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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

CARMELA REYES, individually, on behalf of  
all others similarly situated, and on behalf of the  
State of California and other aggrieved persons,

*Plaintiff,*

v.

EVERYTABLE, PBC, a Delaware  
corporation; HARVEST FRESH FOODS,  
PBC, an unknown entity, and DOES 1 through  
10, inclusive,

*Defendants.*

Case No. 21STCV35987

**CLASS & REPRESENTATIVE ACTION**

*[Assigned for all purposes to Judge David S.  
Cunningham III]*

**DECLARATION OF JUSTIN F.  
MARQUEZ IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

*[Filed concurrently with: Plaintiff's Notice of  
Motion and Motion for Preliminary Approval  
of Class Action Settlement, Memorandum of  
Points and Authorities; and [Proposed] Order  
Granting Plaintiff's Motion for Preliminary  
Approval of Class Action Settlement]*

**PRELIMINARY APPROVAL HEARING**

Date: September 15, 2022

Time: 9:30 a.m.

Dept: 11

Complaint filed: September 30, 2021  
FAC filed: August 22, 2022

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1. I am admitted, in good standing, to practice as an attorney in the State of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Southern, Eastern, and Northern Districts of California. I am a Senior Partner at Wilshire Law Firm, PLC, counsel of record for Plaintiff Carmela Reyes (“Plaintiff”). I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them under oath if called as a witness. This Declaration is submitted in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

2. This is a wage and hour class action and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiff and the putative class members worked in California as hourly-paid, non-exempt employees for Defendants during the class period. Defendants specialize in the meal preparation and subscription industry and serve customers in southern California, including in Los Angeles County.

4. On September 30, 2021, Plaintiff filed a putative wage-and-hour class action complaint against Defendants for: (1) failure to pay minimum and straight time wages; (2) failure

1 to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest  
2 periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized  
3 wage statements; and (7) violation of California's Unfair Competition Law, California Business  
4 and Professions Code §§ 17200, et seq. In addition, Plaintiff filed a First Amended Class and  
5 Representative Action Complaint on August 22, 2022, which adds a cause of action for civil  
6 penalties under PAGA, for which Plaintiff had previously provided notice to Defendants and the  
7 California Labor & Workforce Development Agency on October 1, 2021.

#### 8 DISCOVERY AND INVESTIGATION

9 5. Following the filing of the Complaint, the Parties exchanged documents and  
10 information before mediating this action. Defendants produced timekeeping and pay records for  
11 the class members. Defendants also provided documents of their wage and hour policies and  
12 practices during the class period, and information regarding the total number of current and former  
13 employees in its informal discovery responses.

14 6. After reviewing documents regarding Defendants' wage and hour policies and  
15 practices, analyzing Defendants' timekeeping and payroll records, Class Counsel was able to  
16 evaluate the probability of class certification, success on the merits, and Defendants' maximum  
17 monetary exposure for all claims. Class Counsel also investigated the applicable law regarding  
18 the claims and defenses asserted in the Litigation. Class Counsel reviewed these records and  
19 utilized an expert to prepare a damages analysis prior to mediation

#### 20 SETTLEMENT NEGOTIATIONS

21 7. On March 23, 2022, the Parties participated in private mediation with experienced  
22 class action mediator, Hon. Lisa Klerman (Ret.). The mediation was conducted via Zoom. The  
23 settlement negotiations were at arm's length and, although conducted in a professional manner,  
24 were adversarial. The Parties went into the mediation willing to explore the potential for a  
25 settlement of the dispute, but each side was also prepared to litigate their position through trial and  
26 appeal if a settlement had not been reached.

27 8. After extensive negotiations and discussions regarding the strengths and  
28 weaknesses of Plaintiff's claims and Defendants' defenses, the Parties were able to reach a

1 resolution, the material terms of which are encompassed within the Settlement Agreement.  
2 Attached as **Exhibit A** is a true and correct copy of the Joint Stipulation of Class Action and PAGA  
3 Settlement and Release (“Settlement” or “Settlement Agreement”).

4 9. The Settlement includes \$10,000.00 allocated to Plaintiff’s claims under PAGA,  
5 with 75% of which (\$7,500.00) being paid to the Labor and Workforce Development Agency  
6 (“LWDA”) and 25% (\$2,500.00) being paid to the PAGA Members. (Settlement, § VI, subd.  
7 1.21.) Class Counsel submitted the proposed Settlement to the LWDA before filing the Motion  
8 for Preliminary Approval.

9 10. The Settlement provides that Defendants will not oppose a fee application of up to  
10 33 1/3% (\$247,333.33) of the Gross Settlement Amount, plus out-of-pocket costs not to exceed  
11 \$20,000.00. (Settlement, § VI, subd. 2.4.)

12 11. I requested several bids from experienced class action settlement administrators to  
13 handle the responsibilities of the Settlement Administrator under this Settlement. The Parties  
14 accepted the bid of Simpluris. Simpluris has multiple years of experience in the field of Class  
15 Action Administration, particularly in the wage-and-hour arena. In its bid, Simpluris agreed to cap  
16 its costs at \$9,995 if there are 850 class members. A true and correct copy of the bid is attached  
17 hereto as **Exhibit B**.

18 12. Plaintiff does not have any interest, financial or otherwise, in the proposed *cy pres*  
19 recipient, Legal Aid at Work, or the third-party administrator, Simpluris.

20 13. No one at Wilshire Law Firm, PLC (meaning the law firm itself and anyone  
21 employed at the law firm) has any interest, financial or otherwise, in the proposed *cy pres* recipient,  
22 Legal Aid at Work, or the third-party administrator, Simpluris.

23 14. Wilshire Law Firm, PLC has no fee-splitting agreement with any other counsel in  
24 this case.

25 **THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE**

26 15. Class Counsel has conducted a thorough investigation into the facts of this case.  
27 Based on the foregoing discovery and their own independent investigation and evaluation, Class  
28 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best

1 interests of the Settlement Class Members in light of all known facts and circumstances, the risk  
2 of significant delay, the defenses that could be asserted by Defendants both to certification and on  
3 the merits, trial risk, and appellate risk.

4 16. Based on an analysis of the facts and legal contentions in this case, documents and  
5 information from Defendants, I evaluated Defendants' maximum exposure. I took into account  
6 the risk of not having the claims certified and the risk of not prevailing at trial, even if the claims  
7 are certified. After using the data Defendants provided, including class member timekeeping and  
8 payroll records, as well as class member demographics (i.e., the number of class members,  
9 workweeks, and average total compensation of the class), with the assistance of a statistics expert,  
10 I created a damages model to evaluate the realistic range of potential recovery for the class. The  
11 damages model is based on the following benchmarks:

12 Total Class Members: 772

13 Terminated Class Members during 3-year statute: 528

14 Total Workweeks: 28,525

15 PAGA Pay Periods: 8,019

16 Avg. Hourly Rate: \$16.08

17 17. Based on Plaintiff's discovery and investigation, Class Counsel reached the  
18 conclusion that Defendants failed to pay class members for all hours worked, including overtime  
19 wages, failed to have a legally compliant written policy authorizing and permitting rest periods,  
20 and failed to indemnify employees for necessary business-related expenditures. Defendants denied  
21 these claims.

22 18. Plaintiff alleges that Defendants failed to pay for all hours worked, including  
23 minimum, straight time, and overtime wages. My expert analyzed Defendants' timekeeping and  
24 payroll records and found many instances where he concluded that Defendants failed to pay  
25 employees for all hours worked, particularly the time performing work-related duties pre- and post-  
26 shift. A more conservative estimate was appropriate given the difficulty of proving an off-the-  
27 clock work violation on a class-wide basis. Assuming that Defendants failed to pay employees for  
28 one hour of off-the-clock work per workweek, with 65% of that work being paid at the overtime

1 rate, potential liability for this claim is \$722,156, including interest. Because individualized issues  
2 can be a significant obstacle to certifying and proving off-the-clock claims, I discounted this figure  
3 by 80% to account for the difficulty of prevailing on a motion for class certification and a trial on  
4 the merits, yielding a realistic damage estimate of **\$144,431.20**.<sup>1</sup>

5 19. With respect to the meal period claim, Plaintiff alleges that Defendants required her  
6 and similarly situated class members to either work in lieu of taking meal periods, or their meal  
7 periods were untimely or interrupted. My expert analyzed Defendants' timekeeping records and  
8 opined that approximately 18.7% of all meal breaks had violations of short, missed, or no first or  
9 second meal periods for eligible shifts. Potential liability for the meal period claim, which includes  
10 shifts 5-6 hours long, shifts over six hours long, shifts over ten hours long, and shifts over 12 hours  
11 long, is \$360,089, including interest; however, I discounted this figure by 60% to account for the  
12 difficulty of certifying and proving meal period claims, as well as Defendants' contention that the  
13 claim lacks merit, yielding a realistic damage estimate of **\$144,035.60**.

14 20. With respect to the rest period claim, Plaintiff alleges that Defendants required her  
15 and similarly situated class members to work in lieu of taking rest periods, or their rest periods  
16 were untimely or interrupted, and Defendants lacked legally compliance rest period policies during  
17 the class period, policies which require that putative class members remain on the premises during  
18 breaks. Assuming a 100% violation rate for the class period based on Plaintiff's and other class  
19 members' experience working for Defendants, Defendants' potential liability for the rest period  
20 claim is \$2,110,505.00, including interest; however, I discounted this figure by 80% to account for  
21 the difficulty of certifying and proving rest period claims, particularly because rest periods do not  
22 have to be recorded, and to account for the possibility of class members voluntarily choosing to  
23 forego a rest period, yielding a realistic damage estimate of **\$422,101**.

24 21. With regards to the unreimbursed business expense claim, Plaintiff alleges that  
25 \_\_\_\_\_

26 <sup>1</sup> This discount for risk at certification and trial is reasonable because the Judicial Council  
27 of California found that only 21.4% of all class actions were certified either as part of a  
28 settlement *or* as part of a contested certification motion. See Findings of the Study of California  
Class Action Litigation, 2000-2006, available at [http:// www.courts.ca.gov/documents/class-  
action-lit-study.pdf](http://www.courts.ca.gov/documents/class-action-lit-study.pdf).

1 Defendants required her and other employees to incur necessary business expenses, which included  
2 the purchasing of work attire, safety equipment, and work-related use of their personal cell phones.  
3 Assuming that employees incurred unreimbursed business expenses of approximately \$100 per  
4 year during the class period, Defendants' potential liability for the business expense claim is  
5 \$166,788, including interest; however, I discounted this figure by 50% to account for the difficulty  
6 of certifying this claim, including Defendants' contention that the claim lacks merit on the grounds  
7 that any expenses incurred were not necessary or otherwise required, yielding a realistic damages  
8 estimate of **\$83,394**.

9         22. In sum, I estimated that Plaintiff's maximum recovery for the unpaid wages based  
10 on the failure to pay for all hours worked (minimum, straight time, and overtime wages), meal and  
11 rest period violations, and unreimbursed business expenses is \$3,359,538.00, but, **after factoring**  
12 **in the risk and uncertainty of prevailing at certification and trial, I estimate that Plaintiff's**  
13 **realistic estimated recovery for the non-penalty claims is \$793,961.80.**

14         23. With respect to Plaintiff's derivative claims for statutory and civil penalties,  
15 Plaintiff estimated that Defendants' realistic potential liability is **\$354,016.70**. While Defendants'  
16 maximum potential liability for waiting time penalties is \$1,964,967 based on approximately 528  
17 terminated class members during the 3-year statute, \$773,300 for inaccurate wage statements based  
18 on approximately 572 class members who worked 8,019 pay periods within the 1-year statute, and  
19 \$801,900 for PAGA violations based on the Court assessing a \$100 penalty for initial violations  
20 for all 8,019 pay periods within the 1-year statute, I believe that it would be unrealistic to expect  
21 the Court to award the full \$3,540,167.00 in penalties given Defendants' defenses, the contested  
22 nature of Plaintiff's claims, and the discretionary nature of penalties. Considering that the  
23 underlying claims are estimated to be capped at \$3,359,538.00, such a disproportionate award  
24 would also raise due process concerns. Weighing these factors, and applying a discount to account  
25 for the risk and uncertainty of prevailing at trial, I arrived at \$354,016.70 for statutory and civil  
26 penalties.

27         24. **Using these estimated figures, Plaintiff predicted that the realistic maximum**  
28 **recovery for all claims, including penalties, would be \$1,147,978.50. This means that the**

1 **\$742,000.00 settlement figure represents approximately 65% of the realistic maximum**  
2 **recovery (\$742,000.00 / \$1,147,978.50 = 64.6%).** Considering the risk and uncertainty of  
3 prevailing at class certification and at trial, this is an excellent result for the Class.<sup>2</sup> Indeed, because  
4 of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the  
5 risk of an unfavorable judgment.

6 25. While Plaintiff is confident in the merits of her claims, a legitimate controversy  
7 exists as to each cause of action. Plaintiff also recognizes that proving the amount of wages due  
8 to each Class Member would be an expensive, time-consuming, and uncertain proposition.

9 26. This Settlement avoids the risks and the accompanying expense of further litigation.  
10 Although the Parties had engaged in a significant amount of investigation, informal discovery and  
11 class-wide data analysis, the Parties had not yet completed formal written discovery. Plaintiff  
12 intended to depose corporate officers and managers of Defendants. Moreover, preparation for class  
13 certification and a trial remained for the Parties as well as the prospect of appeals in the wake of a  
14 disputed class certification ruling for Plaintiff and/or adverse summary judgment ruling. Had the  
15 Court certified any claims, Defendants could move to decertify the claims. As a result, the Parties  
16 would incur considerably more attorneys' fees and costs through trial.

