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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

BRENDA BALTAZAR RAMIREZ, an
individual, on behalf of herself and all others
similarly situated,

Plaintiff,

v.

W.K.S. FROSTY CORPORATION, a
California Corporation; and DOES 1 to 50,

Defendants.

Case No. 56-2021-00560191-CU-OE-VTA

Judge: Hon. Matthew P. Guasco
Dept: 20

**STIPULATION AND AGREEMENT FOR
PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Date Action Filed: November 18, 2021
Trial Date: Not Set

1 This Stipulation and Agreement for PAGA Representative Action Settlement is made and
 2 entered into by and between Plaintiff Brenda Baltazar Ramirez (“Plaintiff”), on behalf of herself
 3 and as a representative of the State of California and the Aggrieved Employees (as defined in
 4 Paragraph 2, below), on the one hand, and Defendant W.K.S. Frosty Corporation (“Defendant”), on
 5 the other hand (collectively, the “Parties”), and is made in compromise of disputed claims. The
 6 Parties agree that the above-entitled representative action shall be settled on the terms and conditions
 7 set forth in this Stipulation, subject to the approval of the Court pursuant to Section 2699(1) of the
 8 California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
 9 (“PAGA”).

10 DEFINITIONS

11 1. “**Action**” means and refers to *Brenda Baltazar Ramirez v. W.K.S. Frosty*
 12 *Corporation*, Case No. 56-2021-00560191-CU-OE-VTA, which is currently pending in the Ventura
 13 County Superior Court of the State of California.

14 2. “**Aggrieved Employees**” means all individuals who are or were employed by
 15 Defendant as non-exempt employees in California during the PAGA Period.

16 3. The terms “**Agreement**,” “**Settlement**,” and “**Settlement Agreement**” mean this
 17 Stipulation and Agreement for PAGA Representative Action Settlement, which the Parties
 18 acknowledge sets forth all material terms and conditions of the Settlement between them, and which
 19 is subject to Court approval pursuant to Section 2699(1) of the California Labor Code Private
 20 Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*

21 4. “**Court**” means the California Superior Court, County of Ventura.

22 5. “**Defendant**” means W.K.S. Frosty Corporation.

23 6. “**Effective Date**” of this Agreement shall be the later of: (i) the 61st day after service
 24 of notice of entry of the Final Order and Judgment, if no appeal, review, or writ has been filed; or
 25 (ii) if an appeal, review, or writ is sought from the Final Order and Judgment, the day after the Final
 26 Order and Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Final
 27 Order and Judgment are no longer subject to further judicial review. The Effective Date is
 28 conditioned upon all of the following occurring: (a) this Agreement has been signed by the Parties,

1 PAGA Counsel, and Defendant's counsel; and (b) the Court has entered the Final Order and
2 Judgment.

3 7. **"Enhancement Award"** means the amount the Court authorizes to be paid to
4 Representative Plaintiff, in recognition of her efforts and work in the prosecution of the Action, up
5 to \$10,000.00.

6 8. **"Final Order and Judgment"** means the proposed order granting approval of the
7 Settlement and entering Judgment, in the form substantially similar to that attached to this
8 Agreement as Exhibit B.

9 9. **"Gross Settlement Amount"** means a maximum total of \$450,000.00, which
10 includes all payments owing as a result of this Agreement and includes: the Net Settlement Amount;
11 Settlement Administration Costs; Plaintiff's Enhancement Award; and PAGA Counsel Attorneys'
12 Fees and Costs as awarded by the Court.

13 10. **"LWDA Payment"** means a payment to the California Labor Workforce and
14 Development Agency in an amount equal to 75% of the Net Settlement Amount.

15 11. **"Net Settlement Amount"** is the Gross Settlement Amount less (1) PAGA
16 Counsel's Attorneys' Fees and Costs; (2) Plaintiff's Enhancement Award; and (3) Settlement
17 Administration Costs.

18 12. **"PAGA Aggrieved Employee Payment"** means a payment of 25% of the Net
19 Settlement Amount, which the Parties have agreed to pay the Aggrieved Employees in connection
20 with the settlement of the PAGA Claim.

