6. What Claims are Being Released by the Settlement?

A Judgment approving the PAGA settlement has been entered by the Court. Upon funding of the Gross Settlement Amount, all Aggrieved Employees will have released the Released Parties from the Released Claims for the PAGA Period, which is defined as the period of time between September 20, 2020 to [PAGA Period End Date].

The Released Parties include Defendants Vitco Distributors, Inc. and Kostas Vitakis, and their past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

The Released Claims means any and all claims under PAGA arising during the PAGA Period for the recovery of civil penalties, attorneys' fees, and costs, which Plaintiffs, the LWDA, and/or the Aggrieved Employees had, or may claim to have, against Released Parties, arising out of the violations alleged in the operative complaints in the Actions, Plaintiff Damian Tinoco's September 20, 2021 PAGA Notice to the LWDA, and/or Plaintiff Akilee Childress's September 24, 2021 PAGA Notice to the LWDA, including, but not limited to, claims based on alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 4-2001, 7-2001, and 9-2001. This release is limited to claims arising during the PAGA Period. Aggrieved Employees cannot opt out of or object to the foregoing PAGA Release.

If you have questions, you can call the Settlement Administrator at [Toll-free Number] or you may contact Plaintiffs' attorneys:

S. Emi Minne, Esq.
PARKER & MINNE, LLP
700 S. Flower Street, Suite 1000
Los Angeles, CA 90017
Telephone: (310) 882-6833

Tara Zabehi, Esq.
Connie Lee, Esq.
LAWYERS *for* JUSTICE, PC
450 N. Brand Boulevard, Suite 900
Glendale, CA 91203
Telephone: (818) 265-1020

Isandra Fernandez
Lance Dacre
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200

PLEASE DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LAWSUIT TO THE CLERK OF THE COURT OR THE JUDGE. THE COURT WILL NOT BE ABLE TO ASSIST YOU.