

STIPULATION OF SETTLEMENT OF CLASS ACTION AND PAGA CLAIMS
AND RELEASE OF CLAIMS

This Stipulation of Settlement of Class Action and PAGA Claims and Release of Claims is entered into by and between Plaintiff Crystalynn Villarreal (“Plaintiff”) individually and on behalf of all Settlement Class Members and Aggrieved Employees (as defined below), on the one hand, and Defendant O’Brien’s Market Inc. (“Defendant”), on the other hand, and is approved as to form by their respective counsel of record, subject to the terms and conditions and the Court’s approval.

A. Definitions

1. “Action” or “Lawsuit” means and refers to the case entitled *Crystalynn Villarreal v. O’Brien’s Market, Inc.*, Case No. CV-21-005125, which was filed in the Superior Court of California, County of Stanislaus (“Stanislaus Superior Court”).
2. “Agreement” or “Settlement Agreement” or “Settlement” shall mean this Stipulation of Settlement of Class Action and PAGA Claims and Release of Claims, including any attached Exhibits.
3. “Aggrieved Employees” means all current and former employees of Defendant who worked in California at any time during the PAGA Period as non-exempt, hourly paid employees.
4. “Amended Complaint” shall refer to the First Amended Complaint filed by Plaintiff in the Action, which includes claims for civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”) as set forth in the LWDA Letter.
5. “Attorneys’ Fees and Costs Award” means the amount approved by the Court for Class Counsel’s attorneys’ fees and costs.
6. “Class Action” refers to the class-actions allegations set forth in the Complaint in the Action, and that will also be set forth in the Amended Complaint.
7. “Class Counsel” refers to Kane Moon and Lilit Ter-Astvatsatryan of Moon & Yang, APC.
8. “Class Data” means a complete list that Defendant will diligently and in good

faith compile from its available records and provide to the Settlement Administrator and shall include, to the extent available, the Settlement Class Members' full names, last known addresses, telephone numbers, Social Security Numbers, the total Pay Periods Worked during the PAGA Period for each Aggrieved Employee, the total work weeks worked and/or the total number of hours worked during the Class Period for each Settlement Class Member.

9. "Class Notice" means the Notice of Settlement of Class Action that will be sent to the Settlement Class Members.

10. "Class Period" is the period from September 20, 2017, through the Preliminary Approval Date.

11. "Class Representative" or "Plaintiff" means and refers to Crystallynn Villarreal.

12. "Court" means the California Superior Court, County of Stanislaus.

13. "Defendant's Counsel" or "Defense Counsel" means and refers to Brandon R. McKelvey and Douglas R. Leach of Medina McKelvey LLP.

14. "Effective Date" occurs after the latest of the following dates is reached: (i) sixty-one (61) calendar days following the date the Court enters an order granting Final Approval of the Settlement, assuming no appeal, objection, or request to intervene is filed; or (ii) if a timely appeal, objection, or request to intervene is filed, the date of final resolution of that appeal, objection, or intervening action (including any requests for rehearing and/or petitions for writs of *certiorari*) resulting in final judicial approval of the Settlement.

15. "Final Approval" or "Final Approval Order" refers to the order of the Court granting final approval of this Settlement Agreement and entering a judgment approving this Settlement Agreement on substantially the terms provided herein or as may be modified by subsequent written agreement of the Parties.

16. "Final Approval Hearing" refers to the hearing at which the Court is requested to grant Final Approval of this Settlement Agreement.

17. "Final Settlement Class" means, collectively, all Settlement Class Members who have not opted out of the Settlement Class by submitting timely Requests for Exclusion.

18. "Gross Settlement Amount" shall have the meaning ascribed to it in Paragraph

59.a below, as the same may be escalated subject to Paragraph 59.a.i below.

19. “Individual Settlement Payment” shall have the meaning ascribed to it in Paragraph 59.c below.

20. “Individual PAGA Payment” shall refer to the individual payments made to Aggrieved Employees for their *pro rata* share of the PAGA Payment.

21. “LWDA” shall refer to the California Labor & Workforce Development Agency.

22. “LWDA Letter” shall refer to the letter that Class Counsel sent to the LWDA on September 19, 2021, asserting that Plaintiff planned to pursue a representative action against Defendant under PAGA on behalf of all hourly, non-exempt employees.

23. “LWDA Payment” shall refer to the portion of the PAGA Penalties payable to the LWDA.

24. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 59.b below.

25. “Notice Packet” means the Class Notice and PAGA Notice that will be sent to the Class Members and Aggrieved Employees.

26. “Notice Response Deadline” is 60 calendar days from the date the Notice Packet is mailed to the Settlement Class Members.

27. “Objecting Settlement Class Member” means a Settlement Class Member, other than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with respect to the Released Class Claims, pursuant to Paragraph 82.c below.

28. “PAGA” refers to the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*).

29. “PAGA Action” refers to the PAGA cause of action brought in the First Amended Complaint.

30. “PAGA Notice” means the Notice of Settlement of PAGA claims that will be sent to all Aggrieved Employees.

31. “PAGA Payment” shall refer to the \$2,500.00 in PAGA Penalties to be paid pursuant to this Settlement to Aggrieved Employees.

32. “PAGA Penalties” means the total of \$10,000.00, which shall be separated as \$7,500.00 that Defendant, through the Settlement Administrator, shall pay to the LWDA in connection with the claims that is brought by Plaintiff under PAGA in the First Amended Complaint, as well as \$2,500.00 as the PAGA Payment that will be allocated to each Aggrieved Employee, as more fully described in Paragraph 59.d below.

33. “PAGA Period” is the period from September 18, 2020, through the Preliminary Approval Date.

34. “Participating Class Member” means any and all Final Settlement Class members who are deemed to participate in the Settlement, who will receive an Individual Settlement Payment, and who do not opt-out by submitting a timely valid Request for Exclusion.

35. “Parties” or “Settling Parties” refers to Plaintiff, the Aggrieved Employees, the Settlement Class, the LWDA, and Defendant, collectively.

