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on behalf of himself and all others similarly situated and aggrieved

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

DANIEL DE JESUS MORENO, an
individual and on behalf of all others
similarly situated,

Plaintiff,

v.

M & J SEAFOOD COMPANY, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 22STCV03341

[Assigned for all purposes to the Hon.
William F. Highberger in Dept. 10]

CLASS ACTION

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

Action Filed: January 27, 202

Trial Date: None set

1 This Joint Stipulation re: Class Action and Representative Action Settlement
2 (“Settlement” or “Agreement” or “Settlement Agreement”) is made by and between plaintiff
3 DANIEL DE JESUS MORENO (“Plaintiff”) individually and on behalf of the Settlement Class,
4 on the one hand; and defendant M & J SEAFOOD COMPANY, INC. (“Defendant”), on the other
5 hand, in the lawsuit entitled *Daniel De Jesus Moreno v. M & J Seafood Company, Inc., et al.*,
6 filed in Los Angeles County Superior Court, Case No. 22STCV03341 (the “Action”). Plaintiff
7 and Defendant shall be, at times, collectively referred to as the “Parties”. This Agreement is
8 intended by the Parties to fully, finally, and forever resolve the claims as set forth herein, based
9 upon and subject to the terms and conditions of this Agreement.

10 **1. DEFINITIONS**

11 **A. “Action”** means *Daniel De Jesus Moreno v. M & J Seafood Company, Inc., et*
12 *al.*, filed in Los Angeles Superior Court, Case No. 22STCV03341.

13 **B. “Aggrieved Employees”** means Class Members working for Defendant during
14 the PAGA Period as non-exempt, hourly-paid employees in California.

15 **C. “Class Counsel”** means: David D. Bibiyan and Jeffrey D. Klein of Bibiyan Law
16 Group, P.C. The term “Class Counsel” shall be used synonymously with the term “Plaintiff’s
17 Counsel.”

18 **D. “Class Period”** means the period from January 27, 2018 through July 6, 2022

19 **E. “Class Notice”** means and refers to the notice sent to Class Members after
20 preliminary approval of the Settlement in the manner described in Paragraph 9(A) of this
21 Agreement.

22 **F. “Court”** means the Superior Court of the State of California for the County of
23 Los Angeles.

24 **G. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
25 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
26 objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals
27 have been filed, the date on which they have been resolved or exhausted.

28 **H. “Defendant”** means M & J Seafood Company, Inc.

1 **I. “Employer Taxes”** means employer-funded taxes and contributions imposed on
2 the wage portions of the Individual Settlement Payments under the Federal Insurance
3 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
4 and contributions required of employers, such as for unemployment insurance.

5 **J. “General Release”** means the broader release of claims by Plaintiff, which is in
6 addition to Plaintiff’s limited release of claims as a Participating Class Member.

7 **K. “Gross Settlement Amount”** means a non-reversionary fund in the sum of Six
8 Hundred Ninety-Five Thousand Dollars and Zero Cents (\$695,000.00),¹ which shall be paid by
9 Defendant, from which all payments for the Individual Settlement Payments to Participating
10 Class Members, the Court-approved amounts for attorneys’ fees and reimbursement of litigation
11 costs and expenses to Class Counsel, Settlement Administration Costs, the Service Award, the
12 PAGA Payment, and the LWDA Payment shall be paid. It expressly excludes Employer Taxes,
13 which shall be paid by Defendant separate, apart, and in addition to the Gross Settlement Amount.

14 **L. “Individual PAGA Payment”** means a payment made to an Aggrieved
15 Employee for his or her share of the PAGA Payment, which may be in addition to his or her
16 Individual Settlement Share if he or she is also a Participating Class Member.

17 **M. “Individual Settlement Payment”** means a payment to a Participating Class
18 Member of his or her net share of the Net Settlement Amount.

19 **N. “Individual Settlement Share”** means the gross amount of the Net Settlement
20 Amount that a Participating Class Member is projected to receive based on the number of
21 Workweeks that he or she worked as a Settlement Class Member during the Class Period, which
22 shall be reflected in his or her Class Notice.

23 **O. “LWDA Payment”** means the payment to the State of California Labor and
24 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
25 amount allocated toward penalties under the PAGA all of which is to be paid from the Gross
26 Settlement Amount. The Parties have agreed that Twenty Thousand Dollars and Zero Cents
27

28 _____
¹ As the same may be increased in accordance with Paragraph 17, below.

1 (\$20,000.00) shall be allocated toward PAGA penalties, of which Fifteen Thousand Dollars and
2 Zero Cents (\$15,000.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and Five Thousand
3 Dollars and Zero Cents (\$5,000.00) will be paid to Aggrieved Employees on a *pro rata* basis
4 based on the Workweeks worked for Defendant as a non-exempt, hourly-paid employee in
5 California in the PAGA Period (*i.e.* the PAGA Payment).

6 **P. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
7 that is available for distribution to the Participating Class Members after deductions for the Court-
8 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
9 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA
10 Payment, and the PAGA Payment.

11 **Q. “Operative Complaint” or “Complaint”** means the First Amended Complaint
12 to be filed with the Court.

