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DEL MAR FOOD PRODUCTS CORP.

[ADDITIONAL COUNSEL LISTED ON NEXT PAGE]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ**

ESTEBAN ARTEAGA, JR., individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

DEL MAR FOOD PRODUCTS CORP., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants

Case No.: 21CV03094

CLASS ACTION

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

*[Assigned for All Purposes to the Hon.
Timothy Volkmann; Dept. 5]*

Complaint Filed: December 29, 2021

FAC Filed: March 29, 2022

Trial: Not Yet Set

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1 This Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement” or
2 “Agreement”) is made and entered into by and between Plaintiff ESTEBAN ARTEAGA, JR.
3 (“Plaintiff” or “Class Representative”), individually and on behalf of all putative class members,
4 and Defendant DEL MAR FOOD PRODUCTS CORP. (“Defendant”). Plaintiff and Defendant are
5 collectively referred to herein as “the Parties.”

6 **I. DEFINITIONS**

7 The following definitions are applicable to this Settlement, in addition to other terms defined
8 elsewhere in this Settlement:

9 1. “Action” shall mean the operative Complaint of the civil action initially commenced
10 on December 29, 2021, filed and maintained by Plaintiff against Defendant in the Superior Court of
11 California, County of Santa Cruz, Case No. 21CV03094.

12 2. “Class” shall mean all hourly-paid, non-exempt employees who, during either the
13 Class Period, have previously been or currently are employed in California by Defendant, as an
14 hourly-paid, non-exempt employee. “Class Member” shall mean an individual who is a member of
15 the Class (or if any such person is incompetent, deceased, or unavailable due to military service, the
16 person’s legal representative or successor in interest evidenced by reasonable verification).

17 3. “Class Counsel” shall mean the attorneys representing Plaintiff in the Action, Kane
18 Moon, Esq., H. Scott Leviant, Esq., and Mariam Ghazaryan, Esq. of Moon & Yang, APC.

19 4. “Class Counsel Fees Payment” shall mean one-third (1/3) of the Maximum
20 Settlement Amount (currently estimated to be Three Hundred and Twenty-One Thousand, Six
21 Hundred and Sixty-Six Dollars and Sixty-Seven Cents (\$321,666.67)) subject to approval by the
22 Superior Court as Class Counsel’s attorneys’ fees incurred in connection with the Action, including
23 fees incurred in pre-filing investigation, filing of the Action, and all related litigation activities, this
24 Settlement, and all post-Settlement compliance procedures.

25 5. “Class Counsel Litigation Expenses Payment” shall mean the actual litigation
26 expenses and/or costs expended by Class Counsel subject to approval by the Superior Court
27 incurred in connection with the Action, including pre-filing investigation, filing of the Action, and
28 all related litigation activities, this Settlement, and all post-Settlement compliance procedures. Class

1 Counsel's expenses are not to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00).

2 6. "Class Notice" shall mean the Notice of Proposed Settlement, Preliminary Approval
3 of Settlement, and Hearing Date for Final Court Approval, a sample of which is attached hereto as
4 Exhibit "A". The Class Notice shall further contain (i) a Class Member's first and last name, (ii)
5 last known address, (iii) the Class Member's Individual Workweeks, (iv) the PAGA Group
6 Member's Individual Pay Periods, if applicable; (v) the Class Member's estimated amount of the
7 Settlement Share; and (vi) the PAGA Group Member's estimated PAGA Payment Share, if
8 applicable. The Class Notice shall also provide the Class Members with instructions on how to opt-
9 out of and/or object to the Settlement.

10 7. "Class Period" shall mean the period of time from December 29, 2017, through
11 January 16, 2023.

12 8. "Class Representative Payment" shall mean the special payment made to Plaintiff in
13 his capacity as Class Representative to compensate him for prosecuting the Action, and performing
14 work in support of the Action, in the amount of Seven Thousand, Five Hundred Dollars and Zero
15 Cents (\$7,500.00), subject to approval by the Superior Court.

16 9. "Defense Counsel" shall mean the attorneys representing Defendant in the Action,
17 Matthew C. Sgnilek, Esq. Andrea Rosenkranz, Esq., and John Wu, Esq. of O'Hagan Meyer.

18 10. "Effective Date" shall mean the first business day following the last of the following
19 occurrences: (i) if no Class Member both objects and also files either a timely motion to intervene
20 and/or timely motion to vacate the judgment, then forty-five (45) days following the date the Court
21 enters an order granting Final Approval of the Settlement; (ii) if a Class Member both objects and
22 either files a timely motion to intervene or timely motion to vacate the judgment, then sixty-one
23 (61) days following the date the Court enters an order granting final approval, assuming no appeal is
24 filed; or (iii) if a Class Member both objects and also files a timely motion to intervene or files a
25 motion to vacate the Judgment and also files a timely appeal, then the date of final resolution of that
26 appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final and
27 complete judicial approval of the Settlement in its entirety, with no further challenge to the
28 Settlement being possible. The occurrence of the Effective Date is a prerequisite to any obligation

1 of Defendant to pay any funds into the Settlement Account.

2 11. "Employer's Payroll Taxes" shall mean Defendant's share of all payroll taxes
3 payable to any and all government agencies incurred for any payments of Settlement Shares to
4 Participating Class Members pursuant to this Settlement. Defendant's payment of the normal
5 employer's share of payroll taxes will be made separately and shall not come from the Maximum
6 Settlement Amount.

7 12. "Final Approval Hearing" shall mean the hearing to be conducted by the Superior
8 Court to determine whether to finally approve and implement the terms of this Settlement.

9 13. "Individual Pay Periods" shall mean the number of Pay Periods for an individual
10 PAGA Group Member.

11 14. "Individual Workweeks" shall mean the number of Workweeks for an individual
12 Class Member.

13 15. "Judgment" shall mean the Order of Final Judgment entered by the Superior Court
14 that the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in
15 this Action.

16 16. "LWDA Payment" shall mean the payment to the California Labor and Workforce
17 Development Agency ("LWDA") constituting seventy-five percent (75%) of the value assigned to
18 the claim for penalties under the California Labor Code Private Attorneys General Act, California
19 Labor Code Section 2698, *et seq.* ("PAGA"). Specifically, Sixty Thousand Dollars and Zero Cents
20 (\$60,000.00), which shall constitute the LWDA's seventy-five percent (75%) share of Eighty
21 Thousand Dollars and Zero Cents (\$80,000.00) in civil penalties paid under this Settlement. The
22 remaining Twenty Thousand Dollars and Zero Cents (\$20,000.00) in civil penalties shall be
23 distributed on a *pro rata* basis based upon the number of pay periods worked by each PAGA Group
24 Member ("PAGA Payment").

25 17. "Maximum Settlement Amount" shall mean the maximum settlement amount of
26 Nine Hundred and Sixty-Five Thousand Dollars and Zero Cents (\$965,000.00) payable by
27 Defendant as provided by this Agreement, unless that amount is increased pursuant to Paragraph 18
28 below, exclusive of the normal employer's share of any payroll taxes attributable to the Settlement

1 Share payments allocated to wages. Defendant's payment of the normal employer's share of
2 payroll taxes will be made separately, according to each Defendant's agreed upon proportionate
3 share of the Maximum Settlement Amount, and shall not come from the Maximum Settlement
4 Amount.

5 18. Defendant represents that as of November 16, 2022, the number of workweeks
6 worked by Settlement Class Members during the Class Period is approximately 73,000. If it is
7 determined that the workweeks through January 16, 2023, exceeds 80,300 (73,000 plus 10% of
8 73,000), then Defendant shall have the option of either (i) increasing the Net Settlement Amount
9 by an amount determined by the following formula: $[(\text{Actual Number of Workweeks} - 80,300) \div 80,300] \times \text{Net Settlement Amount}$; or (ii) changing the end date of the Class Period (and
10
11 PAGA Period) to a date for which there are no more than 80,300 workweeks.

12 19. "Net Settlement Amount" shall mean the Maximum Settlement Amount, less (i) the
13 Class Representative Payment approved by the Superior Court; (ii) the Class Counsel Fees Payment
14 approved by the Superior Court; (iii) the Class Counsel Litigation Expenses Payment approved by
15 the Superior Court; (iv) the LWDA Payment approved by the Superior Court; (v) the PAGA
16 Payment approved by the Superior Court; (vi) the Settlement Administrator Payment approved by
17 the Superior Court; and (vii) any other fees or expenses (other than Class Counsel Fees Payment
18 and Class Counsel Litigation Expenses Payment) incurred in implementing the terms and conditions
19 of this Agreement as approved by the Superior Court.