36. “Pay Periods Worked” or “Eligible Pay Periods” means all pay periods during the PAGA Period in which the Aggrieved Employee was employed by Defendant as a non-exempt employee in California and worked at least one shift during the pay period.

37. “Preliminary Approval Date” means the date the Court approves the Motion for Preliminary Approval of the Stipulation of Settlement of Class Action and PAGA Claims and Release of Claims, and the exhibits, and enters the Preliminary Approval Order.

38. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the motion of the Plaintiff, preliminarily approving this Settlement and providing for the issuance of the Notice Packet to the Settlement Class and Aggrieved Employees, an opportunity to opt out of the Final Settlement Class, an opportunity to submit timely objections to the Settlement, and setting a hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs.

39. “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Final Settlement Class and Aggrieved Employees, and from which the settlement payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue Code Section 468.

40. “Released Class Claims” or “Class Claims” means any and all claims, demands, rights, liabilities, grievances, and causes of action that were or could have been pled under local, state or federal law arising out of, related to, or based on any facts alleged in the Complaint or First Amended Complaint against Defendant and the Released Parties arising during the Class Period, including but not limited to claims for (1) failure to pay minimum and regular wages; (2) failure to pay overtime compensation; (3) failure to provide meal periods; (4) failure to authorize and permit rest breaks; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; and (7) unfair business practices under the California Business and Professions Code. “Released Class Claims” or “Class Claims” also includes any claims that arise from, are related to, or are otherwise connected with the facts alleged in the Complaint or First Amended Complaint.

41. “Released PAGA Claims” means any and all claims for civil penalties under PAGA arising from the pleaded claims in the First Amended Complaint for the entire duration of the PAGA Period, and from all other claims for civil penalties arising from, related to, or otherwise connected with the underlying factual allegations contained in the Amended Complaint, that Plaintiff, on behalf of herself, the LWDA and the Aggrieved Employees, alleged or could allege against Defendant and the Released Parties. The Released PAGA Claims include, without limitation, all claims for civil penalties arising under California Labor Code Sections 210, 226.3, 558, 1197.1 and 2699, based on the facts set forth in Plaintiff’s September 18, 2021 LWDA Letter and Plaintiff’s First Amended Complaint, and further includes all claims seeking civil penalties for (1) failure to pay for all hours worked, including minimum wages, straight time wages, and overtime wages, (2) failure to provide meal periods, (3) failure to authorize and permit rest periods, (4) failure to maintain accurate records of hours worked and meal periods, (5) failure to pay all wages at termination, (6) failure to furnish accurate itemized wage statements, and (7) failure to pay all earned wages twice per month, and further including all claims for civil penalties pursuant to California Labor Code Sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198 and 2699.3, as well as any applicable IWC Orders, arising during the PAGA Period.

42. “Released Parties” means Defendant and each of its divisions, subsidiaries, partnerships, parents, affiliated companies, trusts, or other related entities, past and present, and each of them, as well as each of their directors, officers, shareholders, partners, members, representatives, executors, trustees, fiduciaries, administrators, beneficiaries, assignees, successors, business managers, agents, contractors, insurers, attorneys, and employees, past and present, and each of them and their marital community.

43. “Release” shall mean the release and discharge of the Released Class Claims by Plaintiff and all of the Participating Class Members, and the release and discharge of the Released PAGA Claims by Plaintiff, the LWDA (to the greatest extent permissible by law), and all Aggrieved Employees.

44. “Request for Exclusion” means and refers to a valid and timely request for exclusion from the Settlement of the Released Class Claims, which may be submitted by any Settlement Class Member, other than Plaintiff, pursuant to Paragraph 82.a below.

45. “Service Payment” or “Service Award” means the amount approved by the Court to be paid to the Class Representative as a service/enhancement award in consideration for her provision of a general release and Section 1542 waiver to the Released Parties.

46. “Settlement Administrator” means and refers to the ILYM Group, Inc., the third-party class action settlement or claims administrator agreed to by the Parties, that will provide the Notice Packet to the Settlement Class Members and Aggrieved Employees, and distribute the settlement amounts as described in this Agreement, as well perform as any other related services requested and agreed to by the Parties as set forth herein.

47. “Settlement Administration Costs” means the costs payable from the Gross Settlement Amount to the Settlement Administrator, as approved by the Court, for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property due diligence, reporting and remittance obligations, distributing the Gross Settlement Amount, and providing necessary reports and declarations, as requested by the Parties.

48. “Settlement Class” consists of two sub-classes: (A) all persons who worked for Defendant in California as an hourly, non-exempt employee who have not executed an arbitration agreement with a class waiver at any time during the Class Period beginning four years before the date of filing of the initial complaint (“Sub-Class A Members”), and (B) all remaining persons who worked for Defendant in California as an hourly paid, non-exempt employee who executed an arbitration agreement with class waiver at any time during the period beginning September 18, 2020, through the Preliminary Approval date (“Sub-Class B Members”). Note: All members of both sub-classes are participants in the PAGA Settlement.

49. “Settlement Class Member” or “Class Member(s)” refers to individual members of the Settlement Class.

50. “Work Weeks Worked” or “Eligible Work Weeks” means all work weeks during the Class Period in which the Settlement Class Member was employed by Defendant as a non-exempt employee in California and worked at least one shift during the work week. Workweeks for purposes of the escalator provision and for the equitable calculation of individual settlement payments to class members shall be based on a full-time equivalent (“FTE”) calculation of total hours worked by each employee divided by 40.

B. Procedure

51. On or about September 20, 2021, Plaintiff filed a putative class-action complaint in the Court against Defendant, Case No. CV-21-005125, which included the following causes of action: (1) failure to pay minimum and regular rate wages; (2) failure to pay overtime compensation; (3) failure to provide meal periods; (4) failure to authorize and permit rest breaks; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; and (7) unfair business practices.

52. On or about December 23, 2021, Plaintiff filed First Amended Complaint in the Action that includes all claims for civil penalties under PAGA as set forth in the LWDA Letter. The Parties hereby agree that, for settlement purposes only, the statute of limitations of the PAGA Action claims shall be deemed to relate back to September 18, 2020.