17 27. The Net Settlement Amount available for Class Member settlement payments is  
18 estimated to be \$444,666.67, for a class of 772 persons, who worked an average of 36.9 workweeks  
19 during the class period.<sup>3</sup> **As a result, each Settlement Class Member is eligible to receive an**  
20 **average net benefit of approximately \$576, or \$15.60 per workweek.**

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21 <sup>2</sup> See, e.g., *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at \*8  
22 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle  
23 class claims was between 9.53 percent of plaintiffs' maximum recovery); *Bravo v. Gale Triangle,*  
24 *Inc.*, 2017 WL 708766 at \* 10 (C.D. Cal. Feb 16, 2017) (finding that "a settlement for fourteen  
25 percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.*,  
559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is just over 9%  
of the maximum potential recovery asserted by either party.").

26 <sup>3</sup> The Net Settlement Amount is: \$742,000.00 minus \$247,333.33 for Class Counsel's  
27 attorneys' fees, minus \$20,000.00 for Class Counsel's litigation expenses, minus \$10,000.00 in  
28 administration costs, minus \$7,500.00 for the PAGA portion sent to the LWDA, minus \$2,500.00  
for payments to the PAGA Members, and minus \$10,000.00 for the class representative service  
award. The average number of workweeks worked is: 28,525 workweeks divided by 772  
employees.

1           28.     The proposed Settlement of \$742,000.00 therefore represents a substantial recovery  
2 when compared to Plaintiff's reasonably forecasted recovery. When considering the risks of  
3 litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary  
4 to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement  
5 amount of \$742,000.00 is within the "ballpark" of reasonableness, and preliminary settlement  
6 approval is appropriate.

7                     ENHANCEMENT AWARD FOR PLAINTIFF IS REASONABLE

8           29.     Class Counsel represent that Plaintiff devoted a great deal of time and work assisting  
9 counsel in the case, communicated with counsel very frequently for litigation and to prepare for  
10 mediation, and was frequently in contact with Class Counsel during the mediation. Plaintiff's  
11 requested enhancement award is reasonable particularly in light of the substantial benefits Plaintiff  
12 generated for all class members.

13           30.     Throughout this Litigation, Plaintiff, who is a former employee of Defendants, has  
14 cooperated immensely with my office and has taken many actions to protect the interests of the  
15 class. Plaintiff provided valuable information regarding unpaid overtime, meal period, and rest  
16 period claims. Plaintiff also informed my office of developments and information relevant to this  
17 action, participated in decisions concerning this action, made herself available to answer questions  
18 during the mediation, and provided my office with the names and contact information of potential  
19 witnesses in this action. Before we filed this case, Plaintiff provided my office with documents  
20 regarding the claims alleged in this action. The information and documentation provided by  
21 Plaintiff was instrumental in establishing the alleged wage and hour violations alleged in this  
22 action, and the recovery provided for in the Settlement Agreement would have been impossible to  
23 obtain without Plaintiff's participation.

24           31.     At the same time, Plaintiff faced many risks in adding herself as the class  
25 representative in this matter. Plaintiff faced actual risks with her future employment, as putting  
26 herself on public record in an employment lawsuit could also very well affect her likelihood for  
27 future employment. Furthermore, as part of this Settlement, Plaintiff is executing a general release  
28 of all claims against Defendants.

1           32.     In turn, class members will now have the opportunity to participate in a settlement,  
2     reimbursing them for alleged wage violations they may have never known about on their own or  
3     been willing to pursue on their own. If these class members would have each tried to pursue their  
4     legal remedies on their own, that would have resulted in each having to expend a significant amount  
5     of their own monetary resources and time, which were obviated by Plaintiff putting herself on the  
6     line on behalf of these other class members.

7           33.     In the final analysis, this class action would not have been possible without the aid  
8     of Plaintiff, who put her own time and effort into this Litigation, sacrificed the value of her own  
9     individual claims, and placed herself at risk for the sake of the class members. The requested  
10    enhancement award for Plaintiff for her service as the class representative and for her general  
11    release of all individual claims is a relatively small amount of money when the time and effort put  
12    into the Litigation are considered and in comparison to enhancements granted in other class actions.  
13    The requested incentive award is therefore reasonable to compensate Plaintiff for her active  
14    participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation, et al.*,  
15    No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class members were  
16    misclassified as exempt outside salespersons, I was co-lead Class Counsel and helped negotiate a  
17    \$2.5 million class action settlement for 339 class members, and the court approved a \$25,000.00  
18    class representative incentive award for each named plaintiff.

19           THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

20           34.     The Settlement provides for attorney's fees payable to Class Counsel in an amount  
21    up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of \$247,333.33,  
22    plus actual costs and expenses not to exceed \$20,000.00. The proposed award of attorneys' fees  
23    to Class Counsel in this case can be justified under either method – lodestar or percentage recovery.  
24    Class Counsel, however, intend to base the proposed award of fees, costs and expenses on the  
25    percentage method as many of the entries in the time records will have to be redacted to preserve  
26    attorney-client and attorney work product privileges.

27           35.     I am informed and believe that the fee and costs provision is reasonable. The fee  
28    percentage requested is less than that charged by my office for most employment cases. My office

1 invested significant time and resources into the case, with payment deferred to the end of the case,  
2 and then, of course, contingent on the outcome.

3 36. It is further estimated that my office will need to expend at least another 50 to 100  
4 hours to monitor the process leading up to the final approval and payments made to the class. My  
5 office also bears the risk of taking whatever actions are necessary if Defendants fail to pay.

6 37. The risk to my office has been very significant, particularly if we would not be  
7 successful in pursuing this class action. In that case, we would have been left with no compensation  
8 for all the time taken in litigating this case. Indeed, I have taken on a number of class action cases  
9 that have resulted in thousands of attorney hours being expended and ultimately having  
10 certification denied or the defendant company going bankrupt. The contingent risk in these types  
11 of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing  
12 on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

13 38. Because most individuals cannot afford to pay for representation in litigation on an  
14 hourly basis, Wilshire Law Firm, PLC represents virtually all of its employment law clients on a  
15 contingency fee basis. Pursuant to this arrangement, we are not compensated for our time unless  
16 we prevail at trial or successfully settle our clients' cases. Because Wilshire Law Firm, PLC is  
17 taking the risk that we will not be reimbursed for our time unless our client settles or wins his or  
18 her case, we cannot afford to represent an individual employee on a contingency basis if, at the  
19 end of our representation, all we are to receive is our regular hourly rate for services. It is essential  
20 that we recover more than our regular hourly rate when we win if we are to remain in practice so  
21 as to be able to continue representing other individuals in civil rights employment disputes.

22 39. As of the drafting of Plaintiff's Motion for Preliminary Approval of Class Action  
23 Settlement, my office has incurred approximately \$16,000 in expenses litigating this action, and  
24 we anticipate accruing additional costs up to Final Approval of the Settlement. These expenses,  
25 which will be detailed for the Court in advance of the Final Approval hearing, were reasonably  
26 necessary to the Litigation and were actually incurred by my office. They should be reimbursed  
27 in full, up to the maximum amount allowed in the Settlement Agreement.

28 ///

1 MY EXPERIENCE AND QUALIFICATIONS

2 40. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News & World  
3 Report as one of the nation's Best Law Firms in 2022 and is comprised of over 55 attorneys and  
4 over 300 employees. Wilshire Law Firm, PLC is actively and continuously practicing in  
5 employment litigation, representing employees in both individual and class actions in both state  
6 and federal courts throughout California.

7 41. Wilshire Law Firm, PLC is qualified to handle this Litigation because its attorneys  
8 are experienced in litigating Labor Code violations in both individual, class action, and  
9 representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling,  
10 numerous wage and hour class action lawsuits, as well as class actions involving consumer rights  
11 and data privacy litigation.

12 42. I graduated from the University of California, Los Angeles's College Honors  
13 Program in 2004 with Bachelor of Arts degrees in History and Japanese, *magna cum laude* and *Phi*  
14 *Beta Kappa*. As an undergraduate, I also received a scholarship to study abroad for one year at  
15 Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in  
16 2008.

17 43. My practice is focused on advocating for the rights of consumers and employees in  
18 class action litigation and appellate litigation. I am currently the primary attorney in charge of  
19 litigating several class action cases in state and federal courts across the United States.

20 44. I have received numerous awards for my legal work. From 2017 to 2020, Super  
21 Lawyers selected me as a "Southern California Rising Star," and in 2022, I was selected as a  
22 "Southern California Super Lawyer." In 2016 and 2017, the National Trial Lawyers selected me  
23 as a "Top 40 Under 40" attorney. I am also rated 10.0 ("Superb") by Avvo.com.

24 45. I am on the California Employment Lawyers Association ("CELA")'s Wage and  
25 Hour Committee and Mentor Committee, and I was selected to speak at CELA's 2019 Advanced  
26 Wage & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively  
27 mentored young attorneys through CELA's mentorship program.

28 46. I am also an active member of the Consumer Attorneys of California ("CAOC"). In

2020, I was selected for a position on CAOC's Board of Directors. I am also a member of CAOC's Diversity Committee, and I help assist the CAOC in defeating bills that harm employees. Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC, in defeating AB 443, which proposed legislation that sought to limit the enforceability of California Labor Code § 226.

47. As the attorney responsible for day-to-day management of this matter at the Wilshire Law Firm, PLC, I have over eleven years of experience with litigating wage and hour class actions. Over the last eleven years, I have managed and assisted with the litigation and settlement of several wage and hour class actions. In those class actions, I performed similar tasks as those performed in the course of prosecuting this action. My litigation experience includes:

- a. I served as lead or co-lead in negotiating class action settlements worth over \$10 million in gross recovery to class members for each year since 2020.
- b. To my knowledge, I am the only attorney to appear on each of the following *Top Verdict* lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- c. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by winning class certification on behalf of hundreds of thousands of consumers for misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct. C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- d. As lead counsel, I prevailed against Bank of America by: winning class certification on behalf of thousands of employees for California Labor Code violations; defeating appellate review of the court's order certifying the class; defeating summary judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.* (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2, 2018).). The decision certifying the class in *Frausto* is also discussed in *Class Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call Center Employees for Violation of State Law Wage and Hour Rules*, 35 A.L.R. Fed.

3d Art. 8.

- e. I was the primary author of the class certification and expert briefs in *ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action for over 40,000 class members for off-the-clock, meal period, split shift, and reimbursement claims. *ABM Industries Overtime Cases* is the first published California appellate authority to hold that an employer’s “auto-deduct policy for meal breaks in light of the recordkeeping requirements for California employers is also an issue amenable to classwide resolution.” (*Id.* at p. 310.)<sup>4</sup> Notably, the Court of Appeal also held that expert analysis of timekeeping records can also support the predominance requirement for class certification. (*Id.* at p. 310-11.) In 2021, the case settled for \$140 million, making it one of the largest ever wage and hour class action settlements for hourly-paid employees in California.
- f. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims under California’s Private Attorney Generals Act (“PAGA”) cannot be used to calculate the amount in controversy under the Class Action Fairness Act (“CAFA”). This case is cited in several leading treatises such as *Wright & Miller’s Federal Practice & Procedure*, and *Newberg on Class Actions*. In October 2016, the U.S. Supreme Court denied review of a case that primarily concerned *Yocupicio*. That effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus support from a brief authored by Andrew J. Pincus.<sup>5</sup> Considering that leading Supreme Court practitioners from the class action defense bar were very motivated in undermining *Yocupicio* case, but failed, this demonstrates the national importance of the *Yocupicio* decision.
- g. On December 13, 2018, the United States District Court granted final approval of

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<sup>4</sup> As a California district court observed before the *ABM Industries Overtime* decision, “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE Connectivity Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL 1758048, \*7.)

<sup>5</sup> <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.

the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in which I served as lead counsel. In doing so, the Court found: “Class Counsel’s declarations show that the attorneys are experienced and successful litigators.” (*Id.* at p. \*10.)

- h. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a reported decision permitting class-wide discovery even though the employer has a lawful policy because “[t]he fact that a company has a policy of not violating the law does not mean that the employees follow it, which is the issue here.” The court also ordered defendant to pay for the cost of *Belaire-West* notice.
- i. In 2013, I represented a whistleblower that reported that her former employer was defrauding the State of California with the help of bribes to public employees. The case, a false claims (*qui tam*) action, resulted in the arrest and criminal prosecution of State of California employees by the California Attorney General’s Office.
- j. In 2013, I was part of a team of attorneys that obtained conditional certification for over 2,000,000 class members in a federal labor law case for misclassification of independent contractors that did crowdsourced work on the Internet, *Otey v. CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the following pro-plaintiff reported decisions:

- 1) 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding that an unaccepted Rule 68 offer doesn’t moot plaintiff’s claims, and granting plaintiff’s motion to strike defendant’s affirmative defenses based on *Twombly/Iqbal*).
- 2) 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order granting conditional collective certification).
- 3) 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the magistrate judge’s discovery ruling which held that “evidence of other sources of income is irrelevant to the question of whether a

plaintiff is an employee within the meaning of the FLSA”).

4) 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting broad discovery because “an FLSA plaintiff is entitled to discovery from locations where he never worked if he can provide some evidence to indicate company-wide violations”).

j. From 2012 to 2013, I was part of a team of attorneys that obtained class certification for over 60,000 class members for off-the-clock claims, *Linares v. Securitas Security Services USA, Inc.*, Los Angeles Superior Court No. BC416555. We also successfully opposed subsequent appeals to the California Court of Appeal and California Supreme Court.