13 **R. “PAGA Payment** is the 25% portion of the Twenty Thousand Dollars and Zero
14 Cents (\$20,000.00) that is allocated toward PAGA penalties (Five Thousand Dollars and Zero
15 Cents (\$5,000.00)) that will be paid to Aggrieved Employees on a *pro rata* basis based on the
16 Workweeks worked as non-exempt, hourly-paid employees in California in the PAGA Period,
17 which would be in addition to their Individual Settlement Payment if they are Participating Class
18 Members, as well.

19 **S. “PAGA Period”** means the period from January 31, 2021 through June 1, 2022.

20 **T. “Participating Class Members”** means all Settlement Class Members who do
21 not submit a timely and valid Request for Exclusion.

22 **U. “Participating Individual Settlement Share”** means the gross amount of the Net
23 Settlement Amount that a Participating Class Member is eligible to receive based on the number
24 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
25 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
26 may be entitled if he or she is also an Aggrieved Employee.

27 **V. “Plaintiff”, “Named Plaintiff” or “Class Representative”** shall refer to
28 Plaintiff Daniel De Jesus Moreno.

1 **W. “Preliminary Approval Date”** means the date on which the Court enters an
2 Order granting preliminary approval of the Settlement.

3 **X. “Released Parties”** shall mean Defendant and each of their past, present, and
4 future respective subsidiaries, dba’s, affiliates, parents, insurers and reinsurers, and company-
5 sponsored employee benefit plans of any nature and their successors and predecessors in interest,
6 including all of their officers, directors, shareholders, exempt employees, agents, principals,
7 heirs, representatives, accountants, auditors, consultants, attorneys, administrators, fiduciaries,
8 trustees, and agents.

9 **Y. “Response Deadline”** means the deadline for Settlement Class Members to mail
10 any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator,
11 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
12 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In
13 such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing,
14 or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which
15 to postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark
16 shall be the exclusive means for determining whether a Request for Exclusion, Objection, or
17 Workweek Dispute was submitted by the Response Deadline.

18 **Z. “Request for Exclusion”** means a written request to be excluded from the
19 Settlement Class pursuant to Paragraph 9(C) below.

20 **AA. “Service Award”** means monetary amounts to be paid to Plaintiff of up to Seven
21 Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00), which subject to Court approval,
22 will be paid out of the Gross Settlement Amount.

23 **BB. “Settlement Administration Costs”** means all costs incurred by the Settlement
24 Administrator in administration of the Settlement, including, but not limited to, translating the
25 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
26 and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments,
27 Individual PAGA Payments, and Participating Individual Settlement Shares, as well as associated
28 taxes and withholdings, providing declarations, generating Individual Settlement Payment

1 checks and related tax reporting forms, doing administrative work related to unclaimed checks,
2 transmitting payment to Class Counsel for the Court-approved amounts for attorneys' fees and
3 reimbursement of litigation costs and expenses, to Plaintiff for his Service Award, and to the
4 LWDA for the LWDA Payment, providing weekly reports of opt-outs, objections and related
5 information, and any other actions of the Settlement Administrator as set forth in this Agreement,
6 all pursuant to the terms of this Agreement. The Settlement Administration Costs are estimated
7 not to exceed \$5,950.00. If the actual amount of the Settlement Administration Costs is less than
8 \$5,950.00, the difference between \$5,950.00 and the actual Settlement Administration Costs
9 shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
10 \$5,950.00 then such excess will be paid solely from the Gross Settlement Amount and Defendant
11 will not be responsible for paying any additional funds in order to pay these additional costs.

12 **CC. "Settlement Administrator"** means the Third-Party Administrator mutually
13 agreed upon by the Parties that will be responsible for the administration of the Settlement
14 including, without limitation, translating the Class Notice in Spanish, the distribution of the
15 Individual Settlement Payments to be made by Defendant from the Gross Settlement Amount
16 and related matters under this Agreement.

17 **DD. "Settlement Class" or "Settlement Class Members"** means all current and
18 former non-exempt, hourly-paid employees who worked in California for Defendant, either
19 directly or through any subsidiary, staffing agency, or professional employer organization, at any
20 time during the Class Period.

21 **EE. "Workweeks"** means the number of weeks that a Settlement Class Member was
22 employed by and worked for the Defendant in a non-exempt, hourly position during the Class
23 Period in California, based on hire dates, re-hire dates (as applicable), and termination dates (as
24 applicable).

25 **2. BACKGROUND**

26 **A.** On January 27, 2022,, Plaintiff filed a putative wage-and-hour class action
27 alleging that, during the Class Period, Defendant, as it pertains to Class Members: (1) failed to
28 pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide meal periods or

1 compensation in lieu thereof; (4) failed to provide rest periods or compensation in lieu thereof;
2 (5) failed to all wages due upon separation from employment; (6) failed to issue accurate and
3 compliant wage statements; (7) indemnify work expenses; and (8) engaged in unfair competition
4 (the “Class Action”).