20 20. "Non-Participating Class Member" shall mean a Class Member who submits a
21 complete, valid, and timely request to be excluded from the Settlement pursuant to the instructions
22 provided in the Class Notice.

23 21. "PAGA Group" mean all hourly-paid, non-exempt employees who, during the
24 PAGA Period, have previously been or currently are employed in California by Defendant. "PAGA
25 Group Member" shall mean an individual who is a member of the PAGA Group (or if any such
26 person is incompetent, deceased, or unavailable due to military service, the person's legal
27 representative or successor in interest evidenced by reasonable verification).

28 22. "PAGA Payment Share" shall mean the value of each PAGA Group Member's share

1 of the PAGA Payment as provided by this Agreement.

2 23. "PAGA Period" shall mean the period of time from December 29, 2020, through
3 January 16, 2023.

4 24. "Participating Class Member" shall mean all Class Members who have not submitted
5 a complete, valid, and timely request to be excluded from the Settlement pursuant to the instructions
6 provided in the Class Notice.

7 25. "Pay Period" shall mean any pay period in which a Class Member actually received
8 payment from Defendant as an hourly-paid, non-exempt employee.

9 26. "Preliminary Approval" shall mean the Superior Court's preliminary approval of the
10 Settlement without material change that the Parties anticipate will be made following submission of
11 this Agreement to the Court.

12 27. "Settlement Administrator" shall mean Phoenix Settlement Administrators proposed
13 by the Parties and appointed by the Superior Court to administer the Settlement.

14 28. "Settlement Administrator Payment" shall mean the payment to the Settlement
15 Administrator for its fees and expenses in administering this Settlement.

16 29. "Settlement Share" shall mean the value of each Participating Class Member's share
17 of the Net Settlement Amount as provided by this Agreement.

18 30. "Superior Court" shall mean the Superior Court of California for the County of Santa
19 Cruz.

20 31. "Workweek" shall mean any week in which a Class Member actually performed paid
21 work for Defendant during the Class Period as an hourly-paid, non-exempt employee.

22 **II. RECITALS**

23 32. On December 29, 2021, Class Counsel, on behalf of Plaintiff and the PAGA Group,
24 gave written notice to the Labor Workforce and Development Agency ("LWDA") of the Labor
25 Code violations Defendant are alleged to have violated ("LWDA Exhaustion Letter").

26 33. On December 29, 2021, Plaintiff filed a Class Action Complaint against Defendant
27 in the Santa Cruz County Superior Court, Case No. 21CV03094. In his Complaint, Plaintiff pled
28 causes of action for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3)

1 Failure to Provide Meal Periods or Pay Meal Period Premiums; (4) Failure to Provide Rest Breaks
2 or Pay Rest Break Premiums; (5) Failure to Indemnify Necessary Business Expenses; (6) Failure to
3 Timely Pay Final Wages; (7) Failure to Provide Accurate Itemized Wage Statements; and (8)
4 Unlawful Competition.

5 34. On March 29, 2022, Plaintiff amended his Complaint to add a ninth cause of action
6 for Civil Penalties pursuant to PAGA.

7 35. Defendant denies and continues to deny all of Plaintiff's material allegations.
8 Specifically, Defendant contend (1) it did not fail to pay the Class the minimum, straight time,
9 regular rate, and/or overtime wages; (2) it paid the Class for all hours worked; (3) it provided the
10 Class with all meal periods according to law; (4) it provided the Class with all rest periods
11 according to law; (5) it did not fail to timely pay the Class wages due and owing during
12 employment and/or upon separation; (6) it provided the Class with accurate itemized wage
13 statements, consistent with Labor Code Section 226; (7) it properly maintained all payroll records;
14 (8) it reimbursed employees for all necessary business expenses; (9) it did not violate Business &
15 Professions Code Section 17200, *et seq.*; (10) the PAGA Group is not entitled to penalties under
16 PAGA; and (11) Defendant is not liable for damages, including unpaid wages, liquidated damages,
17 statutory penalties, attorneys' fees, or costs of litigation to the Class.

18 36. In connection with the Action, and in order to work toward a mediated resolution
19 without the time and expense of formal discovery, the Parties produced voluminous documents and
20 data (including, by Defendant, human resources documents and policies, time records, and payroll
21 data during the Class Period) which were reviewed, investigated, and analyzed by Class Counsel.

22 37. On November 17, 2022, the Parties in Action participated in a full day of mediation
23 before an experienced employment and class action mediator, Steve Serratore, Esq. (the
24 "Mediation") and the Parties reached a settlement at the Maximum Settlement Amount.

25 38. The Settlement described in this Agreement represents a compromise and settlement
26 of highly disputed claims. Nothing in this Settlement is intended or will be construed as an
27 admission by Defendant that Plaintiff's claims in the Action have any merit or that they have any
28 liability to Plaintiff, the Class, the PAGA Group or the State on those claims, or as an admission by

1 Plaintiff that Defendant's defenses in Action have any merit. This Settlement is intended to fully,
2 finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to
3 the terms and conditions set forth in this Settlement.

4 39. Based on its own thorough, independent investigation and evaluation of this case,
5 Class Counsel is of the opinion that the Settlement of this Action with Defendant for the
6 consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and in the
7 best interest of the Class in light of all known facts and circumstances, including the risk of
8 significant costs and delay, the risk of non-certification of the Class, the defenses asserted by
9 Defendant including the risks of adverse determinations on the merits and numerous potential
10 appellate issues. Although Defendant contends that they have no liability in the Action, Defense
11 Counsel shares Class Counsel's belief that the Settlement represents a fair and adequate settlement
12 given the respective risks associated with the case.

13 40. Based on the foregoing Recitals, the Parties agree as follows:

14 **III. PROCEDURE FOR APPROVING SETTLEMENT**

15 41. **Motion for Preliminary Approval of Settlement by the Superior Court.** Plaintiff
16 will move the Superior Court for an order granting Preliminary Approval of the Settlement, setting
17 a date for the Final Approval Hearing no earlier than 120 days from the date of the order granting
18 Preliminary Approval of the Settlement, and approving the Class Notice (attached as Exhibit "A" to
19 this Stipulation) ("Motion for Preliminary Approval"). Any unresolved disagreement among the
20 Parties concerning the Class Notice or other documents necessary to implement the Settlement will
21 be referred first to Steve Serratore, Esq., and if no resolution is reached, then to the Superior Court.

22 42. At the hearing on the Motion for Preliminary Approval, the Parties anticipate that
23 they will jointly appear, support the granting of the Motion for Preliminary Approval, and obtain an
24 order granting Preliminary Approval, granting approval of the Class Notice, and setting a date for
25 the Final Approval Hearing no earlier than 120 days from the date of the order granting Preliminary
26 Approval.

27 43. Should the Superior Court require any amendments to this Agreement or the Motion
28 for Preliminary Approval, the Parties agree to work jointly to resolve any issues in order to secure

1 the Superior Court's Preliminary Approval.

2 44. Should the Superior Court decline to preliminarily approve any material aspects of
3 the Settlement, the Settlement will be null and void and the Parties will have no further obligations
4 under it. In such event, the Parties shall be returned to their respective positions as of the date and
5 time immediately prior to the execution of this Agreement, and the Parties shall proceed in all
6 respects as if this Agreement had not been executed.