48. Benjamin H. Haber is a sixth-year Associate Attorney at Wilshire Law Firm, PLC. He was admitted to practice law in the State of California and the Central, Southern, Eastern, and Northern Districts of California. He graduated from the University of California, Los Angeles, with a Bachelor of Arts in Political Science, and received his Juris Doctor from the University of California, Hastings College of the Law in 2016. During law school, he was a member of the executive board for the Hastings Law Journal and a student mediator at the San Francisco Superior Court, Small Claims Division. Since graduating law school, he has focused his legal work primarily on wage and hour class action litigation. His current contingent billing rate for this case is \$650 per hour, which is consistent with his level of experience in the wage and hour arena.

49. Arrash T. Fattahi is a second-year Associate Attorney at Wilshire Law Firm, PLC. He was admitted to practice law in the State of California and the Central and Southern Districts of California in January 2021. Arrash graduated from the University of California, Los Angeles, with a Bachelor of Arts in Political Science, *summa cum laude*. He received his Juris Doctor from The George Washington University Law School. During law school, he was a Notes Editor for the *Federal Circuit Bar Journal*. Since January 2021, his practice has mainly been focused on wage and hour class action litigation. His current contingent billing rate for this case is \$450 per hour.

50. My current contingent billing rate of \$850.00 per hour is consistent with my practice

1 area, lead appellate experience in the Ninth Circuit Court of Appeals, numerous awards received,  
2 legal market and accepted hourly rates:

- 3 a. In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town  
4 Anymore,” *NATIONAL LAW JOURNAL*, the following hourly billing rates were  
5 reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense of  
6 wage-and-hour class actions that I opposed when litigating wage-and-hour class  
7 actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd  
8 Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435,  
9 8th Year - \$455. I am a 12th year attorney and Senior Partner, with most of my  
10 experience in class action litigation as a primary practice area. Having successfully  
11 briefed and argued a published appeal in the Ninth Circuit Court of Appeals  
12 involving CAFA and PAGA, having experience certifying large class actions  
13 (including *ABM Industries Overtime Cases*, which was decided on appeal), and  
14 having received numerous awards for my legal work, my hourly rate should be  
15 adjusted upward.
- 16 b. On May 6, 2022, the Hon. Jay A. Garcia-Gregory of the United States District Court  
17 in Puerto Rico approved my \$850 hourly rate when he granted final approval of the  
18 class action settlement in *Serrano v. Inmediata Corp.*, No. 3:19-cv-01811-JAG, Dkt.  
19 57 (U.S. Dist. Ct. P.R. May 6, 2022).
- 20 c. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court  
21 approved my \$800 hourly rate when he granted final approval of the class action  
22 settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, No. 30-2019-  
23 01066522-CU-OE-CXC.
- 24 d. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District  
25 Court granted final approval of the \$1,600,000 class action settlement in *Carlos*  
26 *Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-  
27 SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the  
28 Court approved my then \$750 hourly rate after finding it was “reasonable, given the

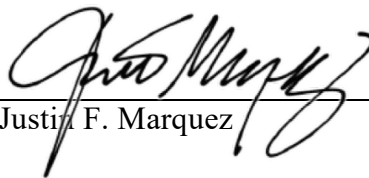
1 qualifications of the attorneys who worked on this matter.” (*Id.* at p. \*3.)

2 e. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior  
3 Court approved my \$750 hourly rate when he granted final approval of the class  
4 action settlement in *Faye Zhang v. Richemont North America, Inc.*, Case No.  
5 19STCV32396.

6 f. On December 13, 2018, the United States District Court granted final approval of  
7 the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services,*  
8 *LLC, supra*, 2018 WL 6616659 in which I served as lead counsel. In doing so, the  
9 Court approved my then \$600 hourly rate and found: “Class Counsel’s declarations  
10 show that the attorneys are experienced and successful litigators.” (*Id.* at p. \*10.)

11 I declare under penalty of perjury under the laws of the State of California and the United  
12 States that the foregoing is true and correct.

13 Executed August 23, 2022 at Los Angeles, California.

14  
15   
16 Justin F. Marquez

# Exhibit A

Justin F. Marquez (SBN 262417)  
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 Arrash T. Fattahi (SBN 333676)  
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*Attorneys for Defendants*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 FOR THE COUNTY OF LOS ANGELES**

CARMELA REYES, individually, and on  
 behalf of all others similarly situated

Plaintiff,

v.

EVERYTABLE, PBC; a Delaware  
 corporation; HARVEST FRESH FOODS,  
 PBC, an unknown entity, and DOES 1  
 through 10, inclusive,

Defendants.

Case No.: 21STCV35987

**CLASS ACTION**

[Assigned for all purposes to: Hon. David S.  
 Cunningham III]

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

Action Filed: September 30, 2021  
 Trial Date: None Set

1 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff CARMELA  
2 REYES (“Plaintiff”), on behalf of herself and all others similarly situated to her and as defined below,  
3 and EVERYTABLE, PBC and HARVEST FRESH FOODS, PBC. (collectively referred to as  
4 “Defendants”), as set forth below:

5 **I. The Conditional Nature of This Stipulation**

6 Defendants and Class Representative enter into this Joint Stipulation of Class Action and  
7 PAGA Settlement and Release (“Stipulation,” “Settlement,” or “Settlement Agreement”), including  
8 all associated exhibits or attachments, in compromise of disputed claims for the sole purpose of  
9 resolving the matter entitled *Reyes v. Everytable, PBC, et al.*, Los Angeles County Superior Court,  
10 Case No. 21STCV35987 (“Action” or “Litigation”). The Settlement is subject to approval by the  
11 Court. In the event that the Court does not execute and file the Final Approval Order and Judgment,  
12 or in the event that the associated Judgment does not become final for any reason, this Stipulation  
13 will be deemed null and void, it will be of no force or effect whatsoever, it will not be referred to or  
14 used for any purpose whatsoever, and the negotiation, terms and entry of it shall remain subject to  
15 the provisions of California Evidence Code §§ 1119 and 1152.

16 Defendants deny all of the claims and allegations asserted in the Litigation (as defined herein).  
17 Defendants have agreed to resolve this Litigation via this Stipulation, but to the extent this Stipulation  
18 is deemed void or does not take effect, Defendants do not waive, but rather expressly reserve, all  
19 rights to challenge all such claims and allegations in the Litigation upon all procedural and factual  
20 grounds, including without limitation the ability to challenge suitability for class treatment or  
21 representative adjudication on any grounds or to assert any and all defenses or privileges. The Class  
22 Representative and her counsel agree that Defendants retain and reserve these rights. In particular,  
23 the Class Representative and her counsel waive and agree not to argue or to present any argument  
24 that Defendants would be estopped from contesting class certification because they have entered into  
25 this Stipulation.

26 **II. The Parties to this Stipulation**

27 This Stipulation (with the associated exhibits) is made and entered into by and among Plaintiff  
28

(on behalf of herself and each of the members of the Class) and Defendants (Plaintiff and Defendants shall be referred to collectively as “Parties”). This Stipulation is intended by the Parties to result in a Judgment and to fully, finally, and forever resolve, discharge and settle the Released Claims (defined below) upon and subject to the terms and conditions thereof.

### **III. Procedural Posture**

On September 30, 2021, Plaintiff filed a class action complaint against Defendants Everytable, PBC and Harvest Fresh Food, PBC, pleading causes of action for 1) Failure to Pay Minimum and Straight Time Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197); 2) Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194 and 1198); 3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512); 4) Failure to Authorize and Permit Rest Periods (Cal. Lab. Code §§ 226.7); 5) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203); 6) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226); 7) Failure to Indemnify Employees for Expenditures (Cal. Lab. Code § 2802); and 8) Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*).

As part of the motion for preliminary approval, Plaintiff will request the Court deem filed an amended complaint adding in an additional cause of action for representative claims under PAGA.

On March 23, 2022, the Parties participated in mediation before esteemed mediator Lisa Klerman, which concluded in a resolution through a mediator’s proposal accepted by both Parties.

### **IV. Defendants’ Denial of Wrongdoing or Liability**

Defendants deny all of the claims and contentions alleged by the Plaintiff in the Litigation, and has asserted multiple defenses to liability, class certification, and damages. Defendants do not, by this Settlement Agreement or otherwise, admit any liability of wrongdoing of any kind. Nonetheless, Defendants have taken into account the uncertainty and risks inherent in any litigation, particularly class action litigation, and concluded that to continue the Litigation would be protracted and expensive and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation.

The Parties understand and acknowledge that this Settlement Agreement constitutes a

1 compromise and settlement of disputed claims. No action taken by the Parties whether previously or  
2 in connection with the negotiations or proceedings connected with the Settlement or this Agreement  
3 shall be deemed or construed to be an admission of the truth or falsity of any allegations, claims, or  
4 defenses heretofore made, or an acknowledgment or admission by any party of any fact, fault,  
5 liability, or wrongdoing of any kind whatsoever.

6 Neither the Settlement, nor any act performed or document executed pursuant to or in  
7 furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or  
8 evidence of, the validity of any claim made by the Plaintiff or Class Members, or of any wrongdoing  
9 or liability of the Released Parties (as defined below); or (b) is or may be deemed to be, or may be  
10 used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the  
11 Litigation or in any proceeding in any court, administrative agency or other tribunal; or construed as  
12 an admission by Plaintiff regarding the validity of any allegation or claim asserted in this Action or  
13 that Plaintiff has waived any allegation or claim asserted in the Action.

14 In addition to any other defenses Defendants may have at law, in equity, or otherwise, to the  
15 extent permitted by law, this Settlement Agreement may be pleaded as a full and complete defense  
16 to, and may be used as the basis for an injunction against, any action, suit or other proceeding that  
17 may be instituted, prosecuted or attempted in breach of this Settlement Agreement or the releases  
18 contained herein.

19 In light of the above, Defendants have determined that it is desirable and beneficial to it that  
20 the Litigation be settled in the manner and upon the terms and conditions set forth in this Stipulation.

21 **V. Claims of the Class Representative and Benefits of Settlement**

22 The Class Representative believes that the claims asserted in the Litigation have merit. The  
23 Class Representative and Class Counsel recognize and acknowledge, however, the expense and time  
24 associated with continued litigation against Defendants through class certification, trial, and/or  
25 appeals. The Class Representative and Class Counsel have also taken into account the uncertain  
26 outcome and risks of any litigation, and in particular putative class actions such as this Litigation, as  
27 well as the difficulties and delays inherent in such litigation. The Class Representative and Class

Counsel are also mindful of the inherent problems of proof in establishing and overcoming potential defenses to the claims asserted in the Litigation. In light of these considerations, the Class Representative and Class Counsel believe that the Settlement set forth in the Stipulation confers substantial benefits and is in the best interests of the Class.

**VI. Terms of Stipulation and Agreement of Settlement**

**1. Definitions**

As used in all parts of this Stipulation (including the exhibits which are incorporated as part of the Stipulation), the following terms have the meanings specified below:

1.1 “Settlement Class” or “Class Members” means any and all persons who worked for Defendants in California as an hourly paid or non-exempt employee during the time period of April 5, 2017 through May 22, 2022.

1.2 “Class Counsel” means Justin Marquez, Benjamin Haber, and Arrash Fattahi of the Wilshire Law Firm, PLC, 3055 Wilshire Blvd., 12<sup>th</sup> Floor, Los Angeles, CA 90010.

1.3 “Class Period” means the time period from April 5, 2017 through May 22, 2022.

1.4 “Class Workweeks” means the following: the number of Workweeks Participating Class Members worked for Defendants during the Class Period.

1.5 “Court” means the Superior Court of the State of California, for the County of Los Angeles.

1.6 “Effective Date” means: (a) in the event that the Settlement has received final approval by the Court and there were no timely objections filed, or that any timely objections have been withdrawn, then the date the Court’s order of final approval of the Settlement; (b) in the event that one or more timely objections has/have been filed and not withdrawn, then upon the passage of the applicable date for an objector to seek appellate review of the trial court’s order of final approval of the Settlement, without a timely appeal having been filed; or (c) in the event that a timely appeal of the Court’s order of final approval has been filed, then the Settlement shall be final when the applicable appellate court has rendered a final decision or opinion affirming the trial court’s final approval without material modification, and the applicable date for seeking further appellate review

1 has passed, or the date that any such appeal has been either dismissed or withdrawn by the appellant.

2 1.7 “Employer Taxes” means Defendants’ share of payroll taxes (e.g. UI, ETT, Social  
3 Security, and Medicare taxes) with respect to the wages portion of Individual Settlement Amounts,  
4 which will be paid by Defendants separately and in addition to the Maximum Settlement Amount.

5 1.8 “Skip Tracing” means the utilization of Accurint or Experian, after the Reasonable  
6 Address Verification, to review the accuracy of and, if possible, to update a mailing address for a  
7 Class Member in the event that his or her Class Notice is returned to the Settlement Administrator as  
8 undeliverable without a forwarding address.

9 1.9 “Maximum Settlement Amount” is the amount of Seven Hundred Forty-Two  
10 Thousand Dollars and Zero Cents (\$742,000.00), which is the maximum amount to be paid by  
11 Defendants pursuant to the Settlement Agreement, which will include: Attorneys’ Fees and Costs,  
12 Settlement Administration Costs, Service Payment, PAGA Penalties, and the Net Settlement Amount.

13 1.10 “Individual Class Settlement Amount” means an individual Participating Class  
14 Member’s share of the Net Settlement Amount, which will be allocated as 25% wages and 75%  
15 interest and penalties.

16 1.11 “Individual Class Settlement Payment” means the net payment of a Participating Class  
17 Member’s Individual Settlement Amount, after reduction for the applicable taxes.

18 1.12 “Individual Class Workweeks” means the following: the number of workweeks that  
19 the Class Member worked for Defendants during the Class Period.