21 13. **"PAGA Claim"** means the claim for civil penalties under the California Labor Code
22 Private Attorneys General Act of 2004 (Cal. Lab. Code sections 2698 *et seq.*, "PAGA") alleged in
23 the Action and stated in Plaintiff's November 11, 2021, and November 18, 2021 notice letters to the
24 LWDA, true and correct copies of which are attached hereto as Exhibit C.

25 14. **"PAGA Counsel"** means Jonathan Melmed, Kyle D. Smith, and Joanne H. Kim of
26 Melmed Law Group P.C.

27 15. **"PAGA Period"** means November 10, 2020, through December 31, 2022.

28 16. **"Released Claims"** means all claims or causes of action for PAGA penalties that

were, or could have been asserted in Plaintiff's November 11, 2021 and November 18, 2021 notice letters to the LWDA and in the first amended complaint in the Action, pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, based on the alleged violations of Labor Code §§ 201-204, 210, 216, 218.5, 218.6, 226, 226.3, 226.7, 256, 510, 512, 1051, 1054, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and IWC California Wage Order 5-2001, whether for civil penalties or attorneys' fees and costs arising out of the PAGA claims at issue, including: failure to pay minimum wages for all hours worked; failure to pay all overtime wages earned; failure to provide lawful rest breaks and pay missed rest break premiums; failure to provide lawful meal periods and pay missed meal period premiums; failure to maintain accurate records; failure to provide accurate and complete wage statements; failure to pay all wages in full and on time during employment; failure to pay all wages due upon termination; and unlawful fingerprinting practices.

17. **"Released Parties"** means Defendant and each of its subsidiaries, affiliates, parent companies, shareholders, members, owners, officers, employees, attorneys, representatives, agents, insurers, predecessors, successors, and assigns, and any individual or entity which could be jointly liable with Defendant.

18. **"Representative Plaintiff"** means Plaintiff Brenda Baltazar Ramirez.

19. **"Settlement Administrator"** shall mean Phoenix Settlement Administrators, a neutral third-party administrator chosen by the Parties, subject to approval by the Court.

RECITALS

20. On November 11, 2021, Plaintiff sent a PAGA Notice to the Labor Workforce and Development Agency ("LWDA"), with a copy to Defendant. On November 18, 2021, Plaintiff sent a Supplemental PAGA Notice to the LWDA, with a copy to Defendant. On November 18, 2021, Plaintiff filed a putative class action complaint in the Superior Court of the State of California, County of Ventura in the case styled *Brenda Baltazar Ramirez v. W.K.S. Frosty Corporation*, Case No. 56-2021-00560191-CU-OE-VTA.

21. On February 15, 2022, Plaintiff filed a first amended complaint in the Action to add the PAGA Claim.

22. The PAGA Claim seeks civil penalties and an award of reasonable attorneys' fees and costs.

23. The Parties have conducted a thorough investigation into the facts of the Action. This included exchanging data and information as well as documents relating to the underlying alleged violations. After participating in a mediation with Mediator Lisa Klerman on October 7, 2022, the Parties accepted a mediator's proposal on October 26, 2022.

24. The Parties believe that the Settlement is fair, reasonable, and adequate. The Parties understand, acknowledge, and agree that this Settlement Agreement constitutes a compromise of Representative Plaintiff's and the Aggrieved Employees' PAGA Claim, and that it is the desire and intention of the Parties to effect a final and complete resolution of the PAGA Claim that the Representative Plaintiff and the Aggrieved Employees have against Defendant or any persons or companies affiliated with Defendant.

25. The Parties enter into this Settlement Agreement on a conditional basis. In the event the Court does not enter a Final Order and Judgment as defined in this Settlement Agreement, this Settlement Agreement will be deemed null and void *ab initio* and will be of no force or effect whatsoever, and will not be referred to or utilized for any purpose whatsoever.

26. As a condition of the Settlement, the Parties have agreed that PAGA Counsel will dismiss the class claims, without prejudice as set forth in Paragraph 36, since the Parties have agreed to resolve the Action on a PAGA-only basis.

27. Defendant denies all of the claims in the Action, and does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations upon all legal, procedural and factual grounds should this Settlement Agreement not become final. This Settlement Agreement reflects a compromise reached to end litigation.