7 45. **Class Notice.** After the Superior Court enters its order granting Preliminary
8 Approval, every Class Member will be provided with the Class Notice (in English and Spanish)
9 which will include the Class Notice completed to reflect the order granting Preliminary Approval of
10 the Settlement and the Class Member's information as follows:

11 (a) Within twenty-one (21) days after the Motion for Preliminary Approval is
12 granted, Defendant will provide to the Settlement Administrator the "Class Members' Data," which
13 shall consist of an electronic database containing (i) each Class Member's first and last name, (ii)
14 last known mailing address, (iii) the Class Member's Social Security number or Tax ID, (iv) the
15 Class Member's total number of Individual Workweeks, and (v) the Class/PAGA Group Members'
16 total number of Individual Pay Periods, if applicable. If any or all of the Class Members' Data are
17 unavailable to Defendant, Defendant will so inform Class Counsel prior to the date on which
18 Defendant are required to submit the Class Members' Data to the Settlement Administrator and the
19 Parties will make their best efforts to reconstruct or otherwise agree upon the Class Members' Data
20 prior to when it must be submitted to the Settlement Administrator. If the Parties are unable to
21 agree, the dispute will be resolved by the Settlement Administrator as provided in Paragraph 48.
22 This information will otherwise remain confidential and will not be disclosed to anyone, except as
23 required to applicable taxing authorities, as required to carry out the reasonable efforts to identify
24 Class Member information as described in Paragraph 45(c), pursuant to Defendant's express written
25 authorization, or by order of the Superior Court.

26 (b) Within seven (7) days after receiving the Class Members' Data, or as soon
27 thereafter as it is able to do so, the Settlement Administrator will mail the Class Notice to all
28 identified Class Members via first-class U.S. Mail using the mailing address information provided

1 by Defendant, unless modified by any updated address information that the Settlement
2 Administrator obtains in the course of administration of the Settlement.

3 (c) If a Class Notice is returned by the U.S. Postal Service because of an
4 incorrect address, the Settlement Administrator will promptly, and not later than five (5) days from
5 receipt of the returned packet, search for a more current address for the Class Member and re-mail
6 the Class Notice to the Class Member. The Settlement Administrator will use the Class Members'
7 Data and otherwise work with Defense Counsel or utilize its own resources such as skip traces to
8 find a more current address. The Settlement Administrator will be responsible for taking reasonable
9 steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing
10 address of any Class Member for whom a Class Notice is returned by the U.S. Postal Service.
11 These reasonable steps shall include the tracking of all undelivered mail; performing address
12 searches for all mail returned without a forwarding address; and promptly re-mailing to Class
13 Members for whom new addresses are found. Any such Class Members who failed to receive a
14 Class Notice, or who were subject to a re-mailing of the Class Notice as described herein shall be
15 given an additional fourteen (14) days to opt out or object to the Settlement.

16 (d) The Settlement Administrator will inform Class Counsel and Defense
17 Counsel of the number of returned Class Notices it receives and Class Notices re-mailed in a
18 weekly status report.

19 (e) Not later than sixteen (16) court days prior to the Final Approval Hearing, the
20 Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its
21 compliance with its obligations under this Settlement. The declaration will be filed with the papers
22 submitted with the Motion for Final Approval. Prior to the Final Approval Hearing, the Settlement
23 Administrator will supplement its declaration of due diligence if any material changes occur from
24 the date of the filing of its prior declaration.

25 46. **Participating Class Members; Requests for Exclusion from Class Settlement;**
26 **and Objections to Settlement.** Class Members may submit requests to be excluded from the effect
27 of the Settlement; or objections to the Settlement, pursuant to the following procedures:

28 (a) **Participating Class Members.** Each Class Member shall be deemed to be a

1 Participating Class Member unless they submit a complete, timely, and valid request to be excluded
2 from the effect of the Settlement as provided below. All Participating Class Members shall be
3 bound by the provisions and releases contained in this Settlement.

4 (b) **Request for Exclusion from Settlement.** Class Members who wish to
5 exclude themselves from the Settlement (“opt out” of the Settlement) must submit to the Settlement
6 Administrator, not later than forty-five (45) days after the date that the Settlement Administrator
7 first mails the Class Notices, an Exclusion Request (“the Exclusion Period”). Exclusion Requests
8 may be submitted to the Settlement Administrator via U.S. Mail only. Class Members must
9 complete, sign, date, and timely return an Exclusion Request to the Settlement Administrator to
10 exclude themselves from the Settlement, setting forth their (i) name, (ii) address, and (iii) the
11 following statement or a similar statement: “I wish to exclude myself from the settlement reached in
12 the matter of *Arteaga v. Del Mar Food Products Corp., et al.* I understand that by excluding
13 myself, I will not receive any money from the Class settlement reached in this matter.” A Class
14 Member who does not complete and submit a valid and timely Exclusion Request in the manner and
15 by the conclusion of the Exclusion Period will remain a Participating Class Member and, if the
16 Court approves the Settlement, will be bound by all terms and conditions of the Settlement and by
17 the Judgment. A Class Member who timely submits a valid Exclusion Request will not participate
18 in, or be bound by, the Settlement of the Judgment and will not receive any payment pursuant to the
19 Settlement except for a payment from the portion of the PAGA Payment to the PAGA Group if the
20 Class Member is a PAGA Group Member, and will not be bound by the terms of the Settlement,
21 except for the release of the PAGA Group Released Claims if the Class Member is a PAGA Group
22 Member, and will not have any right to object, appeal, or comment thereon. To be valid, Exclusion
23 Requests must be completed in full, signed, and returned to the Settlement Administrator before the
24 expiration of the Exclusion Period. Non-Participating Class Members will not be permitted to file
25 objections to the Settlement and/or appear at the Final Approval Hearing to voice any objections to
26 the Settlement. Members of the PAGA Group cannot seek to exclude themselves from the
27 Settlement of the PAGA claim, but retain all rights to exclude themselves from the Class Settlement
28 as delineated herein. The Settlement Administrator will provide Class Counsel, Defense Counsel,

1 and the Superior Court with only the names of the Non-Participating Class Members.

2 (c) **Objections to Settlement.** The Class Notice will provide that any Class
3 Member who does not request exclusion from the Settlement and who wishes to object to the
4 Settlement must serve on the Settlement Administrator, not later than forty-five (45) days after the
5 Settlement Administrator initially mails the Class Notice, a written objection to the Settlement
6 which sets forth the grounds for the objection and the other information required by Paragraph
7 46(d). The objection must be served as follows:

8 *Arteaga v. Del Mar Food Products Corp., et al.*

9 c/o _____

10 _____

11 _____

12
13 (d) The written objection must state the Class Member's (i) name, (ii) address,
14 and (iii) the dates of the Class Member's employment with Defendant. The written objection must
15 state the basis for each objection in clear and concise terms. The written objection shall also state
16 whether the Class Member intends to appear and object at the Final Approval Hearing. A Class
17 Member who does not serve a written objection in the manner and by the deadline specified may
18 appear at the Final Approval Hearing to state their objection to the Settlement. If a Class Member
19 fails to submit a written objection or to appear at the Final Approval hearing to make an oral
20 objection, the Class Member will be deemed to have waived all objections and will be foreclosed
21 from making any objections – whether by appeal or otherwise – to the Settlement.

22 (e) If a Class Member submits both a Request for Exclusion and a written
23 objection, the Settlement Administrator shall attempt to contact and determine whether the Class
24 Member would like to withdraw either the Request for Exclusion or the objection. If the Class
25 Member does not withdraw the Request for Exclusion or if the Settlement Administrator cannot
26 contact a Class Member who submits both a Request for Exclusion and an objection, the Request
27 for Exclusion shall be valid and it shall be presumed that the Class Member does not wish to
28 participate in the Settlement.

1 (f) If the Superior Court rejects the Class Member's objection, or if the Superior
2 Court approves the settlement despite any objections, the Class Member will be deemed to be a
3 Participating Class Member and will be bound by the terms of this Settlement.

4 (g) A Class Member who timely submits a valid Exclusion Request will not
5 participate in, or be bound by, the Settlement of the Judgment and will not receive any payment
6 pursuant to the Settlement except for a payment from the portion of the PAGA Payment to the
7 PAGA Group if the Class Member is a PAGA Group Member, and will not be bound by the terms
8 of the Settlement and Judgment, except for the release of the PAGA Group Released Claims if the
9 Class Member is a PAGA Group Member, and will not have any right to object, appeal, or
10 comment thereon.

11 47. **Report.** Not later than seven (7) days after the deadline for submission of requests
12 to be excluded and/or objections, the Settlement Administrator will provide each Defendant,
13 through its respective Defense Counsel, with a complete and accurate list of names for all
14 Participating Class Members, all Non-Participating Class Members, all PAGA Group Members, and
15 all Class Members who objected to the settlement. The report shall also be accompanied by an
16 itemized calculation of the Settlement Shares for each Participating Class Member. The Settlement
17 Administrator shall also provide both Parties with a report identifying the number of Participating
18 Class Members, the number of Non-Participating Class Members, the number of PAGA Group
19 Members, and the number of Class Members who submitted a valid, timely, and complete
20 objection. Class Counsel shall also receive a list of Class Members who object to the Settlement.