20 1.13 “Individual PAGA Settlement Payment” means the net payment of a PAGA  
21 Employee’s share of the \$2,500 (25% of the \$10,000 to be paid in settlement of the PAGA claims in  
22 the Litigation), which will be allocated as 100% penalties.

23 1.14 “Individual PAGA Workweeks” means the following: the number of Workweeks  
24 PAGA Employees worked for Defendants during the PAGA Period.

25 1.15 “Last Known Address” means the most recently recorded mailing address for a Class  
26 Member, as such information is contained in employment, payroll, or personnel records maintained  
27 by Defendants.

1.16 “Net Settlement Amount” means the Maximum Settlement Amount, less the amount that will be available for payment to all Participating Class Members (subject to the occurrence of the Effective Date), and is calculated by subtracting all of the following from the Maximum Settlement Amount: (1) attorneys’ fees in the amount of up to \$247,333.33 and reimbursement of litigation costs and expenses in the amount of up to \$20,000.00 to Class Counsel (“Attorneys’ Fees and Costs”); (2) service award to Plaintiff of \$10,000; (3) fees and expenses of administration of the Settlement to the Settlement Administrator in an amount not to exceed \$10,000 (“Settlement Administration Costs”); and (4) the \$10,000 in PAGA Penalties. The Net Settlement Amount is currently estimated to be approximately \$439,666.67, and this figure may change depending on the actual amounts awarded by the Court for the Settlement Administration Costs, Attorneys’ Fees and Costs, and Service Payment, and approved by the Court for PAGA Penalties.

1.17 “Notice of Class Action Settlement” or “Class Notice(s)” means a notice titled “Notice of Class Action Settlement” to be approved by the Court, substantially in the form attached hereto as **Exhibit 1.** The Notice of Class Action Settlement will constitute the class notice pursuant to California Rule of Court, Rule 3.769(f).

1.18 “Opt Out” means a Class Member’s act of excluding him or herself from the Settlement, by way of submitting a timely and valid Request for Exclusion to the Settlement Administrator, in conformity with the requirements set forth herein and in the Class Notice. PAGA Employees will release their Released PAGA Claims and receive an Individual PAGA Settlement Payment regardless of whether they request exclusion from the Settlement.

1.19 “Final Approval Order and Judgment” means the judgment and order to be entered by the Court, substantially in the form that the Parties mutually agree to and lodge with the Court, which will be a judgment for purposes of California Rule of Court, Rule 3.771(a) (“Judgment”) and constitute approval pursuant to California Rule of Court, Rule 3.769(a). The Final Approval Order and Judgment will be posted on the Settlement Administrator’s website for a period of sixty (60) calendar days in compliance with California Rule of Court, Rule 3.771(b).

1.20 “PAGA Employees” means all Class Members who worked for Defendants at any

time from April 5, 2020 through May 22, 2022.

1.21 “PAGA Penalties” means the penalties pursuant to California Labor Code §§ 2698, *et seq.*, the Private Attorneys General Act of 2004 (“PAGA”) in the amount of \$10,000 to be paid in settlement of the PAGA claims in the Litigation. PAGA Penalties are to be approved by the Court pursuant to California Labor Code § 2699 and are to be distributed as follows: seventy-five percent (75%) to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%) that will be distributed to PAGA Employees.

1.22 “PAGA Period” means the time period from April 5, 2020 through May 22, 2022.

1.23 “PAGA Workweeks” means the following: the number of Workweeks PAGA Employees worked for Defendants during the PAGA Period.

1.24 “Participating Class Members” or “Settlement Class” means all Class Members who do not Opt Out pursuant to Paragraph 3.3.4 and, thus, become bound by the Judgment.

1.25 “Person” means a natural person, corporation, company, partnership, firm, association, or society.

1.26 “Preliminary Approval Date” means the date on which the Court grants preliminary approval of the Settlement.

1.27 “Preliminary Approval Order” means an order to be executed and filed by the Court, substantially in the form that the Parties mutually agree to and lodge with the Court, which will constitute an order certifying a provisional class for settlement purposes only pursuant to California Rule of Court, Rule 3.769(d) and an order setting a Final Approval Hearing pursuant to California Rule of Court, Rule 3.769(e).

1.28 “Reasonable Address Verification” means the 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.

1.29 “Released Class Claims” means all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims, against the Released Parties (as defined below),

1 and any of them, for relief and penalties, that accrued during the Class Period, and as a result of Class  
2 Members' employment by Defendants in California, that arise under any state or local law or state  
3 administrative order that was or could have been pled based on the facts alleged in the Operative  
4 Complaint, including claims of failure to pay for all hours worked (including minimum, straight time,  
5 and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods,  
6 failure to timely pay final wages at termination, failure to furnish accurate itemized wage statements,  
7 failure to indemnify employees for expenditures, and all damages, interest, penalties, attorneys' fees,  
8 costs, and other amounts recoverable under said causes of action under California law, to the extent  
9 permissible, including, but not limited to, the California Labor Code and the applicable Wage Orders,  
10 including, without limitation, all related claims for restitution and other equitable relief arising from  
11 California Business and Professions Code §§ 17200, *et seq.*, interest on unpaid wages, unpaid wages,  
12 attorneys' fees or litigation costs, and any other related claims and/or penalties. The release does not  
13 extend to any claims not alleged in the Operative Class Action Complaint and specifically excludes  
14 claims for workers' compensation, personal injuries, unemployment insurance, state disability  
15 compensation, claims under the Employment Retirement Income Security Act of 1974, previously  
16 vested benefits under any employer sponsored benefits plan, wrongful termination, discrimination,  
17 retaliation, and harassment including, but not limited to, those arising under the Age Discrimination  
18 In Employment Act, the California Fair Employment and Housing Act, Title VII of the Federal Civil  
19 Rights Act of 1964, and/or Federal Civil Rights Act of 1991, or any similar state or federal laws, the  
20 California Family Rights Act, the Federal Family Medical Leave Act, the California Pregnancy Leave  
21 Law, or similar state or federal laws, the Federal Equal Pay Act of 1963, violations of the Americans  
22 with Disabilities Act of 1990 or violations of any other state or federal law, rule or regulation  
23 concerning discrimination, retaliation and/or harassment. This release does not include any of the  
24 claims encompassed within the Released PAGA Claims (as defined below).

25 1.30 "Released PAGA Claims" means all claims, demands, rights, liabilities and causes of  
26 action of every nature and description whatsoever including, without limitation, statutory,  
27 constitutional, contractual or common law claims, against the Released Parties (as defined below),  
28

1 and any of them, for civil penalties pursuant to PAGA, that accrued during the PAGA Period, and as  
2 a result of PAGA Employees' employment by Defendants in California, that arise under any state or  
3 local law or state administrative order that was or could have been pled based on the facts alleged in  
4 the Operative Complaint and the Plaintiff's notice to the LWDA, including claims of failure to pay  
5 for all hours worked (including minimum, straight time, and overtime wages), failure to provide meal  
6 periods, failure to authorize and permit rest periods, failure to timely pay final wages at termination,  
7 failure to furnish accurate itemized wage statements, and failure to indemnify employees for  
8 expenditures.

9 1.31 "Released Parties" means Defendants Everytable, PBC and Harvest Fresh Foods, PBC  
10 and each of their parent companies, subsidiaries, affiliates, current and former management  
11 companies, shareholders, members, agents (including any investment bankers, accountants, insurers,  
12 reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors,  
13 successors, and assigns.

14 1.32 "Response Deadline" means the date that is sixty (60) calendar days after the date on  
15 which the Settlement Administrator initially mails the Class Notice to the Class Members, which will  
16 be the deadline for a Class Member to Opt Out, dispute the number of Workweeks credited to him or  
17 her, and/or object to the Settlement, and which will be indicated on the Class Notice that is mailed to  
18 the Class Members.

19 1.33 "Request for Exclusion" means a written request to be excluded from the Settlement,  
20 which must be made in writing submitted to the Settlement Administrator by mail, postmarked on or  
21 before the Response Deadline, and which must contain the case name (*Reyes v. Everytable, PBC, et*  
22 *al.*, Los Angeles County Superior Court, Case No. 21STCV35987), as well as the Class Member's  
23 full name, address, telephone number, last four (4) digits of his or her Social Security number, and  
24 signature, and a clear statement indicating that he or she seeks to exclude him or herself from the  
25 Settlement.

26 1.34 "Settlement Administrator" means the third-party settlement administration firm,  
27 Simpluris.

1.35 “Final Approval Hearing” means a hearing set by the Court for the purpose of determining the fairness, adequacy and reasonableness of the Settlement pursuant to class action procedures and requirements and entering Judgment, and required under California Rule of Court, Rule 3.769(a).

1.36 “Unknown Claims” means any Released Claims which the Class Representative does not know or suspect to exist in her favor at the time of the entry of the Judgment, and which if known might have affected the settlement with and release of Defendants.

1.37 “Updated Address” means a mailing address that was updated via a Reasonable Address Verification, via an updated mailing address provided by the United States Postal Service or a Class Member, via Skip Tracing, or via a Locator Service.

1.38 “Workweeks” means the numbers of workweeks worked by the Class Members for Defendants during the Class Period.

**2. Settlement Amount, Timing of Payments, Tax Reporting Obligations, and Other Obligations of Defendants and the Settlement Administrator**

2.1 Defendants will fund the total Maximum Settlement Amount, along with the Employer Taxes (which will be paid by Defendants separately and in addition to the Maximum Settlement Amount). The Maximum Settlement Amount will be paid as follows: Defendants shall deposit the required maximum payout of \$742,000 with the Settlement Administrator in one installment no later than forty-five (45) days after the Effective Date. If the Court’s approval of this settlement is overturned on appeal, all settlement funds deposited by Defendants with the Settlement Administrator to date shall be refunded to Defendants within fourteen (14) days of the Court’s order declining to approve the settlement, and Defendants shall be excused from making any further settlement payment installments.

2.2 The Settlement Administrator will administer the Settlement and perform any function related to settlement administration at the agreed-upon instruction of both Class Counsel and Defendants, including, and not limited to, establishing and maintaining a settlement website and toll-free telephone line for Class Members to call with inquiries regarding the Settlement, distributing the

1 Class Notice, performing skip traces with respect to Class Notices that are returned as undeliverable  
2 and without a forwarding address on or before the Response Deadline, receiving and processing  
3 Requests for Exclusion and objections to the Settlement, adjudicating Class Members' disputes  
4 regarding Workweeks, providing Class Counsel and counsel for Defendants with weekly updates on  
5 the status of the settlement administration process (including the names and percentages of Class  
6 Members who Opt Out or object), calculating and handling inquiries regarding the calculation of the  
7 Individual Settlement Amounts, preparing a declaration to submit to the Court that details the  
8 settlement notice administration process and identifies each Class Member who Opts Out, and  
9 distributing the Maximum Settlement Amount. The actions of the Settlement Administrator will be  
10 governed by the terms of this Stipulation. The Parties, through their counsel, may provide written  
11 information needed by the Settlement Administrator pursuant to the Stipulation.

12       2.3     The Parties agree to cooperate in good faith and to coordinate with each other and the  
13 Settlement Administrator to carry out the terms of the Settlement, including, without limitation, by  
14 providing reasonably available information regarding Class Members.

15       2.4     Defendants, through the Settlement Administrator, will distribute payments as  
16 follows:

17               (a) Class Representative Enhancement Payment: Subject to Court approval, the  
18 Plaintiff shall receive a service award of \$10,000. Defendants agree not to oppose the amount of the  
19 Plaintiff's service award. Since it is the intent of the Parties that the service award to the Plaintiff is  
20 for her service to the Class Members, and not wages, the Settlement Administrator will not withhold  
21 any taxes from the service award. The Settlement Administrator will report the service award on a  
22 Form 1099, which it will provide to the Plaintiff and to the pertinent taxing authorities.

23               (b) Attorneys' Fees and Litigation Costs: Class Counsel shall submit their Application  
24 for Award of Attorneys' Fees and Costs to the Court before the Final Approval Hearing. Class  
25 Counsel will seek attorneys' fees and costs in the amount of \$247,333.33, and actual costs up to  
26 \$20,000, subject to court approval. Class Counsel shall serve Defendants with copies of all  
27 documents in support of their Application for Award of Attorneys' Fees and Costs. Defendants agree

1 not to oppose the Application for Award of Attorneys' Fees and Costs. The Settlement Administrator  
2 will report the attorneys' fees and costs award on a Form 1099, which it will provide to Class Counsel  
3 and to the pertinent taxing authorities.

4 (c) Claims Administration Costs: Subject to Court approval, the Settlement  
5 Administrator shall be paid an amount which is expected to not exceed \$10,000.00 for all fees and  
6 costs relating to the administration of this settlement, all tax document preparation, custodial fees and  
7 accounting fees, all costs and fees associated with preparing, issuing, and mailing any and all Class  
8 Notices, all costs and fees associated with computing, reviewing, and paying distributions from the  
9 Maximum Settlement Amount, all costs and fees associated with preparing any tax returns and any  
10 other filings required by any governmental taxing authority or agency, all costs and fees associated  
11 with preparing any other notices, reports, or filings to be prepared in the course of administering  
12 disbursements from the Maximum Settlement Amount, and any other costs and fees incurred and/or  
13 charged by the Settlement Administrator in connection with the execution of its duties under this  
14 Stipulation.