28. The Parties stipulate and agree to the following terms of this Settlement Agreement with the intent that this Agreement finally disposes of the Action with prejudice.

TERMS AND CONDITIONS

29. **Settlement Payments and Calculation of Claims.** Subject to final Court approval and the conditions specified in this Agreement, and in consideration of the mutual covenants and

promises set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount of **\$450,000.00**. For the avoidance of doubt, Defendant shall not be required to pay any amount over \$450,000.00 for this Settlement. The Gross Settlement Amount includes, but is not limited to, payments to be made to PAGA Counsel's attorneys' fees and costs, the LWDA Payment, Plaintiff's Enhancement Award, and Settlement Administration Costs. The following table summarizes the allocation of the Gross Settlement Amount:

Gross Settlement Amount of \$450,000.00 Is Broken Down As Follows:

- PAGA Counsel Attorneys' Fees not to exceed **33.3% (or \$150,000.00)**.
- PAGA Counsel Costs not to exceed **\$15,000.00**.
- Plaintiff's Enhancement Award not to exceed **\$10,000.00**.
- Settlement Administration Costs, not to exceed **\$14,000.00**.
- Approximately **\$261,000.00** for the Net Settlement Amount:
 - 25% of the Net Settlement Amount for the PAGA Aggrieved Employee Payment (approximately **\$65,250.00**).
 - 75% of the Net Settlement Amount for the LWDA Payment (approximately **\$195,750.00**).

30. **Settlement Escalator.** The Settlement is based on the assumption that there were no more than 78,100 pay periods worked by the Aggrieved Employees during the PAGA Period. Should the actual number of pay periods during the PAGA Period exceed 78,100, Defendant will have the choice of either: (a) paying a proportional increase in the Gross Settlement Amount for each additional pay period over 78,100; or (b) modifying the end date of the PAGA Period to a date prior to December 31, 2022, to avoid incurring the pro rata increase. The Parties agree that any increase to the Gross Settlement Amount made pursuant to this provision will increase the applicable attorneys' fees payable to Plaintiff's counsel such that the attorneys' fees remains one-third of the adjusted Gross Settlement Amount. The pay period value shall be calculated by dividing the Gross Settlement Amount by 78,100.

31. **Apportionment of Gross Settlement Amount.** The Parties agree, subject to Court approval and the conditions specified in this Agreement, that the Gross Settlement Amount shall be apportioned as follows:

- a. **Settlement Administration Fees and Costs:** The fees and costs associated

1 with settlement administration (e.g., preparing and mailing payments to the Aggrieved Employees,
2 tax documentation, etc.) (the “**Settlement Administration Costs**”) will be paid from the Gross
3 Settlement Amount and are estimated to be up to **\$14,000.00**. The Parties agree to use Phoenix
4 Settlement Administrators as the Settlement Administrator. To the extent Settlement
5 Administration Costs are not approved by the Court in the amounts set forth above, and the order
6 becomes final, then the non-approved amount will be added to the Net Settlement Amount to be
7 distributed based on the formula set forth in subsection 31.d.

8 b. PAGA Counsel’s Attorneys’ Fees and Costs: The Parties agree that, subject
9 to the Court’s review and approval, PAGA Counsel will be paid from the Gross Settlement Amount
10 an amount that is up to 33.33% of the Gross Settlement Amount for attorneys’ fees (**\$150,000.00**),
11 plus actual litigation costs, not to exceed **\$15,000.00**. To the extent attorneys’ fees and costs are not
12 approved by the Court in the amounts set forth above, and the order becomes final, then the non-
13 approved amounts will be added to the Net Settlement Amount to be distributed based on the
14 formula set forth in subsection 31.d.

15 c. Representative Plaintiff Enhancement Award. The Parties agree that, subject
16 to the Court’s review and approval, Representative Plaintiff will receive an enhancement award of
17 **\$10,000.00** for her services in bringing this Action on behalf of the Aggrieved Employees, which
18 will be paid from the Gross Settlement Fund. To the extent the Enhancement Award is not approved
19 by the Court in the amount set forth above, and the order becomes final, then the non-approved
20 amount will be added to the Net Settlement Amount to be distributed based on the formula set forth
21 in subsection 31.d.