C. General Terms

53. Defendant denies Plaintiff's claims and allegations and contends that the Action is not suitable for class certification or manageable as a class or representative action.

54. The Class Representative believes she can proceed with her representative and class claims, that the Action is meritorious, and that class certification is appropriate.

55. The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting an extensive exchange of informal discovery, including the production of payroll and timekeeping records for Settlement Class Members and Aggrieved Employees. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Settlement Class and the Aggrieved Employees. Class Counsel has diligently pursued an investigation of the Class Members' and Aggrieved Employee's claims against Defendant. Based on the foregoing data and on their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class Members and Aggrieved Employees in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues.

56. On June 7, 2022, Plaintiff and Defendant participated in mediation before Michael Young, Esq., an experienced wage-and-hour class action mediator. The matter resolved at mediation pursuant to a mediator's proposal.

57. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts to be performed or judgments to be entered pursuant to the terms of the Settlement and Agreement shall be construed as an admission by Defendant of any wrongdoing or violation of any statute or law or liability on any of the claims or allegations in the Action.

58. Stipulation for Class Certification and Representative Treatment. For settlement purposes only, Defendant will stipulate that the Settlement Class Members described herein who do not submit a Request for Exclusion from the Settlement Class may be conditionally certified as a settlement class and that the Aggrieved Employees are appropriate for representative

treatment. This stipulation to certification and representative treatment is in no way an admission that class-action certification and/or representative treatment is proper and shall not be admissible in this or in any other action, except for the sole purpose of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Preliminary and/or Final Approval, the Parties' stipulation to class certification and representative treatment as part of the Settlement shall become null and void *ab initio*, shall have no bearing on, and shall not be admissible in connection with the issue of whether or not certification and/or representative treatment would be appropriate in a non-settlement context. Defendant expressly reserves its rights and declares that it would continue to oppose class certification, representative treatment, and the substantive merits of the case should the Court decline to issue Preliminary and/or Final Approval. Plaintiff expressly reserves her rights and declares that she would continue to pursue class certification, representative treatment, and a trial should the Court decline to issue Final Approval.

D. Terms of Settlement

59. The financial terms of the Settlement are as follows:

- a. Gross Settlement Amount: The Parties agree to settle this Action for Two Hundred Ninety Thousand Dollars and Zero Cents (\$290,000.00) ("the Gross Settlement Amount"), unless it shall be escalated pursuant to Paragraph 59.a.i below. The Gross Settlement Amount is the maximum amount that will be paid and includes Individual Settlement Payments (including all employee-side payroll taxes thereupon), Attorneys' Fees and Costs Award, the Service Payment to the Class Representative, all Settlement Administration Costs, and PAGA Penalties to the Aggrieved Employees and LWDA. No portion of the Gross Settlement Amount shall revert to Defendant. Defendant's share of any Employer-side Payroll Taxes to be paid in connection with the settlement (e.g. FICA, FUTA, payroll taxes, and/or any similar tax or charge – collectively "Employer Taxes") shall be paid in addition to the Gross Settlement Amount. The Settlement Administrator will then be responsible for making appropriate deductions, reporting obligations, and issuing the individual settlement awards.

- i. The Settlement is based on Defendant's representation that there are approximately 20,000 Work Weeks Worked included in the Class Period worked by Sub-Class A & B Members (as defined above in paragraph A.48.). The estimated workweeks are based on the FTE calculation described above in the Definitions section, paragraph A.50. In the event that the actual number of FTE calculated workweeks worked by all Class Members (combined total of both sub-classes) during the foregoing period increases by 20% or more, then Defendant shall increase the Gross Settlement Fund on a proportional basis in excess of twenty percent (i.e., if there were a twenty-one percent (21%) increase in the number of workweeks, then Defendant will increase the Gross Settlement Fund by one percent (1%)).
- b. Net Settlement Amount: The "Net Settlement Amount" is defined as the Gross Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payment to the Class Representative, all Settlement Administration Costs, and PAGA Penalties paid to the LWDA and to all Aggrieved Employees. If the Court reduces the requested Attorneys' Fees and Costs Award, Service Award, or Settlement Administration Costs, or either increases or decreases the amount allocated to the PAGA Penalties, the Net Settlement Amount shall be increased or decreased accordingly.
- c. Individual Settlement Payments for the Settlement Class: Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of Eligible Work Weeks a Settlement Class Member worked during the Class Period. Specific Calculations of Individual Settlement Payments will be made as follows:
 - i. For each sub-class, Defendant will calculate the total number of Work Weeks Worked by each Settlement Class Member during the Class Period and the aggregate total number of Work Weeks Worked by all Settlement

Class Members during the Class Period. The Work Weeks are based on a full-time equivalent (“FTE”) calculation of total hours worked described above (the total number of an employee’s hours worked divided by forty (40) hours).

- ii. To determine each Settlement Class Member’s estimated Individual Settlement Payment, the Settlement Administrator will use the following formula: The Net Settlement Amount will be divided by the aggregate total number of Work Weeks Worked by all Settlement Class Members during the Class Period, resulting in the “Class Work Week Value.” Each Settlement Class Member’s Individual Settlement Payment will be calculated by multiplying his or her total number of Work Weeks Worked during the Class Period by the Class Work Week Value. This amount is to be paid out to the Settlement Class Members by way of check.
 - iii. Notwithstanding the foregoing, Individual Settlement Payments will be reduced by any employee-side tax withholdings and deductions.
 - iv. The entire Net Settlement Amount will be disbursed to all Participating Class Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionally increase the Individual Settlement Payment for each Participating Class Member according to the number of Work Weeks Worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount.
- d. Individual PAGA Payments: Individual PAGA Payments will be calculated and apportioned from the PAGA Payment, which is not part of the Net Settlement Amount.
- i. The Settlement Administrator will determine the total number of Pay Periods in which each Aggrieved Employee worked during the PAGA Period (“Aggrieved Employee’s Pay Periods Worked”), as well as the aggregate number of Pay Periods during the PAGA Period (“Total PAGA

Pay Periods”).