15 2.5 No later than sixty (60) calendar days after the Effective Date and fifteen (15) calendar  
16 days after the payment of funds to the Settlement Administrator, Defendants, through the Settlement  
17 Administrator, and according to the terms, conditions and procedures set forth in Paragraph 2.6 of  
18 this Stipulation, shall pay to each Participating Class Member and PAGA Employee their Individual  
19 Class Settlement Amount and Individual PAGA Settlement Payment, respectively. Each of the  
20 payments to Participating Class Members will be inclusive of interest and penalties, including wage  
21 statement penalties, and will be allocated as follows: 25% to satisfaction of claims for unpaid wages;  
22 75% to the satisfaction of claims for interest and penalties. All settlement payments for wages shall  
23 be subject to required withholdings and deductions as W-2 wage payments. With regard to payments  
24 in settlement of claims for penalties and interest, these payments shall be issued through a 1099 form  
25 and not subject to withholdings or deductions. The payments to PAGA Employees are allocated as  
26 100% penalties and shall also be issued through a 1099 form and not subject to withholdings or  
27 deductions.

1           2.6       The Settlement Administrator shall compute the Individual Class Settlement Amount  
2 and Individual PAGA Settlement Payment for the Participating Class Members as follows:

3                   (a)       The payment of the Individual PAGA Settlement Payments will be calculated  
4 as follows: \$2,500 will be allocated to PAGA Employees as follows: each PAGA Employees' portion  
5 will be determined by dividing each PAGA Employees Individual PAGA Workweeks, by the total  
6 amount of PAGA Workweeks, and then multiplying the result by \$2,500.

7                   (b)       The payment of the Individual Class Settlement Payments will be calculated  
8 as follows: For each Participating Class Member, the Participating Class Members Individual Class  
9 Workweeks will be divided by the total number of Participating Class Member Workweeks. The  
10 resulting number will then be multiplied by the Net Settlement Amount.

11                   (c)       The Parties agree that the above-described formulas and distribution methods  
12 are reasonable and fair in light of the Parties' investigation of the claims of the Class, and the relative  
13 degree of uncertainty, risk of outcome of further litigation, and difficulties and delays inherent in such  
14 litigation of these claims.

15           2.7       Defendants, through the Settlement Administrator, will report each payment made  
16 on the Maximum Settlement Amount to government authorities including the Internal Revenue  
17 Service as required by law, and it shall make all required deductions and/or withholdings.  
18 Defendants, through the Settlement Administrator, shall report payments for penalties and interest  
19 to the Internal Revenue Service (and other relevant governmental agencies) as non-wage income in  
20 the year of payment on a Form 1099, or similar form issued to the Participating Class Members and  
21 PAGA Employees in question.

22           2.8       To the extent that there are excess funds from uncashed checks for Class Members  
23 and PAGA Employees who cannot be located, the Parties agree that such funds shall be submitted to  
24 Legal Aid at Work, 180 days after the checks have been mailed to the Class Members and PAGA  
25 Employees.

26                   **3. Procedure for Approval and Implementation of Settlement**

27           **3.1 Preliminary Approval**

1           3.1.1 The Class Representative, through her counsel of record, will file an  
2 unopposed motion for preliminary approval of Settlement, seeking an order approving the Settlement  
3 pursuant to the California Rule of Court, Rule 3.769(e), and this Stipulation will be filed with the  
4 Court contemporaneously and/or as part of the motion. By way of the motion, the Class  
5 Representative will request that the Court enter a Preliminary Approval Order, approving the  
6 distribution of the Class Notice and scheduling the Final Approval Hearing (pursuant to California  
7 Rule of Court, Rule 3.769(e)) for the purposes of determining whether to grant final approval of the  
8 Settlement and enter Judgment in conformity with California Rule of Court, Rule 3.769(h).

9           3.1.2 The Settlement will be void if the Court categorically refuses to enter the  
10 Preliminary Approval Order in its entirety or in a substantially similar form; however, the Parties are  
11 to take all reasonable steps to cure any non-material issues so as to avoid the Settlement being void.  
12

### 13           **3.2 Notice to Class Members**

14           3.2.1 No later than thirty (30) calendar days after the Preliminary Approval Date,  
15 the Settlement Administrator will mail the Court-approved Class Notice to all Class Members. The  
16 Class Notice will be mailed via first class mail through the United States Postal Service. The envelope  
17 containing the Class Notice will bear the following phrase in bold type, ¼ inch below the return  
18 address or ¼ inch above the addressee's address: RETURN SERVICE REQUESTED. The envelope  
19 will also bear the following phrase in the bottom left-hand corner: IMPORTANT – EVERYTABLE,  
20 PBC CLASS ACTION SETTLEMENT INFORMATION. PLEASE OPEN IMMEDIATELY. The  
21 Class Notice and its envelope or covering will be marked to denote the return address of the  
22 Settlement Administrator as set forth in the Class Notice.

23           3.2.2 Defendants will prepare a list, in an electronically usable format for the  
24 Settlement Administrator, containing for each Class Member, to the extent Defendants has such  
25 information, the following: the full name, Last Known Address, social security number, dates of  
26 employment, and weeks of work as a non-exempt or hourly-paid employee of Defendants during the  
27 Class Period ("Class List"). By granting preliminary approval of the Settlement, the Court will be  
28

1 deemed to have authorized Defendants to provide the Settlement Administrator with the Class List.  
2 Defendants will provide the Class List to the Settlement Administrator and Class Counsel within  
3 twenty (20) calendar days following the Preliminary Approval Date.

4 3.2.3 For Class Members who were employees of Defendants as of the Preliminary  
5 Approval Date, the Settlement Administrator will mail the Class Notice to the Last Known Address  
6 provided by Defendants. No Reasonable Address Verification will be conducted for Class Members  
7 who were employed by Defendants as of the Preliminary Approval Date.

8 3.2.4 For Class Members who were not employed by Defendants as of the  
9 Preliminary Approval Date prior to mailing the Class Notice, the Settlement Administrator will  
10 undertake a Reasonable Address Verification to ascertain the accuracy of the Last Known Address of  
11 the Class Member. To the extent this process yields an Updated Address, that Updated Address will  
12 be treated as the Last Known Address for purposes of this Stipulation and for Class Notice mailing.

13 3.2.5 If a Class Member is known to be deceased, the Class Notice for that deceased  
14 Class Member will be mailed to the Last Known Address (or Updated Address, if applicable) of the  
15 legal representative of the deceased Class Member's estate, to the extent known; otherwise, it will be  
16 mailed to the Last Known Address (or Updated Address, if applicable) of the deceased Class Member.

17 3.2.6 Unless the Settlement Administrator receives a Class Notice returned from the  
18 United States Postal Service for reasons discussed below in this paragraph, on or before the Response  
19 Deadline, that Class Notice will be deemed to have been mailed and received by the Class Member  
20 to whom it was sent five (5) calendar days after the mailing. In the event that subsequent to the first  
21 mailing of a Class Notice and on or before the Response Deadline, the Class Notice is returned to the  
22 Settlement Administrator by the United States Postal Service without a forwarding address, the  
23 Settlement Administrator will undertake a Skip Tracing on the Class Member to attempt to ascertain  
24 the current address of the Class Member, and if such an address is ascertained, the Settlement  
25 Administrator will undertake a single re-mailing of the Class Notice to any Updated Address that is  
26 located for the Class Member, within three (3) business days of receipt of the returned Class Notice,  
27 and the Class Notice will be deemed mailed and received at that point. In the event that subsequent  
28

1 to the initial mailing of a Class Notice and on or before the Response Deadline, the Class Notice is  
2 returned to the Settlement Administrator by the United States Postal Service with a forwarding  
3 address for the Class Member, the forwarding address will be deemed the Updated Address for the  
4 Class Member, the Settlement Administrator will undertake a single re-mailing of the Class Notice  
5 to the Updated Address within three (3) business days of receipt of the returned Class Notice, and the  
6 Class Notice will be deemed mailed and received at that point. The Settlement Administrator will  
7 include a cover letter with any re-mailing to inform the Class Member that the Class Notice was re-  
8 mailed and that he or she has the later of the Response Deadline or ten (10) calendar days from the  
9 date on which the Class Notice was re-mailed (which shall be the date the re-mailing of the Class  
10 Notice is postmarked) to Opt Out, object to the Settlement, and/or dispute the number of Workweeks  
11 credited to him or her. Compliance with the procedures described in this paragraph will constitute  
12 due and sufficient notice to Class Members of this Settlement and of the Final Approval Hearing, and  
13 will satisfy the requirements of due process. Nothing else will be required of or done by the Parties,  
14 Class Counsel, counsel for Defendants, or the Settlement Administrator to provide notice of the  
15 Settlement and the Final Approval Hearing.

16 3.2.7 No later than seven (7) calendar days after the Response Deadline, the  
17 Settlement Administrator will provide Class Counsel and counsel for Defendants with a declaration  
18 attesting to completion of the notice process, including any attempts to obtain Updated Addresses for,  
19 and the re-sending of, any returned Class Notices, to be filed with the Court by Class Counsel.

### 20 **3.3 Responses to the Notice of Class Action Settlement**

21 3.3.1 Disputing Workweeks: If a Class Member disagrees with the number of  
22 Workweeks credited to him or her as set forth in his or her Class Notice, he or she must complete the  
23 Class Workweek Dispute Form ("Dispute Form"), attached hereto as "**Exhibit 2**". The disputing  
24 Class Member must follow the directions in the Dispute Form, including preparing a statement setting  
25 forth the number of workweeks that such person believes in good faith is correct, and stating that the  
26 Class Member authorizes the Settlement Administrator to review the Class Member's personnel file  
27 and management records to determine such information, and attaching any relevant documentation

1 in support thereof. Documentary evidence and paystubs are helpful to substantiate such person's  
2 dispute claim, but are not required. The Dispute Form must be submitted to the Settlement  
3 Administrator by mail, postmarked on or before the Response Deadline. The Settlement  
4 Administrator will review the Dispute Form and any supporting documentation and make a  
5 determination based as to the validity of the Class Member's claim. Upon timely receipt of any such  
6 challenge, the Settlement Administrator, in consultation with Class Counsel and counsel for  
7 Defendants, will review the pertinent payroll records showing the dates the Class Member was  
8 employed and the pertinent leave(s) taken, which records Defendants agree to make available to the  
9 Settlement Administrator and Class Counsel. After consulting with Class Counsel and counsel for  
10 Defendants, the Settlement Administrator shall compute the number of workweeks to be used in  
11 computing the Class Member's pro rata share of the Net Settlement Amount. In the event there is a  
12 disparity between the dates a Class Member claims he or she worked during the Class Period and the  
13 dates indicated by Defendants' records, Defendants' records will control unless inconsistent with  
14 paycheck stub(s) (or bona fide copies thereof) provided by the Class Member, in which case the  
15 paycheck stub(s) will control. The Parties shall file with the Court all disputes submitted, and the  
16 resolution of those disputes. The Court shall have the right to review any decision made by the  
17 Settlement Administrator regarding a claim dispute.

18               3.3.2 Entry of Appearance at Class Members' Own Expense: Pursuant to California  
19 Rule of Court, Rule 3.766(d)(5), any Class Member who does not Opt Out may, if the Class Member  
20 so desires, enter an appearance through counsel at his or her own expense, and will be advised of this  
21 by way of the Class Notice. Class Members who choose to enter such an appearance are responsible  
22 for any attorneys' fees or costs incurred as a result thereof.

23               3.3.3 Objections to Settlement: Class Members who do not Opt Out may object to  
24 the Settlement by submitting a written objection to the Settlement Administrator, postmarked no later  
25 than the Response Deadline. A written objection to the Settlement must be signed by the Class  
26 Member and dated, and additionally state the Class Member's name, last four (4) digits of his or her  
27 Social Security number, dates of employment as a non-exempt or hourly-paid employee of

Defendants in California, the case name and number of the Action (*Reyes v. Everytable, PBC, et al.*, Los Angeles County Superior Court, Case No. 21STCV35987), all legal and factual bases for objection to the Settlement, whether the Class Member intends to appear at the Final Approval Hearing, and whether the Class Member is represented by legal counsel (and if so, identifying the legal counsel and providing said legal counsel's mailing address). Alternatively, Class Members may choose to voice their objections at the Final Approval Hearing. A Class Member who objects to the Settlement will still be considered a Participating Class Member who is subject to the Settlement.

**3.3.4 Opting Out of Settlement:** Class Members may elect to Opt Out of the Settlement and, thus, exclude themselves from the Settlement. Class Members who wish to exercise this option must submit a timely and valid Request for Exclusion to the Settlement Administrator. The written request for exclusion must: (a) state the Class Member's name, address, telephone number, and the last four digits of the Class Member's social security number or employee identification number; (b) state the Class Member's intention to exclude themselves from or Opt Out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than the Response Deadline, in accordance with Paragraph 3.2.6. If a valid Request for Exclusion is not received by the Settlement Administrator from a Class Member on or before the Response Deadline, then that Class Member will be deemed to have forever waived his or her right to Opt Out. The Class Notice will advise Class Members of their option to Opt Out and will contain instructions on how to do so. Class Members who do not Opt Out by submitting valid and timely Requests for Exclusion will be deemed to be Participating Class Members, will be bound by the Settlement and the Judgment entered based thereon. Class Members who Opt Out by submitting valid and timely Requests for Exclusion will not be bound by the Settlement, will not be entitled to any benefits thereunder, or to make any objection to the Settlement. PAGA Employees will release their Released PAGA Claims and receive an Individual PAGA Settlement Payment regardless of whether they request exclusion from the Settlement.

**3.3.5** If a Class Member submits both a Request for Exclusion and an objection to

1 the Settlement, the Request for Exclusion will be accepted and the objection will be disregarded.

2 3.3.6 The Parties agree that the Response Deadline will not be extended, and no  
3 untimely submissions will be honored, under any circumstances, unless mutually agreeable by the  
4 Parties and/or except to the extent permitted under Paragraph 3.2.6.