22 d. Net Settlement Amount: After deducting PAGA Counsel’s Attorneys’ Fees
23 and Costs, Plaintiff’s Enhancement Award, and the Settlement Administration Costs from the Gross
24 Settlement Amount, the remaining amount will comprise the Net Settlement Amount. The Net
25 Settlement Amount is comprised of the LWDA Payment and the PAGA Aggrieved Employee
26 Payment. The Net Settlement Amount of approximately **\$261,000.00** shall be allocated 75% to the
27 LWDA Payment, which is estimated to total **\$195,750.00** ($\$261,000.00 \times 75\%$). The remaining
28 25% of the Net Settlement Amount, estimated to total **\$65,250.00** ($\$261,000.00 \times 25\%$), shall be

allocated to the PAGA Aggrieved Employee Payment to be paid to the Aggrieved Employees on a *pro rata* basis as noted below, which shall be referred to as the Aggrieved Employee's "**Individual PAGA Payment.**"

Example:

Aggrieved Employee A was actively employed during the PAGA Period for 25 pay periods. All Aggrieved Employees were actively employed a combined total of 78,000 pay periods during the PAGA Period. Aggrieved Employee A's Individual PAGA Payment would be calculated as follows:

- 25 pay periods for Aggrieved Employee A ÷ 78,000 total pay periods for all Aggrieved Employees = 0.032%.
- Aggrieved Employee A is entitled to an Individual PAGA Payment in an amount that is 0.032% of the PAGA Aggrieved Employee Payment.¹

e. Taxes and Reporting: The Individual PAGA Payments will be treated as non-wage income to the Aggrieved Employees and reported by the Settlement Administrator on IRS Form 1099.

32. **Release By Aggrieved Employees and the State of California.**

a. Terms of Release. Upon the Funding Date, as defined below, in exchange for the consideration recited in this Settlement Agreement, Representative Plaintiff, as the representative for the State of California and all Aggrieved Employees, and on behalf of her current, former, and future heirs, executors, administrators, attorneys, agents, and assigns will forever completely release and discharge the Released Parties of any and all Released Claims, as defined in Paragraph 16. The Aggrieved Employees and the State of California are deemed by operation of the Final Order and Judgment to have agreed not to sue or otherwise make a claim against any of the Released Parties for any Released Claims. The release will not be effective until Defendant has made all payments due under the terms of this Settlement Agreement.

b. No Claims Based on Stipulation and Agreement. No Aggrieved Employee

¹ The Individual PAGA Payment will be rounded to the nearest penny with .5 rounded up.

1 will have any claim against any of the Released Parties, Defendant's counsel, the Representative
2 Plaintiff, or PAGA Counsel, based on errors in administering claims or performing the mailing and
3 skip-tracing requirements of the Settlement Administrator under this Agreement.

4 33. **General Release By Representative Plaintiff.**

5 a. Terms of Release. Upon the Funding Date, as defined below, in exchange
6 for the consideration recited in this Settlement Agreement, including the Representative Plaintiff
7 Enhancement Award, the Representative Plaintiff, on behalf of herself and on behalf of her current,
8 former, and future heirs, executors, administrators, attorneys, agents, and assigns, does hereby and
9 forever release, waive, acquit and discharge the Released Parties from all claims (known or
10 unknown) which she has, had or might otherwise have had against the Released Parties, from the
11 beginning of time to the date she signs this Agreement, regarding any aspect of her employment
12 including, but not limited to, the Released Claims, any common law or statutory torts (including
13 invasion of privacy), any federal, state or governmental constitution, statute, regulation or ordinance,
14 and any claim for wages, tips or any other compensation or benefit.

15 b. California Civil Code Section 1542. Upon the Funding Date, as defined
16 below, the Representative Plaintiff will be deemed to have, and by operation of the Final Order and
17 Judgment will have, expressly waived and relinquished, to the fullest extent permitted by law, the
18 provisions, rights, and benefits of section 1542 of the California Civil Code which provides as
19 follows:

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

24 a. No Other Actions. The Representative Plaintiff is deemed by operation of
25 the Final Order and Judgment to have agreed not to sue or otherwise make any claim against any of
26 the Released Parties based upon any action, event, or occurrence prior to the date she signs this
27 Settlement Agreement.