- ii. To determine each Aggrieved Employee’s Individual PAGA Payment the Settlement Administrator will use the following formula: Aggrieved Employee’s Individual PAGA Payment = (Aggrieved Employee’s Pay Period Worked / Total PAGA Pay Periods) x \$2,500.00 (the PAGA Payment). This amount is to be paid out to Aggrieved Employees by way of check without withholding or deduction.
- iii. The Settlement payment for a Participating Class Member who is also an Aggrieved Employee will therefore include the Participating Class Member’s Individual Settlement Payment and Individual PAGA Payment.
- iv. A Settlement Class Member who is also an Aggrieved Employee who submits a valid Request for Exclusion will nevertheless be bound by any release of the Released PAGA Claims and will still receive their Individual PAGA Payment.

e. Tax Allocation of Payments:

- i. Individual Settlement Payments: The Individual Settlement Payments will be allocated based on the allegations in the Action as follows: Twenty percent (20%) will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and eighty percent (80%) will be allocated for interest and statutory penalties, as well as statutory and other non-wage damages (pursuant to, *e.g.*, California Labor Code sections 203 & 226) from which no taxes will be withheld or other deductions made.
- ii. Individual PAGA Payments: The Individual PAGA Payments will be one hundred percent (100%) allocated to civil penalties from which no taxes will be withheld or other deductions made.
- iii. The Settlement Administrator will issue to each Participating Class Member an IRS Form W-2 and comparable state forms with respect to the wage allocation and an IRS Form 1099 to each Participating Class

Member and/or Aggrieved Employee with respect to the penalties and interest allocations.

- f. Service Payment to Class Representative: The Service Payment to the Class Representative is a service/enhancement award not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00) approved by the Court in its discretion. This award is in exchange for the services Plaintiff performed on behalf of the Class (including taking steps to support the Settlement) and in consideration for entering into the general and expansive release and California Civil Code Section 1542 waiver. Defendant agrees not to oppose this request just as Plaintiff agrees to not request exclusion from the Settlement Class and to not take any action, directly or indirectly, to undercut or otherwise interfere with the success of this Settlement. The Service Payment to Plaintiff will be paid out of the Gross Settlement Amount. The Class Representative will be issued an IRS Form 1099 by the Settlement Administrator in connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount awarded as the Service Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel or the Class Representative to void this Settlement Agreement nor to appeal this aspect of the Court's ruling. Should the Court approve a lesser amount for the Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members.
- g. Attorneys' Fees and Costs Award: Defendant agrees to not oppose a request by Class Counsel to the Court for an award of attorneys' fees of not more than one-third (1/3) of the Gross Settlement Amount, which here is Ninety-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$96,666.66), plus reasonable litigation costs estimated not to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00) ("Attorneys' Fees and Costs Award"). The Attorneys' Fee and Costs Award shall be paid from the Gross Settlement Amount. Defendant shall

have no further obligation to pay any attorneys' fees, costs or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. The Parties agree that any amount awarded as attorneys' fees and costs to Class Counsel less than the requested amount shall not be a basis for Class Counsel or the Class Representative to rescind or otherwise void this Settlement Agreement. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the Court.

- h. Settlement Administration Costs: The fees and other charges of the Settlement Administrator will be paid from the Gross Settlement Amount, subject to Court approval and estimated not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00). If the actual amount of the Settlement Administration Costs is less than \$20,000.00, then the difference between \$20,000.00 and the actual Settlement Administration Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed \$20,000.00, then such excess will be paid solely from the Gross Settlement Amount and Defendant will not be responsible for paying any additional funds in order to pay these additional costs.
- i. PAGA Penalties: The Parties agree that Ten Thousand Dollars and Zero Cents (\$10,000.00) is allocated to PAGA Penalties and is to be paid from the Gross Settlement Amount, subject to Court approval. Of this amount, the LWDA Payment of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) (which amounts to seventy-five percent (75%) of the PAGA Penalties) shall be paid to the LWDA in satisfaction of civil penalties under PAGA, and the PAGA Payment of Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) (which amounts to twenty-five percent (25%) of the PAGA Penalties) will be paid to the Aggrieved Employees based on a Work-Weeks Worked basis during the PAGA Period, which will be treated entirely as civil penalties and shall be

reported as required on an IRS Form 1099. Defendant will calculate the total number of Pay Periods Worked by each Aggrieved Employee during the PAGA Period and the aggregate total number of Pay Periods during the PAGA Period. Class Counsel agrees to and shall give proper notice to the LWDA of the Settlement.

- j. Tax Liability: Class Counsel, Defendant, and Defendant's counsel make no representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder, and Plaintiff and the Settlement Class Members are not relying on any statement or representation by Class Counsel, Defendant, or Defendant's counsel in this regard. The amount of federal income tax withholding will be based upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to applicable state and/or local withholding codes or regulations. IRS Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, are changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendant into compliance with any such changes. Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective payments described and will hold Defendant harmless from and against any claims resulting from treatment of such payments as non-taxable damages.
- k. CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES

AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

60. No Credit Toward Benefit Plans. The Individual Settlement Payments and Individual PAGA Payments made under this Agreement, as well as any other payments made pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any benefit plans to which any Settlement Class Members or Aggrieved Employee may be eligible,

including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, pension plans, retirement plans, stock purchase or other types of equity plans, vacation plans, sick leave plans, PTO plans, and any other benefit or incentive plan. Rather, it is the Parties' intention that this Settlement will not affect any rights, contributions, or amounts to which any Settlement Class Members or Aggrieved Employees may be entitled under any benefit plans. The Parties agree that the amounts paid pursuant to this Settlement are not for days or hours worked, and are not included toward any regular rate of pay calculation, or any benefit vesting or accrual purpose.