5 **3.4 Final Approval Hearing.**

6 3.4.1 After the Response Deadline, a Final Approval Hearing will be held before the  
7 Court in order to: (1) determine whether the Court should grant final approval of the Settlement; (2)  
8 consider objections to the Settlement; and (3) consider Class Representative's application for an  
9 award of Attorneys' Fees and Costs to Class Counsel and the Service Payment to the Class  
10 Representative. At the Final Approval Hearing, the Parties will request that the Court grant final  
11 approval of the Settlement and enter the Final Approval Order and Judgment. The Parties will take  
12 all reasonable efforts to secure entry of the Final Approval Order and Judgment. If the Court rejects  
13 the Stipulation, fails to enter the Final Approval Order and Judgment, this Stipulation will be void,  
14 and Defendants will have no obligation to make any payments under the Settlement, other than the  
15 Settlement Administration Costs; however, the Parties and their counsel agree to make all reasonable  
16 efforts to fix any issues that the Court cites for its non-approval as set forth in Paragraph 3.1.2.

17 **3.5 Releases**

18 3.5.1 Release by Participating Class Members. Upon the Effective Date, each of the  
19 Participating Class Members (including the Class Representative) will be deemed to have, and by  
20 operation of the Judgment will have fully, finally, and forever released, relinquished and discharged  
21 Defendants and the Released Parties from any and all Released Class Claims.

22 3.5.2 Release by PAGA Employees. Upon the Effective Date, each of the PAGA  
23 Employees will be deemed to have, and by operation of the Judgment will have fully, finally, and  
24 forever released, relinquished and discharged Defendants and the Released Parties from any and all  
25 Released PAGA Claims.

26 3.5.3 Class Representative's General Release of Claims

27 i. In addition to those releases set forth in Paragraph 3.5.1 hereof, with  
28

1 respect to any and all Released Class Claims, upon the Effective Date, the Class Representative will  
2 expressly and will be deemed to have, and by operation of the Judgment will have, waived the  
3 provisions, rights and benefits of California Civil Code § 1542 with respect to the Released Claims,  
4 which provides as follows:

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

10 ii. In consideration for the Service Payment and as an inducement for  
11 Defendants to enter into this Stipulation, with respect to the Class Representative only, the Released  
12 Claims will additionally include any and all claims including Unknown Claims against Defendants  
13 that accrued during the Class Period, but does not include claims for: age discrimination under the  
14 Age Discrimination In Employment Act, unemployment insurance, workers' compensation benefits,  
15 state disability compensation, previously vested benefits under any Employer-sponsored benefits plan  
16 or claims under the Employment Retirement Income Security Act of 1974.

17 iii. The Class Representative may hereafter discover facts in addition to or  
18 different from those which she now knows or believes to be true with respect to the subject matter of  
19 the Released Claims, but Class Representative, upon the Effective Date, will be deemed to have, and  
20 by operation of the Judgment will have fully, finally, and forever settled and released any and all  
21 Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent,  
22 whether or not concealed or hidden, which then exist, or previously have existed upon any theory of  
23 law or equity now existing or coming into existence in the future, including, but not limited to,  
24 conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule,  
25 without regard to the subsequent discovery or existence of such different or additional facts. The  
26 Class Representative acknowledges that the foregoing waiver was separately bargained for and a key  
27 element of the Settlement of which this release is a part. Notwithstanding any other provision of this  
28 Stipulation, the Parties recognize that because the only Unknown Claims released by this Stipulation

are those Unknown Claims that meet the definition of Released Claims, the release effectuated by this Stipulation will not extend to Unknown Claims other than those described in Paragraph 1.36 above.

### **3.6 Termination of Settlement; Reasonable Steps to Cure.**

3.6.1 In the event that the Settlement is not be approved in its entirety by the Court, or in the event that the Effective Date does not occur, Defendants will have the option to void the Settlement, and in such case, no payments will be made by Defendants to anyone, other than the cost of administration, in accordance with the terms of this Stipulation, and this Stipulation will be deemed null and void with no effect on the Litigation whatsoever. Notwithstanding this provision, the Parties agree to take all reasonable steps to cure any issues cited by the Court as reason for non-approval of any matter(s) filed with the Court for preliminary and final approval.

3.6.2 In the event that more than ten percent (10%) of the Class Members Opt Out by submitting timely and valid Requests for Exclusion to the Settlement Administrator by the Response Deadline, Defendants will have the right to terminate and void this Settlement; however, Defendants must notify Class Counsel, of its intention to nullify the Settlement in writing by certified mail to Justin Marquez, Benjamin Haber, and Arrash Fattahi of the Wilshire Law Firm, PLC, 3055 Wilshire Blvd., 12<sup>th</sup> Floor, Los Angeles, CA 90010, within three (3) weeks after the expiration of the Response Deadline.

3.6.3 The Maximum Settlement Amount was calculated with, and is premised on, the understanding that there are approximately 28,525 workweeks worked by the Class Members during the Class Period. To the extent that either of the forgoing estimates, as represented by Defendants, increases by more than 10%, the settlement will increase proportionately. Thus, for example, should there be 31,378 workweeks in the Class Period, then the Maximum Settlement Amount shall be increased by \$74,206.53 ((31,378 workweeks - 28,525 workweeks) x (\$26.01/workweek)).

### **3.7 Miscellaneous Provisions.**

3.7.1 No Person will have any claim against Class Counsel, the Settlement

1 Administrator, or any of the Released Parties based on the payments made or other actions taken  
2 substantially in accordance with the Settlement or further orders of the Court.

3 3.7.2 In the event that the Settlement is not substantially approved by the Court, after  
4 all reasonable steps to cure have been exhausted, or the Settlement is terminated, cancelled, declared  
5 void, or fails to become effective in accordance with its terms, or if the Judgment does not become  
6 final, or to the extent cancellation is otherwise provided for in this Stipulation, the Parties will resume  
7 the Litigation at that time as if no Stipulation had been entered. In such event, the terms and provisions  
8 of the Stipulation will have no further force and effect with respect to the Parties and will not be used  
9 in this Litigation or in any other proceeding for any purpose, and any Judgment or order entered by  
10 the Court in accordance with the terms of the Stipulation will be treated as vacated. Notwithstanding  
11 any other provision of this Stipulation, if the Court should fail to award attorneys' fees to Class  
12 Counsel in the full amount provided for in this Stipulation, no order of the Court or modification of  
13 any order of the Court concerning the amount of any attorneys' fees to be paid by Defendants to Class  
14 Counsel pursuant to this Settlement will constitute grounds for cancellation or termination of the  
15 Stipulation or grounds for limiting any other provision of the Judgment. It is agreed that no order of  
16 the Court, including any order concerning attorneys' fees, may alter or otherwise increase the  
17 Maximum Settlement Amount.

18 3.7.3 The Parties (a) acknowledge that it is their intent to consummate this  
19 agreement; (b) agree to cooperate to effectuate and implement all terms and conditions of the  
20 Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of the  
21 Stipulation; (c) agree to seek and to attempt to obtain preliminary and final approval by Court of the  
22 Settlement; and (d) agree to reasonably work together to seek and attempt to obtain preliminary and  
23 final approval of the Stipulation should the Court not grant approval upon the first presentation.

24 3.7.4 The Parties and attorneys agree to keep the Settlement confidential until the  
25 motion for preliminary approval of the Settlement is filed. Thereafter, the Parties will agree to make  
26 no comments to the media or otherwise publicize the terms of the Settlement.

27 3.7.5 The Parties agree that they will not engage in making or publishing written

1 statements which are disparaging to the reputation of the other or their corporate parents and affiliates.

2           3.7.6 The Stipulation compromises claims which were contested and the subject of  
3 a good faith dispute, and it will not be deemed an admission by any of the Parties as to the merits of  
4 any claim or defense. The Parties agree that the amounts paid in settlement of the Litigation and the  
5 other terms of the Settlement were negotiated at arms-length and in good faith with sufficient  
6 information by the Parties and reflect a settlement that was reached voluntarily after consultation with  
7 competent legal counsel.

8           3.7.7 All of the exhibits to the Stipulation and material and integral parts hereof and  
9 are fully incorporated herein by this reference.

10           3.7.8 The Stipulation may be amended or modified only by a written instrument  
11 signed by or on behalf of all Parties or their respective counsel, subject to approval by the Court.

12           3.7.9 The Stipulation constitutes the entire agreement among the Parties hereto and  
13 no representations, warranties or inducements have been made to any party concerning the Stipulation  
14 or its exhibits other than the representations, warranties and covenants contained and memorialized  
15 in such documents. Except as otherwise provided herein, each party will bear its own costs.

16           3.7.10 The Parties understand and acknowledge that: (a) they have performed an  
17 independent investigation of the allegations of fact and law made in connection with this Litigation;  
18 and (b) even if they may hereafter discover facts in addition to, or different from, those that they now  
19 know or believe to be true with respect to the subject matter of the Litigation as reflected in this  
20 Settlement Agreement, that will not affect or in any respect limit the binding nature of this Settlement  
21 Agreement. It is the Parties' intention to resolve their disputes in connection with this Litigation  
22 pursuant to the terms of this Settlement Agreement and thus, in furtherance of their intentions, the  
23 Settlement Agreement will remain in full force and effect notwithstanding the discovery of any  
24 additional facts or law, or changes in law, and this Settlement will not be subject to rescission or  
25 modification by reason of any changes or differences in facts or law, subsequently occurring or  
26 otherwise.

27           3.7.11 Class Counsel, on behalf of the Class Members, is expressly authorized by the  
28

1 Class Representative to take all appropriate action required or permitted to be taken by the Class  
2 pursuant to the Stipulation to affect its terms and also expressly authorized to enter into any  
3 modifications or amendments to the Stipulation.

4 3.7.12 Each counsel or other Person executing the Stipulation or any of its exhibits  
5 on behalf of any Parties hereby warrants that such Person has full and express authority to do so.

6 3.7.13 The Stipulation may be executed in one or more counterparts. All executed  
7 counterparts and each of them will be deemed to be one and the same instrument. A complete set of  
8 executed counterparts will be filed with the Court.

9 3.7.14 The Stipulation will be binding upon, and inure to the benefit of, the successors  
10 and assigns of the Parties hereto; however, this Stipulation is not designed to and does not create any  
11 third-party beneficiaries unless otherwise specifically provided herein.

12 3.7.15 The Court will retain jurisdiction with respect to implementation and  
13 enforcement of the terms of the Stipulation, and all Parties hereto submit to the jurisdiction of the  
14 Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation, in  
15 conformity with California Rules of Court, Rule 3.769 and California Civil Procedure Code section  
16 664.6.

17 3.7.16 The Stipulation and the exhibits hereto will be considered to have been  
18 negotiated, executed and delivered, and to have been wholly performed, in the State of California,  
19 and the rights and obligations of the Parties to the Stipulation will be construed and enforced in  
20 accordance with, and governed by, the internal, substantive laws of the State of California without  
21 regard to principles of conflicts of law.

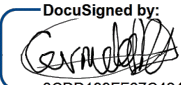
22 3.7.17 The language of all parts of this Stipulation will in all cases be construed as a  
23 whole, according to its fair meaning, and not strictly for or against either party. No party will be  
24 deemed the drafter of this Stipulation. The Parties acknowledge that the terms of the Stipulation are  
25 contractual and are the product of negotiations between the Parties and their counsel. Each party and  
26 their/its counsel cooperated in the drafting and preparation of the Stipulation. In any construction to  
27 be made of the Stipulation, the Stipulation will not be construed against any party and the canon of

contract interpretation set forth in California Civil Code § 1654 will not be applied.

3.7.18 Should any deadlines set forth in the Stipulation require any action to be taken on a weekend or a Court holiday, then the action may be taken on the next business day, unless otherwise specified by law or rule of Court, except that should the Response Deadline (or extension(s) thereof specified in the Stipulation relating to a deficiency notice or a re-mailing) fall on a Saturday and regular U.S. Mail service is in operation that day, then no further extension pursuant to this paragraph will apply to these specific deadlines.

DATED: 7/11/2022, 2022

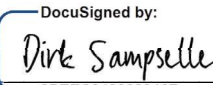
By:

DocuSigned by:  
  
 36DD190FF676424...