5 **B.** On January 31, 2022, Plaintiff filed with the LWDA and served on Defendant a
6 notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the
7 LWDA to recover civil penalties on behalf of Aggrieved Employees for various Labor Code
8 violations. (“PAGA Notice”).

9 **C.** On April 11, 2022, after sixty-five (65) days had passed since Plaintiff filed and
10 served the PAGA Notice, without any action by the LWDA with respect to the alleged Labor
11 Code violations, Plaintiff filed a separate representative action, (Los Angeles Superior Court,
12 Case No. 22STCV12094) seeking PAGA civil penalties against Defendant for the Labor Code
13 violations alleged in the PAGA Notice (the “PAGA Action”).

14 **D.** Shortly thereafter, the Parties agreed to exchange informal discovery and attend
15 an early mediation, in which Plaintiff was provided with, among other things: (1) time and payroll
16 records for 30% of the estimated 55 Class Members as of June 9, 2022; (2) class data points,
17 including average rates of pay, total hours worked during the Class Period through mediation,
18 the number of pay periods worked during the Class Period, the number of terminated/separated
19 Class Members in the waiting time penalty period, and the number of Aggrieved Employees
20 (current and former), number of hours worked, and number of pay periods in the wage statement
21 period and PAGA Period ; and (3) all of Defendant’s policy documents.

22 **E.** On July 1, 2022, the Parties participated in a full-day mediation before Nikki Tolt,
23 Esquire, a well-regarded mediator experienced in mediating complex labor and employment
24 matters. With the aid of the mediator’s evaluation, the Parties reached the Settlement to resolve
25 the Action. As part and parcel to the Settlement, the Parties agreed to stipulate to Plaintiff filing
26 a First Amended Complaint in the Class Action, and dismiss the PAGA Action without prejudice,
27 thereby effectively consolidating the Class Action and PAGA Action, as further set out below
28 (hereinafter, the “Action”).

1 **F.** Class Counsel has conducted significant investigation of the law and facts relating
2 to the claims asserted in the Class Action, and the PAGA Notice, and have concluded that that
3 the Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the
4 Settlement Class, taking into account the sharply contested issues involved, the expense and time
5 necessary to litigate the Action through trial and any appeals, the risks and costs of further
6 litigation of the Action, the risk of an adverse outcome, the uncertainties of complex litigation,
7 the information learned through informal discovery regarding Plaintiff's allegations, and the
8 substantial benefits to be received by Settlement Class Members. As part of the Agreement,
9 Plaintiff agrees to file a First Amended Complaint in the Class Action, and dismiss the PAGA
10 Action without prejudice, thereby effectively consolidating the Class Action and PAGA Action,
11 as further set out below (hereinafter, the "Action").

12 **G.** Defendant has concluded that, because of the substantial expense of defending
13 against the Action, the length of time necessary to resolve the issues presented herein, the
14 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
15 interest to accept the terms of this Agreement. Defendant denies each of the allegations and
16 claims asserted against it in the Action and the PAGA Notice. However, Defendant nevertheless
17 desires to settle the Action for the purpose of avoiding the burden, expense and uncertainty of
18 continuing litigation and for the purpose of putting to rest the controversies engendered by the
19 Action.

20 **H.** This Agreement is intended to and does effectuate the full, final, and complete
21 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all
22 PAGA Released Claims of Plaintiff and, to the extent permitted by law, of the State of California
23 and Aggrieved Employees.

24 **3. JURISDICTION**

25 The Court has jurisdiction over the Parties and the subject matter of the Action. The
26 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
27 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
28

1 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
2 pursuant to California Rule of Court, rule 3.769, subdivision (h).

3 **4. STIPULATION OF CLASS CERTIFICATION**

4 The Parties stipulate to the certification of the Settlement Class under this Agreement for
5 purposes of settlement only.

6 **5. AMENDMENT OF PLEADING AND MOTIONS FOR APPROVAL OF**
7 **SETTLEMENT**

8 The Parties hereby stipulate to the filing of a First Amended Complaint in the Class
9 Action that includes all of the allegations in the PAGA Action. If and when the First Amended
10 Complaint is filed, Plaintiff will dismiss the PAGA Action without prejudice, thereby effectively
11 consolidating all allegations in the PAGA Action into the Class Action.

12 After full execution of this Agreement, Plaintiff will move for an order granting
13 preliminary approval of the Settlement, approving and directing the mailing of the proposed
14 Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “A”**, conditionally
15 certifying the Settlement Class for settlement purposes only, and approving the deadlines
16 proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes, and
17 Objections. If and when the Court preliminarily approves the Settlement, and after
18 administration of the Class Notice in a manner consistent with the Court’s Preliminary Approval
19 Order, Plaintiff will move for an order finally approving the Settlement and seek entry of a
20 Judgment in line with this Settlement. The Parties may both respond to any Objections lodged
21 to final approval of the Settlement up to five (5) court days before the Final Approval Hearing.

22 The Parties hereby expressly agree that whether or not the Court finally approves the
23 Settlement, Plaintiff’s allegations from the PAGA Action will be effectively consolidated into
24 the Class Action, will relate back to the date on which Plaintiff filed the PAGA Notice, and
25 Defendant will be estopped from making any argument that there is any adverse effect on the
26 statute of limitations caused by Plaintiff’s dismissal of the PAGA Action without prejudice to
27 effectuate this consolidation.