61. “Non-Reversionary” Settlement. This is a “non-reversionary” settlement. Under no circumstance will any portion of the Gross Settlement Amount revert to Defendant. Participating Class Members will not have to make a claim in order to receive an Individual Settlement Payment, and Aggrieved Employees will not have to make a claim in order to receive their Individual PAGA Payments. Distributions, in the form of Individual Settlement Payments and Individual PAGA Payments, will be made directly to each Participating Class Member and Aggrieved Employee. The Settlement Administrator shall be responsible for accurately and timely reporting and the remittance obligations with respect to unclaimed funds as a result of a Participating Class Member or Aggrieved Employee not cashing an Individual Settlement Payment or Individual PAGA Payment by the check cashing deadline, as set forth herein.

62. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and adequate, and will so represent same to the Court.

E. Release by Plaintiff, Aggrieved Employees and the Settlement Class

63. Upon entry of the Final Approval Order and Defendant's funding of the Gross Settlement Amount, along with any taxes necessary to be paid by Defendant to effectuate the Settlement, and except as to such rights or claims as may be created by this Settlement Agreement, the Participating Class Members, for themselves and for their respective spouses, domestic partners, children, estates, heirs, trusts, and representatives, will forever completely release and discharge the Released Parties from the Released Class Claims that have or could have arisen or accrued during the Class Period. It is the intent of the Parties that the Final Approval Order and judgment entered by the Court shall have full equitable and collateral

estoppel and *res judicata* effect and be final and binding upon Participating Class Members regarding the Released Class Claims. The *res judicata* effect of the judgment will be the same as that of the Release of the Released Class Claims and Released PAGA Claims.

64. Each Participating Class Member will be deemed to have made the foregoing Release as if by manually signing it.

65. Upon entry of the Final Approval Order and Defendant's funding of the Settlement Amount, as well as any taxes that must be paid by Defendant to effectuate the Settlement, Plaintiff, standing in the shoes of the Labor Commissioner/LWDA to the extent permitted by law, and on behalf of the State of California and all Aggrieved Employees, for themselves and for their respective spouses, domestic partners, children, estates, heirs, trusts, and representatives, will forever completely release and discharge the Released Parties from the Released PAGA Claims that have or could have arisen or accrued during the PAGA Period. It is the intent of the Parties that the Final Approval Order and judgment entered by the Court shall have full equitable and collateral estoppel and *res judicata* effect and be final and binding upon Plaintiff, the LWDA, and the Aggrieved Employees regarding the Released PAGA Claims.

66. Each Aggrieved Employee and the LWDA will be deemed to have made the foregoing Release as if by manually signing it.

67. Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim (to the extent permitted by law) or action, grievance, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery based on or arising out of the Released Class Claims. The Class Members shall be so notified in the Notice. This Paragraph only applies to Participating Class Members and, thus, does not apply to any Class Member who timely and validly submits a Request for Exclusion.

68. Plaintiff and Defendant also intend that the Settlement described in this Agreement will release and preclude any further claim for civil penalties under the California Labor Code, whether by lawsuit, administrative claim (to the extent permitted by law) or action, grievance, arbitration, demand, or other PAGA action of any kind, by each and all of the

Aggrieved Employees and by the LWDA to obtain a recovery based on or arising out of the Released PAGA Claims. The Aggrieved Employees shall be so notified in the PAGA Notice, and Class Counsel shall provide appropriate notice to the LWDA of this Agreement prior to the filing of the Motion for Preliminary Approval.

69. Class Representative, on behalf of herself and the Participating Class Members, acknowledges and agrees that the claims, including claims for unpaid wages and untimely payment of wages, are disputed, and that the payments set forth herein constitute payment of all sums allegedly due to them. Class Representative, on behalf of herself and the Participating Class Members, acknowledges and agrees that California Labor Code Section 206.5 is not applicable to the Parties. Section 206.5 provides in pertinent part as follows:

“An employer shall not require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.”

F. Release by Class Representative

70. As a material inducement to Defendant to enter into this Settlement Agreement and in exchange for the Service Payment, and in addition to the Class Representative's release of the Released Class Claims and Released PAGA Claims, upon entry of the Final Approval Order and Defendant's funding of the Gross Settlement Amount, along with any taxes necessary to be paid by Defendant to effectuate the Settlement, Class Representative for herself and for her respective spouses, domestic partners, marital community, children, estates, heirs, trusts, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and assignees does forever and completely release and discharge and covenant not to sue the Released Parties with respect to any and all claims, demands, liens, agreements, contracts, grievances, covenants, actions, suits, causes of action, wages, obligations, debts, liquidated damages, penalties, interest, costs, expenses, attorneys' fees, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, whether now known or unknown, suspected or unsuspected, concealed or hidden, which Class Representative now owns or holds or has at any time owned or held as against said

Released Parties, or any of them. Such released claims include specifically, but not exclusively and without limiting the generality of the foregoing, any and all claims, demands, agreements, grievances, obligations and causes of action, known or unknown, suspected or unsuspected, concealed or hidden, including but not limited to all claims arising out of, based upon, relating to, or in any way connected with:

- a. Class Representative's employment with Defendant or any Related Party or the remuneration for or termination of such employment;
 - b. any allegation in the Action;
 - c. any transactions, occurrences, acts or omissions set forth, or facts alleged, in any and all charges, complaints, claims, grievances or pleadings filed by Class Representative against any Released Party prior to the date hereof with any city, county, state or federal agency, commission, office or tribunal whatsoever, including, but not limited to, the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, the Department of Labor, the LWDA, Occupational Safety and Health Administration, and National Labor Relations Board; and/or
 - d. any transactions, occurrences, acts or omissions occurring prior to the date hereof, including specifically without limiting the generality of the foregoing any claim under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (29 U.S.C. Section 621 *et seq.*), the Americans with Disabilities Act, the Employee Retirement Income Security Act, the National Labor Relations Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the California Constitution, the California Labor Code, the California Civil Code, the California Government Code, the California Business & Professions Code, the California Family Rights Act, the California Fair Employment and Housing Act, or any other federal, state, or local statute or regulation (collectively, the "Class Representative's Claims").
71. Class Representative agrees that there is a risk that any injury that she may have

suffered by reason of the Released Parties' relationship with her might not now be known, and there is a further risk that said injuries, whether known or unknown, suspected or unsuspected, concealed or hidden, at the date of this Settlement Agreement, might possibly become progressively worse, and that as a result thereof further damages may be sustained.