28 34. **Release by PAGA Counsel.** Upon the Funding Date, as defined below, PAGA
Counsel release on behalf of their present and former attorneys, employees, agents, successors and

1 assigns the Released Parties from all claims for attorneys' fees and costs incurred in connection with
2 the facts and theories alleged in the Complaint, the First Amended Complaint, the PAGA Notices,
3 and the Released Claims.

4 35. **Request For Final Order and Judgment.**

5 a. Upon execution of this Agreement, the Representative Plaintiff shall
6 promptly file a stipulation or unopposed motion with the Court requesting approval of this
7 Settlement by submitting a proposed Final Order and Judgment, in a form substantially similar to
8 Exhibit B.

9 b. The Representative Plaintiff shall not file the stipulation or unopposed motion
10 requesting final approval or final judgment with the Court until Defendant has reviewed and
11 approved it, which approval will not be unreasonably withheld.

12 c. On the date Representative Plaintiff files the stipulation or unopposed motion
13 discussed in this Paragraph, Plaintiff will also submit to the LWDA a notice of the Settlement
14 enclosing a copy of the Settlement Agreement. Plaintiff's notice of the Settlement to the LWDA
15 shall comply with the notice requirement of PAGA.

16 36. **Request For Dismissal of Class Action Claims.**

17 a. As part of her motion for approval of this Settlement Agreement, the
18 Representative Plaintiff shall request dismissal of the class claims in the Action, without prejudice,
19 conditioned on the Court granting approval of this Settlement Agreement. The Representative
20 Plaintiff shall take all steps necessary to dismiss the class claims in the Action, without prejudice,
21 to effectuate the dismissal of class claims pursuant to this Paragraph.

22 37. **Settlement Funding.**

23 a. Upon the Court entering the Final Order and Judgment, and within fourteen
24 (14) days after the Effective Date, the Settlement Administrator shall send Defendant's counsel
25 electronic wiring instructions to fund the Gross Settlement Amount.

26 b. Defendant shall wire to the Settlement Administrator the Gross Settlement
27 Amount by December 31, 2023 (the "**Funding Date**").

28 c. Within twenty (20) days after the Funding Date, the Settlement Administrator

1 shall issue all payments required by this Agreement (the “**Payment Date**”).

2 38. **PAGA List.**

3 Within ten (10) days after the Effective Date, Defendant will provide a PAGA List to the
4 Settlement Administrator which will identify all Aggrieved Employees by name, social security
5 number, and last known home address (“PAGA List”). The PAGA List will also contain the number
6 of pay periods credited to each Aggrieved Employee.

7 39. **List Of Individual Settlement Amounts.**

8 Within ten (10) days after the Settlement Administrator receives the PAGA List, the
9 Settlement Administrator will provide to PAGA Counsel and Defendant’s counsel a Proceeds List
10 reflecting the Individual PAGA Payment for each Aggrieved Employee (“Proceeds List”). The
11 Proceeds List provided to PAGA Counsel will not include the Aggrieved Employees’ names, social
12 security numbers or contact information.

13 40. **PAGA Payments to Aggrieved Employees.**

14 a. On the Payment Date, the Settlement Administrator will mail to each
15 Aggrieved Employee, via first-class United States Mail, the following: (a) the PAGA Settlement
16 Notice in English and Spanish, attached as Exhibit A to this Agreement and (b) their Individual
17 PAGA Payment (collectively, the “**PAGA Packet**”).

18 b. Prior to mailing, the Settlement Administrator will update all addresses using
19 the National Change of Address System (NCOA). In the event that a PAGA Packet is returned to
20 the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send
21 the PAGA Packet to the forwarding address identified. If no forwarding address is provided, then
22 the Settlement Administrator will promptly conduct a “standard search,” sometimes called, “Skip
23 Trace” or “Credit Header” searches, to locate a better address. If a better address is found, the
24 Settlement Administrator will promptly re-send the PAGA Packet. If a better address is not found
25 or the PAGA Packet is ultimately returned without a forwarding address, neither the Settlement
26 Administrator, Defendant, or PAGA Counsel shall be required to take further action.