Plaintiff Carmela Reyes

DATED: 7/5/2022, 2022

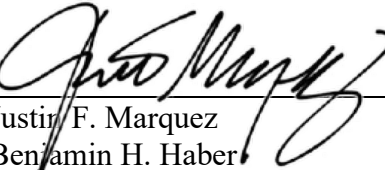
By:

DocuSigned by:  
  
 8BEEC0430880467...

on behalf of Defendants

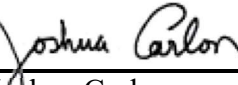
DATED: July 11, 2022

By:

  
 Justin F. Marquez  
 Benjamin H. Haber  
 Arrash T. Fattahi  
**Wilshire Law Firm, PLC**  
 Attorneys for Plaintiff

DATED: July 5, 2022

By:

  
 Joshua Carlon

**Lewis Brisbois Bisgaard & Smith LLP**  
 Attorneys for Defendants

# Exhibit 1

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES  
*Carmela Reyes v. Everytable, PBC, et al.*  
Case No. 21STCV35987

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX -

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**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT.**

**EVERYTABLE, PBC AND HARVEST FRESH FOODS, PBC WILL NOT RETALIATE  
AGAINST YOU FOR PARTICIPATING IN THIS SETTLEMENT.**

**THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.**

*A California court authorized this notice. This is not a solicitation from a lawyer.*

YOU ARE HEREBY NOTIFIED that a proposed settlement (“the Settlement”) of the above-captioned class action (“the Action”) filed in the Los Angeles County Superior Court has been reached by Everytable, PBC, Harvest Fresh Foods, PBC (Everytable, PBC and Harvest Fresh Foods, PBC are collectively referred to as “Defendants”), and Carmela Reyes (“Plaintiff”), an individual, on behalf of herself and all others similarly situated and has been granted Preliminary Approval by the Court supervising the Action. The Los Angeles County Superior Court has ordered that this Class Notice be sent to you because you may be a Settlement Class member. The purpose of this Class Notice is to inform you of the Settlement of this class action and your legal rights under the Settlement as follows:

- Defendants have agreed to settle a lawsuit brought on behalf of all persons who worked for Defendants in California as an hourly-paid or non-exempt employee during the period from April 5, 2017 through May 22, 2022 (the “Settlement Period”) (hereafter, “Settlement Class”).
- The proposed Settlement resolves all alleged claims regarding the following wage and hour policies and/or practices of Defendants: minimum wage, straight time wage, overtime and/or double time wage, failure to pay for all hours worked, meal and rest breaks and any premiums thereon, wage statement violations, waiting time penalties, failure to indemnify for expenditures, and other penalties of any kind arising from an alleged failure to pay wages. Finally, the settlement resolves claims for unfair competition and penalties under California’s Private Attorneys General Act (“PAGA”) arising out of the alleged wage and hour policies and practices of Defendants. The settlement avoids costs and risks to you from continuing the lawsuit, pays money to employees, and releases Defendants from liability for these claims.
- The parties in the lawsuit disagree on whether Defendants are liable for the allegations raised in this case and how much money could have been won if the employees won at trial.
- **Your legal rights may be affected. Read this notice carefully.**

## **YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:**

|                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Get a Payment</b>    | If you are a member of the Settlement Class, you will automatically receive a payment if you do not exclude yourself. If you accept a payment and do not exclude yourself you will give up certain rights as set forth on pages 4-5 below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. |
| <b>Exclude Yourself</b> | Get no payment. Send a letter to the Settlement Administrator as provided below. This is the only option that allows you to bring your own claim against Defendants about the legal claims in this case. The Settlement will bind all Settlement Class Members who do not request exclusion.                                                                                                                                                    |
| <b>Object</b>           | Write to the Court about why you do not like the settlement. Directions are provided below.                                                                                                                                                                                                                                                                                                                                                     |

### **WHY DID YOU RECEIVE THIS NOTICE?**

This notice explains a proposed settlement of a lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of a class on whose behalf this lawsuit has been brought.

### **WHAT IS THIS LAWSUIT ABOUT?**

Plaintiff filed this lawsuit in Los Angeles County Superior Court on behalf of the Settlement Class. The lawsuit alleges that members of the Settlement Class were not paid all minimum, straight time, and overtime wages, were not paid for or properly provided meal and rest breaks, were not paid all wages due at termination and/or resignation, were not issued accurate wage statements, were not provided reimbursements for all necessary business-related expenses, and were subjected to unfair competition. The lawsuit seeks recovery of wages, restitution, statutory and civil penalties, interest, and attorneys' fees and costs.

Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the lawsuit. Defendants contend, among other things, that they complied at all times with the California Labor Code, the California Business and Professions Code, and all other applicable law. Defendants further deny that the lawsuit is appropriate for class treatment for any purpose other than settling this lawsuit.

The Court has made no ruling and will make no ruling on the merits of the Litigation and its allegations and claims.

### **SUMMARY OF THE SETTLEMENT**

#### **A. Why is there a Settlement?**

The Court did **not** decide in favor of the Plaintiff or Defendants. Plaintiff thinks she would have prevailed on her claims at a trial. Defendants do not think that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the costs, risks, and uncertainty of a trial, and the class members will get compensation. Plaintiff and Plaintiff's attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all class members.

**B. Who is in the Class?**

The Settlement Class consists of all persons who worked for Defendants in California as an hourly-paid or non-exempt employee during the Settlement Period.

**C. What does the Settlement provide?**

1. Settlement Amount.

Defendants will pay a total of Seven Hundred and Forty-Two Thousand Dollars and Zero Cents (\$742,000.00) (the “Settlement Amount”) to settle the lawsuit.

The following sums will be paid from the Settlement Amount: all Net Settlement Payments (inclusive of all employment taxes and all other legally required withholdings that would otherwise be due from the individual class members) to the Settlement Class, Attorneys’ Fees (not to exceed 33 ⅓ % of the Settlement Amount, or \$247,333.33), Litigation Expenses not to exceed \$20,000.00, Settlement Administrative Costs estimated in an amount not to exceed \$10,000.00, the PAGA Settlement Payment in the amount of \$10,000.00, and an enhancement payment to the Named Plaintiff not to exceed \$10,000.00. Any and all Employer Taxes which Defendants normally would be responsible for paying on the Net Settlement Payments made to individual Class Members will be paid by Defendants separate and apart from the Settlement Amount.

The funds used for the Settlement Amount shall be paid to the Settlement Administrator. The Settlement Administrator shall disburse the Court-approved enhancement to the Named Plaintiff, Court-approved Attorneys’ Fees and Litigation Expenses, Settlement Administration Costs, and the PAGA Settlement Payment at the same time and manner as the Net Settlement Payments to the Settlement Class members.

2. Net Settlement Amount.

“Net Settlement Amount” means the Settlement Amount minus the Attorneys’ Fees, Litigation Expenses, Settlement Administrative Costs, the portion of the PAGA Settlement payment payable to the Labor & Workforce Development Agency (“LWDA”), and the enhancement payment to the Named Plaintiff.

3. Your Individual Payment Amount.

The Claims Administrator will calculate the total number of workweeks for all Class Members who were employed by Defendants during the Settlement Period (“Total Workweeks”). The value of each Workweek shall be determined by the Claims Administrator by dividing the Net Settlement Amount by the total number of Workweeks available to the Class Members who do not “opt out” (as defined on page 6 below) during the Settlement Period (“Workweek Point Value”).

An “Individual Settlement Payment” for each Class Member will then be determined by multiplying a Class Member’s workweeks (“Eligible Workweeks”) by the Workweek Point Value. The Individual Settlement Payment will be reduced by any required legal deductions, for each participating Class Member.

4. Tax Matters.

The Settlement Administrator will distribute IRS Forms W-2 and 1099 (and the equivalent California forms) to Settlement Class members reflecting the payments each Settlement Class member receives under

the Settlement. For tax purposes, Net Settlement Payments will be allocated as follows: 25% as wages and 75% as penalties and interest. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code and the California Franchise Tax Board.

Interest and penalties paid under this Settlement shall not be subject to federal, state and local payroll withholding taxes. The Settlement Administrator shall issue an IRS form 1099 for payments of interest and penalties. The usual and customary deductions will be taken out of the amounts attributable to unpaid wages. Settlement Class members should consult with their tax advisors concerning the tax consequences of the payment they receive under the Settlement.

**D. What are you giving up to get a payment and stay in the Class?**

Upon the Effective Date (as that term is defined in Section VI(1)(1.6) of the Settlement Agreement), Named Plaintiff and all members of the Settlement Class, except those that make a valid and timely request to be excluded from the Settlement Class and Settlement, will be deemed to have, and by operation of the Judgement, will have fully, finally, and forever released, relinquished, and discharged Defendants and each of their parent companies, subsidiaries, affiliates, current and former management companies, shareholders, members, agents (including any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees), predecessors, successors, and assigns (the “Released Parties”) from any and all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims for relief and penalties, that accrued during the Settlement Period, and as a result of Class Members’ employment by Defendants in California, that arise under any state or local law or state administrative order that was or could have been pled based on the facts alleged in the Operative Complaint, including claims of failure to pay for all hours worked (including minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to furnish accurate itemized wage statements, failure to indemnify employees for expenditures, and all damages, interest, penalties, attorneys’ fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including, but not limited to, the California Labor Code and the applicable Wage Orders, including, without limitation, all related claims for restitution and other equitable relief arising from California Business and Professions Code §§ 17200, *et seq.*, interest on unpaid wages, unpaid wages, attorneys’ fees or litigation costs, and any other related claims and/or penalties. The release does not extend to any claims not alleged in the Operative Class Action Complaint and specifically excludes claims for workers’ compensation, personal injuries, unemployment insurance, state disability compensation, claims under the Employment Retirement Income Security Act of 1974, previously vested benefits under any employer sponsored benefits plan, wrongful termination, discrimination, retaliation, and harassment including, but not limited to, those arising under the Age Discrimination In Employment Act, the California Fair Employment and Housing Act, Title VII of the Federal Civil Rights Act of 1964, and/or Federal Civil Rights Act of 1991, or any similar state or federal laws, the California Family Rights Act, the Federal Family Medical Leave Act, the California Pregnancy Leave Law, or similar state or federal laws, the Federal Equal Pay Act of 1963, violations of the Americans with Disabilities Act of 1990 or violations of any other state or federal law, rule or regulation concerning discrimination, retaliation and/or harassment. This release does not include any of the claims encompassed within the Released PAGA Claims (as defined below).

Additionally, upon the Effective Date, each of the PAGA Employees (defined as all Settlement Class Members who worked for Defendants at any time from April 5, 2020 through May 22, 2022) will be deemed to have, and by operation of the Judgement, will have fully, finally, and forever released, relinquished, and discharged the Released Parties from any and all claims, demands, rights, liabilities and

causes of action of every nature and description whatsoever including, without limitation, statutory, constitutional, contractual or common law claims for civil penalties pursuant to PAGA, that accrued during the PAGA Period (April 5, 2020 to May 22, 2022), and as a result of PAGA Employees' employment by Defendants in California, that arise under any state or local law or state administrative order that was or could have been pled based on the facts alleged in the Operative Complaint and the Plaintiff's notice to the LWDA, including claims of failure to pay for all hours worked (including minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to furnish accurate itemized wage statements, and failure to indemnify employees for expenditures.

### **THE FINAL APPROVAL HEARING**

The Court will conduct a Final Approval Hearing regarding the proposed settlement (the "Final Approval Hearing") on [REDACTED], 2023, at 312 North Spring Street, Los Angeles, California 90012, in Department 11 of the Los Angeles County Superior Court (Spring Street Courthouse). The Court will determine: (i) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class members; (ii) whether the Settlement Class members should be bound by the terms of the settlement; (iii) the amount of the attorneys' fees and costs to Plaintiff's counsel; and (iv) the amount that should be awarded to the Plaintiff as an enhancement payment. At the Final Approval Hearing, the Court will hear all objections, as well as arguments for and against the proposed Settlement. You are permitted to provide an objection at the Final Approval Hearing, in the first instance, even if you did not provide a written objection beforehand. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself. Please note that hearings before the Judge overseeing this case are currently being conducted remotely.

The Final Approval Hearing may be continued without further notice to the Class. You may contact Plaintiff's counsel, listed in this Notice, to inquire into the date and time of the Final Approval Hearing.

Condition of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class.

### **WHAT ARE YOUR OPTIONS?**

- **OPTION 1 – GET A PAYMENT**

**IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS AND WISH TO RECEIVE YOUR SHARE OF THE SETTLEMENT, THEN YOU DO NOT HAVE TO DO ANYTHING AND YOU WILL AUTOMATICALLY RECEIVE A SETTLEMENT PAYMENT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE.**

The average potential recovery for each proposed Settlement Class Member is \$ [REDACTED].

The estimated amount of your Settlement Payment is set forth on the Workweek Dispute Form which accompanies this Notice.

The amount of the Settlement Payment paid to each Settlement Class member is based upon the number of workweeks you worked between April 5, 2017 through May 22, 2022. The number of workweeks applicable to your claim is also set forth on the accompanying Workweek Dispute Form. If you believe

that the number of workweeks stated is incorrect, you may dispute the number of workweeks by following the instructions on the Workweek Dispute Form. If you believe that the number of workweeks stated is correct, you do not have to do anything.

The Settlement Payment you will receive will be a full and final settlement of your released claims described in Section D above.

- **OPTION 2 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will **not** be bound by a judgment in this case and you will have the right to file your own lawsuit against Defendants, subject to time limits called Statute of Limitations and other potential defenses that Defendants may assert, and to pursue your own claims in a separate suit.

You can opt out of the Settlement Class by completing the form on **Page 8** of this Notice and mailing it by First Class U.S. Mail or equivalent to the Settlement Administrator at the following address: Simpluris, <<ADDRESS>>. To be valid, your request for exclusion must be postmarked no later than [60 days after mailing].

- **OPTION 3 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Approval Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing to object, regardless of whether you provided a written objection beforehand, either in person or through an attorney at your own expense.

Any written objection may be mailed to the Settlement Administrator at (Address) by [60 days after mailing].

The contact information for Plaintiff’s counsel and Defendants’ counsel is provided below solely for your informational purposes. Written objections should only be sent to the Settlement Administrator at the address provided above, not to Plaintiff’s counsel or Defendants’ counsel.