Nevertheless, Class Representative agrees to forever and fully release and discharge the Released Parties, and understands that by the execution of this Settlement Agreement no further claims for any such injuries that existed at the time of the execution of this Settlement Agreement may ever be asserted by Class Representative with respect to claims arising in the time period from the beginning of time to the execution of this Settlement Agreement.

72. Upon the release of the Class Representative's Claims as set forth in Paragraph 70 above, Class Representative also expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER 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.

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of all parties, Class Representative and Class Counsel expressly acknowledge that this Settlement Agreement is intended to include in its effect, without limitation, all claims that Class Representative knew of, as well as all claims that he does not know or suspect to exist in her favor against the Released Parties, or any of them, for the time period from the beginning of time to the execution of this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any and all of such Class

Representative's claims. Notwithstanding the above, the general release by Class Representative shall not extend to claims for workers' compensation benefits, claims for unemployment benefits, or other claims that may not be released by law as part of this Agreement.

F. Interim Stay of Proceedings

73. Pending completion of all of the prerequisites necessary to effectuate this Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such as are necessary to effectuate the Settlement.

G. Notice Process

74. Appointment of Settlement Administrator. The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice Packet, using standard devices to obtain forwarding addresses, independently reviewing and verifying documentation associated with any claims or opt-out requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Settlement Payments and the Individual PAGA Payments, drafting and mailing the settlement checks to Participating Class Members and Aggrieved Employees, issuing W-2 and 1099 Tax Forms, unclaimed funds due diligence, reporting and remittance obligations, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders. The Settlement Administrator also shall be responsible for issuing to Class Representative, Participating Class Members, Aggrieved Employees, and Class Counsel any W-2, 1099, or other Tax Forms as may be required by law for all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate government authorities.

75. Disputes Regarding Settlement Administration. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify the Court that all payments and obligations contemplated by this Settlement Agreement have

been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute with the aid of the Settlement Administrator and without the necessity of Court intervention.

76. Class Data. Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement Administrator will remain confidential, shall be used solely to administer the Settlement, and it will not be used or disclosed to anyone (including Class Counsel), except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court. The Settlement Administrator will be required to sign and provide to Defendant any Certification Regarding Confidential Discovery Materials and to be bound by any Stipulated Protective Order as entered by the Court.

77. Notice Packet. The Notice Packet, as approved by the Court, shall be sent by the Settlement Administrator to the Settlement Class Members and Aggrieved Employees, by first class mail within thirty (30) calendar days following the Settlement Administrator's receipt of the Class Data. The Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses of Settlement Class Members and Aggrieved Employees if any envelopes are returned.

78. Returned Notices. The Settlement Administrator will take steps to ensure that the Notice Packet is received by all Settlement Class Members and Aggrieved Employees, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. Notice Packets will be re-mailed to any Settlement Class Member and/or Aggrieved Employee for whom an updated address is located within seven (7) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. The Notice Packet shall be identical to the original Notice Packet, except that it shall notify the Settlement Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Notice

Response Deadline or fifteen (15) days after the remailing of the Notice Packet.

79. Disputes Regarding Information on Notices. Class Members are deemed to participate in the Settlement, unless they opt-out. The Class Notice will inform Class Members of their estimated Individual Settlement Payment and the number of Work Weeks Worked during the Class Period. The PAGA Notice will inform the Aggrieved Employees of their estimated Pay Periods Worked during the PAGA Period and estimated Individual PAGA Payment. Class Members and Aggrieved Employees may dispute their Work Weeks Worked and/or Pay Periods Worked, respectively, in the Class Period and/or PAGA Period if they feel they should be credited with more Eligible Work Weeks or Eligible Pay Periods than Defendant's records show by timely submitting evidence to the Settlement Administrator. Defendant's records will be presumed determinative absent reliable evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and/or Aggrieved Employee and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's and/or Aggrieved Employee's actual number of Work Weeks Worked during the Class Period and/or Pay Periods Worked during PAGA Period and estimated Individual Settlement Payment and/or Individual PAGA Payment. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a final decision. Class Members will have until the Notice Response Deadline to dispute Work Weeks Worked, object or opt out of the Class Action Settlement, and seek to intervene in the Action, unless extended by the Court. The Aggrieved Employees will have until the Notice Response Deadline to dispute Pay Periods Worked. In the event that the Settlement Administrator revises the number of Work Weeks Worked for any Settlement Class Member or Pay Periods Worked for any Aggrieved Employee, then the Settlement Administrator will recalculate the Participating Class Members' Individual Settlement Payments and/or the Aggrieved Employee's Individual PAGA Payments accordingly. In no event will Defendant be required to increase the Gross Settlement Amount on this or any other basis.

80. Declaration of Due Diligence. The Settlement Administrator shall provide to

counsel for the Parties, at least seven (7) calendar days prior to the Final Approval Hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice Packet.

81. Aggrieved Employees' Rights. Each Aggrieved Employee will be fully advised of the Settlement in the PAGA Notice. Aggrieved Employees cannot opt out of receiving a PAGA Payment or object to the Settlement of the Released PAGA Claims.

82. Settlement Class Members' Rights. Each Settlement Class Member will be fully advised of the Settlement, the ability to object to the provisions in the Settlement related to the Released Class Claims, and the ability to opt out or request exclusion from the Settlement with respect to the Released Class Claims. The Notice will inform the Settlement Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Settlement with respect to the Released Class Claims in accordance with the following guidelines:

- a. Requests for Exclusion from Participating in the Settlement Class. Any Settlement Class Member, other than Plaintiff, may request to be excluded from the Settlement Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before the Notice Response Deadline. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE O'BRIEN'S MARKET LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT," or a statement to that effect.