27 c. Aggrieved Employees shall have 180 calendar days after the date the PAGA
28 Packet is mailed to them to cash their settlement payment checks. If any Aggrieved Employee’s

1 check is not cashed within that period, the settlement payment check will be voided and a stop-
2 payment will be issued. Neither Defendant, Defendant's counsel, Plaintiff, nor PAGA Counsel will
3 have any liability for lost or stolen settlement payment checks, forged signatures on settlement
4 payment checks, unauthorized negotiation of settlement payment checks or failure to timely cash a
5 settlement payment check within the 180 day period.

6 d. Any unpaid cash residue or unclaimed Aggrieved Employee funds, plus any
7 accrued interest that has not otherwise been distributed pursuant to order of the Court, shall be
8 transmitted to the California State Controller's Unclaimed Property Fund.

9 41. **Payments Of Attorneys' Fees And Costs, and the LWDA Settlement Payment.**

10 a. On the Payment Date, the Settlement Administrator will pay from the Gross
11 Settlement Amount the Representative Plaintiff's Enhancement Award as awarded by the Court.
12 The payment will be made by sending to directly to Plaintiff a check payable to "Brenda Baltazar
13 Ramirez" in the amount of the Court-approved Enhancement Award. This payment is conditional
14 upon PAGA Counsel providing Defendant's counsel with a completed Form W-9 for the
15 Representative Plaintiff.

16 b. On the Payment Date, the Settlement Administrator will pay from the Gross
17 Settlement Amount to PAGA Counsel its Court-approved Attorneys' Fees and Costs. Such payment
18 is conditional upon PAGA Counsel providing the Settlement Administrator with a completed Form
19 W-9.

20 c. On the Payment Date, the Settlement Administrator will pay the LWDA
21 Payment from the Net Settlement Amount by issuing a check payable to "California Labor
22 Workforce and Development Agency."

23 42. **Deadlines.**

24 If any deadline specified in this Agreement falls on a Saturday, Sunday, or Court holiday,
25 the deadline will be automatically extended to the next regular business day. Unless specified
26 otherwise, all references to "days" shall mean calendar days.

27 43. **Enforcement and Continuing Jurisdiction of the Court.**

28 Pursuant to the Parties agreement, this Settlement Agreement will be approved by the Court

1 and will be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6.
2 Even after the entry of the Final Order and Judgment, this Court will have and retain continuing
3 jurisdiction over the Action and over all Parties and the Aggrieved Employees, to the fullest extent
4 necessary or convenient to enforce and effectuate the terms and intent of this Settlement Agreement
5 and all matters provided for in it, and to interpret it.

6 44. **Mutual Full Cooperation.**

7 The Parties will fully cooperate with each other to accomplish the terms of this Settlement
8 Agreement, including, but not limited to, execution of such documents and taking such other action
9 as may be reasonably necessary or convenient to implement it.

10 45. **Non-Admission Of Liability.**

11 The Parties enter into this Agreement to resolve the dispute that has arisen between them
12 and to avoid the burden, expense, and risk of continued litigation. In entering into this Agreement,
13 Defendant does not admit, and specifically denies, that it has violated any federal, state, or local
14 law; violated any regulations or guidelines promulgated pursuant to any statute or any other
15 applicable laws, regulations or legal requirements; violated or breached any duty; engaged in any
16 misrepresentation or deception; or engaged in any other unlawful conduct with respect to the Action.
17 Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected
18 with it, shall be construed as an admission or concession by Defendant of any such violations or
19 failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms
20 of this Agreement, this Agreement and its terms and provisions shall not be offered or received as
21 evidence in any action or proceeding to establish any liability or admission on the part of Defendant
22 or to establish the existence of any condition constituting a violation of, or a non-compliance with,
23 federal, state, local or other applicable law.

24 46. **Effective Date Of Defendant's Obligations Under This Agreement.**

25 Defendant's obligations under this Settlement Agreement will become final and effective
26 only upon the occurrence of the Effective Date. In the event that any of the conditions specified in
27 this Settlement Agreement are not satisfied, or in the event that this Settlement does not obtain
28 approval of the Court for any reason, all matters covered by this Agreement will be null and void.