21 48. **Resolution of Class Member and PAGA Group Member Disputes.** If a Class
22 Member and/or PAGA Group Member disputes the number of his or her Individual Workweeks
23 and/or Individual Pay Periods stated in their Class Notice, the Class Member and/or PAGA Group
24 Member must, within forty-five (45) days after the Settlement Administrator initially mails the
25 Class Notice, ask the Settlement Administrator to resolve the matter by returning the Class Notice
26 with a statement of the number of Workweeks and/or Pay Periods that he or she contends were
27 worked and include any documentation the Class Member and/or PAGA Group Member has to
28 support their contention. The Settlement Administrator shall notify Defendant of the dispute and

1 provide them with a copy of the Class Notice and any documentation received in support of the
2 dispute within three (3) court days of receipt thereof. Defendant shall review their payroll and
3 personnel records and verify the correct number of Workweeks and/or Pay Periods within five (5)
4 court days of the Settlement Administrator's notification. Defendant's records will have a
5 rebuttable presumption of accuracy. After consultation with Class Counsel, Defense Counsel, and
6 the applicable Class Member and/or PAGA Group Member, the Settlement Administrator will,
7 within three (3) court days of Defendant's verification, make a determination of the Class Member's
8 and/or PAGA Group Member's number of Workweeks and/or Pay Periods and that determination
9 will be final, binding on the Parties and the Class Member and/or PAGA Group Member, and is not
10 appealable.

11 **49. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
12 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member to
13 exclude him or herself from the Settlement, object to the Settlement, and/or appeal from the
14 Judgment. If ten percent (10%) or more of the Class Members submit a complete, valid, and timely
15 request to be excluded from the Settlement and are deemed to be Non-Participating Class Members,
16 then Defendant shall have the unilateral right to void this Settlement. Defendant may do so by
17 giving notice to Plaintiff and the Court of its election to void the Settlement not later than fourteen
18 (14) days after the Settlement Administrator issues its report identifying the number of Participating
19 Class Members, the number of Non-Participating Class Members, and the number of Class
20 Members who objected to the settlement as described in Paragraph 46(c). Notwithstanding any
21 other provisions in this Settlement, no sums shall be payable by Defendant in the event that this
22 Settlement is voided as provided for herein.

23 **50. Additional Briefing and Final Approval.**

24 (a) Not later than sixteen (16) court days before the Final Approval Hearing, the
25 Plaintiff will prepare and file with the Superior Court a Motion for Final Approval of the
26 Settlement, including payment of the Settlement Administrator's Payment, and a memorandum in
27 support of their motion ("Motion for Final Approval"). Not later than sixteen (16) court days before
28 the Final Approval Hearing, Plaintiff and Class Counsel will serve on Defendant and file with the

1 Superior Court a Motion for Awards of the Class Representative Payments, Class Counsel Fees
2 Payment, and the Class Counsel Litigation Expenses Payment, pursuant to this Settlement, and
3 memoranda in support of its motion. Absent the escalator provisions outlined in Paragraph 18, if
4 applicable, Plaintiff will not seek additional fees from Defendant or an increase in the Maximum
5 Settlement Amount as part of the Motion for awards of the Class Representative Payments, Class
6 Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.

7 (b) Not later than five (5) court days before the Final Approval Hearing, the
8 Parties shall be entitled to file and serve a response to any Class Member's objection to the
9 Settlement and/or reply in support of their Motion for Final Approval, to the extent that any
10 opposition to said Motion is filed. Plaintiff and Class Counsel may file a reply in support of their
11 Motion for Awards of the Class Representative Payments, Class Counsel Fees Payment, and the
12 Class Counsel Litigation Expenses Payment, to the extent that any opposition to said Motion is
13 filed.

14 (c) If the Superior Court ultimately does not grant final approval of the
15 Settlement or grants final approval conditioned on any material change to the Settlement that is not
16 agreed to by one of the Parties, then any Party will have the right to void the Settlement. If the
17 Settlement is voided in this manner, the Parties will have no further obligations under the
18 Settlement, including any obligation by Defendant to pay any amounts that otherwise would have
19 been payable under this Settlement, except that the voiding Party will pay the Settlement
20 Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the
21 right to void the Settlement under this Paragraph. An award by the Superior Court of a lesser
22 amount than that sought by Plaintiff and Class Counsel for the Class Representative Payments, the
23 Class Counsel Fees Payment, and/or the Class Counsel Litigation Expenses Payment, will not
24 constitute a material change to the Settlement within the meaning of this Paragraph.

25 (d) Upon final approval of the Settlement by the Superior Court at or after the
26 Final Approval Hearing, the Parties will present for the Superior Court's approval and entry a
27 Proposed Final Order and Judgment. The entry of the Final Order and Judgment shall permanently
28 bar all Participating Class Members from prosecuting against Defendant any claims or causes of

1 action of any kind up through the date of Final Approval, which were or could have been brought in
2 this Action, whether known or unknown, as well as all claims as set forth in the Release contained
3 in Section V of this Agreement.

4 (e) After entry of the Judgment, the Superior Court will have continuing
5 jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Settlement,
6 (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as
7 may be appropriate under court rules or applicable law.

8 51. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms
9 and conditions of this Settlement, Plaintiff, Participating Class Members, Defendant, and their
10 respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights
11 to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a
12 motion for new trial, a motion under Code of Civil Procedure Section 473, and any extraordinary
13 writ, and the Judgment therefore will become non-appealable by them at the time it is entered. The
14 waiver of appeal does not include any waiver of the right to oppose any appeal, appellate
15 proceedings, or post-judgment proceedings. If an appeal is taken from the Judgment, the time for
16 consummation of the Settlement (including making payments under the Settlement) will be
17 suspended until such time as the appeal is finally resolved and the Judgment, consistent with the
18 terms of this Settlement, becomes Final.

19 52. **Vacating, Reversal, or Material Modification of Judgment on Appeal or**
20 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
21 motion, petition, writ, or application, the reviewing court vacates, reverses, or modifies the
22 Judgment such that there is a material modification to the Settlement, and that court's decision is
23 not completely reversed and the Judgment is not fully affirmed on review by a higher court, then
24 either Party will have the right to void the Settlement, which the Party must do by giving written
25 notice to the other Parties, the reviewing court, and the Superior Court, not later than fourteen (14)
26 days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment
27 becomes final. A vacation, reversal, or modification of the Superior Court's award of the Class
28 Representative Payments, the Class Counsel Fees Payment, and/or Class Counsel Litigation

Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this Paragraph.

53. **Establishment of Settlement Account.** The Settlement Administrator shall establish a Settlement Account within ten (10) days of the Effective Date and notify the Parties when the Settlement Account has been established. The Settlement Administrator shall also provide Defendant with an itemized statement for the total amount to be deposited into the Settlement Account, which shall equal the Maximum Settlement Amount (“Settlement Account Deposit”). Within ten (10) days after receiving notification of the Settlement Account and statement for the Settlement Account Deposit, Defendant shall pay into the Settlement Account an amount equal to the Settlement Account Deposit. Defendant shall have no obligation to pay any additional funds into the Settlement Account.

54. **Payment of Settlement Shares.** The Settlement Administrator shall pay to each Participating Class Member his or her Settlement Share from the Settlement Account. The Settlement Administrator shall pay each Settlement Share by sending a check in the appropriate amount after withholdings to the Participating Class Member at the address indicated in the Class Member’s Data. Such payment shall be sent by the Settlement Administrator via U.S. Mail within fourteen (14) days of its receipt of the Settlement Account Deposit from Defendant.

55. **Payment of PAGA Payment Shares.** The Settlement Administrator shall pay to each PAGA Group Member his or her PAGA Payment Share from the Settlement Account. The Settlement Administrator shall pay each PAGA Payment Share by sending a check in the appropriate amount to the PAGA Group Member at the address indicated in the PAGA Group Member’s Data. Such payment shall be sent by the Settlement Administrator via U.S. Mail within fourteen (14) days of its receipt of the Settlement Account Deposit from Defendant.