To be valid, any Request for Exclusion must include the full name, address, telephone number, last four digits of the social security number, date of birth, and signature of the Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by mail or fax to the Settlement Administrator at the specified address. Any such Request must be made in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if postmarked by the Notice

Response Deadline, unless the Parties otherwise agree in writing. Any Settlement Class Member who timely requests exclusion in compliance with these requirements: (i) will not have any rights under this Agreement with respect to the Released Class Claims, including the right to object, appeal, or comment on the Settlement; (ii) will not be entitled to receive any payments under this Agreement for the Released Class Claims; and (iii) will not be bound by this Agreement, or the judgment, with respect to the Released Class Claims. Any Aggrieved Employee who requests timely exclusion from the Settlement Class will still be subject to the Released PAGA Claims to the fullest extent permitted by law and shall be sent his or her share of PAGA Penalties.

- b. Binding Effect on Participating Class Members. Except for those Settlement Class Members who exclude themselves in compliance with the procedures set forth above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this Agreement, the judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.
- c. Objections to Settlement of the Released Class Claims. Any Settlement Class Member, other than Plaintiff, may object to the terms of this Agreement. To object, a Settlement Class Member should inform the Settlement Administrator, in writing, of his or her objection, which must be postmarked by the Notice Response Deadline at the address set forth in the Notice. Such objection shall include the objecting Settlement Class Member's full name, address, telephone number, and dates of employment with Defendant, the case name and number, the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is represented by counsel, the name and address of his or her counsel. The Settlement Administrator shall

provide objections, if any, to Class Counsel and Defense Counsel within three (3) calendar days of receipt, and the Settlement Administrator shall attach the same to its declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any Participating Class Member who files an objection remains eligible to receive monetary compensation from the Settlement. Plaintiff and Defendant shall not be responsible for any fees, costs, or expenses incurred by any Class Member and/or his or her counsel related to any objections to the Settlement.

- d. Failure to Object. Any Settlement Class Member who desires to object to the Released Class Claims in the Settlement but fails to timely submit a written objection or in person objection at the Final Approval Hearing may still object and/or comment on the Settlement in person and/or through counsel at the Final Approval Hearing.
- e. Responses to Objections. Counsel for the Parties may file a response to any objections submitted by objecting Settlement Class Members at least five (5) court days before the date of the Final Approval Hearing.
- f. Timing of Requests. Settlement Class Members will have until the Notice Response Deadline to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class Counsel or Defense Counsel.
- g. Defective Submissions. If a Settlement Class Member's Request for Exclusion or objection is defective as to the requirements listed herein, that Settlement Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Settlement Class Member a cure letter within three (3) business days of receiving the defective submission to advise the Settlement Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion or objection valid. The Settlement Class

Member will have the later of (i) the Notice Response Deadline or (ii) 15 calendar days from the date of the cure letter to postmark or fax a revised Request for Exclusion or objection. If the revised Request for Exclusion or objection is not postmarked or received by fax within that period, it will be deemed untimely.

83. QSF. The Settlement Administrator shall create a QSF for all money paid by Defendant and shall deposit all funds received from Defendant into such QSF.

84. Funding of the Settlement Amount. Defendant shall fund the Gross Settlement Amount in one installment within fourteen (14) calendar days of the Effective Date. Defendant separately shall pay its share of employer payroll taxes as calculated and directed by the Settlement Administrator within fourteen (14) calendar days of the Effective Date.

85. No Further Obligations. Once Defendant has complied with its obligations set forth in this Paragraph, Defendant shall be deemed to have satisfied all of the terms and conditions of this Agreement, shall be entitled to all the protections afforded it under the Agreement, and shall have no further obligations under the Agreement, regardless of what occurs with respect to the further administration of the Settlement. The Settlement Administrator (and not Defendant) shall issue the applicable IRS Forms W-2s and 1099 reflecting all payments to the Class Members, to Class Counsel, and to the Settlement Administrator.

86. Distribution of Funds. No later than fourteen (14) calendar days after Defendant's funding of the Gross Settlement Amount and payment of employer taxes, the Settlement Administrator will mail the Individual Settlement Payments and Individual PAGA Payments to the Participating Class Members and Aggrieved Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service Payment to the Class Representative, the LWDA Payment, and will pay itself the Settlement Administration Costs.

87. Deadline for Cashing Settlement Checks. Participating Class Members and Aggrieved Employees shall have 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. If any Participating Class Member's or Aggrieved Employee's check is not cashed within that period, the check will be void and a stop-payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to the State's

Unclaimed Property Fund. In the event that any settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual, and notify Defense Counsel and Class Counsel of the results. If a new address is located by these means, the Administrator will have ten (10) business days to re-issue the check. Neither Defendant, Released Parties, Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Participating Class Member or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement check.

88. No person shall have any claim against Defendant, Released Parties, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on mailings, distributions, payments or reports made in accordance with or pursuant to this Agreement.

89. Without prejudice to any other remedies, the Settlement Administrator shall agree to be responsible for any breach of its obligations (whether committed by the Settlement Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from and against all liabilities, claims, causes of action, costs and expenses (including legal fees and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

H. Duties of the Parties Prior to the Court's Preliminary Approval

90. Promptly after execution of this Settlement Agreement, Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

- a. Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate as to the Class Members and Aggrieved Employees and a hearing on fees, costs and the Service

Payment;

- b. Approving as to form and content the proposed Notice Packet;
- c. Directing the mailing of the Notice Packet by first class mail to the Settlement Class Members and Aggrieved Employees;
- d. Preliminarily approving this Settlement; and
- e. Preliminarily certifying the class for purposes of this Settlement.

91. Reallocation of Settlement Proceeds. In the event the Court fails, on its first hearing, to approve this Agreement because the amount of the PAGA Penalties is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within this Agreement, in order to try to achieve Final Approval of the Agreement upon any subsequent Court hearings.

I. Duties of the Parties Regarding The Court's Final Approval

92. In connection with the Final Approval Hearing provided for in this Settlement Agreement, Class Counsel shall submit to the Court a Motion for Final Approval and a proposed Final Approval Order:

- a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- b. Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and
- c. Entering judgment approving settlement.