1 In such event, neither this Agreement, nor any negotiations leading to this Settlement, will be used
2 or construed by or against any Party as a determination, admission, or concession of any issue of
3 law or fact in the litigation; and the Parties do not waive, and instead expressly reserve, their
4 respective rights regarding the prosecution and defense of the Action, including all available
5 defenses and affirmative defenses, and to challenge any claim, as if this Settlement Agreement never
6 existed.

7 47. **Nullification.**

8 If: (1) the Court should for any reason fail to enter the Final Order and Judgment; or (2) the
9 Court's Final Order and Judgment is reversed or modified as to any material term as defined above,
10 or declared or rendered void as to any material term as defined above, then (a) the Settlement
11 Agreement shall become null and void; (b) the Parties will revert to their respective positions
12 immediately prior to reaching the settlement; and (c) Defendant will be responsible for any
13 Settlement Administration Costs.

14 48. **Invalidation.**

15 Invalidation of any material term of this Settlement Agreement will invalidate this
16 Agreement in its entirety unless the Parties subsequently agree in writing that the remaining
17 provisions will remain in full force and effect.

18 49. **Confidentiality/No Publicity.**

19 Representative Plaintiff and her counsel agree that the terms of this Settlement Agreement
20 (including, but not limited to, the Gross Settlement Amount), the negotiations leading to the
21 execution of this Settlement Agreement, and the Settlement Agreement itself, shall not be discussed
22 with or publicized or promoted to the media (including, without limitation, legal periodicals and
23 publications such as "Jury Verdicts," disclosure of the Settlement Agreement on any web site of
24 Representative Plaintiff's counsel or any other website, or on any blogs, articles, or on any social
25 media platforms or channels), or the public at large, without the advance written consent of
26 Defendant. The Parties intend this Paragraph 49 to prohibit Plaintiff and her counsel from
27 discussing, answering questions about, promoting or publicizing the Settlement Agreement, its
28 terms, or the negotiations leading to the Settlement Agreement with anyone other than the Court or

1 those individuals necessary to effectuate the terms of the Agreement. Notwithstanding the
2 foregoing, Representative Plaintiff and her counsel (1) may tell the public in general only that certain
3 claims "have been resolved by the Parties;" and (2) may disclose the terms of the Settlement
4 Agreement (a) in appropriate filings with the Court in this case; (b) where required by law (*e.g.*,
5 income tax returns); and (c) to accountants or other tax professionals for the purpose of preparing
6 tax returns. In addition, PAGA Counsel may respond to questions received from, and discuss any
7 aspect of this Agreement with Aggrieved Employees. Nothing herein shall prevent PAGA Counsel
8 from referring to the Action in a declaration before the courts relating to the adequacy of counsel.

9 50. **Entire Agreement.**

10 This Settlement Agreement constitutes the entire integrated agreement between the Parties
11 relating to the Action, and no oral representations, warranties, or inducements have been made to
12 any party concerning this Settlement Agreement other than the representations, warranties, and
13 covenants contained and memorialized in this Settlement Agreement.

14 51. **Authorization To Act.**

15 PAGA Counsel warrants and represents that they are authorized by the Representative
16 Plaintiff, and counsel of record for Defendant warrants that they are authorized by Defendant, to
17 take all appropriate action required or permitted to be taken by such Parties pursuant to this
18 Settlement Agreement to effectuate its terms, and to execute any other documents required to
19 effectuate the terms of this Settlement Agreement, except for any documents, including but not
20 limited to this Settlement Agreement, that are required to be executed by the Parties.

21 52. **Modification Only In Writing.**

22 This Settlement Agreement may be amended or modified only by a written instrument signed
23 by all Parties or their successors in interest.

24 53. **Binding On Successors.**

25 This Settlement Agreement is binding upon and will inure to the benefit of the Parties to this
26 Agreement, as well as their respective attorneys, past, present, and future predecessors, successors,
27 shareholders, officers, directors, employees, agents, trustees, representatives, administrators,
28 fiduciaries, assigns, insurers, executors, partners, parent corporations, subsidiaries, and related or

1 affiliated entities.