56. **Uncashed Settlement Share and PAGA Payment Share Checks.** Any checks paid to Participating Class Members and/or PAGA Group Members shall be negotiable for one hundred and eighty (180) calendar days from the date of their issuance. A Participating Class Member must cash his or her Settlement Share check within one hundred and eighty (180) calendar days after it is mailed to him or her. A PAGA Group Member must cash his or her PAGA Payment

1 Share check within one hundred and eighty (180) calendar days after it is mailed to him or her. If a
2 check remains uncashed after one hundred and eighty (180) calendar days from the initial mailing,
3 or if a check is returned to the Settlement Administrator as undeliverable during the one hundred
4 eighty-day period, the Settlement Administrator shall take all reasonable efforts to identify the
5 Participating Class Member's and/or PAGA Group Member's correct address, including the
6 performance of a "skip-trace." If an updated address can be identified, the Settlement
7 Administrator shall issue another check to the Participating Class Member and/or PAGA Group
8 Member and mail it to the Participating Class Member and/or PAGA Group Member at his or her
9 updated address. If an updated address for the Participating Class Member and/or PAGA Group
10 Member cannot be identified, if a reissued check is once again returned to the Settlement
11 Administrator as undeliverable, or if the reissued check remains uncashed after one hundred eighty
12 (180) calendar days, the Settlement Administrator will keep an accounting of such funds and shall
13 give notice to the Parties of the total balance of uncashed Settlement Shares and/or PAGA Payment
14 Shares. A Participating Class Member who fails to negotiate or receive their Settlement Share
15 check despite the procedures described above shall nevertheless remain bound by the Settlement
16 and the releases contained herein. A PAGA Group Member who fails to negotiate or receive their
17 PAGA Payment Share check despite the procedures described above shall nevertheless remain
18 bound by the Settlement and the releases contained herein.

19 57. The funds represented by Settlement Share and/or PAGA Payment Share checks
20 remaining uncashed for more than one hundred and eighty (180) calendar days after issuance shall
21 be voided and then shall be transmitted to the Controller of the State of California to be held
22 pursuant to the Unclaimed Property Law, California Civil Code Section 1500, *et seq.*, in the names
23 of those Participating Class Members and/or PAGA Group Members who did not cash their checks
24 until such time they claim their property. The Parties agree that this disposition results in no "unpaid
25 residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be
26 paid out to Participating Class Members, whether or not they all cash their settlement checks.

27 58. **Final Report by Settlement Administrator to Superior Court.** Within ten (10)
28 days after final disbursement of all funds from the Settlement Account, the Settlement

1 Administrator will serve on the Parties and file with the Superior Court a declaration providing a
2 final summary report on the disbursements of all funds from the Settlement Account. Within ten
3 (10) days after transmission of any remaining unclaimed funds to Controller of the State of
4 California the Settlement Administrator will serve on the Parties and file with the Superior Court a
5 declaration providing a final summary report on the transmission of any remaining unclaimed funds
6 to Controller of the State of California as outlined Paragraph 57.

7 **IV. SETTLEMENT TERMS AND CONDITIONS**

8 59. **Conditional Certification for Settlement Purposes.** Solely for the purposes of
9 effectuating this Settlement, and subject to Court approval, the Parties hereby stipulate to the
10 conditional certification of the following Settlement Class: “all hourly-paid, non-exempt employees
11 who, during either the Class Period, have previously been or currently are employed in California
12 by Defendant, as an hourly-paid, non-exempt employee.” The Parties agree that if for any reason
13 the Settlement is not preliminarily and/or finally approved, the conditional certification of the
14 Settlement Class will be of no force or effect, does not constitute an admission by Defendant that
15 class certification is proper, and will not be deemed admissible in this or any other proceeding, and
16 that the Parties will litigate the issue of class certification.

17 60. **Settlement Shares.** Subject to the terms and conditions of this Settlement, the
18 Settlement Administrator will calculate the Settlement Shares for each Class Member within ten
19 (10) days after Defendant provide the Settlement Administrator with the Class Members’ Data. The
20 Settlement Share for each Class Member will be calculated as follows, understanding that the
21 formulas below do not constitute an admission by either Party, and are intended only to provide a
22 practical means to simplify and administer the claims process:

23 (a) **Number of Class Members and Workweeks.** Defendant shall determine
24 the total number of Class Members and the aggregate number of Workweeks for those Class
25 Members as of the time of Preliminary Approval. This information shall be provided to the
26 Settlement Administrator along with the Class Members’ Data as described in Paragraph 45(a)
27 above.

28 (b) **Calculation of the Workweek Value.** The Settlement Administrator shall

determine the value of a Workweek (“Workweek Value”) by taking the Net Settlement Amount and dividing it by the sum of all Class Members’ Workweeks who do not opt out of the Settlement.

(c) **Calculation of Settlement Shares.** The Settlement Administrator shall assign to each Participating Class Member a Settlement Share which shall be equal to the Workweek Value multiplied by each Participating Class Member’s Individual Workweeks. Upon calculation of the Participating Class Members’ Settlement Shares, the Settlement Administrator shall furnish to Class Counsel and Defense Counsel a worksheet containing a list of employee identification numbers for the Class Members with their corresponding Individual Workweeks and Settlement Shares.

61. **PAGA Payment Shares.** Subject to the terms and conditions of this Settlement, the Settlement Administrator will calculate the PAGA Payment Shares for each PAGA Group Member within ten (10) days after Defendant provide the Settlement Administrator with the PAGA Group Members’ Data. The PAGA Payment Share for each PAGA Group Member will be calculated as follows, understanding that the formulas below do not constitute an admission by either Party, and are intended only to provide a practical means to simplify and administer the claims process:

(a) **Number of PAGA Group Members and Pay Periods.** Defendant shall determine the total number of PAGA Group Members and the aggregate number of Pay Periods for those PAGA Group Members as of the time of Preliminary Approval. This information shall be provided to the Settlement Administrator along with the Class Members’ Data as described in Paragraph 45(a) above.

(b) **Calculation of the Pay Period Value.** The Settlement Administrator shall determine the value of a Pay Period (“Pay Period Value”) by taking the PAGA Payment amount and dividing it by the sum of all PAGA Group Members’ Pay Periods.

(c) **Calculation of PAGA Payment Shares.** The Settlement Administrator shall assign to each PAGA Group Member a PAGA Payment Share which shall be equal to the Pay Period Value multiplied by each PAGA Group Member’s Individual Pay Periods. Upon calculation of the PAGA Group Members’ PAGA Payment Shares, the Settlement Administrator shall furnish to Class Counsel and Defense Counsel a worksheet containing a list of employee identification

1 numbers for the PAGA Group Members with their corresponding Individual Pay Periods and
2 PAGA Payment Shares.

3 **62. Taxes and Withholdings.** Each Settlement Share is intended to settle the Class
4 Members' claims for unpaid wages and penalties. Accordingly, ten percent (10%) of each
5 Settlement Share shall represent unpaid wages and the remaining ninety percent (90%) of each
6 Settlement Share shall represent penalties and interest. The portion of the Settlement Share
7 representing unpaid wages shall be paid to each Participating Class Member subject to any
8 applicable employee-side tax withholdings and deductions, and the Settlement Administrator shall
9 issue an IRS Form W-2 to each Participating Class Member for that amount. The portion of the
10 Settlement Share representing penalties shall be paid to the Participating Class Member in full
11 without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form 1099
12 to each Participating Class Member for that amount. Each Participating Class Member shall be
13 individually responsible for their own share of applicable income tax withholdings and deductions
14 from the Settlement Share attributable to the portion of the settlement for which an IRS Form 1099
15 will be issued. Defendant's payment of the Employer Payroll Tax attributable to the Settlement
16 Share payments constituting wages will be made separately, according to each Defendant's agreed
17 upon proportionate share of the Maximum Settlement Amount, and shall not come from the
18 Maximum Settlement Amount. The Parties agree and understand that Defendant have not made any
19 representations regarding the tax obligations or consequences, if any, related to this Settlement. The
20 Parties agree that Defendant and each Participating Class Member are solely responsible for
21 determining the tax consequences of payments made pursuant to this Settlement and for paying
22 taxes, if any, which are determined to be owed by each of them on such payments (including
23 penalties and interest related thereto) by any taxing authority, whether state, local, or federal.