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1 **6. STATEMENT OF NO ADMISSION**

2 Defendant denies any wrongdoing of any sort and further deny any liability to Plaintiff
3 and the Settlement Class with respect to any claims or allegations asserted in the Action and the
4 PAGA Notice. This Agreement shall not be deemed an admission by Defendant of any claims
5 or allegations asserted in the Action or the PAGA Notice. Except as set forth elsewhere herein,
6 in the event that this Agreement is not approved by the Court, or any appellate court, is
7 terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived,
8 limited or affected in any way any claims, rights or remedies, or defenses in the Action or the
9 PAGA Notice, and Defendant will not be deemed to have waived, limited, or affected in any way
10 any of their objections or defenses in the Action and the PAGA Notice. The Parties shall be
11 restored to their respective positions in the Action prior to the entry of this Settlement.

12 **7. RELEASE OF CLAIMS**

13 **A. Release by All Participating Class Members.**

14 **B.** Effective only upon the entry of an Order granting Final Approval of the
15 Settlement, entry of Judgment, and payment by Defendant to the Settlement Administrator of the
16 full Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement,
17 Plaintiff and all Participating Class Members release all claims against the Released Parties
18 asserted in the Operative Complaint filed in the Action, or any and all claims that may be asserted
19 against the Released Parties based on the factual allegations in the Operative Complaint, as
20 follows: For the duration of the Class Period, the release includes, for Participating Class
21 Members: (1) all claims for failure to pay overtime wages; (2) all claims for failure to pay
22 minimum wages; (3) all claims for failure to provide meal periods or compensation in lieu
23 thereof; (4) all claims for failure to provide rest periods or compensation in lieu thereof; (5) all
24 claims for failure to pay all wages due upon separation from employment; (6) all claims for
25 failure to issue accurate and compliant wage statements; (7) all claims to timely pay wages; (8)
26 all claims for failure to indemnify business expenses; and (9) all claims asserted through
27 California Business & Professions Code section 17200, *et seq.* arising out of the Labor Code
28 violations referenced in the Complaint (the "Class Released Claims").

1 **C. Release by All Aggrieved Employees**

2 For Aggrieved Employees, and, to the extent permitted by law, the State of California,
3 the release includes for the duration of the PAGA Period, all claims asserted in the PAGA Notice
4 and thereafter alleged in the Operative Complaint for PAGA or that reasonably could have been
5 alleged based on the facts asserted in the PAGA Notice and thereafter alleged in the Operative
6 Complaint, including civil penalties pursuant to Labor Code sections 200, 201, 202, 203, 204,
7 226, 226.7, 510, 512, 1194, 1194.2, 1197, 2802, et al and California Code of Regulations, Title
8 8, section 11040 (the “PAGA Released Claims”). The Class Released Claims and PAGA
9 Released Claims shall be referred to herein as the “Released Claims”.

10 **D. Claims Not Released**

11 The releases above expressly exclude all other claims, including claims for vested
12 benefits, wrongful termination, unemployment insurance, disability, social security, workers’
13 compensation, and any other claims outside of the Class Released Claims of Participating Class
14 Members arising during the Class Period and the PAGA Released Claims of Aggrieved
15 Employees (and, to the extent permitted by law, the State of California) arising outside of the
16 PAGA Period.

17 **E. General Release.**

18 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
19 of Judgment, and payment by Defendant to the Settlement Administrator selected of the full
20 Gross Settlement Amount and Employers’ Taxes necessary to effectuate the Settlement, in
21 addition to the Released Claims, Plaintiff makes the additional following General Release:
22 Plaintiff releases the Released Parties from all claims, demands, rights, liabilities and causes of
23 action of every nature and description whatsoever, known or unknown, asserted or that might
24 have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule,
25 law or regulation arising out of, relating to, or in connection with any act or omission of the
26 Released Parties through the date of full execution of this Agreement in connection with
27 Plaintiff’s employment with Defendant or the termination thereof, except for any and all other
28 claims that may not be released as a matter of law through this Agreement. To the extent of the

1 General Release provided herein, Plaintiff stipulates and agrees that, upon entry of an Order
2 granting Final Approval of the Settlement, entry of Judgment, and payment by Defendant to the
3 Settlement Administrator selected of the full Gross Settlement Amount and Employers' Taxes
4 necessary to effectuate the Settlement, they shall have expressly waived and relinquished, to the
5 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
6 California Civil Code, or any other similar provision under federal or state law, which provides:

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

10 **8. SETTLEMENT ADMINISTRATOR**

11 A. Plaintiff and Defendant, through their respective counsel, have selected Phoenix
12 Administration Solutions to administer the Settlement, which includes but is not limited to
13 translating the Class Notice to Spanish, distributing and responding to inquiries about the Class
14 Notice and calculating all amounts to be paid from the Gross Settlement Amount. Charges and
15 expenses of the Settlement Administrator, currently estimated to be \$5,950.00 will be paid from
16 the Gross Settlement Amount. If the actual amount of the Settlement Administration Costs is
17 less than \$5,950.00, the difference between \$5,950.00 and the actual Settlement Administration
18 Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
19 \$5,950.00, then such excess will be paid solely from the Gross Settlement Amount and Defendant
20 will not be responsible for paying any additional funds in order to pay these additional costs.