2 54. **No Prior Assignments.**

3 The Aggrieved Employees are deemed by operation of the Final Order and Judgment to
4 represent, covenant, and warrant that they have not directly or indirectly assigned, transferred,
5 encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any
6 liability, claim, demand, cause of action, or rights released and discharged by this Agreement.

7 55. **Governing Law.**

8 All terms of this Settlement Agreement will be governed by and interpreted according to the
9 laws of the State of California, without giving effect to conflicts of laws principles.

10 56. **Counterparts.**

11 This Settlement Agreement may be executed in one or more counterparts. All executed
12 counterparts and each of them will be deemed to be one and the same instrument. Counsel for the
13 Parties will exchange among themselves any signed counterparts.

14 57. **Headings For Convenience Only.**

15 The descriptive headings of any paragraphs or sections of this Settlement Agreement are
16 inserted for convenience of reference only and do not constitute a part of this Settlement Agreement.

17 58. **Construction Of This Agreement.**

18 The Parties agree that the terms and conditions of this Settlement Agreement are the result
19 of arms-length negotiations between the Parties and that this Settlement Agreement will not be
20 construed in favor of or against any Party by reason of the extent to which any Party, or her or its
21 counsel participated in the drafting of this Agreement. This Settlement Agreement constitutes the
22 entire agreement between the Parties. Except as expressly provided in this Agreement, this
23 Settlement Agreement has not been executed in reliance upon any other oral or written
24 representations or terms and no such extrinsic oral or written representations or terms will modify,
25 vary or contradict the terms of this Settlement Agreement. In entering this Settlement Agreement,
26 the Parties explicitly recognize California Civil Code section 1625 and California Code of Civil
27 Procedure section 1856(a), which provide that a written agreement is to be construed according to
28 its terms and may not be varied or contradicted by extrinsic evidence. The Representative Plaintiff

1 and Defendant had available to them the advice and assistance of independent counsel. As such,
2 neither Representative Plaintiff nor Defendant may claim that any ambiguity in this Settlement
3 Agreement should be construed against the other.

4 59. **Corporate Signatories.**

5 Any person executing this Settlement Agreement or any related document on behalf of a
6 corporate signatory warrants and promises for the benefit of all Parties that such person has been
7 duly authorized by such corporation to execute this Settlement Agreement or any related document.

8 60. **Representation By Counsel.**

9 All of the Parties hereto acknowledge that they have been represented by counsel throughout
10 all negotiations which preceded the execution of this Settlement Agreement and that this Agreement
11 has been executed with the consent and advice of counsel.

12 61. **Attorneys' Fees And Costs.**

13 Except as otherwise provided in this Agreement, the Parties will bear responsibility for their
14 own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of this Action
15 and will not seek reimbursement thereof from any Party to this Settlement Agreement. In the event
16 of a proven breach of this Agreement, the breaching party will be required to pay the prevailing
17 Party's reasonable attorneys' fees and costs incurred in enforcing this Agreement.

18 [SIGNATURE PAGE TO FOLLOW]
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1 **IT IS SO AGREED:**

2 Dated: 2/28/2023

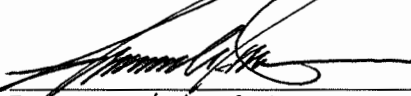
DocuSigned by:

Brenda Baltazar Ramirez

Brenda Baltazar Ramirez

4 Dated: 3/08/2023

W.K.S. FROSTY CORPORATION

5 

6 By: MICHAEL W. SIMMONS

7 Its: VICE PRESIDENT, HUMAN RESOURCES, RISK AND LEGAL

8 Dated: 2/28/2023

APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPHS 34, 49:

DocuSigned by:

Kyle D. Smith

10 By:

Jonathan Melmed

Kyle D. Smith

Joanne H. Kim

MELMED LAW GROUP P.C.

Attorneys for Plaintiff Brenda Baltazar Ramirez, as
an individual, on behalf of herself and all aggrieved
employees

14 Dated: 3/08/2023

APPROVED AS TO FORM:

15 By:

Maria Z. Stearns

Peter Hering

Jonas Trevethan

RUTAN & TUCKER, LLP

Attorneys for Defendant W.K.S. Frosty Corporation