24 **63.** Each PAGA Payment Share is intended to settle the PAGA Group Members' claims
25 for civil penalties. Accordingly, one hundred percent (100%) of each PAGA Payment Share shall
26 represent civil penalties. The PAGA Payment Share shall be paid to the PAGA Group Member in
27 full without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form
28 1099 to each PAGA Group Member for that amount, to the extent the PAGA Group Member's

1 PAGA Payment Share is Six Hundred Dollars and Zero Cents (\$600.00) or more. Each PAGA
2 Group Member shall be individually responsible for their own share of applicable income tax
3 withholdings and deductions for his or her PAGA Payment Share.

4 **64. Total Payment Amount.** In no event will Defendant be required to pay more than
5 the Maximum Settlement Amount (unless that amount is increased pursuant to Paragraph 18 above)
6 for distribution to the Plaintiff, Class Counsel, Participating Class Members, PAGA Group
7 Members, LWDA, Settlement Administrator, or for any other costs or expenses not otherwise
8 enumerated. However, Defendant's payment of the Employer Payroll Tax attributable to the
9 Settlement Share payments constituting wages will be made separately, according to each
10 Defendant's agreed upon proportionate share of the Maximum Settlement Amount, and shall not
11 come from the Maximum Settlement Amount.

12 **65. Payments to Plaintiff and Class Counsel and Others.** Subject to the terms and
13 conditions of this Settlement, the Settlement Administrator will make the following payments out of
14 the Maximum Settlement Amount as follows:

15 **(a) To Plaintiff:** In addition to their respective Settlement Shares, Plaintiff will
16 apply to the Superior Court for a Class Representative Payment in an amount not to exceed Seven
17 Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00). Defendant will not oppose this Class
18 Representative Payment. The Settlement Administrator will pay the Class Representative Payment
19 approved by the Superior Court out of the Maximum Settlement Amount. Payroll tax withholding
20 and deductions will not be taken from the Class Representative Payment and an IRS Form 1099 will
21 be issued to Plaintiff for this payment.

22 **(b) To Class Counsel:** Class Counsel will apply to the Superior Court for the
23 Class Counsel Fees Payment in an amount not to exceed one-third (1/3) of the Maximum
24 Settlement Amount (currently estimated to be Three Hundred and Twenty-One Thousand, Six
25 Hundred and Sixty-Six Dollars and Sixty-Seven Cents (\$321,666.67)). Class Counsel will also
26 submit to the Superior Court a memorandum of costs for the Class Counsel Litigation Expenses
27 Payment in an amount not to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00) as
28 request reasonable costs of suit to be paid from the Maximum Settlement Amount. Defendant will

not oppose these requests. The Settlement Administrator will pay the amounts approved by the Superior Court out of the Maximum Settlement Amount. Withholding and deductions will not be taken from the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment and one or more IRS Forms 1099 will be issued to Class Counsel with respect to those payments.

(c) **To the LWDA:** As part of its Motions for Preliminary and Final Approval, the Plaintiff will apply to the Superior Court for approval of the LWDA Payment in the amount of Sixty Thousand Dollars and Zero Cents (\$60,000.00), which shall constitute the LWDA's seventy-five percent (75%) share of Eighty Thousand Dollars and Zero Cents (\$80,000.00) in civil penalties paid under this Settlement. The remaining Twenty Thousand Dollars and Zero Cents (\$20,000.00) in civil penalties shall be distributed on a *pro rata* basis based upon the number of pay periods worked by each PAGA Group Member ("PAGA Payment").

(d) **To the Settlement Administrator:** The Settlement Administrator will be paid from the Maximum Settlement Amount its reasonable fees and expenses as approved by the Superior Court, which are estimated not to exceed Eighteen Thousand Dollars and Zero Cents (\$18,000.00).

66. **Appointment of Settlement Administrator.** The Parties will ask the Superior Court to appoint Phoenix Class Action Administrators, a qualified and experienced administrator based in California where the Action is venued, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include (i) calculating Settlement Shares and PAGA Payment Shares; (ii) preparing, printing, and mailing the Class Notice to all Class Members; (iii) using reasonable measures to contact all Class Members, including conducting a National Change of Address search on all Class Members before mailing the Class Notice to each Class Member's address; (iv) re-mailing the Class Notice to the Class Member's new address for those Class Members whose address had changed; (v) setting up a toll-free telephone number to receive calls from Class Members; (vi) receiving requests for exclusion and objections to the Settlement; (vii) providing the Parties with weekly status reports about the delivery of Class Notices and any requests for exclusion and objections; (viii) issuing the

1 checks to effectuate the payments due under the Settlement; (ix) using reasonable measures to
2 deliver issued checks to Participating Class Members, including use of a “skip-trace” for
3 undeliverable checks; and (x) otherwise administering the Settlement pursuant to this Agreement
4 including paying and reporting the employer’s share of the payroll taxes to the appropriate taxing
5 agency. The Settlement Administrator will have the final authority to resolve all disputes
6 concerning the calculation of a Participating Class Member’s Settlement Share and/or PAGA Group
7 Member’s PAGA Payment Share, subject to the terms set forth in this Agreement. The Settlement
8 Administrator’s reasonable fees and expenses are estimated to not exceed Eighteen Thousand
9 (\$18,000.00) and will be paid out of the Maximum Settlement Amount, as set forth herein, subject
10 to Court approval.

11 **V. RELEASE OF CLAIMS**

12 67. **Plaintiff’s Released Claims.** Plaintiff, individually and on behalf of Plaintiff’s
13 heirs, executors, administrators, representatives, attorneys, successors and assigns knowingly and
14 voluntarily releases and forever discharges Defendant, including any and all parent corporation,
15 affiliates, subsidiaries, managers, divisions, predecessors, insurers, franchisors, successors and
16 assigns, including but not limited to each of their current and former employees, attorneys, officers,
17 directors and agents thereof, both individually and in their business capacities, and their employee
18 benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans
19 and programs (collectively, “Plaintiff’s Released Parties”), to the fullest extent permitted by law, of
20 and from any and all claims, known and unknown, asserted and unasserted, which Plaintiff has or
21 may have against the Plaintiff’s Released Parties as of the date of execution of this Settlement
22 Agreement. Plaintiff is not waiving any rights Plaintiff may have to: (i) Plaintiff’s own vested
23 accrued employee benefits under the Defendant’s health, welfare or retirement benefits plans, if
24 any, as of the date of execution of this Settlement Agreement; (ii) benefits or rights to seek benefits
25 under applicable workers’ compensation (except as to claims under Labor Code §§ 132a and 4553
26 which are expressly released herein) or unemployment insurance or indemnification statutes; (iii)
27 pursue claims which by law cannot be waived by signing this Settlement Agreement; and (iv)
28 enforce this Settlement Agreement.

1 68. To affect a full and complete general release as described above, Plaintiff expressly
2 waives and relinquishes all rights and benefits of § 1542 of the Civil Code of the State of California
3 and does so understanding and acknowledging the significance and consequence of specifically
4 waiving § 1542. Thus, notwithstanding the provisions of § 1542, and to implement a full and
5 complete release and discharge of all parties, Plaintiff expressly acknowledges this Settlement
6 Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know
7 or suspect to exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this
8 Settlement Agreement contemplates the extinguishment of any such claims. Plaintiff warrants
9 Plaintiff has read this Settlement Agreement, including this waiver of California Civil Code § 1542,
10 and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's
11 choosing about this Settlement Agreement and specifically about the waiver of § 1542, and that
12 Plaintiff understands this Settlement Agreement and the § 1542 waiver, and so Plaintiff freely and
13 knowingly enters into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later
14 may discover facts different from or in addition to those Plaintiff now knows or believes to be true
15 regarding the matters released or described in this Settlement Agreement, and even so Plaintiff
16 agrees that the releases and agreements contained in this Settlement Agreement shall remain
17 effective in all respects notwithstanding any later discovery of any different or additional facts.
18 Plaintiff expressly assume any and all risk of any mistake in connection with the true facts involved
19 in the matters, disputes or controversies released or described in this Settlement Agreement or with
20 regard to any facts now unknown to Plaintiff relating thereto.