21 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION**
22 **PROCESS**

23 **A. Notice to the Settlement Class Members**

24 (1) Within twenty (20) calendar days after the Preliminary Approval Date,
25 Defendant's Counsel shall provide the Settlement Administrator with information with respect
26 to each Settlement Class Member, including his or her: (1) name; (2) last known address(es)
27 currently in Defendant's possession, custody, or control; (3) last known telephone number(s)
28 currently in Defendant's possession, custody, or control; (4) last known Social Security

1 Number(s) in Defendant's possession, custody, or control; and (5) the dates of employment (*i.e.*,
2 hire dates, and, if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class
3 Member ("Class List"). The Settlement Administrator shall perform an address search using the
4 United States Postal Service National Change of Address ("NCOA") database and update the
5 addresses contained on the Class List with the newly-found addresses, if any. Within seven (7)
6 calendar days, or soon thereafter, of receiving the Class List from Defendant, the Settlement
7 Administrator shall mail the Class Notice in English and Spanish to the Settlement Class
8 Members via first-class regular U.S. Mail using the most current mailing address information
9 available. The Settlement Administrator shall maintain the Class List and digital copies of all
10 the Settlement Administrator's records evidencing the giving of notice to any Settlement Class
11 Member, for at least four (4) years from the Final Approval Date.

12 (2) The Class Notice will set forth:

- 13 (a) the Settlement Class Member's estimated Individual
14 Settlement Payment and Individual PAGA Payment,
15 and the basis for each;
- 16 (b) the information required by California Rule of Court,
17 rule 3.766, subdivision (d);
- 18 (c) the material terms of the Settlement;
- 19 (d) the proposed Settlement Administration Costs;
- 20 (e) the definition of the Settlement Class;
- 21 (f) a statement that the Court has preliminarily approved
22 the Settlement;
- 23 (g) how the Settlement Class Member can obtain
24 additional information, including contact information
25 for Class Counsel;
- 26 (h) information regarding opt-out and objection
27 procedures;
28

- 1 (i) the date and location of the Final Approval Hearing;
2 and
3 (j) that the Settlement Class Member must notify the
4 Settlement Administrator no later than the Response
5 Deadline if the Settlement Class Member disputes the
6 accuracy of the number of Workweeks as set forth on
7 his or her Class Notice (“Workweek Dispute”). If a
8 Settlement Class Member fails to timely dispute the
9 number of Workweeks attributed to him or her in
10 conformity with the instructions in the Class Notice,
11 then he or she shall be deemed to have waived any
12 objection to its accuracy and any claim to any
13 additional settlement payment based on different data.

14 (3) If a Class Notice from the initial notice mailing is returned as
15 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
16 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
17 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
18 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
19 is successful in obtaining a new address, it will re-mail the Class Notice to the Settlement Class
20 Member within three (3) business days. Further, any Class Notices that are returned to the
21 Settlement Administrator with a forwarding address before the Response Deadline shall be
22 promptly re-mailed to the forwarding address affixed thereto.

23 (4) No later than seven (7) calendar days from the Response Deadline, the
24 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
25 completion of the notice process, including the number of attempts to obtain valid mailing
26 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
27 and copies of all Requests for Exclusion and Objections received by the Settlement
28 Administrator.

1 **B. Objections.**

2 Only Participating Class Members may object to the Settlement. In order for any
3 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must
4 do so by mailing a written objection to the Settlement Administrator at the address or phone
5 number provided on the Class Notice no later than the Response Deadline. The Settlement
6 Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendant's
7 counsel and attach copies of all Objections to the Declaration it provides Class Counsel, which
8 Class Counsel shall file in support of Plaintiff's Motion for Final Approval. The Objection
9 should set forth in writing: (1) the Objector's name; (2) the Objector's address; (3) the last four
10 digits of the Objector's Social Security Number; (4) the Objector's signature; (5) a statement of
11 whether the Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the
12 Objection, along with whatever legal authority, if any, the Objector asserts in support of the
13 Objection. If a Settlement Class Member objects to the Settlement, the Settlement Class Member
14 will remain a member of the Settlement Class and if the Court approves this Agreement, the
15 Settlement Class Member will be bound by the terms of the Settlement in the same way and to
16 the same extent as a Settlement Class Member who does not object. The date of mailing of the
17 Class Notice to the objecting Settlement Class Member shall be conclusively determined
18 according to the records of the Settlement Administrator. Settlement Class Members need not
19 object in writing to be heard at the Final Approval Hearing; they may object or comment in
20 person at the hearing at their own expense. Class Counsel and Defendant's Counsel may respond
21 to any objection lodged with the Court up to five (5) court days before the Final Approval
22 Hearing.