93. Final Judgment. The Settlement Administrator shall give the Participating Class Members and Aggrieved Employees notice of the entry of Final Judgment by posting the Final Judgment on its website for a period of three (3) years after entry of judgment.

J. Voiding the Agreement

94. Defendant will have, in its sole discretion, the right to void and withdraw from the Settlement without prejudice to its pre-settlement positions and defenses in the Action if ten

percent (10%) or more of Class Members, by number or by value, opt out of the Settlement. To do so, Defendant shall give written notice to the Settlement Administrator and Class Counsel at least thirty (30) calendar days before the final approval hearing date.

95. All Parties, signatories and their counsel shall not encourage opt-outs or objections to this Agreement. The Parties specifically agree not to solicit opt-outs or objections, directly or indirectly, through any means.

96. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Settlement. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator to date shall be borne equally by Defendant and Plaintiffs, unless otherwise specified in this Agreement.

97. If the Settlement is voided by Defendant pursuant to Paragraph 94 above, any costs incurred to date by the Settlement Administrator shall be borne by Defendant.

K. Other Terms

98. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

99. Full and Complete Defense. This Agreement may be pleaded by any Released Party as a full and complete defense to and may be used by any Released Party to pursue an injunction against any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted, asserting any Released Claim.

100. Parties' Authority. The signatories represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties to the terms and conditions hereof.

101. No Publicity. Communications regarding this Settlement prior to the Final Approval Date shall be limited to Court-Approved Notices in the Action. After the Final Approval Date, Class Counsel and Class Representative agree that they will not make any comment or publication of the Settlement or regarding Defendant or any Released Parties that in any way could reasonably identify Defendant or any Released Parties in terms of affirmative or

responsive media statements/comments, press releases or conferences, website postings or content, social media postings or content, other Internet postings or content, subscribed email messages, newsletters, disseminated updates, mass mailings, or any other comment or publication to the press, media, or public at large. Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or other case materials in the Action related to seeking and obtaining Court approval of this Settlement and the related awards of attorneys' fees and costs, or to communications with Settlement Class Members or their representatives about this Settlement, including through the posting of Court-filed documents on Class Counsel's websites for password-protected access solely by the Settlement Class Members, or to prevent the Parties or their representatives from communicating with financial or legal advisors regarding the Settlement. In response to any media inquiry, Class Counsel may state only that the Action has been settled on terms mutually agreeable to the Parties.

102. No Defamatory Statements. Plaintiff will not make, or encourage anyone else to make, any defamatory or maliciously false statements or remarks about Defendant or any Released Parties, any of their employees, and/or any of their services or business; this restriction includes, but is not limited to, Plaintiff not making any such statements or remarks on Yelp, Glassdoor, LinkedIn, Facebook, other social media, and any other online forums.

103. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's Preliminary Approval Order and Final Approval.

104. No Prior Assignments. The Parties represent, covenant, and warrant that they

have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Settlement Agreement.

105. No Admission. Defendant denies any and all liability to Plaintiff and/or any Settlement Class Member or Aggrieved Employee in this Action, as to any and all causes of action that were asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and compromise the matters at issue in the Action to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that it has asserted or could assert against Plaintiff, has determined that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

106. Inadmissibility of Agreement. Whether or not the Court issues the Preliminary and/or Final Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and it, along with all related documents such as the notices, and motions for preliminary and final approval, shall, pursuant to California Evidence Code section 1152, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class certification and PAGA representative status as part of this Settlement Agreement is for settlement purposes only, and if, for any reason the settlement is not approved, the stipulation will be of no force or effect.

107. Construction. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason

of the extent to which any Party or her or its counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

108. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

109. Modification. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties.

110. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiff and Defendant agree to seek the assistance of Michael Young, Esq. to resolve any dispute they are unable to resolve informally. During this period, the Parties shall bear their own attorneys' fees and costs, and split any fees of Mr. Young equally. This provision shall not apply to any legal action or other proceeding instituted by any person or entity other than Plaintiff or Defendant.

111. Court Retains Jurisdiction. The Parties agree that, upon the entry of judgment of dismissal pursuant to the terms of this Agreement, and, pursuant to California Code of Civil Procedure Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties to interpret, enforce, and effectuate the terms, conditions, intents and obligations of this Agreement.

112. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b), this Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible

in a court of law.

113. Choice of Law. This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California.

114. Integration Clause. This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

115. Binding on Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

116. Signatures of All Class Members Unnecessary to Be Binding. It is agreed that, because the members of the Settlement Class are numerous, it is impossible or impractical to have each Class Member execute this Settlement Agreement. The Notice will advise all Settlement Class Members of the binding nature of the releases provided herein and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.

117. Invalidity of Any Provision. Before declaring any provision of this Settlement 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 Settlement Agreement valid and enforceable.

118. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

Dated: 7/18/2022

PLAINTIFF AND CLASS REPRESENTATIVE:

DocuSigned by:

7C461EA91E954ED

Crystalynn Villarreal

Dated:

DEFENDANT: O'Brien's Market, Inc.

By:
Title:

APPROVED AS TO FORM:

Dated: July 18, 2022

CLASS COUNSEL:
MOON & YANG, APC



Kane Moon
Lilit Ter-Astvatsatryan

Attorneys for Plaintiff Crystalynn Villarreal

Dated:

DEFENDANT'S COUNSEL:

Brandon R. McKelvey
Douglas R. Leach

Attorneys for O'Brien's Market, Inc.

END OF DOCUMENT

Dated:

PLAINTIFF AND CLASS REPRESENTATIVE:

Crystalynn Villarreal

Dated: July 20, 2022

DEFENDANT: O'Brien's Market, Inc.

By: *O'Brien*
Title: *president*

APPROVED AS TO FORM:

Dated:

CLASS COUNSEL:
MOON & YANG, APC

Kane Moon
Lilit Ter-Astvatsatryan

Attorneys for Plaintiff Crystalynn Villarreal

Dated: July 26, 2022

DEFENDANT'S COUNSEL:

Brandon R. McKelvey
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Douglas R. Leach

Attorneys for O'Brien's Market, Inc.

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