21 69. **Participating Class Members Released Claims.** As of the date of the
22 Judgment, each Participating Class Member, and without the need to manually sign a release
23 document, shall release the Released Parties from all causes of action and claims that were alleged
24 in the Action or reasonably could have been alleged based on the facts and legal theories contained
25 in the Action, including all of the following claims for relief: (i) failure to pay all regular wages,
26 minimum wages and overtime wages due (Lab. Code §§ 510, 558, 1194, 1194.2, 1197, 1197.1, &
27 1198); (ii) failure to provide compliant meal periods (Lab. Code §§ 226.7 & 512); (iii) failure to
28 provide compliant rest breaks (Lab. Code § 226.7); (iv) failure to timely pay wages during

1 employment (Lab. Code §§ 204 & 210); (v) failure to provide complete, accurate wage statements
2 (Lab. Code § 226); (vi) failure to maintain accurate employment and payroll records (Lab. Code §§
3 1174 & 1174.5); (vii) failure to pay wages timely at time of termination or resignation (Lab. Code
4 §§ 201-203); (viii) failure to indemnify all necessary business expenses (Lab. Code §§ 2800, *et*
5 *seq.*); (ix) unfair business practices that could have been premised on the claims, causes of action or
6 legal theories of relief described above or any of the claims, causes of action or legal theories of
7 relief pleaded in the operative complaint (Cal. Bus. & Prof. Code § 17200, *et seq.*); (x) any claim
8 for costs and attorneys' fees and expenses; and (xi) any claim arising from the claims described
9 above under applicable federal, state, local or territorial law as well as applicable regulations and
10 Wage Orders (collectively, the "Released Claims"). Participating Class Members who cash their
11 checks are deemed to have waived all Released Claims inclusive of claims under the Fair Labor
12 Standards Act. Participating Class Members who do not cash their checks shall be deemed to waive
13 all Released Claims except for a claim under the Fair Labor Standards Act. Released Claims for
14 Class Members who worked for Defendant in California during the Class Period shall have their
15 claims released during the Class Period.

16 **70. PAGA Group Released Claims.** As of the date of the Judgment, each PAGA Group
17 Member, and without the need to manually sign a release document, shall release the Released
18 Parties and the State of California for claims for civil penalties pursuant to PAGA based upon all
19 causes of action and claims that were alleged in the Action or reasonably could have been alleged
20 based on the facts and legal theories contained in the Action, and/or the LWDA Exhaustion Letter
21 including all of the following claims for relief: (i) failure to pay all regular wages, minimum wages
22 and overtime wages due (Lab. Code §§ 510, 558, 1194, 1194.2, 1197, 1197.1, & 1198); (ii) failure
23 to provide compliant meal periods (Lab. Code §§ 226.7 & 512); (iii) failure to provide compliant
24 rest breaks (Lab. Code § 226.7); (iv) failure to timely pay wages during employment (Lab. Code §§
25 204 & 210); (v) failure to provide complete, accurate wage statements (Lab. Code § 226); (vi)
26 failure to maintain accurate employment and payroll records (Lab. Code §§ 1174 & 1174.5); (vii)
27 failure to pay wages timely at time of termination or resignation (Lab. Code §§ 201-203); (viii)
28 failure to indemnify all necessary business expenses (Lab. Code §§ 2800, *et seq.*); (ix) all claims

1 under the California Labor Code Private Attorneys General Act of 2004 that could have been
2 premised on the claims, causes of action or legal theories described above or any of the claims,
3 causes of action or legal theories of relief pleaded in the Action; (x) any claim for costs and
4 attorneys' fees and expenses; and (xi) any claim arising from the claims described above under
5 applicable federal, state, local or territorial law as well as applicable regulations and Wage Orders
6 (collectively, the "PAGA Released Claims"). PAGA Released Claims for PAGA Group Members
7 who worked for Defendant in California during the PAGA Period shall have their claims released
8 during the PAGA Period.

9 71. Released Parties includes Defendant and their past, present and/or future, direct
10 and/or indirect, officers, directors, members, managers, employees, agents, representatives,
11 attorneys, including but not limited to O'Hagan Meyer, insurers, partners, investors, shareholders,
12 administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors,
13 assigns, and joint venturers.

14 72. In light of the binding nature of a PAGA judgment on non-party employees pursuant
15 to *Arias v. Sup. Ct. (Angelo Dairy)* (2009) 46 Cal.4th 969 and *Cardenas v. McLane Foodservice,*
16 *Inc.* (2011) 796 F.Supp.2d 1246, individuals otherwise meeting the definition of a Class Member
17 who exclude themselves from the Settlement shall nonetheless receive a payment for the amount of
18 each such individual's estimated share of the PAGA Payment and shall have released PAGA
19 claims, as outlined in Paragraph 70.

20 73. The Released Claims and PAGA Released Claims described in Paragraphs 69 and 70
21 expressly exclude all claims made by a Participating Class Member and/or PAGA Group Member
22 for vested benefits, wrongful termination, unemployment insurance, disability, social security,
23 workers' compensation, claims while classified as exempt, and claims outside of the Class Period
24 and/or PAGA Period.

25 74. **Class Counsel.** As of the Effective Date, and except as otherwise provided by this
26 Settlement, Class Counsel and any counsel associated with Class Counsel waive any further claims
27 to costs and attorneys' fees and expenses against Defendant or the Released Parties arising from or
28 related to the Action, including but not limited to claims based on the Labor Code, the Code of Civil

1 Procedure, PAGA, the Fair Labor and Standards Act, the Business and Professions Code, or any
2 other contract, statute or law (“Class Counsel Released Claims”).

3 75. **No Effect on Other Benefits.** The payment of Settlement Shares and/or PAGA
4 Payment Shares will not result in any additional employee benefit payments (such as 401(k),
5 vacation, or bonus) and shall not have any effect on the eligibility for, or calculation of, any
6 employee benefit.

7 **VI. DUTIES OF THE PARTIES**

8 76. **Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to
9 accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be
10 limited to, execution of such other documents and the taking of such other actions as may
11 reasonably be necessary to fulfill the terms of this Settlement unless the Court denies the Settlement
12 with prejudice. The Parties shall use their best efforts, including all efforts contemplated by this
13 Stipulation and any other efforts that may become necessary by court order or otherwise, to
14 effectuate this Stipulation and the terms set forth herein. As soon as practicable after execution of
15 this Stipulation, Class Counsel, with the cooperation of Defendant and Defense Counsel, shall take
16 all necessary and reasonable steps to secure the Court's approval of this Stipulation. The Parties will
17 work together to make any non-material modifications of the Settlement requested by the Court to
18 obtain approval of the Parties' Settlement.

19 77. **Duty to Support and Defend the Class Settlement.** The Parties agree to abide by
20 all of the terms of the Settlement in good faith and to support the Settlement fully and to use their
21 best efforts to defend this Settlement from any legal challenge, whether by appeal or collateral
22 attack.

23 78. **Duties Prior to Court Approval.** Class Counsel shall promptly submit this
24 Stipulation to the Court for preliminary approval and determination by the Court as to its fairness,
25 adequacy, and reasonableness. Promptly upon execution of this Stipulation, Class Counsel shall
26 apply to the Court for the entry of a preliminary order, scheduling a hearing on the question of
27 whether the proposed Class Settlement should be approved as fair, reasonable, and adequate as to
28 the Class Members, approving as to form and content the proposed Class Notice attached hereto as

1 Exhibit “A”, respectively, and directing the mailing of the Class Notice to Settlement Class
2 Members.

3 79. **Non-Monetary Relief and Catalyzation of Policy Change.** Although Defendant
4 denies any liability of any kind associated with the claims alleged in the Lawsuit, denies any
5 liability or intentional wrongdoing, Defendant revised and updated their wage and hour policies and
6 practices, including but not limited to their timekeeping and meal period and rest break policies and
7 procedures.

8 **VII. MISCELLANEOUS TERMS**

9 80. **No Admission of Liability.** Defendant denies that it has engaged in any unlawful
10 activity, has failed to comply with the law in any respect, or has any liability to anyone under the
11 claims asserted in the Action. This Settlement is entered into solely for the purpose of
12 compromising highly disputed claims. Nothing in this Settlement is intended or will be construed
13 as an admission of liability or wrongdoing by Defendant, an admission by Plaintiff that any of his
14 claims were non-meritorious, or any defense asserted by Defendant was meritorious. This
15 Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no
16 bearing on, and will not be admissible in connection with, any litigation (other than solely in
17 connection with the Settlement).