23 **C. Requesting Exclusion.**

24 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
25 Settlement by mailing a written request to be excluded from the Settlement ("Request for
26 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
27 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the Class
28 Member's Social Security Number; (3) the Class Member's signature; and (4) the following

statement: “Please exclude me from the Settlement Class in the *Moreno v. M & J Seafood Company, Inc., et al.* matter” or any statement of standing for the proposition that the Class Member does not wish to participate in the Settlement. The Settlement Administrator shall immediately provide copies of all Requests for Exclusion to Class Counsel and Defendant’s Counsel and shall report the Requests for Exclusions that it receives, to the Court, in its declaration to be provided in advance of the Final Approval Hearing. Any Settlement Class Member who requests exclusion using this procedure will not be entitled to receive any payment from the Settlement and will not be bound by the Settlement Agreement or have any right to object to, appeal, or comment on the Settlement. Any Settlement Class Member who does not opt out of the Settlement by submitting a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if Final Approval of the Settlement is granted. A Settlement Class Member cannot submit both a Request for Exclusion and an objection. If a Settlement Class Member submits an Objection and a Request for Exclusion, the Request for Exclusion will control and the Objection will be overruled. Settlement Class Members who worked during the PAGA Period as Aggrieved Employees that submit a valid Request for Exclusion will still be deemed Aggrieved Employees, will still receive their Individual PAGA Payments, and will be bound by the release of the PAGA Released Claims.

D. Disputes Regarding Settlement Class Members’ Workweek Data.

Each Settlement Class Member may dispute the number of Workweeks attributed to him or her on his or her Class Notice (“Workweek Dispute”). Any such disputes must be mailed to the Settlement Administrator by the Settlement Class Member, postmarked on or before the Response Deadline. The Settlement Administrator shall immediately provide copies of all disputes to Class Counsel and counsel for Defendant and shall immediately attempt to resolve all such disputes directly with relevant Settlement Class Member(s) with the assistance of Defendant and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall adjudicate the dispute.

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1 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL**
2 **PAGA PAYMENTS**

3 Individual Settlement Payments will be calculated and distributed to Participating
4 Class

5 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
6 Members' respective number of Workweeks during the Class Period. Individual PAGA
7 Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees
8 from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective number
9 of Workweeks during the PAGA Period. Specific calculations of the Individual Settlement
10 Shares and Individual PAGA Payments to Aggrieved Employees will be made as follows:

11 **A.** The Settlement Administrator will determine the total number of Workweeks
12 worked by each Settlement Class Member during the Class Period ("Class Member's
13 Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement
14 Class Members during the Class Period ("Class Workweeks"). Additionally, the Settlement
15 Administrator will determine the total number of Workweeks worked by each Aggrieved
16 Employee during the PAGA Period ("Aggrieved Employee's Workweeks"), as well as the
17 aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period
18 ("PAGA Workweeks").

19 **B.** To determine each Settlement Class Member's Individual Settlement Share, the
20 Settlement Administrator will use the following formula: Individual Settlement Share =
21 (Settlement Class Member's Workweeks ÷ Class Workweeks) × Net Settlement Amount.

22 **C.** To determine each Participating Class Member's Participating Individual
23 Settlement Share, the Settlement Administrator will determine the aggregate number of
24 Workweeks worked by all Participating Class Members during the Class Period ("Participating
25 Class Workweeks") and use the following formula: Individual Settlement Share =
26 (Participating Class Member's Workweeks ÷ Participating Class Workweeks) × Net Settlement
27 Amount.

28 ///

1 **D.** The net amount of the Participating Individual Settlement Share is to be paid out
2 to Participating Class Members by way of check and is referred to as “Individual Settlement
3 Payment(s)”.

4 **E.** To determine each Aggrieved Employee’s Individual PAGA Payment, the
5 Settlement Administrator will use the following formula: Aggrieved Employee’s Individual
6 PAGA Payment = (Aggrieved Employee’s Workweeks ÷ PAGA Workweeks) x
7 \$5,000.00 (the PAGA Payment).

8 **F.** Individual Settlement Payments and Individual PAGA Payments shall be paid
9 to Participating Class Members and/or Aggrieved Employees by way of check. When a
10 Participating Class Member is also an Aggrieved Employee, one check may be issued that
11 aggregates both the Individual Settlement Payment and the Individual PAGA Payment

12 **11. DISTRIBUTION OF PAYMENTS**

13 **A. Distribution of Individual Settlement Payments.**

14 Participating Class Members will receive an Individual Settlement Payment and
15 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement Payment
16 and Individual PAGA Payment checks shall remain valid and negotiable for one hundred and
17 eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after
18 expiration of the 180-day period, checks for such payments shall be canceled and funds
19 associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue
20 pursuant to Code of Civil Procedure section 384 (“Unpaid Residue”). The Unpaid Residue plus
21 accrued interest, if any, as provided in Code of Civil Procedure section 384, shall be transmitted
22 to Legal Aid at Work, 180 Montgomery Street, Suite 600, San Francisco, California 94104, the
23 *cy pres* recipient, for use in Los Angeles County. The Settlement Administrator shall prepare a
24 report regarding the distribution plan pursuant to Code of Civil Procedure section 384 and the
25 report shall be presented to the Court by Class Counsel along with a proposed amended judgment
26 that is consistent with the provisions of Code of Civil Procedure section 384.