**PLAINTIFF’S/CLASS COUNSEL**

Justin F. Marquez, Esq.  
[justin@wilshirelawfirm.com](mailto:justin@wilshirelawfirm.com)  
Benjamin H. Haber, Esq.  
[benjamin@wilshirelawfirm.com](mailto:benjamin@wilshirelawfirm.com)  
Arrash T. Fattahi, Esq.  
[afattahi@wilshirelawfirm.com](mailto:afattahi@wilshirelawfirm.com)  
**WILSHIRE LAW FIRM, PLC**  
3055 Wilshire Blvd., 12th Floor  
Los Angeles, California 90010  
Telephone: (213) 381-9988  
Facsimile: (213) 381-9989

**DEFENDANTS’ COUNSEL**

Joshua Carlon, Esq. (SBN 263838)  
[joshua.carlon@lewisbrisbois.com](mailto:joshua.carlon@lewisbrisbois.com)  
**LEWIS BRISBOIS BISGAARD & SMITH  
LLP**  
633 W. 5th Street, Suite 4000  
Los Angeles, CA 90071  
Telephone: (213) 281-5235  
Facsimile: (213) 250-7900

### **CHANGE OF ADDRESS**

If you move after receiving this Notice, if it was misaddressed, or if for any reason you want your Settlement Award or future correspondence concerning this Action to be sent to a different address, you must supply your preferred address to the Settlement Administrator at:

Simpluris

<<ADDRESS>>

### **ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?**

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you may review the detailed “Joint Stipulation of Class Action and PAGA Settlement and Release,” which is available for viewing online, along with other court records regarding this case, on the following website:

URL: [Insert website provided by Settlement Administrator]

The pleadings and other records in the lawsuit are also available on the website.

Alternatively, you may also obtain a copy of the Settlement Agreement and related documents online through the Los Angeles County Superior Court’s website, by going to the following webpage: <https://www.lacourt.org/casesummary/ui/> and entering “21STCV35987” for the case number.

**ANY INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO PLAINTIFF’S COUNSEL LISTED ABOVE OR TO THE SETTLEMENT ADMINISTRATOR, Simpluris, <<ADDRESS & PHONE #>>.** Please refer to the *Carmela Reyes v. Everytable, PBC, et al.* Class Action Settlement.

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS**

**[COMPLETE THIS FORM *ONLY IF YOU CHOOSE TO*  
NOT PARTICIPATE IN THIS SETTLEMENT AND  
CHOOSE NOT TO RECEIVE A SETTLEMENT SHARE]**

**OPT-OUT FORM**

***Carmela Reyes v. Everytable, PBC and Harvest Fresh Foods, PBC***  
LOS ANGELES COUNTY SUPERIOR COURT CASE NUMBER 21STCV35987

**INSTRUCTIONS:** TO OPT-OUT OF THE SETTLEMENT, YOU MUST COMPLETE, SIGN AND MAIL THIS FORM BY FIRST CLASS U.S. MAIL OR EQUIVALENT, POSTAGE PAID, POSTMARKED ON OR BEFORE **[+60 DAYS FROM MAILING]**, ADDRESSED TO:

Simpluris  
**<<ADDRESS>>**

Please fill in all of the following information (type or print):

NAME (First, Middle, Last): \_\_\_\_\_  
STREET ADDRESS: \_\_\_\_\_  
CITY, STATE, ZIP CODE: \_\_\_\_\_  
TELEPHONE NUMBERS: Home: \_\_\_\_\_ Work: \_\_\_\_\_

**IT IS STRONGLY RECOMMENDED THAT YOU RETAIN PROOF OF MAILING  
THIS FORM POSTMARKED ON OR BEFORE **[DATE]**.**

I **[insert your name]** wish to be excluded from the Settlement Class in the case of *Carmela Reyes v. Everytable, PBC, et al.*, Los Angeles County Superior Court, Case Number 21STCV35987

I understand I will not receive money from the proposed class action settlement.

I further verify that the following is true: My name, address and other contact information are accurately set forth above. I received and had the opportunity to read the Notice of Proposed Class Action Settlement that were sent to me along with this Opt-Out Form. I understand that by signing this side of the form, I voluntarily choose to exclude myself from the proposed settlement of this class action. **I understand that by excluding myself, I may not accept any money allocated for me in the proposed settlement and may not object to the settlement.** On the other hand, I also understand that if I wish to assert any claims related to those set forth in this lawsuit in my individual capacity, I shall have to do so separately. I understand that any such claims are subject to strict time limits, known as statutes of limitations, which restrict the time within which I may file any such action. I understand that I should consult with an attorney at my own expense if I wish to obtain advice regarding my rights with respect to this settlement or my choice to opt out of the settlement. Defendants have not encouraged me to opt out, and I choose to opt out of my own free will.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Last four digits of Social Security Number \_\_\_\_\_

# Exhibit 2

## **CLASS WORKWEEK DISPUTE FORM**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

*Carmela Reyes v. Everytable, PBC, et al.*  
Case No. 21STCV35987

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX -

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### **INSTRUCTIONS**

IF YOU WERE EMPLOYED BY EVERYTABLE, PBC OR HARVEST FRESH FOODS, PBC (“DEFENDANTS”) IN CALIFORNIA AS AN HOURLY-PAID OR NON-EXEMPT EMPLOYEE BETWEEN APRIL 5, 2017 AND MAY 22, 2022, THEN YOU ARE A SETTLEMENT CLASS MEMBER.

The amount of your estimated Settlement Payment is based upon the Eligible Workweeks you worked for Defendants in California from April 5, 2017 to May 22, 2022.

“Eligible Workweeks” are defined as any week in which you worked at least one (1) day during the calendar week. The number of Eligible Workweeks applicable to your claim is set forth in Section I below. If you believe that the number of workweeks stated is incorrect, you may dispute the number of workweeks by submitting this completed Workweek Dispute Form with any supporting documents on or before [redacted] [60 days after initial mailing]. Documentary evidence may be helpful to substantiate your dispute claim, but it is not required. **If you believe that the number of workweeks stated below is correct, you do not have to do anything.**

If you have moved or may move in the future, you must immediately send your new address to the Settlement Administrator at <<ADDRESS>>; otherwise, your individual settlement payment may not reach you. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your settlement payment.

#### **I. YOUR COMPENSABLE WORKWEEKS**

You worked as an hourly-paid or non-exempt employee for Defendants in California, which qualifies you as a Settlement Class Member, and your total number of Eligible Workweeks in this position are: <<NUMBER OF WORKWEEKS>>.

#### **II. YOUR ESTIMATED SETTLEMENT PAYMENT**

Based upon the number of workweeks stated above, your estimated pre-tax Settlement Payment is <<INSERT>>.

### III. CHALLENGE TO WORKWEEKS

If you wish to dispute the Eligible Workweeks data listed, you must postmark your dispute and provide all supporting information and/or documentation, if any, to the Settlement Administrator by **<<NOTICE PERIOD DEADLINE>>**.

*Check the box below **ONLY** if you wish to dispute the data listed in Section I:*

☐ I wish to dispute the number of Eligible Workweeks listed in Section I. I believe the correct amount of my workweeks is \_\_\_\_\_. I understand that, by submitting this dispute, I hereby authorize the Settlement Administrator to review Defendants' records and make a determination as to the validity of my dispute based upon Defendants' records as well as the records and information that I submit to the Settlement Administrator.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the information I provided in this Workweek Dispute Form is true and correct.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Print or Type Name: \_\_\_\_\_

**MAIL TO:**

**CARMELA REYES v. EVERYTABLE, PBC, ET AL.  
CLASS ACTION SETTLEMENT**

c/o

**[Insert]  
address**

**IF YOU ARE CONTESTING THE AMOUNT OF YOUR ELIGIBLE WORKWEEKS, YOU MUST SIGN, POSTMARK, AND RETURN THIS FORM TO THE SETTLEMENT ADMINISTRATOR ON OR BEFORE «**OPT-OUT DEADLINE**».**

# Exhibit B



3194-C Airport Loop Drive  
Costa Mesa, CA 92626  
800-779-2104 www.simpluris.com

|                |           |               |                                                                          |
|----------------|-----------|---------------|--------------------------------------------------------------------------|
| Estimate #:    | 14625     | Prepared By:  | Michael Sutherland                                                       |
| Estimate Date: | 3/28/2022 | Direct Dial # | 321.223.5067                                                             |
|                |           | Email:        | <a href="mailto:Msutherland@simpluris.com">Msutherland@simpluris.com</a> |

Plaintiff Attorney  
Attorney/Client: **Justin F. Marquez, Esq.**  
Firm: Wilshire Law Group  
Email: [<Justin@wilshirelawfirm.com>](mailto:Justin@wilshirelawfirm.com)

Defense Attorney  
Attorney/Client:  
Firm:  
Email:

**Case Name: Reyes v. Everytable: Opt Out Settlement**

|                               |                 |
|-------------------------------|-----------------|
| <b>Anticipated Total Cost</b> | <b>\$10,486</b> |
| <b>Capped Fee*</b>            | <b>\$9,995</b>  |

**Terms:**

- 1) Capped Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate
- 2) Included is a 2021 Federal 1120 tax return to account for banking activity in 2021.

|                            |         |                     |           |
|----------------------------|---------|---------------------|-----------|
| Total Possible Class Size: | 850     | Undeliverable Rate: | 10%       |
| Response Rate:             | 1%      | Call Rate:          | 5%        |
| Mailing Document Language: | E/S     | Fund Distribution:  | Simpluris |
| Reminder Postcard:         | No      | Redistribution:     | No        |
| Unclaimed Funds:           | Cy Pres | State(s):           | CA        |
|                            |         | Tax Reporting Years | One       |

### Case Setup

#### Data Compilation - Develop Case Specific Response Tracking - Error Reports

| Category                                 | Unit Value | # of Units | Total      |
|------------------------------------------|------------|------------|------------|
| Project Manager - Case Setup             | \$125.00   | 6          | \$750.00   |
| Translation                              | \$0.25     | 3000       | \$750.00   |
| Online Posting set up and manage         | \$250.00   | 1          | \$250.00   |
| Database Manager - Initial Data Analysis | \$140.00   | 6          | \$840.00   |
| Total                                    |            |            | \$2,590.00 |

### Notification

#### Notice Packet: 4 pg Notice - Double Sided - English

| Category                 | Unit Value | # of Units | Total      |
|--------------------------|------------|------------|------------|
| Mail Notice Packet       | \$0.70     | 850        | \$595.00   |
| Postage                  | \$0.53     | 850        | \$450.50   |
| NCOA/CASS/LACS           | \$0.10     | 850        | \$85.00    |
| Undeliverable Processing | \$0.25     | 85         | \$21.25    |
| Skip Trace RUM           | \$1.50     | 85         | \$127.50   |
| Remail Notice Packet     | \$0.90     | 72         | \$65.03    |
| Remail Postage           | \$0.58     | 72         | \$41.91    |
| Mailing Supervisor       | \$50.00    | 1          | \$50.00    |
| Total                    |            |            | \$1,436.18 |

### Call Center

#### Establish Case Specific Toll Free Number

| Category                                  | Unit Value | # of Units | Total    |
|-------------------------------------------|------------|------------|----------|
| Customer Service Reps/Call Center Support | \$75.00    | 3          | \$225.00 |



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## Administration

### Process Mail, Opt-Outs or Objections

| Category                                    | Unit Value    | # of Units          | Total    |
|---------------------------------------------|---------------|---------------------|----------|
| Database Manager                            | \$125.00      | 2                   | \$250.00 |
| Resolving Mismatched TINs                   | \$75.00       | 1                   | \$75.00  |
| Dispute/Deficiencies - Send One Cure Letter | \$2.50        | 9                   | \$21.25  |
| Opt Out Processing                          | \$1.50        | 9                   | \$12.75  |
| Data Entry                                  | \$50.00       | 1                   | \$50.00  |
| Weekly Reporting to Counsel                 | <b>WAIVED</b> | 12 Wks of Reporting | \$0.00   |
| Total                                       |               |                     | \$409.00 |

## Distribution

### Setup a Disbursement Account

### Print & Mail Checks to Class Members: W2's / 1099's - File Reports with Appropriate Federal & State Taxing Authorities

### Account Management & Reconciliation

| Category                                   | Unit Value | # of Units | Total      |
|--------------------------------------------|------------|------------|------------|
| Disbursement Data Preparation              | \$140.00   | 4          | \$560.00   |
| Disbursement Manager - Data Validation     | \$75.00    | 1          | \$75.00    |
| Setup Banking Account/QSF                  | \$300.00   | 1          | \$300.00   |
| Print & Mail Check                         | \$2.00     | 850        | \$1,700.00 |
| Postage                                    | \$0.53     | 850        | \$450.50   |
| Process Returned Checks                    | \$0.50     | 9          | \$4.25     |
| Skip Trace Search Undeliverable Checks     | \$5.00     | 9          | \$42.50    |
| Remail Checks (Includes Postage)           | \$4.00     | 9          | \$34.00    |
| QSF Account Reconciliation                 | \$250.00   | 1          | \$250.00   |
| Individual Federal/State Tax Reporting     | \$500.00   | 1          | \$500.00   |
| QSF Reporting/Declaration                  | \$300.00   | 1          | \$300.00   |
| QSF Annual Tax Preparation Fee, 2022       | \$1,000.00 | 1          | \$1,000.00 |
| Reissuing Checks/Mailing                   | \$5.00     | 9          | \$42.50    |
| Reissue W2's/1099's                        | \$5.00     | 9          | \$42.50    |
| Responding to IRS, State, Agency Inquiries | \$75.00    | 1          | \$75.00    |
| Disbursement Manager                       | \$125.00   | 3          | \$375.00   |
| Total                                      |            |            | \$5,751.25 |



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## Case Wrap Up

### Send Final Reports to Counsel

| Category                             | Unit Value | # of Units | Total    |
|--------------------------------------|------------|------------|----------|
| Data Manager-Final Reporting         | \$125.00   | 1          | \$125.00 |
| Clerical-Clean Up Any Misc           | \$50.00    | 1          | \$50.00  |
| Project Manager-Wrap-up Final Issues | \$125.00   | 1          | \$125.00 |
| Total                                |            |            | \$300.00 |

**Postage \$942.91**

**Total Case Costs**

**\$10,486.43**

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.
13. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

## Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

*Reyes v. Everytable, PBC, et al.*  
21STCV35987

  
Ashley Narinyans