18 81. The Parties also agree that this release constitutes a resolution of a good faith dispute
19 concerning wages and complies with Labor Code Section 206.5, which reads in part:

20
21 “Execution of release of claim or right on account of wages due.
22 No employer shall require the execution of any release of any
23 claim or right on account of wages due, or to become due, or made,
24 or made as an advance on wages to be earned, unless payment of
25 those wages has been made.”
26

27 82. Whether or not the Judgment becomes Final, neither the Settlement, any document,
28 statement, proceeding or conduct related to the Settlement, nor any reports or accounting of those

1 matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be
2 evidence for any purpose adverse to Defendant or any of the Released Parties, including, but not
3 limited to, evidence of a presumption, concession, indication or admission by any of the Released
4 Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed,
5 referred to or offered in evidence against any of the Released Parties, or any other civil, criminal or
6 administrative action or proceeding except for purposes of effectuating this Settlement.

7 83. Notwithstanding Paragraph 82 of this Settlement, any and all provisions of this
8 Settlement may be admitted in evidence and otherwise used in any and all proceedings to enforce
9 any or all terms of this Settlement, or in defense of any claims released or barred by this Settlement.

10 84. **Non-Disparagement.** Plaintiff and Class Counsel agree not to make any untruthful,
11 malicious, disparaging or defamatory statements, allegations, comments or communications,
12 regardless of form (whether written, oral, electronic, including but not limited to Glassdoor, Yelp,
13 or otherwise), regarding the Released Parties. Plaintiff and Class Counsel further agree not to
14 encourage authorize or permit any such statements, allegations, comments or communications to be
15 made by others on their behalf. To the extent Plaintiff and/or Class Counsel have posted any
16 negative comments about the Released Parties on Glassdoor, Yelp, or other websites, Plaintiff
17 and/or Class Counsel agree to request that these comments be removed and to provide a copy of
18 such request to Defense Counsel within 30 days of the execution of this Agreement.

19 85. **Waiver of Reemployment.** Plaintiff acknowledges that he has no intent to apply for
20 employment and/or re-employment with Defendant. Plaintiff further acknowledges that Defendant
21 or any related, successor, parent, or subsidiary companies has the right to refuse rehire Plaintiff for
22 non-discriminatory and non-retaliatory reasons and Plaintiff acknowledge that Defendant's position
23 is that such legitimate non-discriminatory and non-retaliatory reasons exist.

24 86. **Integrated Agreement.** After this Settlement is signed and delivered by all Parties
25 and their counsel, this Settlement and its exhibits will constitute the entire agreement between the
26 Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties,
27 covenants, or inducements have been made to any Party concerning this Settlement or its exhibits
28 other than the representations, warranties, covenants, and inducements expressly stated in this

1 Settlement and its exhibits.

2 87. **Attorney Authorization.** Class Counsel and Defense Counsel warrant and represent
3 that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action
4 required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms,
5 and to execute any other documents required to effectuate the terms of this Settlement. The Parties
6 and their counsel will cooperate with each other and use their best efforts to affect the
7 implementation of the Settlement. In the event the Parties are unable to reach agreement on the
8 form or content of any document needed to implement the Settlement, or on any supplemental
9 provisions that may become necessary to effectuate the terms of this Settlement, the Parties will
10 seek the assistance of mediator Steve Serratore, Esq., and if no resolution is reached the Superior
11 Court, and in all cases all such documents, supplemental provisions and assistance of the court will
12 be consistent with this Settlement.

13 88. **Modification of Agreement.** This Agreement, and any and all parts of it, may be
14 amended, modified, changed, or waived only by an express written instrument signed by all Parties,
15 their successors-in-interest, and/or the Parties' respective counsel, as authorized.

16 89. **Settlement Binding on Successors.** This Settlement Agreement will be binding
17 upon, and inure to the benefit of, the successors of each of the Parties.

18 90. **Applicable Law.** All terms and conditions of this Settlement and its exhibits will be
19 governed by and interpreted according to the laws of the State of California, without giving effect to
20 any conflict of law principles or choice of law principles.

21 91. **Cooperation in Drafting.** The Parties have cooperated in the drafting and
22 preparation of this Settlement. This Settlement will not be construed against any Party on the basis
23 that the Party was the drafter or participated in the drafting.

24 92. **Fair Settlement.** The Parties and their respective counsel believe and warrant that
25 this Settlement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at
26 this Settlement through arms-length negotiations, taking into account all relevant factors, current
27 and potential.

28 93. **Headings.** The descriptive heading of any section or Paragraph of this Settlement is

1 inserted for convenience of reference only and does not constitute a part of this Settlement.

2 94. **Notice.** All notices, demands or other communications given under this Settlement
3 will be in writing and deemed to have been duly given as of the third business day after mailing by
4 U.S. Mail, addressed as follows:

5 *To Class Counsel:*

Kane Moon
H. Scott Leviant
Mariam Ghazaryan
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017

8 *To the Defendant's Counsel:*

9 Matthew C. Sgnilek, Esq.
Andrea Rosenkranz, Esq.
John Wu, Esq.
O'HAGAN MEYER
3200 Park Center Drive, Suite 700
Costa Mesa, CA 92626

12 95. **Execution in Counterpart.** This Settlement may be executed in one or more
13 counterparts. All executed counterparts and each of them will be deemed to be one and the same
14 instrument provided that counsel for the Parties will exchange between themselves original signed
15 counterparts. Facsimile signatures, scanned PDF signatures, and electronic signatures will be
16 presumptive evidence of execution of the original, which shall be produced on reasonable request.
17 Any executed counterpart will be admissible to prove the existence and contents of this Settlement.
18

19 DATED: 2/7/2023

ESTEBAN ARTEAGA, JR.

DocuSigned by:

Esteban Arteaga

511A1607AB93471...

24 DATED: _____

DEL MAR FOOD PRODUCTS CORP.

25 By: _____

26 Its: _____

1 inserted for convenience of reference only and does not constitute a part of this Settlement.

2 94. **Notice.** All notices, demands or other communications given under this Settlement
3 will be in writing and deemed to have been duly given as of the third business day after mailing by
4 U.S. Mail, addressed as follows:

5 *To Class Counsel:* Kane Moon
6 H. Scott Leviant
7 Mariam Ghazaryan
8 MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017

9 *To the Defendant's Counsel:* Matthew C. Sgnilek, Esq.
10 Andrea Rosenkranz, Esq.
11 John Wu, Esq.
12 O'HAGAN MEYER
3200 Park Center Drive, Suite 700
Costa Mesa, CA 92626

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17 presumptive evidence of execution of the original, which shall be produced on reasonable request.
18 Any executed counterpart will be admissible to prove the existence and contents of this Settlement.

19 DATED: _____

20 **ESTEBAN ARTEAGA, JR.**

21
22
23 DATED: 2/9/2023

24 **DEL MAR FOOD PRODUCTS CORP.**

25 By: _____

DocuSigned by:
PJ Meozzi
0981DD441DE0440...

26 Its: _____

President

1 DATED: February 8, 2023

MOON & YANG, APC

2
3
4 By:



Kane Moon, Esq.
H. Scott Leviant, Esq.
Mariam Ghazaryan, Esq.

5
6
7 Attorneys for Plaintiff
ESTEBAN ARTEAGA, JR.

8 DATED: _____

O'HAGAN MEYER

9
10
11 By:

Matthew C. Sgnilek, Esq.
Andrea Rosenkranz, Esq.
John Wu, Esq.

12
13
14 Attorneys for Defendant
DEL MAR FOOD PRODUCTS CORP.

1 DATED: _____

MOON & YANG, APC

4 By: _____

Kane Moon, Esq.
H. Scott Leviant, Esq.
Mariam Ghazaryan, Esq.

Attorneys for Plaintiff
ESTEBAN ARTEAGA, JR.

8 DATED: 2/7/2023

O'HAGAN MEYER

11 By: _____

DocuSigned by:

Andrea Rosenkranz

Matthew C. Smilek, Esq.
Andrea Rosenkranz, Esq.
John Wu, Esq.

Attorneys for Defendant
DEL MAR FOOD PRODUCTS CORP.