27 **B. Funding of Settlement.**

28 Defendant shall, within fourteen (14) calendar days of Final Approval Date, make

1 payment of the Gross Settlement Amount (as the same may be escalated pursuant to Paragraph
2 17 of this Agreement) and Employer Taxes to the Settlement Administrator pursuant to Internal
3 Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account
4 (“QSA”) with an FDIC insured banking institution, for distribution in accordance with this
5 Agreement and the Court’s Orders and subject to the conditions described herein.

6 **C. Time for Distribution.**

7 Within seven (7) calendar days after payment of the full Gross Settlement Amount and
8 Employer Taxes by Defendant, or as soon thereafter as practicable, the Settlement Administrator
9 shall distribute all payments due from the QSA for: (1) the Service Award to Plaintiff as specified
10 in this Agreement and approved by the Court; (2) the Attorneys’ Fees and Cost Award to be paid
11 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
12 Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA
13 Payment, as specified in this Agreement and approved by the Court; (5) Individual PAGA
14 Payments as specified in this Agreement and approved by the Court; and (6) Individual
15 Settlement Payments, less applicable taxes and withholdings, as specified in this Agreement and
16 approved by the Court. All interest accrued shall be for the benefit of the Class Members and
17 distributed on a *pro rata* basis to Participating Class Members based on the number of
18 Workweeks worked by them in the Class Period.

19 **12. ATTORNEYS’ FEES AND LITIGATION COSTS**

20 Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys’
21 fees of up to 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph
22 17 of this Agreement, amounts to One Hundred and Twenty Thousand Seven Hundred and Fifty
23 Dollars and Zero Cents (\$243,250.00). Class Counsel shall further apply for, and Defendant shall
24 not oppose, an application or motion by Class Counsel for reimbursement of actual costs
25 associated with Class Counsel’s prosecution of this matter as set forth by declaration testimony
26 in an amount up to Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Awards of
27 attorneys’ fees and costs shall be paid out of the Gross Settlement Amount, for all past and future
28 attorneys’ fees and costs necessary to prosecute, settle, and obtain Final Approval of the

1 settlement in Action. The “future” aspect of the amounts stated herein includes, without
2 limitation, all time and expenses expended by Class Counsel (including any appeals therein).
3 There will be no additional charge of any kind to either the Settlement Class Members or request
4 for additional consideration from Defendant for such work unless, Defendant materially breach
5 this Agreement, including any term regarding funding, and further efforts are necessary from
6 Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce
7 the Agreement. Should the Court approve attorneys’ fees and/or litigation costs and expenses in
8 amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall
9 be a part of the Net Settlement Amount.

10 **13. SERVICE AWARD TO PLAINTIFF**

11 Named Plaintiff shall seek, and Defendant shall not oppose, a Service Award in an
12 amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to
13 Plaintiff, for participation in and assistance with the Action. Any Service Award awarded to
14 Plaintiff shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form
15 1099. If the Court approves the Service Award to Plaintiff in less than the amounts sought herein,
16 then the unapproved portion(s) shall be a part of the Net Settlement Amount.

17 **14. TAXATION AND ALLOCATION**

18 a. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
19 be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS
20 Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties
21 agree that the employees’ share of taxes and withholdings with respect to the wage-portion of the
22 Individual Settlement Share will be withheld from the Individual Settlement Share in order to
23 yield the Individual Settlement Payment. The amount of federal income tax withholding will be
24 based upon a flat withholding rate for supplemental wage payments in accordance with Treasury
25 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
26 be made pursuant to applicable state and/or local withholding codes or regulations.

27 b. Forms W-2 and/or Forms 1099 will be distributed by the Settlement
28 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the

1 “Code”) and consistent with this Agreement. If the Code, the regulations promulgated
2 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
3 set forth in this Section may be modified in a manner to bring Defendant into compliance with
4 any such changes.

5 c. All Employer Taxes shall be paid by Defendant separate, apart, and in addition to
6 the Gross Settlement Amount. Defendant shall remain liable to pay the employer’s share of
7 payroll taxes as described above.

8 d. Neither Counsel for Plaintiff nor Defendant intend anything contained in this
9 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
10 be relied upon as such within the meaning of United States Treasury Department Circular 230
11 (31 C.F.R. Part 10, as amended) or otherwise.

12 **15. PRIVATE ATTORNEYS’ GENERAL ACT ALLOCATION**

13 The Parties agree to allocate Twenty Thousand Dollars and Zero Cents (\$20,000.00) of
14 the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five
15 percent (75%) of the amount allocated toward PAGA (\$15,000.00) will be paid to the LWDA
16 and twenty-five percent (25%) (\$5,000.00) will be distributed to Aggrieved Employees on a *pro*
17 *rata* basis based upon their respective Workweeks worked as Aggrieved Employees during the
18 PAGA Period.

19 **16. COURT APPROVAL**

20 This Agreement is contingent upon an order by the Court granting Final Approval of the
21 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
22 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
23 shall be restored to their respective positions in the Action prior to entry of this Settlement. If
24 this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal,
25 it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a)
26 the Court reserves any authority to issue any appropriate orders when denying approval; and/or
27 (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive
28 the Settlement Agreement being voided or not approved, and which control in such an event.

1 **17. INCREASE IN WORKWEEKS**

2 Defendant represents that there are no more than 11,220 Workweeks worked by Class
3 Members during the Class Period. In the event the number of Workweeks worked increases by
4 more than 5%, or 561 Workweeks worked, then the GFV shall be increased proportionally by
5 the Workweeks worked in the Class Period in excess of 11,220 Workweeks by the Workweek
6 Value. The Workweek Value shall be calculated by dividing the GFV by 11,220 Workweeks.
7 The Parties agree that the Workweek Value amounts to and the settlement amounts to \$61.94 per
8 Workweek (\$695,000 / 11,220 Workweeks). Thus, for example, should there be 12,335
9 Workweeks worked by Class Members in the Class Period, then the GFV shall be increased by
10 \$69,063.10. ((12,335 Workweeks – 11,220 Workweeks) x \$61.94 per Workweek.)

11 **18. NOTICE OF JUDGMENT**

12 In addition to any duties set out herein, the Settlement Administrator shall provide notice
13 of the Final Judgment entered in the Action by posting the same on its website for a period of no
14 less than four (4) years.

15 **19. MISCELLANEOUS PROVISIONS**

16 **A. Interpretation of the Agreement.**

17 This Agreement constitutes the entire agreement between the Parties with respect to its
18 subject matter. Except as expressly provided herein, this Agreement has not been executed in
19 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
20 written representations or terms shall modify, vary or contradict its terms. In entering into this
21 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
22 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
23 enforced under the laws of the State of California, both in its procedural and substantive aspects,
24 without regard to its conflict of law provisions. Any claim arising out of or relating to the
25 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
26 Court of the State of California for the County of Los Angeles, and Plaintiff and Defendant
27 hereby consent to the personal jurisdiction of the Court in the Action over it solely in connection
28 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties,

1 and each of them, participated in the negotiation and drafting of this Agreement and had available
2 to them the advice and assistance of independent counsel. As such, neither Plaintiff nor
3 Defendant may claim that any ambiguity in this Agreement should be construed against the other.
4 The Agreement may be modified only by a writing signed by counsel for the Parties and approved
5 by the Court.

6 **B. Further Cooperation.**

7 The Parties and their respective attorneys shall proceed diligently to prepare and execute
8 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
9 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they
10 will not take any action inconsistent with this Agreement, including, without limitation,
11 encouraging Class Members to opt out of the Settlement. In the event the Court finds that any
12 Party has taken actions inconsistent with the Settlement, including, without limitation,
13 encouraging Class Members to opt out of the Settlement, the Court may take any corrective
14 actions, including enjoining any Party from communicating regarding the Settlement on an *ex*
15 *parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary and/or
16 terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of
17 opt-outs and/or objections.

18 **C. Counterparts.**

19 The Agreement may be executed in one or more actual or non-original counterparts, all
20 of which will be considered one and the same instrument and all of which will be considered
21 duplicate originals.

22 **D. Authority.**

23 Each individual signing below warrants that he or she has the authority to execute this
24 Agreement on behalf of the Party for whom or which that individual signs.

25 **E. No Third-Party Beneficiaries.**

26 Plaintiff, Participating Class Members, Aggrieved Employees, the State of California,
27 Class Counsel, and Defendant are direct beneficiaries of this Agreement, but there are no third-
28 party beneficiaries.

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1 **F. Deadlines Falling on Weekends or Holidays.**

2 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
3 or legal holiday, that deadline shall be continued until the following business day.

4 **G. Jurisdiction of the Court**

5 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
6 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms
7 of this Settlement Agreement and all orders and judgments entered in connection therewith,
8 and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of
9 interpreting, implementing, and enforcing the settlement embodied in this Settlement
10 Agreement and all orders and judgments entered in connection therewith.

11 **H. Severability.**

12 In the event that one or more of the provisions contained in this Agreement shall for any
13 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
14 unenforceability shall in no way effect any other provision if Defendant's Counsel and Class
15 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
16 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

17
18 **IT IS SO AGREED:**

19 Dated: _____, 2023

Daniel De Jesus Moreno
Plaintiff and Class Representative

22
23 Dated: ----January 28-----, 2023

M. & J. SEAFOOD COMPANY, INC.
Defendant

25
26 By: Jose Luis Rodriguez

27 Its: C.O.O.
28

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3 **AGREED AS TO FORM:**

4 Dated: February 1, 2023

Vedang J. Patel

DAVID D. BIBIYAN

VEDANG J. PATEL

**Counsel for Plaintiff DANIEL DE JESUS
MORENO**

7
8 Dated: *January 27* -----, 2023

M. Schiller

Michael I. Schiller

**Counsel for Defendant M & J SEAFOOD
COMPANY, INC.**